The Heritage Foundation Backgrounder

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ADVANTAGE INCUMBENTS: CLINTON'S CAMPAIGN FINANCE PROPOSAL

INTRODUCTION

President Clinton's campaign finance reform proposal, now being debated in Congress, holds more threat than promise for American democracy. The bill would aid incumbent campaigners to the detriment of challengers, increase bureaucratic control of politics, and tax Americans to subsidize politicians. It would, in fact, worsen the problems that real campaign reform should solve.

The package combines voluntary campaign spending limits with partial public financing and other incentives for candidates who comply with the limits. Non-complying candidates would both forgo benefits and face various penalties. Significant new regulations would be imposed on campaigns, political parties, political action committees (PACs), and other participants in the election process. President Clinton's principal contributions to the new package were a ban on campaign contributions by lobbyists and a proposal to pay for the public financing costs by taxing lobbying activities.

While Democrats rushed the plan, designated as S.3, to the Senate floor on May 26, they are still tinkering with the details of their bill. Specifics of rules for House campaigns are still not available.

The Clinton bill is hopelessly flawed, both in its specific provisions and in its general approach. The plan reprises the 1974 campaign finance law. Part of that law was declared unconstitutional, and the rest is largely responsible for the very problems—too much money and special interest influence—Clinton says he is trying to solve. Among the bill's most notable problems:

✘ **Spending limits hurt challengers most.** While challengers need not outspend incumbents in order to win, they must cross a significant spending threshold to become competitive. The spending and fundraising limitations in the Clinton bill would hobble challengers.

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

- ✗ **Taxpayers reject public financing.** Participation in the presidential campaign income tax check-off has plummeted in recent years to 17 percent, yet Clinton is proposing to expand the program to include congressional campaigns.

- ✗ **More bureaucracy is not the solution to America's political woes.** S. 3 would transform campaigns into battles of accountants and lawyers. Citizen activists would be ensnared in red tape. Issues would become less and less relevant, and the impossibility of adequately policing complaints would create powerful incentives to cheat.

- ✗ **Incumbents and special interests would benefit most.** Incumbents who write the rules, and monied special interests, will have an easier time complying with regulations than challengers and citizen groups. Even worse, the spending and fundraising limits and a plethora of exemptions in the Clinton plan are designed to aid incumbents and favored interest groups.

- ✗ **The plan is probably unconstitutional.** The Supreme Court has declared that only voluntary spending limits are constitutional. Yet S. 3's efforts to entice acceptance and penalize non-compliance are designed to force participation, and easily could be found unconstitutional. In addition, many of the bill's prohibitions, regulations, taxes, and counter-subsidies trespass seriously on free speech rights.

The ultimate solution to public dissatisfaction with politics as usual lies in term limits and other substantial government reforms. Any genuine campaign finance proposal will make elections more open to challengers and weaken special interest advantages. Among the most important elements would be:

- **eliminating the differential between donation limits for individuals and special interest PACs;**
- **prohibiting the use of incumbents' perks for campaign advantage;**
- **enforcing the *Beck* decision, which prohibits unions from using compulsory dues for political purposes;**
- **providing challengers with easier ways to raise initial funding; and**
- **encouraging fundraising among constituents rather than from Washington-based special interests.**

Political speech and action are among Americans' most important constitutional liberties. The regulations proposed in President Clinton's campaign finance reform bill will make their exercise far more difficult. Citizens and taxpayers would lose; politicians and special interests would gain.

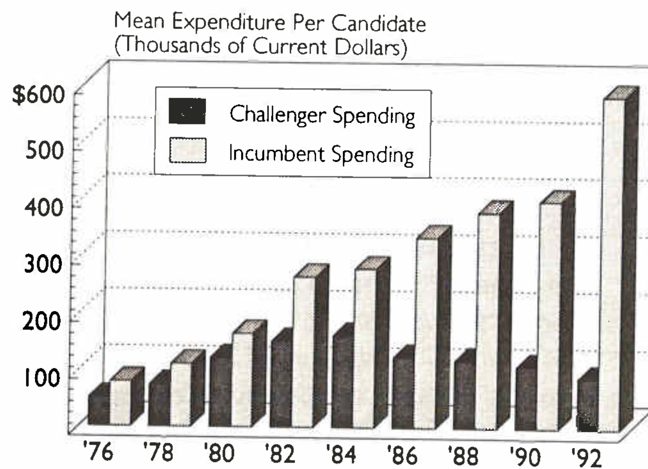
THE CURRENT SYSTEM

Current law limits individual contributions in congressional races to $1,000 for each primary, runoff, and general election. Individuals can contribute no more than $25,000 per year to all federal campaigns. While direct corporate contributions are prohibited, unions, corporations, and other groups are permitted to maintain political action committees (PACs) which can donate up to $5,000 per election, with no limit on annual ag-

gregate contributions. Political parties may donate $10,000 per candidate in House general elections and $20,000 or two cents per voter (whichever is greater) in Senate elections. They may also make "coordinated expenditures" (in cooperation with a campaign) in House campaigns of up to $28,460 per year and roughly five and a half cents for each adult in the state for the Senate—which comes to over $700,000 for the recent special Senate election in Texas. These allowances are adjusted yearly for inflation.

