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Campaign Finance

Experts Agree Campaign System Hurting Parties, Candidates, but Prescriptions Differ

By Kenneth P. Doyle

Campaign finance experts from across the political spectrum were in wide agreement at a Jan. 23 conference that a steep rise in spending by outside groups in recent election cycles has weakened the relative ability of political parties and even candidates to shape election outcomes.

But the experts were divided about whether this trend should be addressed by imposing new transparency requirements on outside spending or by beefing up parties and candidates through relaxed restrictions on campaign contributions.

Lawyers and academics addressed campaign finance issues at the conference sponsored by the libertarian Cato Institute. Their comments focused on developments since the Supreme Court's pivotal 2010 decision in *Citizens United*. That case, decided almost exactly three years ago, struck down decades-old restrictions on corporate and union campaign spending.

Bradley Smith, a Capital University law professor and former Republican commissioner on the Federal Election Commission, led off the comments at the Cato conference by estimating that the *Citizens United* decision was responsible for an increase in overall campaign spending of between 10 percent and 20 percent. He suggested this was not the huge upheaval that some critics of the decision have suggested.

Smith added that the increased money going into campaigns was not a bad thing, as some campaign reform groups claim, because more money spent on campaigns leads to more effective campaign messages and more informed voters. Yet, Smith said, recent developments have led to relative disadvantages for political parties, which face contribution limits and other restrictions not applied to other political organizations.

"We need to make it easier for parties to raise money," Smith said, so that they and their candidates can have a more effective voice in campaigns.

Smith's comments echoed a frequent response from Republican lawmakers to Democratic calls for new campaign reforms. GOP leaders have advocated changing the current system by loosening limits on candidates and parties.

Another panelist, Ray LaRaja, a University of Massachusetts political scientist, added that there has been a "redistribution" of campaign money and influence away from parties and candidates and toward outside groups. LaRaja noted that Republicans have sought to address this by loosening current regulations but said that Democrats do not appear inclined to go along with this type of proposal.

Bauer Sees Possible Action on Disclosure

A prominent Democratic election lawyer speaking at the Cato conference, Robert Bauer, indicated that he did not believe Congress was likely to approve proposals to loosen current campaign finance limits.

"It's not clear there's any movement in that direction," Bauer said, though he acknowledged there was "no question parties have been dealt a significant blow" by *Citizens United* and other recent developments in campaign finance law.

More likely, Bauer suggested, is possible action on strengthening disclosure requirements for outside spending groups. Congressional Democrats and President Obama have advocated increased disclosure in response to the *Citizens United* decision, though their proposal—known as the DISCLOSE Act—has been stalled by solid Republican opposition.

Bauer said that this opposition to recent proposals on disclosure represented a radical shift from the

traditional Republican position. Previously, lawmakers from both parties had supported the idea that sources of campaign money should be disclosed, he said, but that “bipartisan consensus collapsed” in the wake of *Citizens United*.

Bauer, a partner in the law firm Perkins Coie, is a close ally and adviser of Obama, having served as the president's White House counsel and as counsel to Obama's 2008 and 2012 presidential campaigns.

Obama 501(c)(4) Group Discussed

In response to a question at the Cato conference, he briefly discussed Obama's recent move to establish a so-called Section 501(c)(4) group, known as Organizing for Action, as a successor to the president's campaign committee.

Bauer said that he is serving as counsel to the new organization and that it “will not be involved in electoral activity at all.” He said the group will be involved in public policy advocacy, adding that the “business of communication on issues ... requires resources.”

Bauer added that the new group will voluntarily disclose its donors, though this is not legally required. The details of how this disclosure process will work have not yet been announced.

Many political reformers, such as veteran activist Fred Wertheimer, have been sharply critical of Obama's move to set up a 501(c)(4) group, which can accept unlimited contributions from wealthy individuals, corporations, and other entities. Reformers say it leaves Obama vulnerable to charges of trading political favors for contributions to his organization.

Bauer indicated that Obama will take precautions to make sure that there will be no instances of improper influence, though he did not specify what the fund-raising guidelines for the new organization will be.

Lessig Urges Public Financing

A second panel at the Cato conference focused mainly on the prospects for change in the campaign finance system in the wake of the *Citizens United* ruling. Views ranged from Harvard Law School Prof. Lawrence Lessig's ringing endorsement of new proposals for public campaign financing to more conservative prescriptions from Cato analyst John Samples and Republican FEC Commissioner Donald McGahn.

Lessig offered a lively slide show presentation of hypothetical “Lester World” shaped by a tiny minority of people named Lester. He said this corresponded to the American political system, which is being shaped by a few big donors, rather than the broader public interest, in a betrayal of the constitutional ideal of a government representing all of the American people.

McGahn and Samples offered subdued rebuttals, suggesting that public financing schemes have not garnered broad public support and could infringe on the rights of private campaign donors.

Both of these conservative commentators suggested, however, that some changes in the current campaign finance system, including greater disclosure of sources of campaign money, could become reality in the coming years.

McGahn: Some Republicans Unhappy

McGahn said he has heard increasing complaints about the status quo from some Republicans in Congress who have been targeted by outside spending groups and feel their voices are being drowned out. He emphasized, however, that current problems can be traced back to reform laws, which have imposed restrictions on political parties and candidates that should be lifted.

Samples said he believes any moves toward new campaign finance legislation would be staunchly opposed by Senate Minority Leader Mitch McConnell (R-Ky.). McConnell advises GOP lawmakers to “just say no” to any proposals because he feels that they will all inevitably lead to greater restrictions on campaign money.

However, Samples suggested that Republicans should now be looking for “a settlement” of the current long-running debates over campaign finance policy. Among the possible compromises, he suggested, should be new disclosure provisions that could better inform voters while offering donors protection from negative consequences of being identified in the political arena.

Samples also suggested that the recent trend toward “liberalization” of campaign finance rules might be more fragile than Republicans realize because it depends so largely on a 5-4 majority of Supreme Court justices in the *Citizens United* case. If one of the justices in that majority leaves the bench and is replaced

with an appointee of President Obama, the ruling could be reversed fairly quickly, Samples suggested.

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