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TOPIC #1: CAMPAIGN FINANCE REFORM

"While not abandoning the quest to make elections fairer and money less decisive, reformers will have to recognize that the campaign finance system is embedded deeply in a rich and complex world of political speech, all or most of which is dependent on money in some way, and also strongly protected by the spirit and the letter of the First Amendment."

Mark Schmitt

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Beyond McCain-Feingold

A new approach to money in politics

BY MARK SCHMITT

One of the effects of the 2000 campaign is that Americans finally seem ready to confront the distortion of our democracy by money. Campaign finance reform became a political issue, for the first time ever, during the election. By this March, Congress finally had the votes to send some sort of reform legislation to the president's desk. And most importantly, a popular movement for reform has emerged, bringing together environmentalists, organizers of low-income communities, liberal religious groups, and many others who share a belief that they are bound together in defeat by the influence of moneyed interests on the democratic process.

At the same time, though, the problem this movement set out to solve has gotten much worse. In the 2000 elections, regulated campaign contributions reached a record total of $3 billion, and that figure does not account for the vast amounts of political money that moved outside the boundaries of both the existing system of regulation and the broader reach of the McCain-Feingold bill. The problem now for campaign finance reformers is that we no longer know whether even the most ambitious solutions will work.

REFORMERS CAN MAKE TWO MISTAKES in this climate: One is aiming too low, by settling for reform that does not reach most of the money that distorts politics. The other is promising too much, or expecting too much, from procedural reforms.

Start with aiming too low. Reform should at least recognize all the paths—there are at least three—through which large outside contributions enter and influence elections. Of these, political party soft money is the best known. The use of party soft money, which was intended for party building activities like voter registration drives, exploded after the discovery in 1995 that it could pay for television ads. Soft money reached about half a billion dollars last year, which is more than was spent by all candidates for the White House and both houses of Congress combined as recently as 1992.

There's nothing good to be said for soft money: It brought the million-dollar contribution and the corporate contribution, both long forbidden, back to politics. And rather than strengthening parties, soft money has ushered in a period in which the parties, especially at the state and community level, are as weak as they have ever been on every dimension except fundraising. When the parties became banks, they ceased to function as political parties.

The McCain-Feingold legislation, in the version most recently before the Senate, would close down this path by subjecting all gifts to parties to the existing legal limits on contributions. This is worth doing, and might even revitalize the parties by making them find something else to do, but it would not eliminate large or corporate contributions from campaigns.

That's because there are at least two other paths by which big money enters politics. One is the campaign ad disguised as an independent discussion of issues, sponsored not by a party but by an outside group. These are easily spotted because they avoid regulation by ostentatiously not asking you to vote for or against a candidate: "Call Sam Jones and ask him why he loves taxes so much," is the typical pitch to such an ad. Such ads were a mere trickle in 1996, but in 2000, outside groups spent more than the Republican party itself in House races, and dominated certain key races, such as Montana's Senate contest.

McCain-Feingold would require that the sponsors of some of these ads disclose their identities, and would prohibit direct corporate and union spending on these ads in the two months just before an election, but it wouldn't get rid of them. Nor would it shut off the third path of big-money spending: the true issue ad, the one that doesn't need to mention a candidate at all. In the current political world, which is more about issues than we realize, politicians and consultants know that "control of the issue environment" is the most valuable asset a campaign can possess. Prescription drug coverage, Social Security, reproductive rights — it was only by making these the key issues in the 2000 campaign that Democrats won Senate and House seats and the popular vote for president. None of this was accidental. *Money*, spent wisely, created this favorable issue environment for Democrats. A targeted effort to remind a small group of swing voters — moderately conservative, pro-choice women in a few states — that reproductive rights were at risk, without naming names, was surely every bit as effective as an ad attacking Bush would have been. *Any issue campaign that amplifies a candidate's campaign message is likely to significantly benefit that campaign.*

Much of this spending is unreported, but by one estimate, progressive groups spent about $65 million on such issue messages. Conservative groups spent much more, though less effectively. If soft money were banned, and false issue advocacy effectively restricted, it is easy to foresee that a great deal more money could move into this third zone of unrestricted, unrestrictable spending.

While not abandoning the quest to make elections fairer and money less decisive, reformers will have to recognize that the campaign finance system — that is, the regulated system of contributions to candidates and to the party's hard-money committees — is embedded deeply in a rich and complex world of political speech, all or most of which is dependent on money in some way, and also strongly protected by the spirit and the letter of the First Amendment. This presents a tremendous challenge as we look beyond the current legislation.

