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Problem Is Not the Phone Calls, It's the Special Interest Money, The;Campaign Finance Reform Symposium: Perspectives

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The Problem Is Not the Phone Calls; It's the Special Interest Money

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Because I began my political career at the lowest rung on the political ladder—as an elected town meeting member in the town of Brookline, Massachusetts—and pursued public office through four campaigns for the state legislature, four campaigns for the governorship, and the presidency in 1988, I have seen and done political fundraising at every level of American politics. And I am here, after thirty years in public life, to tell you that it is possible to raise the funds you need to run a viable race at every level of the political process honestly and without in any way compromising your principles or the public interest. But it takes discipline, plenty of hard work, and soon, I hope, campaign laws that require your opponents to meet the same high standards that you try to set for yourself. I also know from personal experience that much of what is currently passing for congressional investigation of this subject is blatant hypocrisy and a smoke screen for congressional inaction. Candidates of both parties have been taking special interest money since the beginning of the Republic. That includes a lot of current members of Congress, including a substantial number of the people who are now purporting to sit in judgment of the current administration and some of their peers.

I began raising campaign funds in a serious way in 1962, when I first ran for the Massachusetts Legislature. I was an inveterate doorbell ringer and street campaigner in a legislative district of about 55,000 people. I had a strong grass-roots organization with lots of volunteers. I sent out one letter to hundreds of potential supporters each time I ran asking for help and money. That letter produced all the money I needed for a relatively low-cost campaign which emphasized heavy person-to-person contact, and I never received a contribution of more than $100. In fact, most of my contributions were in the fifteen to twenty-five dollar range. I was helped by some very tough Massachusetts campaign finance laws that barred corporate contributions of any kind,[1] and prohibited public employees from soliciting or receiving campaign contributions for any political purpose whatsoever.[2]

As I moved up the political ladder and began running for statewide office, I obviously needed a lot more money. My legislative races, however, set the pattern: a

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1. MASS. GEN. LAWS ch. 55, § 7 (1953).
2. MASS. GEN. LAWS ch. 55, § 11 (1953).

broad base, lots of money made up of relatively modest contributions, strict adherence to the spirit as well as the letter of the state's campaign finance laws, and some self-imposed limits of my own.

I put a maximum limit of $100 dollars on any contribution made by a state employee. I prohibited registered lobbyists from being involved in my fund-raising in any way. I refused to accept contributions from any political action committee (PAC). And I carefully scrutinized lists of campaign donors to make sure that those with an obvious interest in state business or contracts did not contribute to my campaigns.

If all of this strikes you as a bit much or the ultimate manifestation of the New England Puritan ethic, I understand. It is not your standard fund-raising operation. On the other hand, I am no Mr. Goody Two-Shoes. I operated in the tough world of Massachusetts politics with a fairly high degree of success for a long time. But nobody had to explain to me the corrosive effects of special interest campaign donations. I began my political career at a time when Massachusetts was one of the most corrupt states in the country. I was determined to do everything I could while in public office to help clean it up, and I did not see how I could do that if I was playing the money raising game in the same old way.

The remarkable thing about my approach to campaign fund-raising was that money was not all that was raised amidst the effort to run effective, and for the most part, winning campaigns. Raising money from a very broad base of small donors helped me to create a grass-roots army of volunteers. These volunteers not only contributed twenty-five or fifty bucks to the campaign, but they then went out with their families and friends and worked their heads off for me in their communities and neighborhoods. They were the key to my political success.

Now I know what some of you may be thinking: maybe you can do it your way at the state or local level, Dukakis, but you can't possibly do it and run an effective presidential campaign. Not true.

In fact, I raised all the money I needed to win my party's nomination for the presidency in much the same way I had always done it. We had the best fund-raising operation of any of the Democratic candidates in the 1988 race with nearly 400,000 individual contributors and no PAC money. We raised over $20 million during the primary period, never had a money problem, and effectively wrapped up the nomination before the end of April. Our fund-raising produced the same kinds of grass-roots organizing efforts in many states that it had during my Massachusetts experience. In fact, in California alone I had some 13,000 precinct captains who ultimately got me within two-and-a-half points of my Republican opponent—something no Democrat had done in California in over twenty years.

