

Why We Are Stopping Campaign Finance Reform

By Senator Mitch McConnell

I appreciate the opportunity to be here to talk about my favorite issue, campaign finance reform. It's sort of an odd choice as a favorite issue, but I find that people get more interested as they learn more about it.

Let me start by reminding everyone that this whole issue is about the First Amendment. The Supreme Court in the *Buckley v. Valeo* case held that campaign spending is speech. That decision was 9-0. Even Thurgood Marshall agreed that spending is speech. And the Court ruled that it is constitutionally impermissible to dole out the ability to speak in equal but limited amounts to candidates. You just can't say under the Constitution, "Candidate A you speak this much. Candidate B you speak that much; don't speak too much." You can't constitutionally quantify and ration speech, so the Court struck down the congressional campaign financing plan, including spending limits, because it was mandatory for all candidates.

The Court did allow spending limits in presidential races, reasoning that if Congress concluded, for whatever reason, there was some useful purpose in seeking to entice candidates into avoiding excessive speech, the Congress could provide an inducement to encourage the candidates to shut up. But the inducement could be no more than simply that there could be nothing mandatory about the speech limit. The Court in the *Buckley* case upheld the presidential campaign financing system but struck down the congressional system. It upheld the presidential system because no evil befalls you in the presidential race if you choose to speak excessively. You simply forfeit the opportunity to raid the Treasury.

Now, why are so many presidential candidates who don't like spending limits and public financing accepting them? Because the subsidy is an extraordinarily generous one. We've had a couple of candidates who have chosen not to accept the speech limit and have financed the race in other ways. The first one was John Connally, who said, "As a matter of principle, I simply can't take a public subsidy." And Connally went out and raised as much as he could on his own. But nothing bad happened to him. He suffered no penalty and his opponents derived no benefit. Ross Perot, who could pay for the whole thing out of his pockets, certainly didn't want to accept a public subsidy, and nothing bad happened to him as a result of that. In other words, the presidential spending limit is truly a voluntary limit, it does not trigger adverse consequences for anyone who exercises his or her First Amendment right not to accept the limit.

Now against that backdrop, let's examine the various congressional campaign financing schemes that have been proposed, S. 3 in the Senate and H.R. 3 in the House. The biggest problem for proponents of those schemes is that the voters hate and detest and abhor the thought that their tax dollars would be used in political campaigns. The best evidence of that is the voluntary taxpayer check-off that provides money for presidential races. It doesn't add to your tax bill, it simply diverts a dollar of taxes you already owe to the presidential election fund. Yet, the participation in the check-off has dropped from 29 percent to 18 percent over the last 15 years. It's the

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best survey we have in America on any subject. Every April 15th we get to decide whether we want to divert \$1.00 of taxes we already owe to pay for the presidential campaign system. And its popularity is dropping dramatically. It is dropping so much that the majority party increased the check-off from \$1.00 to \$3.00 last year to ward off bankruptcy. So now, fewer and fewer people get to divert more and more money from the Treasury.

Make no mistake about it in terms of the politics of supporting taxpayer funding of elections. It's terrible. We were working in a congressional campaign a couple of years ago in a fairly liberal district in Kentucky, and found through polling it was worse to support taxpayer-funded elections than it was to raise your own pay.

Now, bearing in mind the public attitude about taxpayer-funded elections, the majority has been seeking in congressional campaign finance reform to diminish, to the maximum extent possible, the amount of tax dollars involved because of the politics of it. And of course, if you do that, then the question arises, how in the world do you get people to comply with the speech limit? If they don't get a generous subsidy like in the presidential system, why would anybody comply with the spending limit? How are you going to get anybody to shut up?

What Democrats have done is craft a number of different punitive measures. And even though they call these "voluntary" spending limits, let me ask you whether you think the following would add up to a "voluntary" system? Under the bills that passed both the House and the Senate, if you were so audacious as to want to speak as much as you wanted to and not accept the government-prescribed speech limits, the following things would happen: 1) You would lose a 50 percent broadcast discount. 2) Your opponent would receive additional tax dollars to counteract your excessive speech. 3) A postal discount would be eliminated for you. In other words, your decision to speak as much as you wanted to would provide a reward for your opponent and result in penalties on you.