In addition to direct and coordinated contributions to candidates, political parties may spend unlimited amounts of so-called soft money—election-related spending that is not intended to benefit any particular candidate—for party-building activities such as voter registration and advertising designed to benefit all party candidates. Soft money donations to the parties, which must be reported to the Federal Election Commission (FEC), can come directly from corporations and unions as well as from individuals and PACs. Labor unions and other groups are permitted to spend unlimited amounts of soft money on voter identification and education efforts, but are not required to report that spending. Labor efforts generally are funded from the dues of union members.

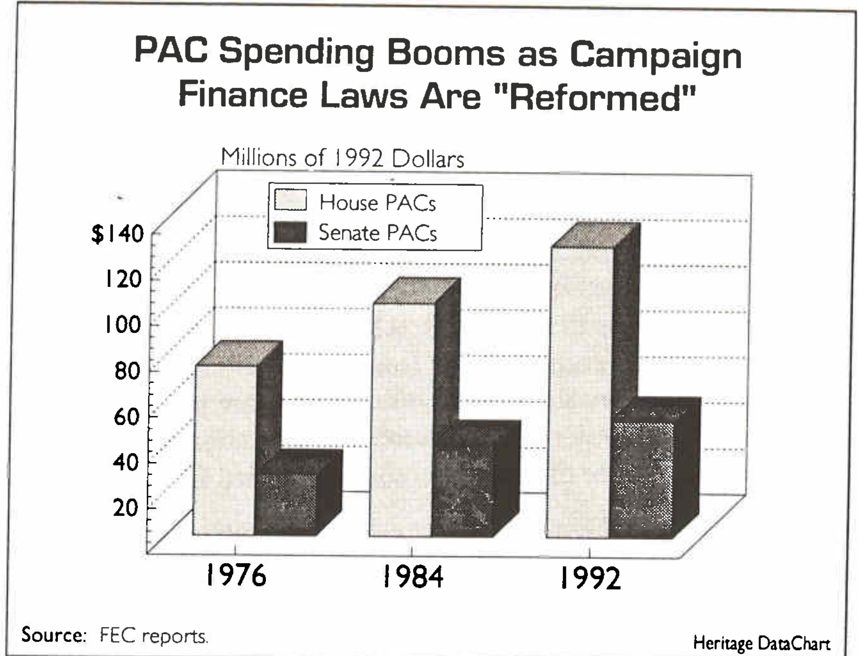
The role of money—in particular special interest money—has grown tremendously since the 1974 reforms that were supposed to clean up politics, and incumbent reelection rates have soared. Since passage of the 1974 law, spending in congressional campaigns has nearly tripled: from an aggregate of $244 million (in 1992 dollars) to $678 million in 1992. Special interest and incumbent reelection PAC activity has exploded. The number of PACs has grown sevenfold, from 608 in 1974 to 4,268 in 1988, while PAC spending soared from $101 million (in 1992 dollars) in 1976 to $179 million last year. The 1992 PAC spending total was 19 percent higher than just two years ago.



Source: *Vital Statistics on Congress, 1991-1992*, and FEC reports.

As spending has increased, the dollars, particularly special interest donations, increasingly have flowed to incumbents. In fact, the majority of incumbents now raise the majority of their campaign funds from PACs.[1] In the 1992 election cycle, House incumbents spent an average of $560,000, compared with only $160,000 for their challengers, a better than three-to-one spending advantage.[2] Incumbent Senators were able to achieve a healthy two and a half-to-one fundraising advantage.[3] Not surprisingly, incumbent reelection rates have risen to levels reminiscent of the old Soviet Politburo, peaking in 98.5

percent and 98 percent re-election rates in 1988 and 1990.[4] Even in 1992, a year marked by public opinion polls showing approval rates for Congress in the teens,[5] voter ire at congressional scandals, and redistricting which pitted incumbents in races against each other, the incumbent re-election rate in the House was fully 93 percent.[6] The sizable freshman class of the 103rd Congress was created primarily by incumbent retirement, not incumbent defeat.[7]



While Senate elections have been more competitive, incumbency creates huge advantages there as well: Not since the Senate shakeup of 1980 have less than three-quarters of Senators standing for re-election been victorious.

