

July 6, 2008

ECONOMIC VIEW

Untying a Knot in Campaign Finance

By ROBERT H. FRANK

WHEN [Barack Obama](#) announced his decision to reject public financing for his presidential campaign, he caught heavy flak from all sides. Critics, including some of his most ardent supporters, complained that he was willing to abandon the cause of good government to gain a financial edge.

What the critics have ignored is that truly effective campaign finance reform has been precluded by First Amendment concerns. Given that constraint, the Obama campaign's approach may offer the only realistic possibility of limiting the corrupting influence of money in politics.

Many champions of good government say they favor public financing because campaign spending is wasteful. It's a fair point. After all, campaign spending is driven by the same logic that governs a military arms race. But while the competition to amass bigger and more powerful weapons generates waste on a truly grand scale, the waste from

campaign spending is relatively trivial — at most, a small fraction of 1 percent of national income. The spending itself is not the problem. The far more compelling rationale for campaign finance reform is to prevent the conflicts of interest that produce bad laws and policies.

Even in the face of current campaign finance legislation, politicians clearly remain subject to such conflicts. Scores of members of Congress, for example, accepted contributions from the same pharmaceutical companies that reaped millions of dollars of additional profit from the provision in [Medicare](#) Part D legislation that prevented the government from negotiating discount prescription prices for beneficiaries.

Most of these legislators would deny any conflict, saying the provision they supported had somehow served the public interest. That's not surprising — few of us like to acknowledge our own possible vulnerability to conflicts of interest. But we are quick to recognize that others are subject to them, which explains the perennial attraction of legislation to limit the role of money in politics.

In legislative matters, however, the devil is in the details. Both the Federal Election Campaign Act (amended in the aftermath of Watergate in 1974) and the more recent Bipartisan Campaign Reform Act of 2002 (popularly known as McCain-Feingold) have faced numerous First Amendment

challenges, and more are pending. Although the [Supreme Court](#) has affirmed the legality of placing contribution and expenditure limits on candidates who accept public financing, it has ruled against imposing similar limits on independent advocacy groups.

Because political expression occupies such a hallowed place in the American constitutional tradition, the court's First Amendment concerns won't vanish. Voicing one's opinions effectively in a political campaign requires money. So the law can't eliminate the influence of money in politics without also preventing people from making their political views heard.

At the same time, it is vitally important to prevent donors from buying laws and policies in violation of the public trust.

The harsh reality is that free speech and good government are conflicting goals. When forced to choose, the Supreme Court has essentially sided with free speech. Recent decisions by the Roberts court suggest an even stronger tilt in that direction.

That is the crucial backdrop to the 2008 campaign. Despite the McCain-Feingold law, the First Amendment constraint had essentially made it impossible to impose effective legal limits on campaign spending. As the year unfolded, however, the Obama campaign demonstrated the possibility not only

of remaining financially competitive but also of raising record sums by relying primarily on small donations from individuals. (Disclosure: I'm one of those contributors.)

This was a significant change. It showed that voters had the power to take matters into their own hands. For them to be able to avoid candidates who are beholden to large contributors, the law need only require full public disclosure of campaign contributions, a step that poses no threat to the First Amendment.

Senator Obama's fund-raising totals caught many observers off guard. After all, traditional economic models suggest that a campaign financed by small individual donations shouldn't go far. The problem, according to these models, is that because a campaign's fate is essentially independent of any given small donation, no individual donor can expect to have any influence. Yet many small donors seem undeterred by that logic.

Campaign finance reform laws notwithstanding, political campaign contributions from large donors have grown explosively in recent decades. Because the marketplace has become so much more competitive, corporations are under much greater pressure to bend the rules to their own advantage. In this effort, the corporate side has had victories like Medicare Part D, the so-called [Enron](#) loophole and the deregulation of the financial industry. But the public has

often paid a heavy price.

To be sure, the Obama campaign's move does nothing to reduce the scale of campaign budgets. Nor does the mere fact that small donors can finance successful campaigns guarantee that champions of good government will prevail. A charismatic tyrant, for example, might prove extremely successful as a fund-raiser. Current campaign finance laws, which allow but do not require public financing, provide no protection against the emergence of such a tyrant, either.

The fund-raising success of the Obama campaign, however, has demonstrated that if enough people are willing to withhold donations to politicians who do not credibly refuse to rely on large private contributions, voters have the power to eliminate the fundamental conflicts of interest that have corrupted American politics in recent decades. Because of the First Amendment constraint, that's something McCain-Feingold and other campaign finance laws simply cannot deliver by themselves.

Robert H. Frank is an economist at the Johnson School of Management at Cornell University. E-mail: rhfrank@nytimes.com.