

Once More into the Breach: Here Comes Campaign Finance Reform Again

The start of the 107th Congress brings with it the return of the debate over campaign finance reform. John McCain has declared that there will be “blood all over the floor of the Senate” if opponents of the McCain-Feingold bill attempt to prevent its consideration. The election fiasco produced a consensus for electoral reform that lends impetus to McCain’s crusade, and Thad Cochran’s recent support means that McCain can prevent a filibuster and ensure that his bill reaches the floor of both houses of Congress.

This means the return of an all too familiar debate. Will banning soft money prevent corruption or unconstitutionally restrict political speech? Will limiting the amounts spent in campaigns curtail special interest influence or magnify the advantages of incumbency? Will requiring disclosure of funding sources provide a needed disinfectant or allow the return of McCarthyite political tactics?

Without taking sides on these questions, may I suggest that they are really beside the point. The relevant question is not whether eliminating soft money, or reducing total spending, or disclosing funding sources are good things, but rather whether legislative mandates are necessary to achieve them. Interestingly, the evidence from the 2000 campaign suggests that they are not.

Since 1996, the proponents of campaign finance reform have been doing their utmost to raise public awareness of and indignation over the way campaigns are financed. Although they have been doing this to generate support for their proposed legislation, the result has been to turn the way campaigns are financed into a campaign issue itself.

Candidates now compete for votes by promising to eschew soft money and challenging their opponents to do the same. In the New York Senate race, Rick Lazio sought political advantage by challenging Hillary Clinton to sign an agreement banning the use of soft money. Mrs. Clinton signed to avoid losing votes. In the Washington Senate race, Maria Cantwell attributed her narrow victory to the additional support generated by her pledge not to accept PAC contributions. This suggests that as soon as a significant percentage of the voting public believes that soft money is corrupting, a ban on soft money becomes self-enforcing. Ironically, the better the job reform advocates do of convincing the public that a mandatory ban on soft money is necessary, the less necessary it becomes.

The same applies to disclosure. If a significant percentage of the voters really care about where candidates get their money, candidates will compete for votes by unilaterally disclosing the source of their funds and challenging their opponents to do the same. Those who refuse to disclose risk losing votes by looking like they have something to hide. In addition, the more the public cares about the source of candidates’ campaign funds, the more investigative journalists can grab headlines by ferreting this information out. Within a day of the airing of a “secretly funded” ad attacking John McCain’s environmental record, journalists revealed that it was paid for by Sam and Charles Wyly, two wealthy Bush supporters. In an article called “The Secret Money Chase,” Newsweek attacked “stealth PACs” that raised money from secret sources by identifying eleven of the major contributors to them. This suggests that the more successful reform proponents are at generating public support for mandatory disclosure, the less the disclosure needs to be

mandatory.

Of course, reform proponents can still argue for mandatory legislation by claiming that the public does not care about campaign finance enough for media exposure and competition for votes to police the situation. And if at least a significant minority of the electorate are not willing to alter their votes because of how candidates fund their campaigns, soft money and secret contributions will indeed continue to abound. But the argument that legislation should be passed precisely because almost none of the electorate cares about it enough to alter their votes is surely a strange one to make in a democracy. Indeed, it sounds enough like the old Viet Nam era claim that the troops “burned the village in order to save it” to make one wonder whose interests the proposed mandates really serve, the public’s or the politicians’?

John Hasnas
Associate Professor of Law
George Mason University