THE POLITICS OF REFORM

Campaign finance reform, frequently linked to complaints about special interests, became a significant issue in the 1992 presidential campaign. Ross Perot harshly criticized the role of lobbyists in elections and policy making. Candidate Bill Clinton echoed that Americans need "to take our political system back… we have been absolutely paralyzed by special interests and big government,"[8] and promised to sign a campaign finance reform bill. Congressional Democrats, many putting aside private objections, rushed a campaign finance bill through Congress, on largely party-line votes of 273-156 in the House and 56-42 in the Senate, forcing President Bush to veto the legislation in May of

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1 "Yes to Campaign Finance Reform," *The Washington Post*, January 3, 1993, p. A-26.
2 "House Campaign Spending," *The Washington Post*, May 26, 1993, p. A-17.
3 "Senate Campaign Spending," *The Washington Post*, May 24, 1993, p. A-17.
4 Norman Ornstein, Thomas Mann, and Michael Malbin, *Vital Statistics on Congress, 1991-1992* (Washington, D.C.: The American Enterprise Institute, 1992), p. 58, table 2-7.
5 Gallup poll, March 1993, Roper Center, University of Connecticut.
6 See *Congressional Quarterly*, November 7, 1992, p. 3576.
7 Out of 110 departing House members, 67 died, retired, or sought another office.
8 *The New York Times*, June 2, 1992.

1992. Bush and most Republicans opposed that plan because it contained spending limits and public financing. The bill also was criticized for its bewildering assortment of regulations, subsidies, multi-level spending limits, and hidden tax increases.[9]

The 1992 bill, which combined differing and often inconsistent provisions governing House and Senate campaigns, was reintroduced as H.R. 3 and S. 3 this year. While President Clinton supported the general thrust of that bill, presidential advisors and congressional leaders opened negotiations to modify certain provisions early this year. New regulations and taxes on lobbyists, including financing public benefits through a new tax on lobbying activities, were the most notable changes emerging from these negotiations. The White House and congressional Democrats announced a compromise in May, which is now being debated as substitute legislation.

Details of the House plan are still not available, and presumably are still being negotiated. While the detailed language covering Senate and presidential campaigns and non-candidate activities has been released, Senate leaders are also continuing to modify the bill, announcing on May 20, for instance, that they would amend the plan to include a ban on PAC donations to Senate candidates. The House version, when released, is likely to differ from the Senate bill in numerous respects, due in part to a fractious House coalition encompassing women, blacks, moderates, and liberals with varying agendas.

THE CLINTON REFORM PLAN: MORE OF THE SAME

Like the reforms of 1974, President Clinton's campaign finance reform plan seeks to address special interest influence, the rising cost of campaigns, and fairness in elections. Despite the demonstrable failure of contribution limits, the questionable constitutionality of spending limits, the unpopularity of public financing, and the perverse results of previous campaign regulations, the President and Democratic congressional leaders seem determined to try another dose of the same cure.

The Clinton plan would link voluntary spending and fundraising limits for House and Senate elections to a series of taxpayer-funded incentives for candidates agreeing to comply with the limits and sanctions against those who refuse. The bill would change contribution limits and impose new restrictions and reporting requirements on political activity by individuals, PACs, and political parties. The 137-page bill would regulate campaign, contributor, party, and citizen political activities in minute detail. The size and authority of the FEC bureaucracy would be increased vastly to administer and police the complex funding limitation and taxpayer financing provisions. The FEC General Counsel, a career bureaucrat, would gain new powers to operate independently of Commission guidance and even to break tie votes among the six Commissioners, who are appointed by the President and confirmed by the Senate. Clinton would offset the public financing costs by repealing the current deductibility of lobbying costs as a business expense. Funds from that change, which were previously designated for deficit reduction in Clinton's tax plan, would flow into the general treasury, however. President Clinton

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9 For further details of the 1992 campaign finance reform bill, see Steven Schwalm, "Back to the Congress: Campaign Finance Reform in 1992," Heritage Foundation *Backgrounder* No. 885, February 28, 1992.

proposed that a specific campaign financing account be established with the proceeds of an increase from $1 to $5 in the existing presidential campaign fund check-off on income tax returns. The pending Senate version omits the check-off, however, establishing a fund based on the estimated receipts from the lobbying tax. The changes in the bill would not take effect until 1996.

House Spending Limits

For House candidates the nominal spending limit would be $600,000 for combined primary and general election campaigns. Actual limits will be significantly higher, however. Candidates who win a contested primary (defined as a victory margin of less than 20 percent) may spend another $150,000. Fundraising costs of up to 10 percent of the limits do not have to be counted. Finally, the plan will take effect in 1996, but the limits will be adjusted for inflation from 1992. Assuming 4 percent inflation, the limit with a contested primary in 1996 would be $960,000. Combined with available postal and advertising discounts, effective spending easily could exceed $1 million. Within these spending limits, candidates may raise no more than one-third of campaign donations from political action committees and another third from individual contributions larger than $200. The maximum allowed donation from any one PAC would remain at $5,000, and from individuals at $1,000.[10] Candidates could receive up to another third of their funds in government vouchers matching individual contributions up to $200. Matching vouchers would begin to be issued when a candidate raised 15 percent (initially $75,000) of the nominal spending limit. Candidates who did not reach the limit of PAC or large individual donations could make up the shortage through individual donations of less than $200, which are restricted only by the overall spending limits.

