Deregulating Campaign Finance: Solution or Chimera?

Thomas E. Mann

This selection first appeared in the *Brookings Review*, Winter 1998, pp. 18–21. In this article Mann, coeditor of *Campaign Finance Reform: A Sourcebook*, published by the Brookings Institution in 1997, considers the merits of the Doolittle proposal to "remove all existing limits on contributions to federal candidates and national parties, end the public financing of presidential primary and general election campaigns, and mandate electronic filing and timely disclosure." This he calls "a proposal breathtaking in its boldness and contrariness."

Deregulation and disclosure are appealing, he concludes, given the continual oversight and repair of the complex task of regulating federal campaign financing. But ultimately he objects. He claims that "a fundamental objective of campaign finance regulation is to ensure that the inequalities generated by the market economy do not undermine the political equality that is a central feature of our democracy" and asks us to "recall" this, as though it were something that we all know and acknowledge, a fundamental linchpin of our way of life.

But it is not. It is a statement of the underlying principle that the influence of money, of both income and wealth, should be stripped from politics and that individuals who earn paychecks that enable them to support candidates and public causes should be as financially limited in their capacity to communicate as those on the public dole.

Those who have more money than others will unduly influence the voters, Mann says, because voters cannot acquire enough information, cannot distinguish the pattern of campaign contributions received by different candidates, and do not have enough incentive to acquire information and punish candidates too heavily under the influence of special interests. In other words, regulation must protect voters from their own inadequacies.

The reports of widespread fund-raising abuses in the 1996 elections have precipitated another heated debate about whether and how best to alter the rules under which money is raised and spent to influence general elections. Alleged violations of existing laws—fund-raising from

foreign nationals, the use of conduits to mask impermissible contributions, improper use of public property for fund-raising events and telephone calls, and the use of soft money and issue advocacy to circumvent spending limits on publicly funded presidential candidates—have led to calls for aggressive criminal prosecution (preferably led by an independent counsel) and for legislative action to plug the legal loopholes that have encouraged or abetted reprehensible conduct by candidates, parties, and outside groups.

In spite of the colorful (and appalling) new material from 1996, much of the reform rhetoric is stale, reflecting arguments that have been marshaled time and again during the futile debates of the past fifteen years. But there is one decidedly new kid on the reform block, a proposal breathtaking in its boldness and contrariness. Introduced by Rep. John Doolittle (R-Calif.) and championed by the estimable columnists Charles Krauthammer, Robert Samuelson, and George Will, H.R. 905 (the "Citizen Legislature and Political Freedom Act") would remove all existing limits on contributions to federal candidates and national parties, end the public financing of presidential primary and general election campaigns, and mandate electronic filing and timely disclosure on the Internet of reports on contributions to candidates for federal office. Faced with widespread evidence of perverse effects and unanticipated consequences from previous efforts to regulate the flow of money in elections, Doolittle and his supporters appear to take a lesson from the largely successful experience with deregulation of the intercity transportation, energy, and financial services industries. In addition to the obvious virtue of simplicity, this call to "deregulate and disclose"—and let the chips fall where they may—offers a vision of a political marketplace disciplined not by a legal thicket of arcane rules and zealous regulators but by rational citizens exercising their franchise.

Part of the appeal of the Doolittle approach is that it explicitly rejects a regulatory model that by virtually all accounts has failed utterly to achieve its objectives. Present law regulating the financing of congressional elections restricts the supply of funds (through contribution

limits whose real value has eroded by two-thirds since enactment in 1974) but not demand (since the mandatory spending limits in the law were declared unconstitutional by the Supreme Court). Is it any surprise that this hybrid system has intensified the money chase and stimulated the development of a black market for raising and spending funds to influence the outcome of House and Senate elections? The rules governing the financing of presidential elections (with voluntary spending limits achieved through the provision of generous, inflation-adjusted public financing) were built on a more plausible regulatory model, and for a while they worked largely in the manner anticipated by their architects. But a series of Federal Election Commission rulings beginning in 1978 created an alternative currency, not subject to federal regulation, that proved irresistible to ambitious politicians and resourceful consultants. By 1996 the scramble for this alternative currency (otherwise known as soft money) and its expenditure for what were ostensibly ads about "issues" and not candidates made a mockery of the legal prohibitions and limits on contributions and the voluntary spending limits.

