
Let the Sun Shine In

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This selection first appeared in the *Washington Post*, October 17, 1997, p. A29. Krauthammer argues that the changes proposed by the McCain-Feingold legislation—banning soft money—would weaken political parties and limit the political speech of individuals while strengthening the position of the media. He too sees deregulation with full disclosure as the solution to the dilemma created by the fact that political speech is precious and protected by the First Amendment, but political money can be a means of political influence and even corruption. He suggests not only disclosure of contributions but also disclosure of access granted to donors.

The conventional view of the failure of campaign finance reform in the 105th Congress is that politicians are too corrupt and cynical to reform the system. Now, politicians may be corrupt and cynical, but that is not why campaign reform failed.

It failed because campaign reform is confronted with two self-evident yet contradictory propositions:

1. Supporting a political campaign is a way of advancing one's political ideas. For those who don't own a printing press or TV station (or write a syndicated column), campaign contributions are an indispensable form of political speech. And political speech is protected by the First Amendment.
2. On the other hand, political money can very obviously also be an instrument of political corruption.

How to eliminate corruption without curtailing political speech? It cannot be done. The most famous attempt to regulate a squaring of the circle—the 1974 post-Watergate reforms—has proved a spectacular

failure: loophole-ridden, massively violated, and now the source of the biggest fund-raising scandal since Watergate.

The 1974 campaign reforms proved pernicious because their individual contribution limit forced politicians to spend their entire waking lives on the phone raising money in little bits. Apart from turning them into full-time hustlers, it spawned another unintended consequence: a whole cohort of rich people who, essentially exempt from the campaign laws, can write their own ticket. Ross Perot and Steve Forbes and a Senate of thirty-nine millionaires are the direct legacy of the 1974 reforms.

McCain-Feingold—dead for now but it will rise again—was supposed to fix the old reform. As Jonathan Rauch has pointed out, however, its main effect would be to weaken political parties—it bans “soft money” contributions to them—and curtail the political speech of individuals.

Unintentionally—these reforms are prodigious producers of unintended effects—McCain-Feingold serves as a media-incumbency preservation act. Current owners of newspapers and electronic media can support or savage any candidate they want right up to election day. But you are legally barred from taking out an ad in your local newspaper sixty days before an election to support a candidate. McCain-Feingold then creates a whole new set of regulations that expand the notion of what kinds of political activity count as campaign contributions—and are thus subject to regulation.

McCain-Feingold has the added distinction of combining this obvious unconstitutionality with a cosmic naivete. Its premise is that by regulation, such as banning soft money, it can take money out of politics.

Politics is power. And late-twentieth-century government, which eats up one-third of gross domestic product and then doles it out, is the seat of power. If Willie Sutton were around today, he'd be breaking into government, not banks.

Under McCain-Feingold, money meant to influence government won't dry up. It simply will be redirected away from political parties. It

will find its way into lobbies. It will find its way into corporate and union and “independent” advocacy groups. They will spend the political money and end up controlling political speech. The net effect of McCain-Feingold will be not on money but on the parties—already weak but desperately needed in a far-flung democracy such as ours to harmonize and mediate between narrow interests. Under McCain-Feingold, the narrow interests, flush with money, will be king.

There is an obvious alternative to this futile regulation of speech: deregulation. Abandon the baroque '74 reforms and all attempts to fix them with even more baroque reforms. Let people give whatever they want to whomever they want. But demand full disclosure.

Now, in most proposals this means only disclosing how much money a Roger Tamraz gives to a president or a party or a campaign. But why not require a second form of disclosure? Not just the quid but the quo: A public accounting of the access granted the donor by the donee.

Just a listing. Let the people draw their own conclusions about favors and corruption. Thus disclose that Roger Tamraz gave the Democrats \$300,000 in the '96 campaign and disclose that the campaign gave Tamraz so many meetings (with and without coffee) and so many phone calls with the president or the vice president or other high administration officials.

You cannot reconcile the two aspects of political money—speech and corruption—by such Rube Goldberg confections as McCain-Feingold. They can be reconciled only by a system of transparency. Full disclosure squares the circle: no curtailment of speech, but a bright light shone on money meant for corruption.