Straight Talk on Campaign Finance: Separating Fact from Fiction

Paper No. 2

CONSTITUTIONALITY

- Explaining the rationale for the 1907 ban on corporate electioneering, Chief Justice Rehnquist wrote that the purpose of the law was "to ensure that substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political 'war chests' which could be used to incur political debts from legislators who are aided by the contributions…" *Federal Election Commission v. National Right to Work Committee*, 459 U.S. 197, 207 (1982).

- That very same rationale justifies banning the unregulated election spending of corporations, unions and wealthy individuals that exists today because of soft money contributions and sham issue ads. The McCain-Feingold and Shays-Meehan bills are constitutionally-sound approaches for dealing with these problems.

- Since 1907, it has been illegal for corporations to spend money to influence federal elections. Since 1947, it has been illegal for labor unions to spend money to influence federal elections. And since 1974, it has been illegal for an individual to contribute more than $1,000 to a federal candidate, or more than $20,000 per year to a political party, for the purpose of influencing a federal election.

- **The soft money loophole is the means through which corporations, unions, and wealthy individuals have come to evade these rules. A ban on soft money contributions to political parties is a constitutionally permissible means to end these donations that subvert the law.**

- First Amendment absolutists and entrenched election lawyers – advocating an oversimplified and one-dimensional view of the Constitution – continuously assail the legislation working its way through Congress as unconstitutional. These reform opponents are wrong.

- ***Every living person*** **who has ever held a leadership post in the American Civil Liberties Union, outside of the current leadership, has endorsed the constitutionality of the McCain-Feingold bill.**

- The statement signed by these leaders said, "In our opinion, the First Amendment does not forbid content-neutral efforts to place reasonable limits on campaign spending and establish reasonable disclosure rules, such as those contained in the McCain-Feingold bill. . . . We have come to believe . . . that the ACLU's opposition to campaign finance reform in general, and the McCain-Feingold bill in particular, is misplaced."

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- Reform opponents see problems in creating different sets of rules for corporations and the press, yet they dismiss the fact that corporate general treasury funds have been banned from paying for electioneering speech for 94 years. The First Amendment specifically guarantees the freedom of the press.

- Reform opponents decry the burdens imposed on advocacy groups, while failing to assign any weight to the compelling public interest in preserving the integrity of our elections through disclosure, contribution limits, and source restrictions.

- Most importantly, reform opponents have asked the wrong question about the pending legislation. There is no debate over whether genuine issue ads should be limited or banned. They should not. The question is whether the pending bills have drawn a sufficiently precise line between issue advocacy, on the one hand, which is not subject to regulation, and campaign advocacy, on the other hand, which clearly and constitutionally is.

- **Top legal academics join the former ACLU leaders in vouching for the constiutionality of the proposed legislation.** Eighty-eight constitutional scholars — including Erwin Chemerinsky, Norman Dorsen, Ronald Dworkin, Frank Michelman, Abner Mikva, Burt Neuborne, Norman Ornstein, and Daniel Ortiz — signed a letter addressed to Senators McCain and Feingold, affirming that the key provisions in the McCain-Feingold bill are consistent with the First Amendment.

- With the Supreme Court's recent decision in *Federal Election Commission v. Colorado Republican Party*, there is even greater reason to believe that the soft money ban in Shays-Meehan would be upheld as a constitutional means of preventing circumvention of campaign finance restrictions.

- **With top constitutional scholars and former ACLU leaders agreeing that banning soft money contributions does not violate the Constitution, the question for the House should be one of policy – should we close the soft money loophole that allows corporations, unions and wealthy individuals to evade federal election law?**

The Brennan Center for Justice at NYU School of Law has conducted groundbreaking research studies of political television advertising in the 1998 and 2000 elections. Brennan Center attorneys testify frequently before Congress on the constitutionality of campaign finance bills, appearing this month before the House Judiciary Subcommittee on the Constitution and the Committee on House Administration.

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