Patching the holes in this regulatory regime is a daunting task, especially in light of the restrictions on policymakers imposed by the *Buckley* Court's holding that money is speech under the First Amendment and can be regulated only if there is a compelling interest in doing so—and only if the rules are narrowly tailored to advance that interest. Increasing the supply of funds (through higher individual and party contribution limits and tax credits) and subsidies (with free broadcast time and mailings) seems essential, as does an insistence that federal campaign activity be financed exclusively with regulated—that is, "hard" money—funds. But this approach is exceedingly complex, both technically and politically, and the solution will be temporary at best, requiring ongoing oversight and repair. All the more reason, say Doolittle advocates, to rely instead on the invisible hand of the political market to allocate campaign resources by disciplining the candidates who raise and spend those funds.

"Deregulate and disclose" is a seductive slogan. But will it have the desired effects? Recall that a fundamental objective of campaign finance regulation is to ensure that the inequalities generated by the market economy do not undermine the political equality that is a central feature of our democracy. Another key objective is to prevent incumbent officeholders from abusing state power to extract private contributions to undermine the competitiveness of elections. Under the Doolittle plan, would voters be able to limit the extent to which campaign donations and expenditures reinforce or magnify the influence of concentrated economic wealth and state power? To do so, they would need to acquire full information on who was giving what to which candidates and parties; be able to differentiate between the opposing candidates or parties in the pattern of campaign contributions; and have a strong incentive to cast their ballots on a single basis: to punish a candidate or party for accepting funds that they find repugnant. It is hard to see how any one, much less all three, of these conditions could be met in the brave new campaign finance world sketched by Representative Doolittle—given the more realistic world described by Anthony Downs of voters rationally limiting the time they invest in pursuing information about politics.

First, take full information. The Doolittle bill does nothing to require disclosure of campaign activity disguised as issue advocacy—the most rapidly growing, the most negative, and the least accountable form of political communication. Assuming the rest is disclosed on the Internet, how are voters to obtain and absorb copious data on campaign contributions? The press can help, but its voice might easily be drowned out by the political ads financed with the unregulated contributions that are supposed to be disciplined by an informed electorate. The Doolittle proposal also underestimates the extent to which full disclosure itself requires an extensive regulatory apparatus—just the thing Doolittle promises to abolish.

Second, even assuming they garner the necessary information, will voters be presented with a clear difference in fund-raising behavior on

which to cast their ballots? What is to prevent large economic interests from investing generously in both parties or contributing to winning candidates after the election, in a quest for better access or in response to heavy-handed requests from those public officials? Each party or pair of candidates might attract campaign contributions, albeit from different sources, that voters find equally offensive.

Finally, why would voters sublimate those forces that now weigh heavily on their vote (party identification, political ideology, positions on key issues, economic performance, and the relative attractiveness of the candidates) in the single-minded pursuit of exercising the moral opprobrium that disciplines the role of money in politics? Experience with campaign finance disclosure over the past two decades suggests that citizens are less likely to vote on the basis of this new information than to conclude that the entire system is corrupt.

A deregulated campaign finance system is less a solution to the clear shortcomings of the existing regulatory model than a fanciful exercise in wishing those problems out of existence. The unrestrained use of economic wealth and state power in the electoral process would so clearly subvert the essential attire of our democracy that it would almost certainly lead to insistent public demands for the deregulation of campaign finance. There may be an alternative to muddling through the complexity of the present system. But if there is, it has yet to be persuasively articulated.