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## Campaign Finance Reform 2.0: A Small-Donor Approach to Fixing the System

by Daniel Weeks

It's been said that money is the mother's milk of American politics. Congressional incumbents spend about a third of their time chasing after it in never-ending campaigns for reelection. Interest groups contribute it in ever-increasing sums to politicians as an investment in government policy, or at least as a cost of doing business. Political consultants and the broadcast media collect it by the hundreds of millions every two years, thanks to the epic, televised spectacle we call the modern campaign.

Difficult though it may be to imagine American politics unconstrained by big money in elections, that is hardly reason for pragmatic

progressives not to think creatively about the sources, uses, and effects of private campaign cash. For those concerned about the distribution of political voice and power in our democracy – not to mention the nation's ability to address an ominous set of economic, social, and environmental challenges – it may be the most important long-term question we face. And with the Supreme Court set to hand down a landmark decision in *Citizens United v. Federal Election Commission* on the “free speech” rights of corporations to spend unlimited sums of money on political campaigns, the time for Congress to reconsider this question is now.

This policy paper endeavors to set the stage for meaningful campaign finance reform in the 111th Congress by providing an analytical framework that is better suited to the times. It begins with a critical examination of the dueling views of liberal reformers and their conservative adversaries over the role of money in politics, and posits that the old ways of “regulate and restrict” are out of date. Prin-

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ciples aside, such are the facts of life under a conservative high court.

It then proposes an alternative, two-part framework for reform: (1) a “more speech” approach that levels up rather than limits down speech opportunities for qualified candidates without added regulation; and (2) a more nuanced and evenhanded conception of political influence-peddling in Washington, which favors system-level accountability over anecdotal accusations of vote-buying and political corruption. It concludes with a discussion of legislation now before Congress, the Fair Elections Now Act (H.R. 1826 and S. 752), which would establish a voluntary public funding system involving small donors and matching public funds. With its emphasis on small donors and expanding participation, the legislation would go a long way toward achieving the goals of fairness and accountability in American elections.

### **The Old Frame: Regulate and Restrict**

Money in American elections is hardly a novel concern. Since the days of Theodore Roosevelt, reformers have sought to counter the corrupting influence of private wealth in public elections. While the playing field has changed since the turn of the 20th century, the debate has remained much the same.

Liberals have traditionally sought to regulate and restrict the flow of money in elections. To many, private contributions to candidates for public office are inherently problematic. Political donors, the thinking goes, are predominantly motivated by a desire for particularistic gain, while politicians willingly indulge at taxpayer expense. Political corruption, lack of electoral competition, and public disenchantment with government are cited as reasons for increased government oversight of campaign

money; lower contribution limits, caps on campaign spending, and increased regulation of independent expenditures have been among the favored responses to counter these problems. The emerging role of small donations from a rapidly expanding base of middle-income Americans who scarcely conform to the “special interest” mold has only begun to change this mindset.

By contrast, conservatives have staunchly objected to regulation of any kind in the name of free and unfettered debate. They favor disclosure of campaign contributions as an alternative to government-imposed limits: let the public know the sources of political money and it will act as it sees fit. Many argue that less regulation, not more, will free politicians from the cumbersome task of dialing for special-interest dollars and enable outsiders (albeit those with access to wealth) to more effectively compete.

The U.S. Supreme Court, for its part, has endeavored to strike a balance between the reformist call for government regulation and conservative opposition in the name of freedom of speech. In a landmark 1976 ruling in *Buckley v. Valeo*, the Supreme Court held that spending money on political campaigns was subject to full First Amendment protection as free (if you can afford it) speech. Contributing money to campaigns, by contrast, was held to be an indirect form of political speech subject to reasonable limits in the interest of preventing corruption – or the appearance of it – in government. (The limit was set at \$1,000 per contribution in 1976; it is at \$2,400 today.) Subsequent Supreme Court cases have upheld the right of individuals to influence elections through independent spending, while limits on

corporate and labor union spending have thus far been maintained.

In each of four major legislative landmarks in campaign reform over the last century, liberals have succeeded at gradually extending government regulation over the sources and sums of political cash.\* Important as each reform has been in incrementally righting wrongs, few on the right or left today would deny that our campaign finance system leaves much to be desired. A new, more affirmative approach to the role of money in elections is badly needed.

### **Going Positive: The “More Speech” Answer to a Conservative Supreme Court**

A generation after the Supreme Court’s controversial *Buckley* ruling equating money and freedom of speech, the Court is again testing the constitutional limits of government regulation of our campaign finance system. At issue in the present *Citizens United v. Federal Election Commission* case is whether corporations and labor unions – in this case, the corporate-backed Citizens United organization, producer of 2008’s *Hillary: The Movie* – can spend from their treasuries to influence the outcome of elections. At stake is more than a century of campaign finance laws.

