
The Money Gag

Mitch McConnell

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Proponents of campaign spending limits are stuck between a rock and a hard place: the Constitution and reality.

It is impossible constitutionally to limit all campaign-related spending. The Supreme Court has been quite clear on this matter, most notably in the 1976 *Buckley v. Valeo* decision: “The First Amendment denies government the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.”

For those who do not at first blush see the link between the First Amendment and campaign spending, the Court elaborates: “A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today’s mass society requires the expenditure of money.”

The reformers do not care or, in some cases, cannot accept that spending limits limit speech. They believe that spending limits are justified and necessary to alleviate perceived or actual corruption. But the Court slapped that argument aside, holding that there is “nothing in-

vidious, improper, or unhealthy” in campaigns spending money to communicate. The reformers contend that spending limits are essential because campaign spending has increased dramatically in the past two decades, a woefully lame premise the Court easily dispatched: “The mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending.” Appealing to Americans’ instinct for fairness, the reformers passionately plead for spending limits to “level” the political playing field. The Court was utterly contemptuous of this “level playing field” argument: “The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”

There you have it. The reformers cannot achieve their objectives statutorily. To realize the reformers’ campaign finance nirvana would require essentially repealing the First Amendment—blowing a huge hole in the Bill of Rights via a constitutional amendment. Frightfully undemocratic? Yes. Out of the question? No. Thirty-eight United States senators voted to do just that on March 18, 1997. These thirty-eight senators voted, in the name of “reform,” for S.J. Res. 18, a constitutional amendment to empower Congress and the states to limit contributions and spending “by, in support of, or in opposition to, a candidate.” Thus would the entire universe of political speech and participation be subjected to limitation by congressional edict and enforcement by government bureaucrats.

This wholesale repeal of core political freedom registered barely a ripple in the nation’s media. Perhaps reporters and editorial writers do not appreciate that their campaign coverage could be construed as spending “by, in support of, or in opposition to, a candidate” and, therefore, could be regulated under a Constitution so altered. It is not a stretch. The television networks and most major newspapers are owned by corporate conglomerates (aka “special interests”) and the blurred distinction is already acknowledged in federal campaign law, which currently exempts from the definition of expenditure “any news

story, commentary, or editorial" unless distributed by a political party, committee, or candidate.

I do not advocate regulating newspaper editorials, articles, and headlines. I do not believe that government should compensate candidates who are harmed by television newscasts or biased anchors. However, the political playing field can never be "level" without such regulation, and it is the only area of political speech upon which the vaunted McCain-Feingold bill is silent. McCain-Feingold has provisions to enable candidates to counteract independent expenditures by every "special interest" in America, except the media industry. This "loophole" is the only one that editorial writers are not advocating be closed by the government.

Such regulation of the media may strike one as an absurd result of the campaign reform movement, but it is a logical extrapolation of McCain-Feingold's regulatory regime. The McCain-Feingold bill's spending limit formula for candidates is itself ludicrous. For Senate general elections: 30 cents times the number of the state's voting-age citizens up to 4 million, plus 25 cents times the number of voting-age citizens over 4 million, plus \$400,000. However, if you are running in New Jersey, 80 cents and 70 cents are substituted for 30 and 25 because of the dispersed media markets. Moreover, the formula notwithstanding, for all states the minimum general election limit is \$950,000 and the maximum \$5,500,000. McCain-Feingold sets the primary election limit at 57 per cent of the general election limit and the runoff limit at 20 per cent of the general election limit.

Reading the Clinton-endorsed McCain-Feingold bill, one can only conclude that the era of big government is just beginning. The courts have repeatedly ruled that communications which do not "expressly advocate" the election or defeat of a candidate (using terms such as "vote for," "defeat," "elect") cannot be regulated, yet McCain-Feingold would have the Federal Election Commission policing such ads if "a reasonable person" would "understand" them to advocate election or

defeat. Out of 260 million Americans, just which one is to be this “reasonable person”?

The McCain-Feingold bill seeks to quiet the voices of candidates, private citizens, groups, and parties. Why? Because, it is said, “too much” is spent on American elections. The so-called reformers chafe when I pose the obvious question: “Compared to what?”

In 1996—an extraordinarily high-stakes, competitive election in which there was a fierce ideological battle over the future of the world’s only superpower—\$3.89 per eligible voter was spent on congressional elections. May I be so bold as to suggest that spending on congressional elections the equivalent of a McDonald’s “extra value” meal and a small milkshake is not “too much”?

The reformers are not dissuaded by facts. Their agenda is not advanced by reason. It is propelled by the media, some politicians, and the recent infusion of millions of dollars in foundation grants to “reform” groups. Fortunately, the majority of this Congress is not ideologically predisposed toward the undemocratic, unconstitutional, bureaucratic finance scheme embodied in McCain-Feingold. Further, a powerful and diverse coalition has coalesced to protect American freedom from the McCain-Feingold juggernaut.

Ranging from the American Civil Liberties Union and the National Education Association on the left to the Christian Coalition, the National Right-to-Life Committee, and the National Rifle Association on the right, the individual members of the coalition agree on little except the need for the freedom to participate in American politics. There is perhaps no better illustration of the Supreme Court’s observation in 1937 that freedom of speech “is the matrix, the indispensable condition, of nearly every other form of freedom.” These groups understand that the First Amendment is America’s greatest political reform.

Where do we go from here? After ten years of fighting and filibustering against assaults on the First Amendment advanced under the guise of “reform,” I am heartened by the honest debate in this Congress. In the House of Representatives, John T. Doolittle’s bold proposal to

repeal government-prescribed contribution limits and the taxpayer-financed system of (illusory) presidential spending limits has more cosponsors than McCain-Feingold's companion bill, the Shays-Meehan speech-rationing scheme. In the Senate, McCain-Feingold's fortunes cling pathetically to the specter that the Government Affairs investigation into the Clinton campaign finance scandal will fuel public pressure for reform.

My goal is to redefine "reform," to move the debate away from arbitrary limits and toward expanded citizen participation, electoral competition, and political discourse. McCain-Feingold is a failed approach to campaign finance that has proved a disaster in the presidential system. McCain-Feingold would paper over the fatal flaws in the presidential spending-limit system and extend the disaster to congressional elections. Experience argues for scuttling it entirely.

The best way to diminish the influence of any particular "special interest" is to dilute its impact through the infusion of new donors contributing more money to campaigns and political parties. Those who get off the sidelines and contribute their own money to the candidates and parties of their choice should be lauded, not demonized. The increased campaign spending of the past few elections should be hailed as evidence of a vibrant democracy, not reviled as a "problem" needing to be cured.

My prescription for reform includes contribution limits adjusted, at the least, for inflation.

The \$1,000 individual limit was set in 1974, when a new Ford Mustang cost just \$2,700. The political parties should be strengthened, the present constraints on what they can do for their nominees, repealed. These would be steps in the right direction.