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Money wins elections: Laws shouldn't supersede free speech

By John Samples

In 1969, Congress considered the first of the modern era's many campaign-finance regulations. Major laws followed in 1974 and again in 2002. But now that the Supreme Court has invalidated much of the latter as well as some earlier prohibitions on business and union spending, the end of "campaign-finance reform" seems near. Many will lament its passing. Fewer will note its failures.

To diminish private political spending, lawmakers can restrict contributions or subsidize candidates. The latter approach, public financing, has never been very popular with voters, so federal law is filled with limits and prohibitions.

Such limits invariably threaten free speech. The early campaign-finance legislation mentioned above would have limited candidates' spending on broadcast advertising, effectively suppressing some political speech. Restrictions on the political spending of corporations and labor unions, meanwhile, were a prior restraint on speech, a particularly severe form of censorship.

Such restrictions have been justified as preventing corruption, as campaign donors might buy official favors. Of course, bribery is already illegal, so corruption is redefined as "undue influence." The trouble is that those who stand to lose or gain much from public policy have every incentive to fight for their interests through political spending. If they succeed, have they had undue influence? Or is that just another way of saying the wrong side won?

Moreover, there is little evidence that money has much influence on policymakers. Political scientists have found that contributions explain little about lawmaking once ideology, party, and constituency are accounted for. One scholarly study of lobbying concluded that "the direct correlation between money and outcomes that so many political scientists have sought simply is not there."

Reformers also seek equality: If each voter has one vote, why should some be allowed to speak more loudly than others? But the Supreme Court has ruled that campaign-finance restrictions can't be justified on the basis of equality of voice. Making voices equal requires shutting up voices that are speaking "too much." We face a stark choice between equality and freedom of speech, and the Constitution rightly favors the latter.

Even as they fail to deliver benefits, campaign-finance regulations impose costs. The incumbents who write them are tempted to make it harder for challengers to raise money. Scholars have also found that reducing campaign spending leads to fewer and less informed voters.

In addition, those engaged in politics seek to legally evade regulations. So reformers constantly demand new regulations to close "loopholes," producing a complex body of law. Legal advice becomes vital for electoral engagement, discouraging participation - a perverse result for rules purporting to advance democracy.

Finally, the rhetoric of campaign finance reform has poisoned public debate. Instead of arguments, voters hear accusations of corruption. Not surprisingly, many attribute problems to malevolent "moneyed interests."

But our fiscal challenges, for example, come from popular and inadequately funded entitlement programs. No surprise there: Voters' desire for benefits without costs is a very democratic failing. But it is a failing Americans have refused to face; it's easier to blame moneyed interests for our problems.

A day may come when Americans are mature enough to face our collective problems, and campaign spending will no longer be at the center of our discourse. We will debate the merits of policies in a world without demonic money men or divine reformers. And we will have a better politics - a politics freed from the illusions and failings of campaign-finance reform.