Even worse are provisions to discourage constitutionally protected independent speech—that is, your right as an individual or as part of a group to go into a campaign and say whatever you want to for or against whomever you want to. Under the pending bills a candidate would receive additional tax dollars if somebody independently expressed opposition to him or support for his opponent.

Let me give you a hypothetical example. Let's assume that B'nai B'rith or the NAACP thought that it was not a terrific idea for David Duke to be elected to the U.S. Senate from Louisiana. And these groups made independent expenditures against David Duke in Louisiana pointing out his many deficiencies. Under the Democrats' schemes, David Duke would get federal tax dollars to counter those independent expenditures by those organizations.

Now to say that this proposal is of dubious constitutionality is to put it mildly. The campaign finance bills reek of unconstitutional provisions. And you'd be interested to know that I'm allied in this fight with the American Civil Liberties Union, which, if this monstrosity becomes law, will be the co-plaintiff in the case that I will be bringing. We are very confident that if the proposed bills pass, we can win in court. But I would rather not see it get that far.

Let me describe for you the efforts we're making here at the end of this session to drive the stake through the heart of this thing for the last time. The Senate passed a bill in June of 1993 that had one other curious provision that is not in the House bill. The Senators, in order to avoid the ire of the taxpayers, decided to have no taxpayer funding at all if you didn't speak too much. But if you spoke too much, you would have to pay a corporate tax on your excessive speech: the top corporate rate of 34 percent on all of your contributions. In other words, we were going to tax excessive speech. You would have to pay the government for the right to speak. That's another one we're going to have a great time with in court, should that be in the final version as it

comes out of conference. The House passed an equally absurd bill in November 1993 that did not have the speech tax, but it had some other important provisions, equally unconstitutional.

For the last ten months the Democratic leadership has been arguing among themselves over such peripheral issues as how much PAC money should be allowed, and not tampering with the heart of the thing, which is spending limits and taxpayer funding. And they're having a difficult time resolving their differences. Foley has been under a lot of pressure from people in his caucus who don't want this bill. Interestingly enough, the Black Caucus opposes it. A lot of the women in the Democratic Caucus don't like the bill. It's one thing to be for reform when you know that George Bush is going to veto it. It's quite another when you're shooting real bullets. What we've got is a situation here where they're shooting real bullets.

So as we speak today, Democrats still have not finally resolved the differences among themselves. But the bad news is that I anticipate they will. There have been no real conferences, just meetings between Democrats in the House and the Senate to try to work out their differences; thus the House and Senate still must formally go to conference. In order to further deter them, and to stop this legislation, we intend to debate fully the three separate motions that must be approved before the Senate can appoint conferees. I have objected to all three motions. Tomorrow afternoon we will have the first cloture vote on the first of these three debatable motions. Now, I will encourage everybody to vote for cloture. You're probably wondering why. Well, if cloture is invoked, we're immediately on that motion for 30 hours. And it is my intention to see to it that we burn 90 hours on the three motions, discussing the relative merits of taxpayer funding of elections. We need to get the message out there that what these people are trying to do here at the eleventh hour, at the end of this session, is to sock the taxpayer with the bill for our campaigns. It's an entitlement program for politicians. We need to get that message out.

And one of the things we discovered in the course of the health care debate, and crime for that matter, is that you get the message out by taking the floor and holding it for awhile and discussing an issue. It begins with the C-SPAN junkies who watch, and it spreads out from there. I view it as my responsibility to make certain that the American people, if they're paying any attention at all, understand what they're trying to do here in the eleventh hour. Democrats couldn't take over the finest health care system in the world, so they're going to try to start a new entitlement program with your money for our campaigns. That's what they're going to try to do here at the eleventh hour. And that's going to be adequately discussed.