Once again the two camps have assembled, one to assert that restricting corporate and labor union spending is necessary to prevent

\*A quick-and-dirty rundown of those reforms: the Tillman Act of 1907 banned direct contributions from corporate treasuries to political campaigns; the Taft-Hartley Act of 1947 extended that ban to unions; the Federal Election Campaign Act of 1971 and its amendments capped individual contributions and candidate spending, and established a framework for independent expenditure regulation; and the Bipartisan Campaign Reform Act of 2002 barred the use of unregulated “soft money” by the political parties while extending government oversight over independent electioneering campaigns.

corruption, and the other to demand that First Amendment rights be universally extended to all, individuals and corporations alike. But there is a false assumption at the center of this debate. Government regulation and freedom of speech are not necessarily at odds when it comes to the role of money in American elections. The question is not *whether* we should regulate the transfer of private wealth between those with a vested interest in government policy and the public officials who make and enforce such policy (it does not take a con-

When government regulation is harnessed for the purpose of leveling up rather than limiting down the range and sum total of political speech, the result is a maximization of First Amendment rights.

stitutional lawyer to recognize the conflict of interest). Instead, it is *how* to fashion campaign finance laws so they meaningfully advance the legitimate aims of both sides: preventing corruption and expanding freedom of speech.

Positively constructed campaign finance regulation and freedom of political speech are both necessary and complementary components of a democratic campaign finance system. When government regulation is harnessed for the purpose of leveling up rather than limiting down the range and sum total of political speech, the result is a maximization of First Amendment rights. As laid out in the Fair Elections Now Act, a “more speech” solution would be predicated on encouraging broad-based small donations and matching public funds. It’s an approach that recognizes that entering the political debate is a

costly affair in our modern media environment, and that there is an uneven distribution of economic resources among citizens who seek to exercise First Amendment rights in campaigns. Further, it recognizes that political speech is not a zero-sum game, in which one person's spending diminishes another's ability to be heard. Empirical studies of the relationship between campaign spending and election outcomes have long shown that money matters *to a point*: candidates may lose for lack of adequate funds, but spending beyond a reasonable competitive threshold does not meaningfully affect the outcome.

As a result, when highly qualified candidates have access to sufficient campaign funding to make their message heard, there is little need to limit the spending of independently wealthy candidates or outside groups. In other words, let the wealthy speak – so long as theirs are not the only voices that ring out from the political arena. Such a leveling-up approach to campaign finance reform has been upheld as fully constitutional by the Supreme Court. Broadening the base of campaign funding to better reflect the public will and prevent conflicts of interest, the program does not replace – and, in fact, reinforces – common-sense regulations limiting the ability of corporations and unions to influence campaigns.

### **Shifting the Focus to System-Level Accountability**

Like the debate over freedom of political speech, concerns over corruption and public accountability have unnecessarily divided advocates and opponents of campaign finance reform. Reformers have traditionally invoked the specter of government under the malign influence of “big money” as a chief motivation for reform. All politics, the theory goes, is corrupt and the only solution is to remove

all links between special interests and public servants. Besides the obvious limitations of this account, the corruption frame prevents a rational assessment of the problem and reduces the range of policy tools with which we may respond.

The usual rebuttal to the corruption thesis centers on a contestation of the facts and the nature of political corruption. Opponents argue that instances of corruption are isolated and rare, and, when they do occur, are met with appropriate sanction under existing law. In other words, while a few bad apples are bound to turn up now and then, the electoral system itself is sound, and any measures extending beyond existing disclosure requirements and anti-bribery laws are excessive. That no amount of campaign finance regulation in the last 100 years has succeeded in completely eradicating corruption is taken to support the case.

A more constructive account on which to base reform moves from a focus on individual instances of corruption to a positive appeal for system-level accountability. It stresses the limitations and contradictions that are inherent in the campaign finance system and makes those deficiencies, rather than individual officeholders, the target of reform. Even while the corruption card has at times proven to be a powerful motivator of public support, a more nuanced and system-centered public accountability frame provides a more honest assessment of the facts and a stronger basis for reform.

According to this account, the problem does not lie in isolated cases of outright *quid pro quo* but rather in a *system* that actively encourages – even requires – unaccountable behavior on the part of elected officials in order to win and keep their seats. Front and center is the inherent contradiction in allowing society's regulators to finance their campaigns

in large part through contributions from the very individuals and groups they are charged with regulating. Estimates of the economic cost of this system, if one considers only those spending programs that directly benefit major campaign contributors, run in the tens of billions of dollars per year. The larger economic cost of private campaign funding, in terms of increased rent-seeking and countless other market inefficiencies, are difficult to estimate but are a cause for grave concern. In the words of Rep. Barney Frank (D-MA), “Politicians are the only human beings in the world who are expected to take thousands of dollars from perfect strangers on important matters and not be affected by it.”

