

Chapter 8

Campaign finance reform: The impossible dream

Federal campaign finance laws have failed to stop or even slow down the flood of special interest money. Campaign finance reform is wishful thinking. Essentially we are trying to use a set of very detailed rules to control men and women who lack a basic moral compass. It makes more sense to fix the underlying system so men and women of good character will once again be willing to serve as our leaders.

The campaign finance laws actually provide a clear guide for how to corrupt our representatives and other public officials without breaking the law. This outcome is not so surprising. The same folks who are taking the money with both hands are also the ones who wrote the laws.

I've mentioned it before, but it bears repeating. Just because something is *legal* does not make it *right*. Public officials are elected to represent their fellow citizens. It is their job to look out for the interests of the people. When our representatives take large sums of money from those whose interests may be different from their constituents', it is clearly unethical. It is a *conflict of interest*, and it is always *wrong* even if it is legal.

Toward the end of the 1800's as a result of the industrial and transportation revolutions, large corporation came into being. Bribery and corruption by giants of industry and finance are not a recent happening. The men who controlled these early corporations came to be known as the "robber barons." Like today's giant corporations and their lobbyists, the robber barons understood the value of friends in high places so they contributed millions to elect President McKinley in 1896 and 1900 and President Teddy Roosevelt in 1904.

When ordinary American citizens got a whiff of these activities, they did not like the smell. In 1907, they pressured Congress and the President into passing a law called the Tillman Act which made it illegal for corporations to give money to any candidate for federal office.

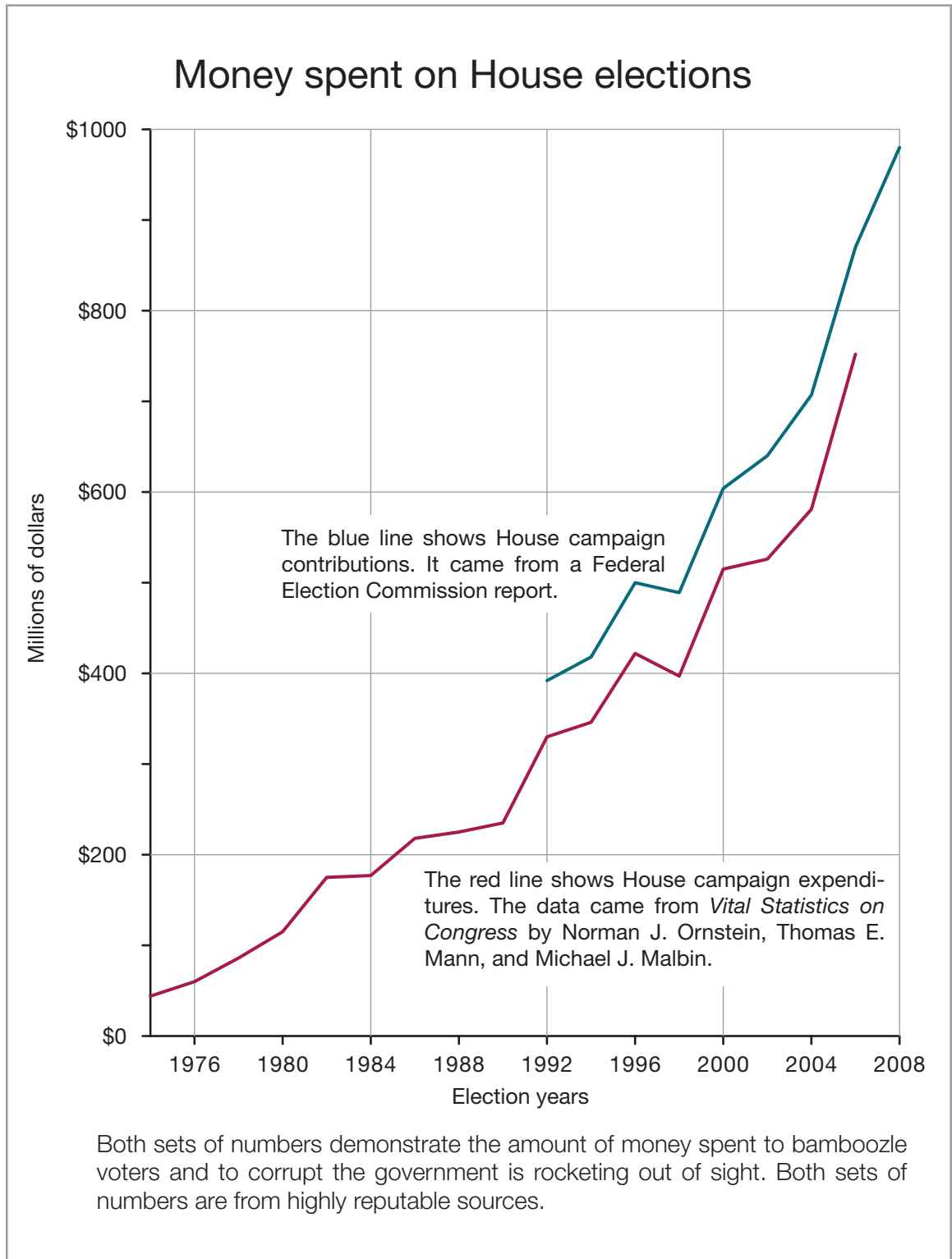
I start at 1907 because it is important to see how far we have drifted away from plain, garden-variety common sense during the past 100 years. Back then, ordinary citizens, government officials, industrialists and even the Supreme Court knew that it was corrupt and unethical for an elected official to take large sums of money from someone who might expect a favor in the future. They understood the critical importance of fair elections for the proper functioning of a democracy.