If there is a conference, it will last all of 15 minutes. And the Conference Report will be back, and our challenge at that point will be to filibuster the Conference Report. I am quite apologetic that we have not very successfully used the filibuster. I am a proud guardian of gridlock. I think gridlock is making a big comeback in the country. People are yearning for gridlock. They are asking for it. And the key will be whether we can hold 41 folks together to stop the Conference Report by defeating a cloture motion to end debate on it. There are 44 Republicans. Only twice have we produced 41 to kill a bill entirely. We did it on the stimulus package and we did it on striker replacement. You have my apologies that we haven't done it more frequently. Here at the end of the session, clearly that will be the only device remaining for us. And my assumption is that the President has now decided that this is one of his top priorities that they will put the heat on and really try to push this through here at the end.

With that overview, let me just throw it open for your questions.

Q: Senator, what effects would this bill have on political parties?

A: Well, essentially, the bill as it's crafted would eliminate about a third of the money that the Republican National Committee gets. It would eliminate corporate soft money entirely. It would eliminate most of the state party transfers that both ourselves and the Democrats use to provide voter turnout devices. This bill goes the two parties. And this is one of the reasons why David Broder is against the bill. He doesn't think we need to be weakening parties; he thinks we need to be strengthening them. And by the way, you would be interested to know that virtually every academic in America is against this bill—liberals and conservatives. It's a travesty. It's a joke. And yet, we're about to do it.

Q: Given that Mitchell and Boren won't be back, if this bill is beaten, is there any hope for a better reform bill? What if there is a Republican majority?

A: Frankly, there's not much that needs to be reformed. I think the big mistake that they made in the 1970s was not indexing the contribution limit to inflation, because a thousand dollar contribution in the mid-1970s is now worth \$400 and something. My view—I've given a lot of thought to this—is that fundamentally the system is O.K.. There are some changes I would make, but I don't think anything major. My view is that the cavalry is on the way to the rescue, and they're going to arrive here on November 8th. And if we can just stop this travesty here at the end in the eleventh hour, I don't think this kind of bill will even be on the radar screen next year. This is not the kind of thing that we think is good for America. We are going to be talking about capital gains tax reduction, tort reform and a variety of other things that are really good for the country

Q: Why are there limits on the amounts PACs and individuals can contribute to campaigns?

A: Well there was a big split in the Supreme Court on that issue. Chief Justice Rehnquist felt that any limit on an individual contribution was unconstitutional. The Court drew a distinction between overall spending and individual contributions. And the distinction was essentially this: overall spending has no corruption potential. The question is, who does the money come from? The argument that the majority bought on that issue was that my ability to give you \$100,000 had the potential to corrupt you, but my ability to spend \$100,000 on my own behalf, or to spend in your behalf independently or against you independently, had no corrupting potential. So the Court did draw a distinction between a limit on an individual donation to another and an expenditure on behalf of yourself. You can spend everything you've got. There's nothing that the Congress can constitutionally do to keep you from spending everything you've got on your own behalf or against somebody.

Now, that would be an interesting question if it went back to the Supreme Court. I think, basically, if you spend a lot of money today, it means you have a whole lot of support because the limits are so low. If you spend a lot of money, you have to raise it from a heck of a lot of people. So you show me a candidate who's raised a lot of money and I'll show you a candidate who's got a heck of a lot of support. So, there is nothing corrupting about spending. As a matter of fact, a report out of the Kennedy School of Government in 1979 found a few years after this law was passed, at a time when increases in spending were really dramatic, that the fundamental problem in America is we were not spending enough on

campaigns. There was a dramatic increase in spending between 1990 and 1992, and the reason for that is we had more candidates, more competition and more interest.

There is another statistic you would be interested in. Almost without exception the campaigns where there is the greatest spending have the highest turnout. Are we against high turnout? Obviously not. Spending generally, and almost without exception, represents interest, competition, which results in turnout. We shouldn't be against any of that; we ought to be for that.

Q: Let's say hypothetically it's a week from now and this awful bill actually passes. Can you walk us through what your next steps will be?