Because the tax-funded vouchers match only the first $200 in individual donations, candidates could not actually raise the maximum allowed in all three restricted categories. Under a $600,000 limit, for instance, a candidate who raised $200,000 from PACs and $200,000 in $1,000 individual donations would receive $40,000 in vouchers (matching the first $200 of each $1,000 donation). That candidate could then raise an additional $80,000 in small individual donations, which would be matched with government vouchers (for a total of $120,000 in public funds). Because the spending limits are indexed while donation limits are not, the mathematical calculations, and consequently the compliance burdens, quickly become complex.

Senate Spending Limits

Senate candidates would face spending limits based on their state's voting-age population, ranging from $1.2 million to $5.5 million for the general election. Candidates could spend an additional two-thirds of the limit, with a maximum of $2.75 million, in a primary. Senate candidates could spend an additional 15 percent on legal and accounting compliance costs, with a maximum of $300,000, making total spending limits range between $2.3 million and $8.5 million. As with House figures, Senate caps would be indexed for inflation, but the base year would be 1996 rather than 1992. Under the initial

10 As described by White House aides, the Clinton plan would maintain $5,000 PAC donation limits for House campaigns. An amendment adopted during Senate consideration, however, would ban PAC contributions to House and Senate campaigns.

Clinton plan, Senate candidates could take up to 20 percent of their total funds from political action committees with the maximum donation from any one PAC reduced to $2,500. Senators subsequently agreed, however, to prohibit all PAC donations. Under the modified plan, Senate candidates would have to raise all funds, except for a population-based contribution from their political party, through individual donations in amounts of $1,000 or less.

Senate candidates complying with spending limits would receive up to 25 percent of the combined primary and general election limits in taxpayer-funded communications vouchers, though they would receive aid only after the primary. The first 12.5 percent in voucher aid would be payable when a candidate raised 10 percent of the general election spending limit, with a second 12.5 percent after an additional 10 percent of the general election limit was raised. Only the first $250 of each contribution would be counted toward the threshold, and 50 percent of the funds would have to be from the candidate's home state. Non-major party candidates could receive a maximum of only 12.5 percent in voucher aid, in 6.25 percent increments, though they would have to meet the same fundraising thresholds as Republicans and Democrats. Incumbent Senators would be prohibited from sending franked mass mailings during their re-election year (no limitations are placed on franking by incumbent House members).

Because Senate fundraising thresholds are based on general election limits while the higher public funding ratio is based on combined primary and general election limits, the taxpayer vouchers would go to Senate candidates at a better than two to one ratio for the first 20 percent of funds raised. For instance, in a state with a $3 million general election limit, a candidate who raised $600,000 (20 percent of the general election limit) would receive $1,250,000 (25 percent of the $5 million combined general and primary limits) in vouchers. Minor party candidates would receive over 40 percent of their general election funds in voucher aid.

Advertising Discounts and Matching Funds

In addition to the vouchers, House and Senate candidates complying with the spending limits would receive a 50 percent discount from the lowest price otherwise charged on broadcast television and radio advertising late in the campaign. Since such advertising is a major expense for nearly all campaigns, this provision would double the value of a large portion of campaign spending, making spending limits effectively far higher than advertised. Broadcasters would be prohibited from displacing political ads from their schedules and would be required to give politicians their lowest rates on early advertising. Candidates would be permitted to mail at the non-profit bulk mail rate up to one letter per voting age resident of the state or district. (By mailing only to registered voters and combining names into household groups, candidates could write each voter two or three times.) Candidates would also receive government payments to offset spending by opponents who exceeded the spending limits and to match any independent expenditures targeted against them or for their opponent.

Non-Complying Candidates

Candidates who refuse to abide by the spending limits forgo the government vouchers and mandatory discounts. They are required to include in all advertising a statement that they have refused to comply with voluntary spending limits. Once a privately funded candidate exceeded the general election spending limit, his opponent would receive govern-

ment cash grants of up to 100 percent of the limit in one-third increments. (Non-major party candidates who agreed to spending limits would receive a maximum of 50 percent of the general election ceiling to offset spending by an opponent who exceeded the limit.) While spending limits are called voluntary, the combination of subsidies and penalties thus create powerful, punitive incentives for candidates to comply.