The public accountability frame argues for a more nuanced examination of the role of money in politics. It identifies the legally sanctioned means by which “investor contributors” work within the existing system to limit the policy debate and ensure their interests are met. It questions whether politicians can effectively serve the interests of citizens when the need to raise campaign funds consumes an ever-increasing share of their time, and when the individuals with whom they interact in the fundraising process are scarcely representative of their constituents. And it enables a more productive collaboration between all parties involved by acknowledging the full scope of the challenge and withholding undue blame. In so doing, it enables a solution to the “corruption” problem that selectively preserves those elements of the current system (e.g. independent campaign spending) that are not at fault, and seeks to reform the rest.

### **Putting the Pieces Together: A Small Donor Approach to Federal Campaign Finance**

A retooled system of voluntary public funding of qualified candidates running for federal office – combining broad-based small donations with matching public funds – provides a viable alterna-

tive to private campaign funding in Congress today. The bipartisan Fair Elections Now Act would replace large donations from wealthy individuals and groups with donations of no more than \$100 per contributor raised from a candidate’s constituents. Candidates seeking to participate in the voluntary program would be required to first raise at least 1,500 checks in amounts of \$100 or less from within their home state. Once qualified, they would receive a four-dollars-to-one public match on every small donation they raise from their constituents, up to a competitive spending threshold. Once the threshold is reached, candidates are permitted to raise unlimited small donations without the benefit of public matching funds.

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Under such a citizen-funding program, candidates who choose not to participate would remain free to raise and spend their private money on political speech under existing law. Independent groups would likewise be permitted to enter the political debate on their own terms. But history and common sense tell us that speech in a democratic society is not free when only the rich are heard. Cherishing the First Amendment requires that we extend speech opportunities to qualified candidates for public office irrespective of wealth. As noted above, for candidates with access to *sufficient* funding to make their message known to the voters, additional spending by themselves or their opponents has [little determining effect](#).<sup>1</sup>

As experience with citizen funding in seven states and more than a dozen cities from Arizona and

Los Angeles to New York City and Maine has shown, large majorities of candidates willingly forego the big-money game – and the countless fundraising hours it demands – when presented with a small-donor alternative and matching public funds. More than three-quarters of candidates across the several states that have such systems are voluntarily opting in to citizen-funding programs and spending more time with the voters they seek to represent. Participation from small donors has increased several-fold and more candidates from diverse backgrounds are stepping forward to run for public office. Once in office, public officials report a new and welcome sense of independence to consider the full range of perspectives on policy matters put forward by interest groups and their constituents at large.

As a case in point, the state of Maine has seen candidate and small-donor participation in its program (called the Maine Clean Election Act) rise with each successive election since its inception in 2000. In 2008, more than 80 percent of candidates voluntarily opted in, compared with one-third in 2000, including more women candidates and candidates from diverse economic and professional backgrounds. As the rate of electoral competition has steadily increased – uncontested races are increasingly a thing of the past and incumbent reelection rates are down – the cost of running for office has markedly, if counterintuitively, declined. With thousands of Maine citizens becoming stakeholders in political campaigns through their small donations, the rate of voter turnout in Maine has increased with each election, making it among the highest in the nation today. (For a more detailed summary of the track record of Fair Election candidates, see this Americans for Campaign Reform [fact sheet](#).)<sup>2</sup>

In a 2007 [study](#) by the Maine Commission on Governmental Ethics and Election Prac-

tices, lawmaker and candidate responses to the public-funding system were enthusiastic. Among the representative remarks from respondents included, “I like the statement it makes...that I am not beholden to lobbying organizations and major donors,” “[I] don’t want to feel beholden to anyone but my constituents,” and “I believe Clean Elections have improved Maine’s responsiveness to citizens and reduced the influence of lobbyists.”<sup>3</sup>

As the Supreme Court concludes its deliberations on the role of corporate spending in federal elections, it is time to pursue a new and affirmative course in campaign finance reform. Members of Congress concerned with the ability of government to meet the considerable challenges facing the nation today would do well to join the more than 120 of their colleagues from both sides of the aisle who have already stood up for citizen-funded elections. Respect for the constitutional principles of fairness and freedom of speech demands nothing less.

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1 Daniel Weeks, “Does Money Buy Elections?” American for Campaign Reform, January 2008; available at <http://youstreet.org/sites/default/files/Policy Paper - Does Money Buy Elections.pdf>.

2 Fact Sheet, “Fair Elections: State Track Record of Success,” Americans for Campaign Reform, August 25, 2009; available at <http://youstreet.org/sites/default/files/Fair Elections Track Record.pdf>.

3 Maine Commission on Governmental Ethics and Election Practices, “2007 Study Report: Has Public Funding Improved Maine Elections?” 2007; available at [http://library.publiccampaign.org/sites/default/files/2007\\_study\\_report.pdf](http://library.publiccampaign.org/sites/default/files/2007_study_report.pdf).

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