I felt particularly good about our fund-raising efforts as we successfully closed out the primary campaign in early June. Then, I got the surprise of my life. Having assumed all along that the post-Watergate reform[3] would guarantee me the public

3. *See* Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended at 2 U.S.C. §§ 431-441h, 451-455 and scattered sections of 18 & 47 U.S.C.); Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (codified as amended at scattered sections of 2, 18, 26 & 47 U.S.C.); Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (codified as amended at scattered sections of 2, 18 & 26 U.S.C.); Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (codified as amended at scattered sections of 2, 5, 18, 22, 26 & 42 U.S.C.).

funds I needed to run a strong final campaign, I suddenly discovered the wonderful world of soft money. Shortly after the last set of primaries in early June, my chief fund-raiser, Bob Farmer, sat me down to tell me about all the fund-raising events he was planning between then and November.

"Wait a second," I said. "I thought the fund-raising was over. Doesn't the federal government now provide me and Bush with a substantial amount of public money? And aren't we barred from outside fund-raising?"[4]

That was when my friend Farmer explained to me for the first time what soft money was—something I quite frankly had only dimly heard about and had never taken seriously. I listened, and then in somewhat characteristic fashion said to Bob, "I'm sorry. We're not going to do it. I think it does violence to the basic principles of public funding and puts us right back in the soup we were in that created the Watergate mess in the first place."[5]

"You can take that position if you want to," Farmer said. "But I can tell you this. The Republicans out-raised Fritz Mondale about ten-to-one in soft money in 1984, and they will probably do even more this year. So if you want to go into this race $50 million behind, you can do it, but I wouldn't bet a nickel on your chances under those circumstances."[6]

To tell you that I was mad as hell about all of this would be the understatement of the century. I had spent nearly three decades in active politics. I had always raised my campaign funds in a way that met the standards I had set for myself and that I passionately believed campaign finance reform legislation should set for others. Now I was being told that I would begin the final four months of a presidential marathon that had begun in March 1987 at a hopeless competitive disadvantage because of an outrageous loophole that had been carved into the law by a decision of the Federal Elections Commission (FEC) and had been used primarily by the Republican Party—and that unless I, too, began raising soft money, the race was as good as over.[7]

Vowing that if I made it to the White House, getting rid of the soft money loophole and clamping down on PAC and special interest money would be at the top of my agenda, I reluctantly agreed to continue the fund-raising process. I did, however, insist on some rules and procedures which at least made an attempt to keep the soft money game under control. These rules and procedures included a maximum of $100,000 for any soft money contributions, no PAC or corporate contributions, full disclosure (which was not then required by law) of soft money contributors on a regular basis and review by a committee of volunteer lawyers from the District of Columbia Bar Association who would carefully scrutinize all of the soft money contributions in excess of $10,000 to determine precisely who the contributor was, whether or not he or she actually made the contribution from his or her own resources, what, if any, special interest in the federal government he or she might have that would disqualify them, and so on. That committee of lawyers continued, by the way, to do its work in the 1992 campaign. But, for some unexplained reason, it was disbanded in 1996 at the

4. Conversation with Bob Farmer, Campaign Treasurer, in Boston, Mass. (June, 1988).
5. *Id.*
6. *Id.*
7. Soft money generally refers to the use of funds that come from a prohibited source. 2 U.S.C. §§ 441b, 441c, 441e (1994). Soft money may also refer to funds that exceed contribution limits. 2 U.S.C. § 441a (1994).

DNC—a step that I am now sure the White House regrets since the committee could have saved it and the President untold misery in the months after the 1996 campaign.

Not surprisingly, we had no difficulty in matching Republican soft money contributions in 1988, even with the modest restrictions we put on ourselves. But finding myself forced to raise funds in ways and amounts that should have no part in the American political process has made me an even more passionate supporter of campaign finance reform than I was in 1988.

The problems with the current system are painfully obvious. The current fund-raising system forces candidates to prostitute themselves for big special interest contributions. Politicians are spending too much time with the fat-cats and not enough time in the nation's backyards and living rooms recruiting supporters and raising funds from the people that ought to count in this country. Campaigns are now waged almost exclusively on radio and television instead of down at the grass-roots level where campaigns and candidates belong. And all of this has created a profoundly negative effect on voter behavior and voter turnout and the willingness of ordinary citizens, and especially young people, to get deeply and actively involved in public life.

