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Did Business Want Campaign Finance “Reform”? **by Sheldon Richman**

It didn’t take long for the sponsors of the latest campaign-finance reform (translation: free-speech prohibitions) to complain that their law is being circumvented. Senators John McCain (Republican) and Russell Feingold (Democrat) are infuriated that private groups are using (gasp!) unregulated money to influence an election and their law doesn’t seem to be able to stop it.

The McCain-Feingold law, also known as the Bipartisan Campaign Reform Act, forbids political parties from raising unrestricted “soft money” and using it to elect federal candidates. Predictably, people quickly found ways to accomplish their ends without using the parties’ fund-raising machinery. The law already permitted (how merciful) what are called “527 committees,” named after a section of the tax code. These are private groups that raise money from unions, corporations, and individuals for the purpose of influencing elections. They can raise all the money they want and spend what they raise as long as they don’t coordinate with the campaign organizations.

This naturally upsets some folks, such as politicians who abhor the idea that private citizens might run television ads that attack incumbents like themselves.

Most of the “527” activity is coming from opponents of President George W. Bush. The Media Fund and other Democrat-leaning groups are accused of being a “shadow party,” because they’re doing what the Democratic National Committee would be doing if Congress and Bush hadn’t enacted the law. McCain and Feingold want the Federal Election Commission (FEC) to impose regulations to stop that activity. The Bush-Cheney campaign has also complained to the FEC about these groups’ alleged circumvention of the law.

Some Republican sympathizers worry about the coming crackdown, but the Republican establishment seems unconcerned. This has a simple explanation: Republicans raise far more “hard money” (restricted money given directly to candidates) than the Democrats do and so don’t care as much about soft money.

Let's be clear about what's happening here. The Republican-controlled Congress passed flagrant prohibitions on fund-raising and free speech by political parties and their supporters. A Republican president signed the bill. The U.S. Supreme Court affirmed its constitutionality. As a result, nonparty organizations run by former Democratic operatives are raising money and airing commercials critical of the president. So the president and other Republicans (and some Democrats) want the FEC to stop those organizations in their tracks.

All this is happening in a putatively free country.

To recap what I covered in my earlier article, "Campaign Finance Won't Square the Circle" (Freedom Daily, March 2004), McCain-Feingold had nothing to do with fears that money would corrupt politics. No member of Congress was willing to say, "We need a prohibition on soft money and tight controls on hard money because I am weak and prone to what is in effect bribery, that is, voting as my rich donors wish." No one said that, although they left the public with the impression that corruption was their chief concern.

In reality, they wanted "reform" because they think campaigns are too negative and too expensive. In other words, they dislike that incumbents can be criticized during campaigns by people who raise money and air television commercials. They didn't emphasize that concern because it is blatantly self-serving. Is it any of their business how much money the American people choose to spend on campaigns? Is prohibiting campaign negativism a proper use of government power?

Money and politics

The issue of money in politics is ironic. Politics attracts money because government is powerful. There is a simple way to make corporate executives and other "special interests" indifferent to political campaigns: strip the politicians of their power to favor or hamper private interests. Short of that, nothing will succeed in keeping money out of politics. If "527" activity is outlawed, other ways will be found. It's a sure thing.

The allegations about corruption get more interesting the closer they are examined. Is it corruption if a company donates to a like-minded candidate, who then votes the way the company prefers? After all, the company wouldn't have contributed to a hostile candidate. To demand that companies, unions, and advocacy organizations be barred from participating in campaigns is to betray a lack of confidence in democracy. There's nothing wrong with lacking confidence, but the finance reformers should at least have the decency to say so. Instead, they attack the freedom to participate in elections while praising democracy. It's a contradiction.

Another thing that gets more interesting under the microscope is the idea that corporations relish pouring millions of dollars into political coffers and shriek at such laws as McCain-Feingold. It ain't necessarily so.

It is certainly true that throughout American history some business interests sought extra-market favors from politicians. But here's a riddle: If corporations are so powerful that we need McCain-Feingold, how did it ever pass?

