

Real Campaign Reform: Floors, Not Ceilings

By Stuart Taylor Jr., *National Journal*
© National Journal Group Inc.
Friday, March 23, 2001

Public financing of congressional campaigns? Free TV time for politicians? Forget it, says the conventional wisdom -- McCain-Feingold is the only game in town. The voters don't want "food stamps for politicians." And the broadcasters' lobby will surely strangle any proposal to make a public-interest obligation out of its billion-dollar profit center -- the pre-election political ads that candidates and others buy with the same contributions that some of the same broadcasters depict as legalized corruption.

Well, perhaps. But the public should at least be aware that we already have taxpayer funding of congressional elections -- for incumbents only. It's part and parcel of the annual Legislative Branch appropriations bill, which pays for the swelling legions of staffers who spend their time generating favorable publicity for their members, tending to constituents' wants and needs, drafting position papers and proposals, and doing other things that are at least as valuable to members campaigning for re-election as they are to the public. The congressional franking privilege alone gives incumbents a huge advantage over challengers. All of this, on top of their built-in head start in name recognition and free media coverage. Small wonder that House incumbents' re-election rates were 98.3 percent in 1998 and 97.7 percent last year.

So the question is not whether to have public financing at all, but whether to have it for challengers as well as for incumbents, and whether to spend enough to spring candidates from the need to spend their time grubbing for special-interest contributions. A carefully crafted system of partial public financing and free airtime -- a system designed to open up our politics to unmoneyed candidates, and not to attempt the impossible task of purging private money from politics -- would be a far more effective reform than either the constitutionally flawed [McCain-Feingold bill](#), on which Senate debate now rages, or the bewildering maze of contribution caps and technical rules that we have had since the 1970s.

McCain-Feingold is propelled in part by understandable public disgust at the excesses of political money-chasing and influence-peddling -- and in part by the undisguised enthusiasm of incumbents for quieting the kind of criticism by citizens and groups that the First Amendment was adopted to protect. However, McCain-Feingold seems likely to do far more harm than good. Those unpersuaded by my arguments to that effect last week might consider those of **Kathleen M. Sullivan**, the certifiably liberal but independent-minded dean of Stanford Law School, in congressional testimony last year:

"It is really false to talk about American government today as being a hotbed of corruption. This is quite arguably the cleanest government in the world and... in the history of the country.... Campaign finance regulation plainly amounts to a restriction upon political speech. It follows that it should not be undertaken unless it has a very strong justification -- that is, unless we are practically certain that it will really work. [But] earlier attempts at campaign finance reform have had unintended and anti-democratic consequences, and... further efforts at similar reforms are

likely to be similarly ineffective. When the cure has been worse than the disease, the solution is not more doses of the same medicine."

Not all opponents of **John McCain's** drive to impose ever-more limits on the use of private money to disseminate political speech argue simply for preserving the status quo. Some of them, including Kathleen Sullivan and the American Civil Liberties Union, have a better idea. It is to amplify the voices of candidates who are neither very rich nor inclined to spend 360 days a year wheedling money out of moneyed interests. The ACLU calls its approach "floors without ceilings." It would provide free airtime, mailing privileges, and other subsidies to allow qualifying candidates to bring themselves to the attention of the voters.

The best thing about this idea is that it would be up to individual voters, not to self-interested congressional incumbents or to federal bureaucrats, to penalize candidates they consider too dependent on moneyed interests. They could cast their votes for publicly funded candidates -- who would have every incentive to highlight any perception that the private-money candidates had been bought and paid for.

Unlike McCain-Feingold, the ACLU idea poses virtually no risk of *harming* our political discourse; the worst-case scenario is that it might not do enough good to warrant its cost. But the cost would be relatively modest -- perhaps \$2 billion per year, which would come to \$10 per registered voter -- and less than the cost of a single B-2 bomber (\$2.2 billion). And about half of the cost could be paid (involuntarily) by the broadcasting industry, in the form of free airtime. So it's well worth a try.

Here's how it might work: Major-party nominees and other qualifying candidates would receive federal vouchers for free airtime, free postage (for challengers, to offset incumbents' franking privileges), and free travel, plus some congressionally appropriated cash for other campaign needs. The airtime could be exacted from the nation's broadcasters, as part of their legal obligation to serve the public interest in exchange for their exclusive licenses to valuable slices of the government-owned broadcast spectrum. Or, the time could be paid for by the government.

The total public subsidy for each qualifying candidate would vary, based on the number of registered voters in the relevant district or state. The amounts should be generous enough to let qualifying candidates get their names and proposals onto the voters' radar screen, but not so generous as to let them compete dollar-for-dollar, ad-for-ad with opponents who have raised gobs of private money. Those who shun large contributions, or who eschew private fund raising altogether, could present themselves as incorruptible "clean-money" candidates, and depict their adversaries as unduly beholden to private donors. A requirement for immediate public disclosure on the Internet of all large private contributions would give the press and the public more timely information about who is getting big bucks from whom.

If voters are indeed revolted by the corrupting influence of private campaign money -- as McCain and his allies suggest they are -- such a system would give them plenty of information and opportunity to identify and reject candidates who wallow in what McCain calls "legalized bribery and legalized extortion," and to elect those who do not. No candidate could be barred from seeking or spending private money. But every candidate would have to decide whether to

chase the big bucks or make do with public funding, free airtime, and perhaps some small contributions. And every voter could pass judgment on every candidate's choice.

To be sure, candidates who spend little or no private money would not have the resources to bombard voters with as many ads as those who have piles of the stuff. But "if the floor is adequate, there is no need to impose a ceiling [of] legal limits on contributions and expenditures," said ACLU Executive Director **Ira Glasser**. Big-money candidates reach a point of diminishing returns, spending more and more to move fewer and fewer voters.

The ACLU would let candidates who accept public subsidies raise as much private money as they wish, leaving it to the voters to judge whether they compromise themselves. My colleague **Jonathan Rauch** has proposed a more politically palatable approach. (See "[*Social Studies*](#)," *March 29, 1997*) Under his plan, federal candidates would receive public financing only if they made binding agreements not to take any private money. Both the ACLU and Rauch would also scrap the whole tangle of contribution caps and other controls on private political giving and spending -- with the exception of disclosure requirements, which both would tighten.

The biggest difficulties with this type of system would be figuring out how to determine which candidates qualify for free airtime and other subsidies during primary elections, how much to give them, and how to deal with third-party candidates. It is not easy to make subsidies available to all serious candidates without enabling some profiteers, opportunists, and crackpots. But Congress could alleviate these problems by giving all registered voters tax credits of up to, say, \$300 for contributions to political candidates, and by making candidates' initial success in collecting such small contributions a gauge of whether they have enough support to qualify for free airtime and other subsidies. And candidates who feel shortchanged would always have the option of relying on private contributions.

McCain-Feingold's unstated premise is that political speech must be rationed because voters are too ignorant, indifferent, and indolent to decide for themselves which candidates are unduly beholden to financial benefactors. But Congress cannot save the voters from themselves. What lawmakers *can* do is make it easier for voters to make informed choices, by helping candidates who want to get their messages out without entering the money chase.

