Price Controls on Democracy

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This selection first appeared in the *Wall Street Journal*, September 24, 1997. Du Pont, former governor of Delaware, likens the proposals of the McCain-Feingold legislation to price controls, which have repeatedly failed to accomplish their avowed purposes. Du Pont favors full and fast disclosure of contributions.

Hard cases, it is said, make bad law. The hard cases of Clinton campaign cash corruption are pushing Congress toward very bad law—the McCain-Feingold bill, which would, in effect, impose price controls on political involvement.

The First Continental Congress understood well the consequences of legislated prices, which had been imposed during the Revolutionary War. In June 1778 it concluded that "limitations on the prices of commodities are not only ineffectual for the purposes proposed, but likewise productive of very evil consequences to the great detriment of the public service and grievous oppression of individuals."

But the failure of price controls reaches back to the beginning of government. As Robert L. Scheuttinger and Eamonn F. Butler document in "Forty Centuries of Wage and Price Controls," in 2150 B.C., the kingdom of Babylon adopted the Code of Hammurabi. Among its provisions were wage and price controls. For example, the code said the price to hire a 60-ton boat shall be "a sixth part of a shekel of silver per diem" and the pay of a carpenter "four grains of silver per diem."

"BOUNDLESS AVARICE"

Twenty-five centuries later, in A.D. 284, the Roman emperor Diocletian, complaining of "raging and boundless avarice," decreed that "maximum [prices] be fixed" for all goods and services. Hoarding, riots, a black market and a failed economy soon followed. Four years later Diocletian abdicated his throne.

Sixteen centuries after that, nations ranging from Lenin's USSR to Hitler's Germany to Richard Nixon and Jimmy Carter's America imposed wage and price controls. All failed to achieve their purpose and caused more problems than they solved.

So it makes perfect sense in the world of Washington to insist that they be imposed again. This time Sens. John McCain (R, Ariz.) and Russ Feingold (D, Wis.), aided and abetted by Common Cause, the *New York Times*, and President Clinton, want to impose price controls on political speech and campaigns. Their legislative proposal contains a wide variety of price controls: on campaigns (an overall spending limit), on private broadcasters (advertising rates), on government (postal rates), and on out-of-state contributors to a candidate (the proportion of contributions they may give is restricted).

The legislation is a mind-numbing example of government by the numbers. The overall spending limit for Senate races "shall not exceed the lesser of $5,500,000, or the greater of $950,000 or $400,000 plus 30 cents multiplied by the voting age population not in excess of 4,000,000 and 25 cents multiplied by the voting age population in excess of 4,000,000." Oh, that is unless the candidate runs in a state that has no more than one VHF TV transmitter licensed for operation, in which case 80 cents is substituted for 30, and 70 cents for 25.

In addition the bill proposes free television time for candidates, Each candidate would be entitled to a total of thirty minutes, to be used Monday through Friday between 6 and 10 P.M., in minimum bites of thirty seconds and a maximum of five minutes; but no more than fifteen minutes on an one station. Breathtaking in its complexity, McCain-Feingold calls to mind a statement attributed to Soviet official Vladimir Kabaidze in 1936: "We cannot tolerate the proliferation of this paperwork any longer. We must kill the people producing it."

Other reformers offer alternative schemes of government control. Max Frankel, writing in the *New York Times* magazine, is for "chasing political commercials off the air and giving ballot-worthy candidates enough free air time to present themselves to the voters." Two think-tankers, Thomas Mann of the Brookings Institution and Norman Ornstein of the American Enterprise Institute, want to eliminate political party "soft money" and narrow the definition of how much an individual or organization can spend advocating or opposing a public policy issue. And House and Senate Minority leaders Richard Gephardt (D, Mo.) and Tom Daschle (D, S.D.) want to amend the Constitution, weakening the First Amendment to permit campaign price controls.

All of these ideas are bad economics, bad politics, and, as forty centuries of experience have proved, very bad public policy.

In addition to the First Amendment problem—the Supreme Court ruled unanimously in *Buckley v. Valeo* that political contributions are protected speech—there are enormous fairness issues. Mr. Frankel's formulation hints at them: giving "ballot-worthy candidates" free air time. So who is "ballot-worthy?" Strom Thurmond and the Dixiecrats in 1948? Eugene McCarthy's challenge to Lyndon Johnson in 1968? Harry Browne or Ralph Nader, last year's Libertarian and Green candidates for president? What impartial arbiter would decide who may or may not run for election in America?

Another affront to liberty is the McCain-Feingold proposal to limit a candidate's out-of-state contributions to 40 percent of all contributions. Under such a provision, non-Louisianans who don't want to see David Duke elected to the Senate might be unable to contribute to his opponent.

Limiting issue advocacy is another clear and present danger to American democracy. McCain-Feingold would permit the federal government to regulate campaign speech that contains "express advocacy" intended to affect an election. But advocacy of issues is what elections are about. There should be more of it, not less.

Any state or local party activity, from voter registration to kaffeeklatsches, that "might affect the outcome of a federal election" would also be covered by national campaign controls, effectively federalizing local elections. All this is Big Brother writ large, a bit of Leninism superimposed on modern America.

Finally comes the question of political action committees. Let's be clear, we are not talking of legalizing illegal acts—foreign contributions to political campaigns, solicitations from government offices or making contributions in the name of another. We are considering whether people of similar beliefs—union members or right-to-life advocates—may contribute to a common organization to increase their political impact.

McCain-Feingold purports to outlaw them all. But under the independent expenditure sections of the bill, a union, for example, could advertise and advocate anything it likes. If it spends $35 million, as the AFL-CIO did in last year's congressional elections, opposing candidates would be allowed to spend a like amount in addition to their legislated spending limit. Which is a loophole big enough to drive a hippo through.

So what is the answer to the dilemma of money and politics in this season of discontent? Disclosure—full, accurate, daily disclosure.

Congress should defeat McCain-Feingold and repeal the arcane existing campaign spending rules (which encourage, for example, presidential campaign staffers to sleep across the river in Vermont to avoid their motel bills counting against New Hampshire spending limits) and take a pledge against price controls.

Then let the sunlight in. The quagmire we are in is the result of the post-Watergate campaign reforms. Is it likely that a new set of government regulations will be any better than the old set?

ELECTRONIC REPORTING

Instead of superregulating an already overregulated activity, require every campaign contribution, hard or soft, direct or indirect, to be reported to the Federal Election Commission electronically the day it arrives. If President Clinton's campaign wants to take $50,000 from John Huang, it can. If the Democratic National Committee wants to accept $300,000 checks from federal employee unions, or the Republican National Committee from Phillip Morris or Archer-Daniels-Midland, that's OK too. But it will be reported in the morning paper. And the people will decide if it is wrong when they vote.

What do you suppose the voters would have decided if what we now know of Al Gore's solicitations from the White House, the Chinese connections, and the cost of nights in the Lincoln Bedroom had been reported nightly on the evening news in the last two weeks before the election? A well-informed electorate will safeguard American campaigns far better than any appointed group of the best and brightest Washington regulators.