The rich man who enters into Society along with the poor man, gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man in proportion to his superior stake, the rights of the poor man would immediately cease to be secure.

Roger Sherman
on June 28, 1787 from James Madison's notes in Max Farrand's *Records of the Federal Convention*, 1911

In the mid-1990s [Representative Tom] DeLay and his colleagues in the Republican leadership had struck a bargain with Washington's lobbyists that was both brazen and remarkably successful: if the lobbyists would help raise hundreds of millions of dollars to support Republicans and help preserve their majority in Congress, DeLay would invite them into the legislative process, and allow them to propose entire bills and suggest changes to legislation proposed by others.

Robert G. Kaiser
So Damn Much Money, 2010



Over the next several decades, campaign finance laws were expanded from time to time to include reporting requirements, limits on expenditures and contributions, and restrictions on unions similar to those on corporations. On the one hand, there were plenty of loopholes, and laws were not rigorously enforced. On the other hand, Congress and the President did not appear to have been bought and paid for. Corporations did not as a matter of course have Washington offices or government relations departments.

In the 1960s, key elements in the way we elect national officials changed. The first televised presidential debates took place in 1960. The debates were between a photogenic John F. Kennedy, who came across more young and vibrant than he perhaps was, and Richard Nixon, to whom the camera was particularly unforgiving. Candidates of both parties and for all offices quickly grasped the enormous power of television in both conveying their image to the voters and controlling that image. Of course, enormous power was matched by an enormous price tag for writers, media consultants, pollsters and the like.

Also in response to their highly divisive and disorderly convention in 1968, the Democrats changed their party's rules to favor primary elections. This drove many states to adopt a system of primary elections. Before this change, candidates were generally chosen by party leaders in closed-door caucuses—the famous “smoke-filled rooms.” These same party leaders then used their party organization to turn out the vote for their man (and an occasional woman). With the advent of the primary system, it has become every man for himself. Each candidate has to create and to fund his own organization. This produced another need for hard, cold cash.

For many of the older, long standing members of Congress, the arrival of the 1970s was as if they had waked one morning to find themselves in an alternate universe. They were disturbed not only by the shocking cost of running for re-election but also by how fast the cost was rising. These men were the products of an earlier system, one which did not require them to approach wealthy individuals and business interests with a begging bowl. Also, the Watergate scandal with its hidden corporate slush funds drove strong public support for reform. As a result, during the 1970s Congress passed a series of laws designed to put teeth into the campaign finance laws.

The 1970s may have been the last era when government was capable of reforming itself. The campaign finance reforms passed then included the creation the Federal Election Commission (FEC), a full-time, somewhat independent organization dedicated to monitoring

I can hardly imagine any kind of government more repellent than a democracy that has ceased to believe in anything, and in which all ambitions are directed towards a selfish use of power.