The solution is simple. Either we decide that public financing is the way to go—something that at this point may be approved in a handful of states but has little support in Washington—or we reform our campaign finance laws to require all candidates to raise their campaign funds in a way that forces them to go to the grass-roots for their financial support and, to the maximum extent possible, limits their ability to tap into large amounts of special interest money. Congress or the FEC should close the soft money loophole immediately.

I know that perfection in politics is not possible. People who feel strongly about particular issues, whether they are corporate presidents, union leaders or environmental activists, will always want to raise money for the candidates who share their philosophy and their values, and they should have a perfect right to do so. But, I also know that the *Buckley* decision[8]—one of the worst in Supreme Court history—appears to give candidates of independent wealth an unfair advantage.

The McCain-Feingold Bill[9] and its progeny go a long way toward meeting the kinds of goals that we should have for democratizing the fund-raising process. And if I were running for office these days, I would be happy to take my chances against a Michael Huffington or a similarly well-heeled candidate under the rules contained in McCain-Feingold.

I also know that the human mind is infinitely creative, as anyone knows who has tried to enforce our tax laws in the face of constant efforts by tax lawyers and consultants to find ways around or through them. That is why we need campaign finance enforcement machinery that is up to the task. Present law requires that the FEC be divided among three Democrats and three Republicans.[10] That is a prescription for deadlock. It should not have taken the commission more than a month or two to pull itself together, hold public hearings and respond to the proposals of both the administration and some members of Congress that it reexamine its own ruling that created the soft money loophole in the first place.[11] An FEC headed by a single administrator

8. *See* Buckley v. Valeo, 424 U.S. 1 (1976).
9. S. 25, 105th Cong. (1997).
10. 2 U.S.C. § 437c(a)(1) (1994).
11. *See* FEC Advisory Op. 1978-10, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5340 (Aug. 29,

picked by Congress for a fixed-term makes a lot more sense. Such a system has worked well for the General Accounting Office.[12] There is no reason why it cannot work just as well in the field of campaign finance reform.

What we do not need are weeks and months of additional congressional hearings chaired by people who themselves have taken thousands of dollars in special interest campaign money and who, I am sure, do not bar their doors to major campaign contributors who want to see them. Nor do we need more idle speculation about alleged plots by the Chinese or any other governments to influence United States presidential elections. Such plots have not taken place in our country, a country that has itself spent millions of CIA dollars to influence elections all over the world.

Furthermore, the key issue that Congress must address in the weeks ahead is not whether or not Al Gore made fund-raising calls from the White House. The laws that prohibit fund-raising in federal buildings had—and have—nothing to do with telephone calls. Those laws were part of the late nineteenth century civil service reform movement that was designed to end wholesale political patronage, create a federal merit system and protect civil servants from being forced by their superiors or party leaders to contribute to political campaigns.[13] When I was running for re-election as governor, I had two phones on my desk. One was white—the state phone. The other was red—the campaign phone. The campaign phone was a totally separate line paid for entirely by my campaign committee. I made hundreds of campaign calls on the campaign phone, and it never dawned on me or anyone else that doing so violated the law that prohibited fund-raising inside a state building.

What do his critics want the Vice-President to do? Go across the street to a pay phone? And what if the person called is not in and calls him back at the White House? Is it a criminal offense for the Vice-President or, for that matter, a member of Congress while at his or her desk to accept a call from a political supporter or a contributor?

What troubles me about this kind of foolishness is that it is diverting our, and the Congress', attention from the real problems that ought to be solved. It's not where you make the phone call that is the problem. The problem is the people and organizations that candidates are going after and the virtually unlimited sums of money that the soft money loophole permits candidates to raise.

In short, we do not need any more education about what the problems are, or any distracting sideshows. We do not need any preemptory blocking maneuvers from the office of the Senate Majority Leader or the Speaker of the House. What we need is congressional action—and we need it now.

1978).

12. 31 U.S.C. § 703 (1994).

13. Civil Servant Act (Pendelton Act), ch. 27, 22 Stat. 403 (1883) ("[N]o person in the public service is for that reason under the obligation to contribute to any political fund, or to render any political service, and . . . he will not be removed or otherwise prejudiced for refusing to do so.").