AS INCOMPLETE AS THE REFORM ATTEMPTS of congressional incrementalists are, however, efforts that aim to rid politics of money completely will be even less effective. In our market-driven, inherently unequal society, democracy cannot be completely isolated from capitalism.

Reformers believe that it is possible to set rules for the "campaign finance system" as if it were self-contained. And as they see the system fail — that is, as outside money penetrates the regulated zone of democracy — they see the cure in similar terms: find the loopholes and close them off. Former Senator Bill Bradley (for whom I worked on this issue) used to say that "money in politics is like ants in the kitchen: If you don't close *all* the holes, they'll keep getting in." But what if that can't be done? What happens to reform if closing off soft money simply pushes big money into independent issue ads, and closing off independent issue ads simply pushes the money into ads intended to "shape the issue environment"?

A New Approach

The real question for reformers is not how to eliminate, but how to moderate the influence of money on politics, in a world in which robustly democratic politics cannot be isolated from the inequalities of capitalism. This is best done by a new approach. It is based on an understanding that politics, and democratic politics in particular, depends on communication and communication in modern society is a matter of money—someone's money.

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Consider the problem of money in politics this way: There is a wall between candidates (along with the larger number of civic-minded people who would be candidates if they could imagine raising the money) and the voters they need to reach. In the case of a reasonably competitive House seat, the wall is roughly a million dollars high. (Only one new House member who won a reasonably competitive seat spent less than a million.) That wall consists mainly of the cost of paid television advertising, still the principal means by which candidates communicate with voters. For Senate candidates, or for those facing well-known or well-financed opponents, the wall is much higher.

Under current rules, there are three ways to be heard over that wall. The official, legally recognized way is to, in effect, build a staircase of bricks to the top of the wall, accepting no more than one brick ($1,000) from any one person. To be heard over a million-dollar wall means finding several thousand individuals willing to contribute. The advantage is that no donor can be said to have given so much that the candidate would owe his or her success to that donor. But the downside is that most candidates can't even think of raising money from that many people.

A second way over the wall is to bring your own ladder. Self-financed candidates such as Senators Jon Corzine, Mark Dayton, and John Edwards face no limit on what they can contribute to their own campaigns. Courts have held that such candidates can't corrupt themselves with their own money, a theory that interestingly matches a familiar election slogan for these candidates: "He's too rich to be bought." These candidates are no longer anomalies: exactly half of the Democratic senators who defeated Republican incumbents in the last two election cycles were self-financed, and more than 100 congressmen and senators are millionaires.

The third way over the wall is to cheat. In this case, cheating means violating the spirit (though usually not the letter) of the law by raising or spending money through the unrestricted outside channels of party soft money, false issue ads, or even pure issue advertising. The consequences are as described above: huge contributions, direct corporate contributions, a far greater potential for corruption than we have had in the past, and a divide between candidates and their own campaigns. Yet many candidates cannot be heard at all by either of the first two methods, and all the incentives in the current system encourage candidates to cheat, especially if they think their opponents will.

Reform should turn these incentives on their heads. Since it cannot hope to close off every possibility of cheating, it should instead encourage participation in the above-ground system as much as it discourages evasion. There are three ways that procedural changes could make it easier for candidates to get over the metaphorical wall and be heard, without cheating:

1. Lower the wall. Money matters so much more than it should in politics because candidates reach voters mainly through television. They are forced to compete with car companies and beer companies for the right to pay broadcasters tens of thousands of dollars to reach voters for 30 seconds. Yet the public owns the airwaves, lends them to broadcasters, and has the right to set the terms on which broadcasters borrow them. Free television and radio time has long been ancillary to campaign finance reform (although it was dropped from the McCain-Feingold bill several years ago). It should move to the center.

2. Create a path around the wall. The era in which paid television is the main channel of political information did not end with the emergence of Internet politics in 2000, but the end may be in sight. If politics is ever to become less dependent on such an outrageously expensive and limited medium — one that rewards the short, sharp, visual attack and discourages subtlety and deliberation — money would matter much less and ideas would matter more. In the meantime, well-designed Internet projects, such as the Democracy Network (DNet) can create a space for candidates where they stand on equal footing, where they can say as much or as little as they want, where they can initiate debates and even engage directly with voters. There may or may not be a role for government in creating this space, but now is the time to model the kind of communication system that will work best for politics when the television era finally wanes.