Carl Schurtz
'For the Republic of
Washington and Lincoln'
February 22, 1900

John Stennis, one of the lions of the old Senate, spent less than \$5,000 on his first five reelection campaigns. But in 1982, facing a well-funded Republican opponent, Stennis's political consultant told him he needed to raise \$2 million, and recommended that the senator solicit contributions from the big defense contractors whose weapons systems Stennis had supported. Stennis, then eighty-one, was taken aback. “Would that be proper?” He asked. (James K. Atherton, *The Washington Post*)

Robert G. Kaiser
So Damn Much Money, 2009

The founding fathers understood that money threatens sound government.

Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of honour that shall at the same time be a place of profit, and they will move heaven and earth to obtain it.... The struggles for [such places] are the true sources of all those factions which are perpetually dividing the Nation, distracting its councils, hurrying sometimes into fruitless & mischievous wars, and often compelling a submission to dishonorable terms of peace.

And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your Government and be your rulers. And these too will be mistaken in the expected happiness of their situation: For their vanquished competitors of the same spirit, and from the same motives will perpetually be endeavouring to distress their administration, thwart their measures, and render them odious to the people.

Benjamin Franklin
at the Constitutional Convention on June 2, 1787

Ben Franklin argued that the best way to keep money out of the picture was to make the presidency an unpaid position. He described what will happen to a government driven by money. Reading it, you can almost believe he had a supernatural ability to look into the future. His statement would be at home on any of today's opinion pages.

The legislature, with a discretionary power over the salary and emoluments of the [President], could render him as obsequious to their will as they might think proper to make him. They might, in most cases, either reduce him by famine, or tempt him by largesses, to surrender at discretion his judgment to their inclinations.... There are men who could neither be distressed nor won into a sacrifice of their duty; but this stern virtue is the growth of few soils; and in the main it will be found that a power over a man's support is a power over his will.

Alexander Hamilton, *Federalist 73*, 1788

Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support.... In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resource on the occasional grants of the latter....

Alexander Hamilton, *Federalist 79*, 1788

In the end, the Constitutional Convention decided to pay the President. In their view, the threat to the integrity of either the President or federal judges would come from Congress who controlled the national purse strings. So the Constitution limited Congress's ability to change their compensation. As you can see from Federalists 73 and 79, they realized government officials could be compromised with money and they tried to defend against it.

They knew that money and speech are not the same thing. I'd guess that they would understand that money is power and can stop the free flow of ideas.

Each year the Pentagon expends hundreds of billions of dollars to raise and support U.S. military forces. This money lubricates American politics, filling campaign coffers and providing a source of largess—jobs and contracts—for distribution to constituents. It provides lucrative “second careers” for retired U.S. military officers hired by weapons manufacturers or by consulting firms appropriately known as “Beltway Bandits.” It funds the activities of think tanks that relentlessly advocate for policies guaranteed to fend off challenges to established conventions. “Military-industrial complex” no longer suffices to describe the congeries of interests profiting from and committed to preserving the national security status quo.

Andrew J. Bacevich
Washington Rules, 2010

national elections. The laws strengthened limits on campaign contributions and campaign spending. They tightened reporting requirements. Finally, in an effort to reduce the temptation created by the need for money, a system for federal funding of presidential elections was established.

And what happened to this serious attempt at reform? Although the Supreme Court, the FEC and the Internal Revenue Service all made decisions or rules that materially weakened campaign finance reform, the Supreme Court did the most damage. Having paid little or no attention to campaign finance laws dating back to 1907, the Supreme Court now issued a series of opinions that in essence re-wrote the laws. Their most breathtakingly simple-minded and destructive decision was that any attempt to create a fair election process by limiting campaign expenditures would be a violation of the right to free speech. In other words, to their way of thinking money was the same as speech!

So more and more money flowed to campaigns. The amounts involved became obscene (as did the ads they produced). Of course, the most money flowed to those who had already demonstrated their willingness to throw their constituents under the bus: the incumbents.