Independent Expenditures

In addition to the offsetting payments and commercial response requirements, the Clinton campaign finance reform legislation would more strictly regulate independent expenditures—advertisements or other political communications that support or oppose a candidate or party, but which are done without the cooperation of any candidate or party. Persons or organizations having virtually any contact with the targeted campaign would be prohibited from making independent expenditures. Strict time frames for reporting and disclosing independent expenditures would be established, requiring action within hours of specified events in some cases. Expenditures of more than $5,000 in the final weeks of a campaign would have to be announced by twenty days before the election.

The Clinton plan seeks to discourage and offset independent expenditures. Independent ads would have to be conspicuously identified as such. Broadcasters would be required to notify candidates who are targets of independent ads and grant them time (paid for with government vouchers) immediately after the ads to respond with their own commercials. Candidates would receive government vouchers to compensate for non-broadcast communications as well. Vouchers would be issued to offset independent expenditures in excess of $10,000 (or in excess of $1,000 in the twenty days before an election).

New Regulations

Political parties, PACs, and individual donors would face numerous new limitations, regulations, and reporting requirements under the Clinton plan. While the PAC donation limit apparently will remain at $5,000 for House candidates, it would be reduced to $1,000 for presidential campaigns and PACs would be prohibited from contributing to Senate candidates. Bundling (collecting individual donations in excess of the applicable PAC limit) would be prohibited, though supporters of EMILY's List, a PAC supporting pro-abortion women candidates, are attempting to carve out a loophole that would allow bundling for that organization. So-called leadership PACs (controlled by elected officials) would be prohibited. Contributions from lobbyists to candidates they have contacted about legislation would be precluded. The $25,000 per year limit on aggregate contributions to candidates would be tightened and combined with a new $60,000 election cycle (two-year) cap which includes donations to political parties for the first time. Annual party contributions could not exceed $20,000, but only $5,000 of that amount could go toward direct candidate support, with the remainder for grassroots party-building or get-out-the-vote activities. Political party soft money would be limited and significantly regulated for the first time, with national party aid to states limited to administrative expenses. Similar activities by labor unions are left unreported and unregulated in the bill, however. State and local political parties would face significant new record-keeping requirements—having to distinguish, for instance, between odd and even year expenses for maintaining voter lists.

To police all of these new regulations the FEC General Counsel would be given broad new investigatory and auditing powers, largely independent of the appointed FEC Commissioners. The General Counsel would be given a tie-breaking vote whenever the FEC's six Commissioners (three Republicans and three Democrats) are deadlocked. The Counsel could even allow political partisans to sue opposing campaigns directly rather than making their case before the Commission. Rather than uniform enforcement, legal action would be based on political maneuvering, and courts would be clogged with partisan lawsuits. The new powers would make the FEC General Counsel, a career bureaucrat, a virtual elections commissar.

Taxpayer Financing

Funds necessary for the vouchers and matching grants would be offset by repealing the current deductibility of lobbying costs as an ordinary business expense. Clinton had proposed to use the same revenue source for general deficit reduction, however, and that proposal is included in the tax bill approved by the House of Representatives on May 27. Under "pay-as-you-go" budget rules, Clinton will either have to secure a change to the tax bill at a later stage in the legislative process, or find a new funding source for the taxpayer financing in his campaign bill.

Though it is possible to generate reasonable estimates of the income from the new lobbying tax, funds would flow to the government as small, indistinguishable portions of millions of corporate tax returns. Clinton therefore proposed that the account from which checks would be issued to politicians be funded through an entirely different device, an increase in the existing presidential campaign income tax check-off from $1 to $5. Because the income tax check-off does not affect a taxpayer's tax liability or refund, this change does not actually generate new funds, and in fact reduces revenue which otherwise would be available for deficit reduction or other government spending. The Senate version of the legislation simply drops this charade, ordering the Treasury to estimate receipts from the lobbying tax and credit that amount to a Senate Election Campaign Fund.

WHAT'S WRONG WITH SPENDING LIMITS?

✘ Spending limits hurt challengers most.

The enthusiasm of many proponents of spending limits is puzzling in light of their own spending records. The lead House sponsor of campaign reform legislation, Connecticut Democrat Sam Gejdenson spent $974,000 on his 1992 reelection effort, 62 percent more than the $600,000 limit he proposes and seven times the amount spent by his opponent. Three members of the House Democratic leadership who support the $600,000 limit, Steny Hoyer of Maryland, Martin Frost of Texas, and David Bonior of Michigan, spent more than double that amount last year, far outspending their opponents in the process.[11]

11 "Shame Big Spenders," *Roll Call*, January 14, 1993, p. 4.