A: I will be going to court as the plaintiff (the co-plaintiff will be the American Civil Liberties Union) seeking an injunction to stop the implementation of the legislation until such time as we can get a decision. The legislation in all likelihood will have an expedited judicial review procedure provision in it. The previous bill did in the mid-'70s, so that there was rapid consideration by the courts. In the previous instance, Buckley and the ACLU lost in the lower courts and the Supreme Court reversed those decisions. We are very optimistic this time we are going to win the initial case. And the easy thing for the Supreme Court to do, unless it wants to completely re-write the Constitution and the First Amendment in this field, is simply uphold the lower court. But we expect a very quick decision. I'm praying we don't have to get that far, but that's where we're headed if we lose.

Q: I can envision the political arguments the other side is making, but what legal arguments will they make?

A: They're just ignoring this completely. They're going to argue that spending is corrupting. The Supreme Court has previously rejected that. The only thing they thought had potential to corrupt, to get back to your question, was my ability to give to you. And so they upheld a limit on what I can give you. They found no basis for the conclusion that your spending had any corrupting potential. It's a dissemination of information; it's speech. They will go back and try to get the Court to conclude that the act of spending is, per se, corrupting. It's a hell of a hard argument to make.

The suspicion that many of us have is that many Democrats do not really want to pass a bill. They are treating the issue like a dead cat in the yard. They throw it in the neighbor's yard, thinking they're never going to see it again. Well this dead cat just keeps moving. And everybody hopes that the dead cat's going to wind up in somebody else's front yard. And I'm confident they're hoping that either we will bury it for them in the Senate, which I fervently hope we will do, or if we are incapable of doing it in the end, that the courts will take care of it. It's a highly cynical thing. Any of these liberals who know anything about the Constitution and the First Amendment have got to know these bills are unconstitutional.

But more broadly, philosophically, liberals really believe that the participation of individuals in political process is a corrupting thing, a tainting thing. And their goal for a number of years has been to push private people out of the campaign process and take the money out of the Treasury, the only truly unbiased source. And then, of course, the game will be to buy their votes. It's already been the game. They buy votes with tax dollars by starting a program to benefit this group and a program to benefit this group. They buy people's votes with their own tax dollars. So the big-government crowd, if they can take over campaigns, they've got it all. They've got control of how we get here, as well as what happens after we get here. This is a very, very important issue. I think the most important issue that we dealt with this

year. And some would argue health care is. But the question of how elected officials are chosen, and ability of the people to participate in the process by opposing or supporting whomever they wish is going to determine what kind of Congress you have, and that's going to have a big impact on policy. And they know that. And they'd like to push all these nasty private people out of the process so they could, like philosopher kings, decide what's best for everybody. You've heard the arguments made on health care. Senator Rockefeller was very candid about it: "We need to do this whether people want it or not. We know what's best."

So that's what is at the heart of this. They want to put a clamp on the speech of individual citizens and their rights to participate in the political process. That's at the core of this. My view is that the worst place to get our support is the Treasury. We ought to have to work for these jobs; we don't own these seats. And if we displease a lot of people, as Mike Synar learned yesterday, we're not going to be back. We ought not to have a hammer lock on re-election. We ought to have to work for it. We ought to have to go out and get support. There's nothing wrong with money. How else are you going to pay for the TV? You've got to have money in politics. It can come from two places. It can come from individuals, voluntarily given to the candidates of their choice. It's all fully disclosed on our FEC reports. Or you can get it out of the Treasury. These are the only two choices. I prefer to get it from individuals, who voluntarily choose to give to me because they like what I stand for. So that's where we are. And this is a fight for the heart and soul of the country, as far as I'm concerned—the whole process by which we get here. And I don't know what you can do to help in these remaining days, but I hope you will help us gin up the degree of enthusiasm we need on our side to go through the first 30 hour gauntlet, which will be difficult, although not terribly difficult, because each Senator only has to take an hour. And then the key thing, of course, will be holding 41 together.

