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F A C T S H E E T

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PUBLIC FINANCING OF CAMPAIGNS

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PUBLIC FINANCING OF CAMPAIGNS

Introduction

It is impossible to understand campaign finance reform and public financing of campaigns without considering each of the components included in comprehensive reform proposals, namely: Disclosure of campaign finances, limitations on contributions, limitations on expenditures, and public subsidies for campaign expenses. Advocates of reform feel that these components are so intertwined that none by itself can achieve much meaningful reform. For example, California adopted disclosure requirements in the Political Reform Act of 1974, but there are indications of public awareness that disclosure is only a first step toward reform.

On January 2, 1976, Common Cause released the results of a poll conducted by Field Research Corporation. In answer to the question: "Would you favor or oppose a California election law which would impose strict limits on what a candidate may collect and spend and which would finance campaigns by matching small private contributions with public funding?", 69.6% of the respondents favored such a law.

Assemblyman Howard Berman queried his constituents in August 1975, and found those responding to be 2 to 1 in favor of publicly funded campaign subsidies coupled with limitations on contributions and expenditures.

Such signs of support for public subsidies in California and the recent holdings of the U. S. Supreme Court in Buckley v. Valeo, 96 S. Ct. 612 (1976)

concerning the federal campaign reform statutes make this a propitious time to review the issues involved.

Goals of Campaign Financing Reform

The most commonly perceived problem with the current campaign system is that the entire system has become skewed, so that, regardless of personal intent, most participants are trapped and must either comply with the system or run the serious risk of political impotence within it.

The electoral process is ideally viewed as a marketplace of ideas competing for voter approval, but because of the bias of the process some ideas may never be adequately presented to the electorate and, therefore, voters are denied choices which they should be allowed to make.

Recognizing their limited choices, many voters have refused to participate in the electoral process or have otherwise indicated an alienation from the governmental system. (For example, in the 1974 California gubernatorial election, almost 6.3 million votes were cast; it is estimated that another 7 million citizen adults in this state either were not registered or were registered but failed to vote -- see The California Poll, Release No. 846, 1/3/75. The title of Release No. 858 of the same organization, 5/29/75, speaks for itself: "Public Confidence In Institutions Continues to Decline.")

Although flaws in the electoral system are difficult to quantify, one indicator can be measured: money. Campaigns are expensive and, therefore, only those candidates with access to money can participate effectively.

The pursuit of campaign funds is a major cause of the system's imbalance. Given the constraints of time, those seeking money are most likely to solicit

groups or individuals who have larger sums of money at their command. Certain categories of ideas have traditionally lacked much monetary support. Soliciting large donations for the sake of efficiency leaves both under-financed groups and the mass of the electorate unrepresented at a crucial stage of the electoral process.

Present fund-raising methods have other inherent problems: politicians often find raising money to be both a demeaning and inordinately time-consuming endeavor and there can be at least an implicit quid pro quo involved in giving and receiving large sums.

If the sole alternative to such money brokering were individual candidate wealth, then many potentially viable candidates and the ideas they espouse would never be able to enter the marketplace of ideas.

In summary, advocates of publicly subsidized elections have articulated several complementary goals which mandate the use of subsidies:

- 1) To insure a vigorous and reasonably broad competition of candidates and ideas during the electoral process;
- 2) to alleviate the reliance on "big givers" for campaign funding;
- 3) to increase citizen participation in campaigns, e.g., greater volume of small donations or more emphasis on campaign volunteers.

Components of Reform

(I) Disclosure

Campaign financial disclosure requirements are the cornerstone of reform efforts; California adopted a disclosure law in the Political Reform Act of 1974.

An attraction of disclosure has been the hope that it would make campaign reform self-policing; information filed in a central accessible location could be perused by political opponents and by the media who could publicize any apparent questionable source or use of funds.

Most people believe that reasonable disclosure requirements do not have undue negative impact on the electoral process, however, some critics suggest that disclosure is too time-consuming and that it deters some candidates or their staffs from the political arena.

The U. S. Supreme Court, in Buckley v. Valeo held the analogous federal disclosure statutes to be constitutional. The Court did factor out the truly independent actor who tries to influence an election but who neither acts on behalf of a particular candidate nor expends funds in an effort expressly calling for the defeat or election of a clearly identified candidate. The federal statute was found to be inapplicable to that kind of activity. (The independent actor, whether an individual or a group, will be discussed further with regard to limitations on contributions and expenditures; the Buckley court defined truly independent activity differently in the limitations area.)

However, even though disclosure has its positive attributes, it is not the panacea which some had hoped it would be. As Senator Gregorio has pointed out:

. . . (D)isclosure of campaign contributions is necessary and beneficial . . . it will deter some of the worst abuses . . . The problem is, however, that the vast bulk of campaign contributions will go unscrutinized. Neither the press nor the public has the time or patience to sift through the massive quantities of campaign reporting data generated by a single election. Nor does either have the time to try to make some sense out of that data - except, perhaps, with respect to a few very salient issues of widespread public interest . . . Special interests will still be able to purchase access to public officials and to secure special attention for any number of low-visibility issues which, when taken together, far outweigh in importance the few glamorous issues that do come to light. ("Background information on SB 442" -- April 1975, pp. 3-4, issued by Senator Gregorio's office.)