Big-spending incumbents are willing to impose spending limits because they know that spending limits hurt challengers most, and the limits set in the Clinton bill are far from arbitrary. Because incumbents have tremendous advantages in name identification and organization, challengers have to spend a significant amount to become competitive. When a challenger reaches this level, additional spending by an incumbent is less and less effective.[12] In 1988 the mean expenditure of challengers who beat House incumbents exceeded $600,000,[13] the proposed limit for House races. In 1990, no challenger defeated an incumbent on a budget of less than $300,000. While the odds against challengers remain steep as funding improves, one in six of those spending over $500,000 were able to defeat incumbents.[14] The House spending limit is set just where challengers might become dangerous.

The tripartite division of permissible fundraising sources puts House challengers at another disadvantage. Since challengers are usually spurned by PACs, few would raise close to the one-third ($200,000) PAC limit. Since individual contributions in excess of $200 are also limited to one-third of the overall limit, the only way for most challengers to match incumbent PAC income would be in individual donations of $200 or less, the most time-consuming way to raise money. The five-to-one PAC advantage currently enjoyed by incumbents would become, effectively, a 25-to-one edge.

✘ Spending limits ignore incumbent advantages.

In addition to contending with incumbents' natural advantage in name identification and media access, challengers must compete with the enormous array of taxpayer-funded resources that incumbents have at their disposal. The proposed spending restrictions simply ignore this crucial factor, which easily can double or triple incumbents' campaign-related resources. For example, the flood of franked mail from Congress peaks just before elections. In 1992, the House appropriated a whopping $80 million for mail, while the Senate added another $32 million.[15] This amounts to an average of $368,000 for each House member during his two-year term, and $1.9 million over a Senate term. Though the Senate reform bill prevents mass mailings in an election year, Senators can send targeted mailings at taxpayer expense during election periods, and have five other years per term to advertise with mass mailings. The franking advantage alone amounts roughly to a 50 percent or larger increase in incumbents' spending limits, all at taxpayer expense. Only about 8 percent of this mountain of mail is in response to constituent inquiries. (A bill introduced by South Carolina Republican Representative Bob Inglis, H.R. 1484, would cut each Member of Congress's franking allowance by 75 percent; such a cut would be a useful part of any real reform agenda.)

Taxpayers fund other incumbent perks with electoral impact including large staffs, district offices, and television and radio studios on Capitol Hill. Constituent service staffs have been described as a "re-election machine," accounting for 5 percent to 10

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12 *Campaign Finance Reform: The Case for Deregulation* (Tallahassee, FL: The James Madison Institute of Policy Studies, 1991), p. iii.

13 Ornstein, Mann, and Malbin, *op. cit.*, p. 82, Figure 3-2.

14 "Challengers Fall Further Behind in 1988," *Roll Call*, July 24-30, 1989, p. 8.

15 Legislative Branch Appropriations bill for FY 1992.

percent of an incumbent's vote total.[16] Constituent service spending by most incumbents would add another 50 percent in effective campaign-related spending.

✘ Spending limits violate the First Amendment.

Mandatory spending limits are clearly unconstitutional. Though the spending limits proposed in the Clinton bill are advertised as voluntary, the penalties for non-compliance are so steep as to make them arguably compulsory, and thus unconstitutional. Those not complying would lose federal subsidies and face heavily subsidized opponents who will receive broadcast and mail discounts. Imposing conditions on the exercise of free speech rights as a result of a citizen's refusal to take government subsidies raises serious constitutional issues.

In addition to providing extra subsidies to their opponents, the Clinton bill would explicitly discriminate against non-complying candidates by requiring them to include a statement in their advertising that they were not complying with the limits. The implication of wrongdoing in such a statement could have significant electoral impact. There is far less justification for requiring this sort of statement in privately funded advertising than there would be for requiring government-funded candidates to disclose that their ads were paid for (or paid for in part) with taxpayer funds.

The campaign reform bill would also apply the heavy hand of government regulation and subsidy to independent expenditure efforts, which the Supreme Court has declared to be protected free speech. By attempting to give candidates who are targets of such efforts an edge though advance notification, subsidies, and advertising placement requirements, the government is effectively taking sides against independent expenditure efforts. The bill's attempts to protect subsidized candidates from the vicissitudes of the political system, and its explicit bias against privately funded candidates and citizens, clearly put the government in the position of restricting free speech.

✘ Spending limits encourage evasion, hiding, and cheating.

As long as the First Amendment—including the right to petition (e.g., lobby) the government—exists, citizens will find ways to express their political views. The principal effect of government regulation of political speech is to push citizens away from straightforward activities (such as direct donations to candidates or political parties) into more circuitous methods. Such byproducts of regulation as PACs, bundling, soft money and independent spending are problematic primarily in the context of the restrictions already erected. Unfortunately, both the Democratic and Republican programs propose to restrict them further, and to impose new limits and regulations on state political parties.