3. Give the average voter a bigger brick. Imagine how much easier it would be to get over a million-dollar wall if every small contribution counted for much more. What if every $250 gesture of support had the impact of a much larger contribution? That's the case under New York City's law, passed in 1998, which provides four dollars in government money for every dollar raised in small contributions up to $250. As a result, the donor who can give $250 has almost the same value to a candidate as the donor who can give $1,250. A similar approach would involve tax credits for small contributions. In Minnesota, a full tax credit for contributions of $100 or less has the effect of giving every citizen $100 with which to reinforce his or her political views. (Such tax credits would leave out the poorest citizens unless, as in Minnesota, they are refundable to families who do not otherwise owe taxes.) Instead of banning large contributions, these approaches seek to encourage candidates to look for small contributors.

Full public financing, or "Clean Money Reform," may have a similar impact. Under the "clean money" system in Maine, for example, candidates who collect enough five dollar contributions to show a base of support can receive a fixed amount of public funds as long as they agree to raise and spend no more money. The risk in full public financing, however, is that it depends on the hope of eliminating private money entirely. If that hope fails (for example, if there is significant independent spending on campaigns), the system could collapse entirely.

These alternatives, in various combinations and coupled with a soft money ban and improved disclosure, would not eliminate money from politics but would make money less decisive in political choices. They would reduce the incentives to cheat and the rewards for evasion. Best of all, they would do so by opening up the system to candidates and ideas rather than attempting to close it down. They will not be uncontroversial, in part because elected officials have a stake in maintaining a limits-based system that has significant barriers to entry. But this approach presents no constitutional problems, no problems of implementation, no difficult choices between the requirements of free expression and those of political equality. And finally, it is at least something different from the approach reformers have pursued, with little to show for it, for a quarter-century.

Mark Schmitt is director of the Governance and Public Policy program at the Open Society Institute, U.S. Programs. He was formerly policy director for Senator Bill Bradley.

The Alliance for Better Campaigns

Democratizing the airwaves

BY PAUL TAYLOR

"Today's political campaigns function as collection agencies for broadcasters," former Sen. Bill Bradley lamented a few years ago. "You simply transfer money from contributors to television stations."

The Alliance for Better Campaigns has taken up that lament as a roadmap for reform. We focus not on where political money comes from, but where it goes. Most reform measures seek to limit the supply of political money; we've tried to reduce the demand for political money, while at the same time to create a culture of political communication that's open, accessible and noisy. All of these goals have led us exactly where Bradley's remark pointed — to television.

We haven't accomplished nearly as much as we'd like, and after three years of trying to sweet-talk and shame the broadcast industry into making voluntary changes that would reduce the cost and increase the flow of political communication, we're ready to push for legislation. More in a moment on our proposed fix.

First, a primer on the problem. Out of the estimated $3 billion spent on all political activity in the 1999-2000 election cycle, about $1 billion went to political ads on broadcast television. This was a five-fold increase over what was spent on political ads in 1980, even after adjusting for inflation. Although its audiences keep getting sliced thinner, broadcast television remains today what it has been since it came on the scene half a century ago — the medium of choice for politics. It's still the closest thing we have to a public square.

But when it comes to substantive coverage of politics, the broadcast industry has been in retreat. The amount of time the national networks devote to debates, conventions, and issue discussion has shrunk substantially over the past two decades. Most local stations don't even employ a regular political correspondent. This paucity of coverage means that if candidates want to be on television — and they do — their only option is to buy their way on, 30 seconds at a time. It's a great arrangement for the broadcasters; the heavy demand for ad time enabled them to double and triple their ad rates in the closing weeks of the 2000 campaign. But it's lousy for democracy. By doling out political speech only to those who can afford to pay top dollar for it, the broadcast industry has placed itself at the very core of the problem of money in politics.

In 2000, the Alliance called on the industry to open the airwaves to something better than this nightly blizzard of expensive ads. Picking up on the recommendation of an advisory panel appointed by President Clinton, we urged the national networks and all of the nation's 1,300 local television stations to voluntarily provide five minutes of "candidate-centered discourse" every night for the 30 nights preceding the primaries and general election. Twenty-two national organizations, 25 state-based groups and more than 200 prominent leaders — including Alliance co-chairs Walter Cronkite, Jimmy Carter, and Gerald Ford — added their voices to this appeal.

