Legislation mutes free speech

By Allison McCarty

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In this February's controversial Citizens United v. FEC decision, the Supreme Court struck down sections of the 2002 McCain-Feingold Act on the basis that they unconstitutionally limited the First Amendment rights of corporations. The April 19 The New York Times editorial slammed this decision, defending McCain-Feingold's campaign finance regulations as essential "to prevent[ing] influence-buying by big contributors and influence-selling by too willing parties and politicians."

Unfortunately, proponents of campaign finance reform forget that campaign finance regulations are also subject to the same problems of corruption that plague the rest of American politics. Public choice economics warns us that just as foxes cannot be trusted to watch henhouses, so politicians cannot be expected to pass self-limiting campaign finance regulations. The DISCLOSE Act, which failed to overcome Republican filibuster both in July and then again in August, is a prime example of this perennial problem.
The basic premise of public choice economics is that people, including politicians and public interest groups, are self-interested. Accordingly, we can assume that politicians will craft campaign finance laws that expand, not limit, their own power.

Campaign finance reform is a recurrent topic in national politics, precisely because incumbent politicians realize that they can manipulate campaign finance regulations to protect their own power and persecute political opponents.

The mandatory disclosure requirements proposed by the DISCLOSE Act were Congress's attempt to control campaign finance without violating Citizens United and "suppress[ing] that speech altogether."

This legal distinction, unfortunately, makes little difference. The complex regulations proposed by the DISCLOSE Act would still have a chilling effect on political speech. This effect is hardly unintentional, for unrestrained political speech is the Achilles heel of political incumbents. Appropriately, George F. Will of the Washington Post dubbed the DISCLOSE Act "Democratic Incumbents Seeking to Control Losses by Outlawing Speech in Elections."

DISCLOSE would have vastly complicated political speech- an impressive feat given how overregulated political speech already is today. A study by Institute for Justice found that of 255 college-educated participants, not a single person could accurately follow existing disclosure requirements. Ninety percent of the study's participants said fear of criminal liability for violating disclosure laws would deter them from engaging in political activity at all.

Compliance with the DISCLOSE Act, if possible, would have proven prohibitively expensive and time-consuming. Recording and reporting requirements, as well as the need to keep full-time lawyers on staff, would disproportionally burden small organizations.

Another requirement of DISCLOSE would require political advertisements to include a disclosure of the organization supporting the message. This sort of disclosure, which takes roughly 20 seconds to say, would consume the majority of the average 15 to 30 second radio or television advertisement. Because advertising is expensive, small organizations would be unable to afford political messages long enough to be effective.

Conveniently, these difficulties would not have applied to politically-favored groups. News organizations and powerful special interest groups, like the NRA and the Sierra Club, were given carve-out exemptions to DISCLOSE's onerous disclosure requirements.

Unions, who overwhelmingly support the Democratic establishment, were exempted by a technicality. Union contributions rarely run over the disclosure limit of $600, and even if they did, unions could argue that union contributions are not inherently political donations.

In addition, the DISCLOSE Act would likely be enforced in a manner that favored political incumbents. The Federal Election Commission (FEC) would be solely responsible for prosecutions, and the FEC is controlled by incumbents. As a result, incumbents would have a powerful weapon against political adversaries at their disposal.

These and many other components of DISCLOSE would have chilled the political speech of small or unpopular organizations, thus benefiting the political establishment. This is exactly why the Democrats, who currently hold majority power in Congress, support campaign finance regulation.

But even if politicians had pure intentions, campaign finance reform would still be doomed to failure. The corrupting influence of money in politics is just one symptom of America's underlying disease- big government. As government spending and regulations increase, so will attempts to influence weighty policy-making decisions. A government big enough to give you anything you want is also big enough to give Exxon Mobil or Goldman Sachs anything it wants- and for obvious reasons, the latter is far more likely.

To successfully fight political corruption, we must fight for limited government. As Patrick Basham of the CATO Institute concludes, "[t]he only sure way to lower campaign spending would be to restrict government to its constitutional powers."

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