The story of so-called campaign finance reform did not end with the 1976 ruling that money was the same as speech. Corporate interests started to want more in return for their investment. Corporations opened government affairs offices in Washington, and buying government influence became a necessary part of the business model.

It was not enough for a representative to vote the way his backers wanted on most bills. Business interests started to press for their very own legislation. Two things resulted. First, lobbyists were invited to actually write the language that went into bills so that it would be favorable to their client’s very specific needs. Second, the use of earmarks exploded. Earmarks are passages in legislation that required certain government contracts to be awarded to companies or institutions by name. No competitive bidding required. The government didn’t even necessarily need the goods or services covered by the contracts. Not so surprisingly the no-bid contracts went to major campaign contributors. All perfectly legal.

Money flowed from business interests far in excess of the limits placed on them by existing campaign finance laws. The money flowed around the laws like a river around a big rock. If spending met certain technical requirements, there were no limits. It was called soft money, and it drove elections.

After the 2000 elections exploded all records for fundraising and spending, most of it involving soft money, Republican Senator John McCain and Democratic Senator Russell Feingold pushed through new, improved campaign finance legislation. The issue had not changed since the 1907 Tillman Act—that elections driven by special interest money debase democracy.

And so we come to the most recent installment in this long running soap opera. In 2010, the Supreme Court, those reliable guardians against too much democracy, reviewed the provisions of the McCain Feingold bill. And what did they decide? Hold on to your hats! They decided corporations were being treated unfairly. These guys decided that a corporation's right to free speech, which as you will recall is not really speech, but money, should not be "abridged" as it says in the first amendment.

In this remarkable ruling the Supreme Court justices were divided 5 to 4. So five men, answerable to no one, have decided to throw out a law the President, the Senate and the House—the men and women we elected to govern our nation—drafted, debated and made the law of the land. They also chucked out legal precedent that has been understood and respected since the 1907 Tillman Act.

Democracy is based on the ideal of an electorate being able to make an informed choice of men and women to lead their own nation. The choice is made by means of elections. Our elections have deteriorated to the point where informed choice is no longer possible so we are now governed by compromised professional politicians, not statesmen.

The moral of this story is that while there is widespread, almost universal agreement about the corrupting influence of money, repeated attempts to fix the system by means of campaign finance reform have failed. It seems the law cannot fix the problem. The only way we are going to regain control of our own country is by changing the system. And the only part of the system that lends itself to change is the House of Representatives.

[O]ur results speak to a simple conclusion: PACs pursue power. They invest in those in office, not those hoping to win. They give to those legislators on key committees, especially the committees dealing with economic regulation and taxation. They give considerably more to those in the majority, and to those who lead the majority. And they give disproportionately to those whose votes are likely to be decisive on legislation that comes before the House as a whole. As a result, incumbents have a much easier time raising money than their opponents.

Stephen Ansolabehere

James M. Snyder Jr.

'Money and Office: The Sources of the Incumbency Advantage in Congressional Campaign Finance' from *Continuity and Change in House Elections*, 2000

The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed, the fabric must fall. Such is the voice of universal history. The theory of our government is that all public stations are trusts, and that those clothed with them are to be animated in the discharge of their duties solely by considerations of right, justice, and the public good. They are never to descend to a lower plane. But there is a correlative duty resting upon the citizen. In his intercourse with those in authority, whether executive or legislative, touching the performance of their functions, he is bound to exhibit truth, frankness, and integrity. Any departure from the line of rectitude in such cases is not only bad in morals, but involves a public wrong. No people can have any higher public interest, except the preservation of their liberties, than integrity in the administration of their government in all its departments.

...The present case was for the sale of the influence and exertions of the lobby agent to bring about the passage of a law for the payment of a private claim, without reference to its merits, by means which, if not corrupt, were illegitimate, and considered in connection with the pecuniary interest of the agent at stake, contrary to the plainest principles of public policy...

If any of the great corporations of the country were to hire adventurers who make market of themselves in this way, to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and employed as steeped in corruption and the employment as infamous.

If the instances were numerous, open, and tolerated, they would be regarded as measuring the decay of the public morals and the degeneracy of the times.

from the 1874 Supreme Court opinion in *Trist v. Child*.