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GOP WEEDING

Why Campaign Finance Reform Never Works

Professor Bradley A. Smith, Wall Street Journal

Think campaign finance reform isn't an incumbent protection racket? Just look at the spending limits included in the Shays-Meehan and McCain-Feingold bills, the hot "reform" bills on Capitol Hill.

Shays-Meehan would limit spending in House races to \$600,000. In 1996, every House incumbent who spent less than \$500,000 won compared with 3% of challengers who spent that little. However, challengers who spent between \$500,000 and \$1 million won 40% of the time while challengers who spent more than \$1 million won five of six races.

The McCain-Feingold bill, which sets spending limits in Senate races, would yield similar results. In both 1994 and 1996, every challenger who spent less than its limits lost, but every incumbent who did so won.

The key spending variable is not incumbent spending, or the ratio of incumbent to challenger spending, but the absolute level of challenger spending.

Incumbents begin races with high name and issue recognition, so added spending doesn't help them much.

Challengers, however, need to build that recognition. Once a challenger has spent enough to achieve similar name and issue recognition, campaign spending limits kick in.

Meanwhile the incumbent is just beginning to spend. In other words, just as a challenger starts to become competitive, campaign spending limits choke off political competition.

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...Government is inherently untrustworthy when it comes to regulating political speech, and this tendency to use government power to silence political criticism and stifle competition is a major reason why we have the First Amendment.

The Supreme Court has recognized the danger that campaign finance regulation poses to freedom of speech, and for the past 20 years, beginning with *Buckley v. Valeo*, has struck down many proposed restrictions on political spending and advocacy, including mandatory spending limits. Supporters of campaign finance reform like to ridicule *Buckley* as equating money with speech. In fact, *Buckley* did no such thing.

Instead, *Buckley* recognized that limiting the amount of money one can spend on political advocacy has the effect of limiting speech. This is little more than common sense. For example, the right to travel would lose much of its meaning if we limited the amount that could be spent on any one trip to \$100.

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...Of course, the purpose of political campaigns is to discuss issues; and the purpose of discussing issues is to influence who holds office and what policies they pursue. Naturally, candidates don't like to be criticized, especially when they believe that the criticisms rely on distortion and demagoguery. But the Founders recognized that government cannot be trusted to determine what is "fair" or "unfair" when it comes to political discussion. The First Amendment doesn't promise us speech we like, but the right to engage in speech that others may not like.

X Recognizing that many proposed reforms run afoul of the Constitution, some, such as former Sen. Bill Bradley and current House Minority Leader Richard Gephardt, are calling for a constitutional amendment that would, in effect, amend the First Amendment to allow government to regulate political speech more heavily.

X This seems odd, indeed, for while left and right have often battled over the extent to which the First Amendment covers commercial speech or pornography, until now no one has ever seriously questioned that it should cover political speech.

X In fact, constitutional or not, campaign finance reform has turned out to be bad policy. For most of our history, campaigns were essentially unregulated yet democracy survived and flourished. However, since passage of the Federal Elections Campaign Act and similar state laws, the influence of special interests has grown, voter turnout has fallen, and incumbents have become tougher to dislodge. Low contributions limits have forced candidates to spend large amounts of time seeking funds. Litigation has become a major campaign tactic, with ordinary citizens hauled into court for passing out homemade leaflets; been restrained from communicating endorsements to their dues-paying members.

The reformers' response is that more regulation is needed. If only the "loopholes" in the system could be closed, they argue, it would work. Of course, some of today's biggest loopholes were yesterday's reforms. Political action committees were an early 1970's reform intended to increase the influence of small donors. Now the McCain-Feingold bill seeks to ban them. Soft-money, which both bills would sharply curtail, was a 1979 reform intended to help parties engage in grassroots political activity, such as get-out-the-vote drives.

When a law is in need of continual revision to close a series of ever-changing "loopholes," it is probably the law, and not the people, that is in error. The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.