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## Deregulating Politics

George F. Will

This selection first appeared in *Newsweek*, November 10, 1997, p. 94. Will's conclusion about the excesses of financing the 1996 presidential campaign is that there is virtually nothing left that is illegal, a situation that has his approval: this is "as it should be." He too judges that attempts to regulate one kind of political money lead to attempts to regulate other kinds of political money—from hard money to soft money to express advocacy to issue advocacy.

Will recounts that Wisconsin legislation restricting communication that has the purpose of influencing an election has led to suits in which legislators have sued on the grounds that they have been harmed by political messages criticizing their performance, thus demonstrating what Will considers the real motive behind campaign finance reform: "The political class thinks it has a right to ration the permissible amount of political communication because it really thinks it has a property right to the offices it holds."

**W**hen Earl Long was Louisiana's governor, he did not think highly of the state's attorney general: "If you want to hide something from Jack Gremillion, put it in a lawbook." Nowadays if you want, as sensible people do, to discredit the drive for campaign finance reform, give the reformers ample opportunities to put forth their arguments. The more they talk, the more wind escapes from their movement's sails.

Although Bill Clinton is almost negligible as a president, he may have one large, and largely wholesome, consequence. Having run his last campaign, he now favors new regulations on giving and spending money to disseminate political advocacy. However, suppose, as seems probable and by and large desirable, the final conclusion about his 1996 campaign-financing activities is that although what he did was often coarse and unseemly, it was nevertheless permitted by existing laws. In that case, his behavior will have produced the de facto deregulation of campaigning. That is, there will be almost nothing significant that the laws regulating campaigns will significantly inhibit. Which is as it should be.

Clinton operated on the ethical principle propounded by George Washington Plunkitt, the philosopher of Tammany Hall: “I seen my opportunities and I took em.” Republicans, too, took the same opportunities by the fistful. The opportunities were provided by the silly distinction between “hard” and “soft” money, a distinction almost as impractical as that between “express advocacy” and “issue advocacy.”

“Hard” money is given to a particular candidate’s campaign. “Soft” money is given to parties for issue advertising and other “party-building” activities. But trying to draw a bright line between the political uses of hard and soft money is like trying to draw a line in a river. The purpose of the hard-soft distinction is to segregate, for the purpose of controlling, hard money, meaning money intended to win elections, to influence voters. But Clinton raised pots of money and caused it to be spent on issue ads intended to get voters to think as the Democratic Party does. And wonder of wonders, he benefited with the voters. How could it be—why should it be—otherwise?

Attempts to regulate some kinds of political money lead inexorably to attempts to regulate all kinds. This produces, as Prohibition did, widespread disregard for the law. Prohibition at least had some measurable public health benefits. Today’s prohibitionists—the campaign reformers—have no such partially redeeming effect.

The response of reformers to the demonstrated futility of the distinction between hard and soft money has been to multiply distinctions. They say soft money can be meaningfully regulated only if regulation is extended to “express advocacy”—political communication by independent groups urging voters to support or oppose a particular candidate in a particular election. Then they say that this, too, will be nugatory unless regulation also is extended to any “issue advocacy” that has a political purpose—which of course means virtually any conceivable issue advocacy.

Inevitably, this gets government into the business of assessing the intentions of citizens who participate in politics. The bureaucracy of

speech regulators must try to divine this: Do the citizens' intentions make the content of the citizens' political communications subject to government regulation? Thus Sen. Fred Thompson's expiring committee, investigating 1996 campaign activities, has issued a blizzard of snooping subpoenas to private advocacy groups across the political spectrum, from the Sierra Club to the National Right-to-Life Committee. It wants to scrutinize the motives and tactical thinking of private citizens engaging in political advocacy, in order to develop a regulatory response. But many of the subpoenaed groups have been splendidly insubordinate, resisting the subpoenas by simple noncompliance and by threatening to seek relief in court. Where does all this pernicious government desire to regulate political speech lead? To the mess Wisconsin is in.

Wisconsin imposes registration and reporting duties on groups that engage not just in express advocacy but also in any communication that has "the purpose of influencing" an election. In 1996 the group Americans for Limited Terms (ALT) began running a radio ad saying that David Travis, a state assemblyman, opposed term limits. The ad urged voters to call Travis and "tell him to change his mind." ALT had not registered, and Travis got a judge to ban the ad on the weekend before the election. Judges also silenced the Sierra Club and the Wisconsin Manufacturers & Commerce (WMC) organization, which were running issue ads.

Now come David Plombon and Michael Wilder with a lawsuit that should help drive a stake through the heart of campaign finance reform. They are Democrats. They were Wisconsin assemblymen. In 1996 they lost campaigns in which WMC ran ads that characterized them as "voting with the Madison liberals nearly 100 percent of the time," that said they voted against certain tax and spending cuts, and that urged voters to call the two legislators and urge them to mend their ways.

Plombon and Wilder are suing WMC, seeking a "permanent injunction" to prevent WMC from running similar ads in the future. They say they are "members of a protected class under the elections laws,"

meaning that politicians, not voters, are the intended beneficiaries of those laws. They say WMC violated “their property rights in the rights and responsibilities of state office.” They say they “have been damaged in the loss of the value of their campaign expenditures and efforts.” And they say they “have suffered damages in the loss of their right to hold office and the payment and benefits” to which officeholders are entitled.

There. Plombon and Wilder have blurted out a usually unexpressed motive of campaign reform: the political class thinks it has a right to ration the permissible amount of political communication because it really thinks it has a property right to the offices it holds. This is the *reductio ad tedium* of campaign reform.