Robert H. Sitkoff, writing in the Winter 2003-2004 issue of the Cato Institute's *Regulation* magazine, has an answer. Maybe the powerful corporate interests weren't opposed to the bill at all. But if that's true, why weren't they?

To answer this question, Sitkoff goes back to 1907, when the first campaign-finance reform, the Tillman Act, was passed. It outlawed corporate donations to federal candidates. The naive story of this law is that progressive-minded people, such as President Theodore Roosevelt, overcame great odds to tame political abuses by robber barons. It wasn't quite that way.

While there was some public anxiety about corporate influence in politics, the nature of the influence is critical. Sitkoff points out that in the late 19th century, "the national parties began shouldering a larger share of the [financial] burden" in elections. Hence, "the national parties began deploying systematic procedures for *demanding contributions* for their candidates — and corporations were a frequent target." [Emphasis added.]

Sitkoff notes that in 1896, when Republican William McKinley faced Democrat William Jennings Bryan for the presidency, monetary policy was the chief issue. McKinley's money man, Mark Hanna, "focused his efforts on New York financiers and large corporations. Standard Oil was *assessed* \$250,000 and, under Hanna's stewardship, the Republican National Committee *assessed* banks at one-quarter of one percent of their capital." [Emphasis added.] Hanna's letters "requesting" donations would mention what a company's competitors had already given.

Thus the background to "campaign finance reform" was an environment in which powerful politicians had their henchmen lean on businesses in order to raise money. In 1907, Sitkoff notes, the *New York Times* recognized what was happening. In an editorial the *Times* anticipated that the Tillman Act "will lessen a very mean and sordid practice of *blackmail*. The beneficiaries [of regulation] will still find methods of furnishing the sinews of war to the party that controls their favors, but the great number of corporations that have *suffered extortion* through weakness and cowardice will have their backbones stiffened, and parties will be put to it to fill their coffers by *really voluntary* contributions." [Emphasis added.]

As Sitkoff writes,

This is not to say that, in the late 1800s and early 1900s, corporations were not engaged in socially undesirable rent seeking. Rather, the point is that legislators are as active in the "market for legislation" as potential "buyers" such as corporations.

This is true today. Politicians make it perfectly obvious that donations can bring benefits. Even worse, they make it clear that donations can ward off detrimental legislation. (See Fred McChesney's path-breaking book *Money for Nothing*.)

Summing up, Sitkoff writes,

To the extent that legislators actively raise funds through threats and other means, [business's] acquiescing in a ban on direct corporation contributions would be a rational response. Not surprisingly, corporate leaders embraced the Tillman Act for precisely that reason.

In other words, business welcomed relief from the political squeeze for money. Why? Corporate managers thought they had better things to do with their companies' money than to hand it over to politicians — such as improve their products or develop new ones. Economic, as opposed to political, investment was likely to increase the stock price and keep the shareholders (their bosses) happy. But failing to cough up political money on demand, especially when one's competitors are doing it, could be bad for the company's health. So a manager might conclude he had no choice but to give — unless corporate donations could be *outlawed*.

That was why businessmen supported the earliest campaign finance act, and that is why corporate opposition to McCain-Feingold was conspicuous by its absence. Sitkoff quotes a corporate manager who said in connection with McCain-Feingold, most “business today would prefer not to give. But there's not going to be unilateral disarmament.” He also quotes the global chairman of Deloitte Touche Tomatsu at the time:

What has been called legislated bribery looks like extortion to us.... I know from personal experience and from other executives that it's not easy saying no to appeals for cash from powerful members of Congress or their operatives. Congress can have a major impact on business.... The threat may be veiled, but the message is clear: failing to donate could hurt your company.

McCain-Feingold may actually give some desired relief to beleaguered corporations. But, alas, it will do so by violating the free-speech rights of the American people. A better way would be to separate state and economy. How many businesses are willing to stand up for that?

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