One frequent result of campaign regulation is to force political activity out of parties and campaigns, which naturally compete to represent majority interests, into special interest channels. Every campaign practice now being condemned—PACs, bundling, independent expenditures, and soft money—is a direct response to the 1974 law which

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16 See "The Reelection Machine" in Eric Felten, *The Ruling Class* (Washington, D.C.: The Heritage Foundation/Regnery Gateway, 1993).

Clinton is proposing to amplify. Increased regulation can only push money and activism into even narrower and less accountable paths. The President himself, for instance, has suggested that organizations could circumvent his proposed bundling ban by sending fundraising appeals with envelopes addressed to individual campaigns. Lost in this scheme is the accountability that comes from the disclosure that a candidate has received a large sum of money from members of a particular interest group.

Candidates and campaigns themselves clearly will have an incentive to push the edge of any spending restrictions. State spending limits for presidential primaries have spawned countless creative attempts to shift costs or expand exemptions. The majority of FEC audits of presidential campaigns have uncovered excess or otherwise improper expenditures and resulted in repayments to the government. The restriction to auditing only 10 percent of congressional campaigns, conducted well after elections, creates low effective penalties for questionable behavior or even outright cheating, while the spending limits magnify the potential benefits of violations. The slight possibility of a fine months after the election is a small price to pay when the big prize—a seat in Congress—has been won.

WHAT'S WRONG WITH PUBLIC FINANCING?

✗ The money is already spoken for.

The lack of political support for public financing is evidenced by the convoluted financing structures proposed in the Clinton plan. The President proposes to fund public financing by repealing the tax deductibility of lobbying expenses, while directing money into campaign accounts through an unrelated income tax check-off. Clinton had proposed the lobbying tax for deficit reduction, so the provision is included in the tax bill now wending its way through Congress. Clinton must come up with a new financing source for his campaign plan or find a replacement for revenue lost by removing the lobbying provision from the broader tax bill. Either way, all taxpayers will share the burden of any financing scheme, especially since there is no link between revenues from the lobbying tax, which will flow into the general treasury, and tax check-off funds diverted from the general treasury into a campaign account. Shifting money from one account to another saves no money and creates no additional revenue. Even the alleged funding source is suspect: the lobbying tax may be declared unconstitutional, since it discriminates against the constitutionally protected right to petition the government.

✗ Public financing is expensive.

The public financing costs in the Clinton plan are not insignificant. Vouchers and direct grant payments will be measured in the hundreds of millions of dollars every two years. The tab for 435 incumbent Congressmen (and five Delegates) who take full advantage of the public funding provisions will be in the neighborhood of $100 million per election. Assuming a fully funded opponent for each, or multiple primary candidates, that figure would more than double. Each Senator, and his opponent(s), would be eligible for taxpayer grants ranging from $575,000 to over $2.1 million. Added to these figures would be matching grants to offset independent expenditures and spending by non-subsidized candidates. These costs could well outstrip the income from

Clinton's tax check-off increase, which is designed to generate slightly more than $100 million annually.

Beyond the direct costs of vouchers and matching funds, consumers will end up paying more for goods and services as a result of mandatory politicians' discounts on postage and broadcast advertising. One analysis of last year's bill identified direct and indirect costs of over $1 billion for a six-year Senate election cycle alone.[17]

✗ The public opposes public financing

The clearest expression of public opinion about public financing is participation in the voluntary tax check-off for presidential campaigns on individual income tax returns. Taxpayers have abandoned the check-off, with participation falling from 29 percent in 1980 to 17 percent in 1991. According to the Federal Election Commission, there will be no funds available for presidential primary candidates, and less than a complete entitlement for the contenders in the 1996 general election. Voters have also rejected public funding in California and Ohio referenda.

The Clinton Administration proposes to respond to the public's overwhelming expression of no confidence in the presidential fund by expanding it to include Congress, and quintupling the value of the check-off to $5. While the Administration bravely predicts that the increase will not cause a further decline in check-off participation, it is unlikely that hitching Congress's baggage to an already bankrupt presidential fund will make it more popular.

✗ Subsidizing political extremists is unattractive to most Americans.

Experience with the presidential fund shows that fringe candidates will be attracted by government subsidies. Third-party radical Lenora Fulani received nearly $1 million in federal matching funds in the 1988 presidential campaign and over $2 million in 1992.[18] Because there cannot be an ideological litmus test for public funding, tax dollars would inevitably go to dozens of extremist candidates ranging from Fulani to David Duke. The combination of federal subsidies, broadcast discounts, and requirements that television and radio stations accept candidate ads will prove irresistible to cause-oriented candidates.