If the campaign system is fundamentally skewed, then disclosure will not provide "a choice between clean-money candidates and dirty-money candidates; all are soiled." (Political Money by Adamany and Agree, pp. 3-4; see suggestions for further reading.)

(II) Limitations on Contributions

Imposing limitations on contributions to candidates by either individuals or groups and requiring contributions over a certain amount to be conveyed by a written, signed instrument is intended to prevent the possibility of purchased influence and to induce all candidates to seek a broader base among many small sum donors.

While there are decisions to be made regarding the kinds of contributions to be so limited and the limits themselves, the toughest issue of this component of reform is how to treat groups and associations:

Drafters of California bills will have to decide whether a corporation should be considered a group or a person. If a corporation is defined as a group, should it be limited to one contribution to each candidate, or should the corporate division, affiliates and subsidiaries also each be allowed to contribute?

Labor unions present similar problems. Should a county labor council be enjoined from contributing to a specific campaign if the statewide labor federation also contributes? Similarly, should a union local be preempted from contributing to a candidate if the statewide parent union has previously contributed?

("Public Funding of Political Campaigns: Attitudes and Issues in California," Fay and Leatherwood, February 1975, p. 4; see suggestions for further reading.)

The Buckley opinion did uphold the constitutionality of the federal limitations on contributions. However, several policy issues remain. For example, since the independent actor can choose to expend funds independently rather than contribute directly and since various multiple committees may be organized, each carrying its own limit, there is some doubt as to whether effective limitations can be enforced. (For purposes of distinguishing between independent expenditures and contributions, the Buckley criteria are: authorization, consent or cooperation of the candidates' campaign effort. If those factors are absent, there exists an independent expenditure even if it is used to voice support for a specified candidate.)

There has also been discussion of the importance of the original "seed" money for getting campaign efforts underway in the first place. Depending upon at what stage contribution limitations are imposed, e.g., one year or six months prior to filing or only after filing, potentially viable candidates without ready-name identification or personal wealth may be hard-pressed to build momentum by collecting small contributions.

(III) Limitations on Expenditures

The Buckley court found the unilateral imposition of limitations on the level of campaign expenditures to be unconstitutional - with the use of a candidate's personal funds and the spending by a truly independent actor

(acting without authorization, consent or cooperation) held to be expenditures, not contributions.

However, voluntary contractual agreements by a candidate to limit spending as a condition of accepting public subsidies is permissible. The staff of the Fair Political Practices Commission also feels that the Buckley opinion does not necessarily prohibit limitations on expenditures by corporations and labor unions. (Discussed under item No. 39, part (2), proposals to amend the Political Reform Act: preliminary recommendations by the staff of the FPPC, February 10, 1976.)

Limiting the level of campaign expenditures has been proposed as a method of insuring balanced campaign dialogue and as another means of preventing dependence on large contributions - since there would theoretically be less impetus for seeking larger sums. There are also general claims that current campaigns often cost too much.

The problems involved in implementing limitations include those of definition and supervision, especially concerning activities of independent actors who would not be affected by a candidate's contractual self-restraint, and the actual dollar limits to use. If the limits are too low, then new personalities will confront difficulties in achieving recognition and a premium will be placed on prior public exposure in other fields, e.g., sports or entertainment. If they are too high, then the limits become meaningless and should be revealed as such.

Incumbency advantage is another problem. Lower limits favor incumbents, who receive a certain amount of public exposure simply by virtue of their office - at public expense. A solution is some kind of proportional limits, with challengers allowed to spend a given percent more than incumbents.

(IV) Public Campaign Subsidies

Public election subsidies complement provisions for disclosure and contribution limitations, both of which tend to curtail private funding. Only subsidies would serve to assure broader access to the campaign arena and subsidies are the indispensable inducement for voluntary limits on campaign spending. However, the topic of public subsidies also raises complex problems of both policy and implementation.

The following questions demonstrate some of the difficulties involved in formulating any subsidy plan:

- 1) Should public subsidies be available for both primary and general elections?
- 2) Should subsidies be used as a floor to provide a basic level of participation for each candidate, allowing for the use of private funds too, or should the entire expense of a campaign be publicly underwritten, with strictures imposed on the use of private funds? If the latter scheme is chosen, what should be done with private funds collected and, more importantly, what would be the effect of opportunities for independent actors to spend outside of those strictures?
- 3) If only a floor is provided, should any limitations on expenditures be imposed?
- 4) How should subsidies be disbursed - funds delivered to candidates? bill paid by the government? media coverage/ time provided by the state? other services-in-kind made available? or some combination of methods?

