RUSH!

Executive Memorandum

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5/5/92 Number 329

S.3: A "REFORM" ONLY AN INCUMBENT COULD LOVE

The last week of April, Congress sent the President a campaign reform bill which supporters claim will clean up elections by reducing special interest influence and promoting citizen involvement. In fact, the "reform" bill, S.3, would perpetuate special interest influence, erect new regulations to hinder independent citizen political activity and magnify incumbent advantages in elections. Furthermore, the reform bill requires a hidden tax increase to fund its unpopular public financing provisions. The President should veto the bill, as he has threatened to do.[1]

The House and Senate passed differing versions of campaign finance reform earlier this year. A combined package which covers House and Senate campaigns with frequently diverse rules was passed by the House of Representatives by a vote of 259 to 165 early last month, and by the Senate 58 to 42 on the 30th. S.3 advertises spending limits of $600,000 for House races, and between $950,000 and $5.5 million for Senate races, though actual spending may be more than twice these limits due to a complex series of subsidies and exemptions. Though the limits are supposed to be voluntary, the system of benefits for participants and penalties against those who do not comply virtually compels participation. Benefits include government matching funds, discounts and vouchers for free television and radio advertising and reduced postal rates. For candidates whose opponents do not participate, spending limits are removed or raised, while the benefits of participating in the system remain.

Loopholes and Regulatory Overkill. S.3's system of heavy regulation combined with spending and contribution limits has been tried before and failed. While sections of the Federal Election Campaign Act of 1971 were declared unconstitutional, its remnants are responsible for the explosion of special interest PACs and overall campaign spending since 1974.[2] S.3 represents an intensification of this same stultifying system. The complex new requirements threaten to be a regulatory nightmare. S.3 would increase the already heavy burden of compliance on campaigns and detract from the legitimate conduct of political activities.[3] The regulatory burden will be especially harsh on non-incumbent campaigns and on grass roots political groups. Evidence that Congress actually sees these regulations as a weapon against challengers is the fact that S.3 would require many state ballot initiative efforts to comply with federal campaign finance laws—a provision clearly aimed at the term limit movement. Incumbents will find it far easier to comply with the web of regulations and to exploit loopholes known only to insiders.

Lax enforcement practices—the FEC finished accounting for the 1988 presidential campaign in 1991—actually encourage campaigns to exploit complex provisions with questionable practices. Even if a practice is

1 For further details on the contents of the House and Senate versions of campaign finance reform, see Steve Schwalm, "Back to the Congress: Campaign Finance Reform in 1992," Heritage Foundation *Backgrounder* No. 885, February 28, 1992.

2 Steve Schwalm, *ibid.*, pp. 3-4.

3 *Campaign Finance Reform - A Report to the Majority and Minority Leader, United States Senate*, Campaign Finance Reform Panel, March 6, 1990, p.3.

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later declared improper, that decision, and any penalty, would come long after the campaign. Further, S.3 requires only random auditing, so there is a good chance that illegal activity will not be detected even after a campaign ends. Beyond campaigns, S.3 would add restrictive new regulations on state political parties and on independent political activity. The aim appears to be to make it difficult for anyone other than incumbents to participate in the electoral process.

Taxpayer Funding, Government Control. Taxpayers have indicated time and again that they do not wish to pay taxes for government campaign financing. Even the voluntary Presidential Campaign Fund is expected to go broke by the next election. S.3 includes numerous government funding provisions, yet there are no provisions to pay for the subsidies. S.3 represents a lurking campaign tax, as proponents hope to pass the bill now and stick someone else with the tab later. Beyond the direct subsidies, S.3 would require private broadcasters and the Postal Service to subsidize campaigns without reimbursement, costs which will ultimately be borne by consumers.

Another objectionable element of the public financing is the indiscriminate way in which funds will be distributed. Candidates who meet the mathematical thresholds for receiving government benefits will receive them, even the David Dukes or Al Sharptons. This already happens in Presidential primary races. The problem will only be exacerbated by opening for funding 535 more races with lower qualifying standards.

While S.3 opens the public coffers to candidates, it fails to eliminate the special interest advantage incumbents claim to oppose. Political Action Committees (PACs) are the greatest source of special interest funding in elections. PAC contributions favored incumbents over challengers in House races by more than thirteen to one in 1990. The PACs' power is due largely to the fact that PACs are allowed to contribute more than individuals in elections. Yet S.3 continues a contribution limit that is two and one-half times (for the Senate) to five times (for the House) greater than the $1,000 limit for individual contributors.

Perpetuating Incumbent Advantages. S.3 does little to offset the huge electoral advantages incumbents enjoy by virtue of their office. Incumbents have access to tax money for activities and resources that support their re-election, such as full-time paid staff, district and state offices, the ability to do constituent service on behalf of district voters, virtually unlimited travel, and use of House and Senate broadcast studios. The biggest of these re-election perks, is the free mailing privilege, or frank. Congress sends out hundreds of millions of pieces per year, only ten percent of which is in response to constituent mail.

Senators have agreed to a ban on election-year franked mass mailings largely because that leaves five years in which they can flood their states with taxpayer-funded mail. A staff error initially included an election year ban for the House as well. But, in an unusual procedure, the House quickly removed the election-year limit: with terms of only two years, the free mail was simply too valuable for House members to give up. Rules for the House and Senate also differ in regard to contribution sources, government funding, and other subsidies. These differences reveal that S.3's real aim is not so much to clean up campaigns as to appear to do so while protecting favored—and differing—fundraising sources and campaign techniques for House and Senate incumbents.

S.3 would do virtually nothing to address the real problems in campaign finance: unfair incumbent advantages and a cumbersome regulatory system. Instead, S.3 would add even more bureaucratic restrictions on political activity and would enhance incumbent advantages with spending limits and public financing. The need for true campaign finance demands that the President veto S.3 as promised.

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