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It's The Money, Stupid

Some thirteen years ago, when I first began to think seriously about campaign finance reform, I thought that columnist George Will had it right: eliminate all restrictions on political giving so that anybody could give whatever money desired, subject to immediate and complete disclosure. This "sunlight is the best disinfectant" approach appealed to my longstanding conservative, antiregulation values; it also had the elegance of simplicity. After all, who needed more complex rules that were not enforced by the consistently ineffective Federal Election Commission?

But something struck me as fundamentally troubling about this libertarian stance. Were our political candidates just commodities in a marketplace where voters exercised consumer choices among competing brands? Conservatives generally believe that marketplace decisions are best made without political distortions (such as rent-seeking by special interests), but does it likewise make any sense to speak about our elections in terms of marketplace competition?

For some, including a majority of the United States Supreme Court, it does. But in a society where so much of life has been "commoditized," do we want our elections to be conducted like cattle auctions?

The more I thought about the Will approach, the more concerned I became that this libertarian, Hobbesian free-for-all would produce the equivalent of a campaign finance arms race. Before passage of the 2002 McCain-Feingold-Shays-Meehan campaign finance law, known as the "Bipartisan Campaign Reform Act," unregulated "soft" money contributions from companies, labor unions, and individuals to political parties was roughly doubling every four-year election cycle -- and doing so at a time of virtually no inflation.

BCRA ended these "unlimited" soft money contributions, doubled the "hard money" regulated contributions from individuals to candidates from $1,000 to $2,000, and redefined the concepts of issue advocacy and express advocacy as a matter of statutory interpretation. Immediately thereafter, two changes occurred that would undermine BCRA's efforts to end the arms race.

First, wealthy individuals -- most notably billionaire George Soros -- began to exploit a loophole through Internal Revenue Code Section 527 which allowed unlimited contributions to go to socalled independent organizations that could run campaign ads and undertake other campaign activities that were not coordinated with the spending of any political campaign or political candidate. I met with Mr. Soros on the eve of his decision to spend millions of dollars to support ACT, The Media Fund and Moveon.org in the 2004 presidential election. He is the bête noir of many conservatives, but I have to say he is a man for whom I have immense admiration because of his commitment to the anticommunist democratic teachings of the late Sir Karl Popper, author of "The Open Society and its Enemies." Full disclosure: his Open Society Institute has supported the Committee for Economic Development's work on state judicial reform. I told him that his decision to funnel such money into our elections would not only undermine BCRA but was at odds with his own prior support for campaign finance reform. I also said that his actions would only "inspire" future large contributions from wealthy conservatives. His dislike of then-president George W. Bush, however, led him to abandon his earlier views and open his personal checkbook in the amount of $27 million.

Second, the Supreme Court began issuing a series of rulings that unraveled not just key portions of BCRA but, quite literally, several decades of precedent about the role of corporate and union treasury money in our political system. The Supreme Court weakened the rules relating to the distinction between issue advocacy and express advocacy and then, early in 2010 with its "Citizens United" ruling, allowed corporations, and unions to make unlimited expenditures in support of candidates on their own or through IRC Section 501(c)(4) organizations that did not have to disclose the sources of their funding, unlike the full disclosure required for Section 527 groups making independent expenditures in campaigns.

The counting is not yet over, but we do know that the recent midterm elections saw substantially more money spent on political campaigns than ever before in a nonpresidential election year, with some $135 million spent in secret contributions by nonprofit groups to influence the elections. It is expected that Republicans will have substantially outraised Democrats for independent expenditures, and the arms race that I predicted to Mr. Soros has arrived. Wealthy conservatives are now following his example. Ironically, Mr. Soros decided to sit out this year's campaign, having commented that it made little sense to resist an oncoming "tsunami."

On November 3, 2010, the 2012 presidential campaign began unofficially, and the prospects for addressing the campaign spending arms race have become daunting in the face of the Citizens United decision. President Obama is in no position to take the high road -- or signal a truce -- given that his 2008 presidential campaign effectively gutted the presidential campaign public funding system by electing not to take public funds during the general-election campaign. And given the Republicans' enormous successes on virtually every level -- the House, the Senate, the governorships, state legislatures, and even state judicial races -- it will be virtually impossible for basic reforms to pass the Congress before 2012, with the exception of the new disclosure provisions that nearly passed this year.

A cynic might archly observe that perhaps the part of our political system that works the best is the part that raises money for those seeking public office. A vibrant cottage industry has now grown up around this system, and the pollsters, consultants, campaign advisors, and media (not the candidates, fortunately) rake in the money from this lucrative system. It's a big business.

At the same time, a significant majority of people surveyed believe the country is on the wrong track, and there is little confidence in the approaches offered by both major political parties. Approval of Congress has reached a new low of 13%. We face serious questions about our fiscal health, our massive national debt, unsustainable entitlements, escalating health care costs, an expensive yet faltering education system, and continued reliance on fossil fuels. The necessary reforms will spark intense opposition from vested, special interests which can now spend virtually unlimited amounts to influence how elected politicians behave.

When two members of the president's budget commission announced just a draft outline of how to fix the nation's fiscal crisis - by reforming Social Security through a later retirement age, reigning in unchecked Medicare costs, eliminating earmarks, and increasing some taxes -- special interests on the right and left launched an immediate attack.

When John McCain first ran for President in 2000, he made campaign finance reform a central part of his message. What he said then remains true today: to achieve major reforms like Medicare, education, fiscal, and energy policy reform, the gateway issue is first reforming the way money enters our political campaigns. Until we do that, America's democratic institutions will reflect the views of the monied interests and not the will of the American people.

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