- 5) If subsidies were available for primaries, what thresholds could be used to screen out frivolous and solely self-serving candidates? Access to subsidies could be predicted on both funds collected, maybe requiring a minimum total and a minimum number of small donations and signatures obtained on petitions or cards.
- 6) What role, if any, should parties serve in public subsidy plans?
- 7) Should each candidate receive the same subsidy or should a proportional allocation be designed to provide funds relative to public support or possibly to discount the share of an incumbent seeking reelection? If a proportional system is used, how can public support be measured -- by past party vote performance? by money raised or signatures collected? or possibly by a voucher system, allowing voters to give state distributed vouchers to candidates who could redeem them for state funds?
- 8) What effect would subsidies have on minor party or independent candidates and how would they share in subsidies?
- 9) What would subsidies cost and where would the money come from -- general funds? a tax check-off system similar to the federal presidential plan? a new tax surcharge?
- 10) What state agency would supervise a subsidy plan? California proposals usually name the Fair Political Practices Commission (FPPC), but is that presently feasible given current staffing and workload requirements? How large an agency would be necessary?

The complexity of this component of campaign reform means that the implementation of subsidies is a problem not suited to easy or simple resolution.

Analysis of Some Recent Proposals

Each proposal would apply to statewide and legislative elections and each names the FPPC as the general supervisory agency; no subsidy plan would allow unopposed candidates to receive public funds.

SB 442 - Beilenson

Provided for reimbursement of candidates in general and runoff elections for qualified expenses at a rate of \$2 in public funds for each \$1 received in private contributions; formulas were included to determine the maximum amount available in public funds but no overall limits on spending were included.

Limited the use of a candidate's personal funds and the receipt of contributions from any individual or group, including labor unions and corporations to \$100.

No private contributions received prior to the day of a primary election could be used by a candidate to pay for general or runoff election expenses (with a specific \$1000 exception).

Limited independent committees to \$1000 in expenditures and to the receipt of \$100 contributions only from individuals who had not previously given \$100 on behalf of the same candidate.

Allowed enforcement by the Attorney General and by private residents who could recover treble damages, measured by unlawful contributions or expenditures, plus attorneys' fees.

Included a statement of qualifications and political philosophy submitted by each candidate in the ballot pamphlet.

Status: Died on inactive file.

AB 2564 - Berman

Provided partial funding for candidates in primary and special elections with limited funds available to those who qualify exclusively or by a combination of endorsement cards and private contributions; threshold minimums determined by formulas involving total registered voters with allocation by a matching plan in a 3 to 1 ratio of public funds to demonstrated support.

Provided partial funding of general and runoff elections for candidates who qualify for the ballot. Maximum public funding limits set at a percentage of limitations imposed on total expenditures. Allocation would be by a set amount augmented by a matching plan.

Included a statement by candidates in ballot pamphlet mailings. Either the Secretary of State or County Clerk -- for statewide and legislative offices, respectively -- would be required to refuse to print anything obscene or otherwise proscribed.

Imposed limitations on contributions by individuals and groups with same dollar limit applicable to both.

Sets limits on total expenditures for each office, applicable to candidates and independent actors; limits for incumbents set at 10% less than for other candidates.

Allowed party committees to make a limited aggregate contribution to candidates and to make a limited aggregate expenditure to further a candidate's election.

Status: Died in Committee. SB 1414 (Rains) was introduced January 13, 1976 as a Senate companion bill to AB 2564. Its future is currently unclear.

Certain provisions are obviously inconsistent with Buckley v. Valeo.

AB 2942 - Goggin

Gives candidates in general and runoff elections an option to finance their campaigns solely with public funds; those exercising that option would be required to contract with the FPPC not to collect or expend any private contributions during that campaign.

Major party, minor party and independent candidates would receive a total amount based upon given formulas.

Creates a State Campaign Finance Fund to be managed by the FPPC.

Defines political advertising and requires that any person or group publishing such advertising first file a confidential form with the FPPC which would include specified information concerning that ad. The cost of any ads promoting candidates who had opted for public funds would be debited against their total public allocation -- even if the candidate had no control over the publication of the ad.

Status: Introduced February 2, 1976; referred to Committee on Elections and Reapportionment.

Common Cause Initiative

Limits allowable contributions by any person to any candidate or person (with person defined to include individuals or groups); larger groups could give a somewhat greater sum and the limits are generally higher for all contributions given prior to the time a candidate files or becomes eligible for public funds. Parties also contribute aggregate total sums.

Limits expenditures for those candidates who choose to accept public funds -- with an incumbent limitation differential.

A candidate's statement would be mailed with the appropriate ballot pamphlet in all elections; the statement would not be edited or reviewed by any public official.

Limited public funding on a matching basis would be available for candidates in primary elections who met minimum threshold support requirements as demonstrated by dollars contributed or by signed endorsement cards (which would be confidential and would contain a statement declaring that confidentiality).

Limited public funding would be available for candidates in general, special and runoff elections, with allocation based on set amounts augmented by matching funds.

A matchable contribution would be one made by written instrument containing the name of the donor.

Status: Filed as an initiative in February 1976; the Common Cause directors have subsequently decided to wait until at least 1978 before pursuing the initiative route to implement further campaign financing reform.

Suggestions for Further Reading

ABA Special Committee on Election Reform

Symposium on Campaign Financing Regulation, April 25-27, 1975.

Adamany, D. W., and Agree, G. E.

Political Money: A Strategy For Campaign Financing In America

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