By October 2000, five station groups — Hearst-Argyle, E.W. Scripps, Capitol, CBS, and NBC — which collectively own 75 local stations, had committed to this "5/30" standard. But the vast majority of the industry ignored the proposal. A study by the Annenberg Public Policy Center of the University of Pennsylvania found that in the month before the November 7 election, the three major broadcast networks devoted an average of just 64 seconds per network per night to candidate discourse. A study by the Norman Lear Center at the University of Southern California found that local stations in large markets devoted an average of just 74 seconds a night to candidate-centered discourse.

The one bright note in the Lear study: stations that had made a commitment aired three times more candidate-centered discourse than those that hadn't, and these committed stations aired a far higher percentage of substantive, issue-based coverage.

The "5/30" project demonstrated that an aggressive advocacy campaign can have a modest positive impact on the behavior of television station managers and news directors. But it also demonstrated that the only hope for transforming change on the broadcast front is through a legally binding requirement.

We argue that all stations should be required to contribute to a National Political Broadcast Time Bank. Vouchers for this ad time would be distributed to candidates who raise a threshold number of small donations and who agree to voluntary spending limits, and to political parties that give up soft money contributions. The value of the bank could be set at $750 million per election cycle (roughly what candidates and parties spent in 2000), and indexed to rise with inflation.

This approach would dramatically cut down on the cost of communication, but it would abandon politics on television to a dialogue dominated by ads — not a happy consequence, given how manipulative and shallow most political ads are. So we also propose that television stations must air a minimum of two hours a week of candidate discourse, in the form of debates, interviews, etc., in the final six weeks before a general election. This is similar to the existing requirement that television stations meet their obligation to the public interest by airing three hours a week of children's educational programming.

In effect, this approach would provide a public subsidy for political communication, with the subsidy coming from the broadcast industry rather than from the taxpayer. The cost to the industry would be a small fraction of its annual gross revenues. Given that broadcasters receive billions of dollars worth of publicly-owned spectrum for free, it's a reasonable way for them to meet the public interest obligations that come with their licenses. And it would be a big step toward solving the riddle of money and politics.

Paul Taylor is executive director of the Alliance for Better Campaigns and a former reporter for the Washington Post.

Introducing a new series

CONTINUED FROM PAGE 1 dying people deserve comfort and dignity. And sometimes it is a bold aspiration to assure that all can participate in an open society — every child should be entitled to quality afterschool programs; every person struggling to overcome poverty and every prisoner who has paid a debt to society should have access to education and job training.

In this spirit we inaugurate a new OSI Publication Series, *Ideas for an Open Society*, as a forum for promoting provocative ideas and innovative strategies to advance open society values. This first issue contains an essay by Mark Schmitt, director of our Program on Governance and Public Policy, about campaign finance reform. Upcoming issues will focus on reproductive health and choice, overreliance on incarceration, and reform of urban high schools.

BY GARA LaMARCHE
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IDEAS
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OSI and campaign finance reform

Reducing the influence of money on politics was part of George Soros's core vision when the Open Society Institute launched its U.S. Programs in 1997. Since that time, OSI has worked to encourage citizens to develop a deeper commitment to renewing democracy by supporting experimentation with public financing and other new approaches to campaign finance reform. OSI has looked beyond federal legislation to become the largest funder of state-level initiatives, including those that led to major reforms in several states. OSI has supported efforts to develop more sophisticated legal strategies to prevent reforms from being invalidated by courts; to make information about political contributions accessible; and to reduce the need for money in politics by expanding other channels of communication, including free television time and the Internet.

Mission Statement

The Open Society Institute is a private operating and grantmaking foundation that promotes the development of open society around the world. OSI's U.S. Programs seek to strengthen democracy in the United States by addressing barriers to opportunity and justice, broadening public discussion about such barriers, and assisting marginalized groups to participate equally in civil society and to make their voices heard. U.S. Programs challenge over-reliance on the market by advocating appropriate government responsibility for human needs and promoting public interest and service values in law, medicine, and the media. OSI's U.S. Programs support initiatives in a range of areas, including access to justice for low and moderate income people; independence of the judiciary; ending the death penalty; reducing gun violence and over-reliance on incarceration; drug policy reform; inner-city education and youth programs; fair treatment of immigrants; reproductive health and choice; campaign finance reform; and improved care of the dying. OSI is part of the network of foundations, created and funded by George Soros, active in 60 countries around the world.

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