The $75,000 House threshold is not very daunting, especially in light of the fact that the combination of a 50 percent broadcast discount and federal matching funds could triple a candidate's money. While the Senate threshold is higher (starting at $120,000), independent candidates for Senate could also effectively triple privately raised funds. So powerful are these incentives that candidate proliferation would likely not be limited to fringe issues. Activists on issues such as abortion and gun control might find it attractive to support single-issue candidates, or even to form single-issue parties, in order to get their viewpoint across.

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17 Senate Republican Policy Committee, "S. 3: Over a Billion Dollars and Still Counting," April 9, 1992.

18 FEC reports state that Fulani received $938,798.45 in public funds in 1988, and $2,013,323.42 in 1992.

What's Wrong with More Regulation?

While supporters of the Clinton campaign finance reform plan tout its spending limits and public financing, the third leg of the Clinton plan is the conviction that more regulation will fix what ails the American political system.

The most obvious argument against the sort of regulations being proposed in the Clinton campaign finance bill are the perverse results of similar regulations imposed in 1974: Spending increased and special interests and incumbents benefitted most. In any system of regulation, insiders will tend to benefit, but the design of the Clinton plan, its favored funding sources, exemptions, and targets for regulation, is far from neutral.

✗ Regulation is costly.

Administering spending limits and public financing will require an enormous increase in the election bureaucracy. The Federal Election Commission currently monitors one presidential election involving spending limits and public financing every four years, yet it takes over four years to complete audits of all campaigns. The FEC would now be given one thousand times as many races to track and audit, and the spending limit and matching fund provisions are far more complex than those applied to presidential campaigns. Every candidate would be scrutinized to determine if eligibility requirements to receive public money were met: determining the amount a candidate has raised, the number of contributors, and the amounts given by each, making sure that no one has exceeded contribution limits or improperly solicited or bundled contributions. The FEC would then have to review spending by each candidate to ensure that no one exceeded applicable spending limits, taking into account the various formulas for each state and district as well as the numerous exemptions. It also would need to ensure that no one indirectly assisted or hindered candidates through outside assistance, either in conjunction with a campaign or completely independently. To administer the system fairly would take a tremendous amount of accounting detective work, which would be impossible to complete until elections were long over.

✗ Regulation favors insiders.

Spending has grown rapidly under the current system of campaign contribution controls because regulation creates opportunities to gain a decisive advantage over an opponent. By requiring that funds be raised in relatively small portions, incumbents make it more difficult for challengers to get campaigns off the ground. The increased time required to raise funds in the regulated environment creates the incentive to amass huge war chests well in advance of the election (which incumbents are in a position to do through PAC funds), and presents a high barrier to any potential challenger. The natural fundraising advantages of incumbents are magnified by regulation of any sort, and the problem is worsened by a deliberate bias toward incumbents' favored fundraising sources.

✗ Incumbents will favor incumbents.

Far worse than the general bias of regulation toward established candidates are the explicit biases in the Clinton bill toward incumbents and their favored funding sources. The insistence on a PAC donation limit for House members five times the individual

limit (a situation Clinton decried on the campaign trail) is perhaps the most blatant example. In the House, PAC funds go to incumbents over challengers at more than a nine to one ratio. The selection of a House spending cap calculated to stop challengers just when they reach a competitive level is a cynical abuse of lawmaking power.

Incumbents' willingness to dip into taxpayers' pockets for funds to match independent expenditures is another inexcusable exercise in self-preservation. Challengers rarely face independent expenditures; they have enough trouble attracting attention to their campaign efforts. Incumbents, on the other hand, sometimes find themselves at odds with interest groups and citizens organizations who are sufficiently exercised to work against the incumbent's reelection. Under the Clinton bill, incumbents have arranged to write themselves checks to offset any such expenditures, and command the heavy hand of government regulators to ensure that they will have the last shot in any fusillade.

Perhaps even more fearsome to incumbents than an outraged group of citizens is one outraged individual who happens to be wealthy enough to finance his own campaign. While any number of incumbents financed their own initial electoral efforts, most are successful at tapping the usual sources for reelection funds. To protect incumbents against self-financed challengers, individuals are prohibited from giving more than $25,000 (lowered from an initial figure of $250,000) of their own money to a Senate effort if they wish to accept public funds. While the Supreme Court has ruled that the government cannot stop a candidate from spending his own money on a campaign (on the proposition that a candidate cannot corrupt himself), incumbents have arranged to grant themselves matching funds of up to twice the normal spending limit if they face a wealthy, free-spending opponent.

Incumbents have designed a self-serving regulatory structure. The spending limitation and funding schemes for the Senate and House are completely disparate, with the readiest explanation being the differing funding sources and campaign methods favored by incumbent Representatives and Senators. Since most House incumbents raise a majority of funds from PACs, they have clung to a $5,000 limit and a one-third overall cap. Senators, who already rely far more heavily on individual contributions, are willing to forgo PAC funds altogether. Members of each chamber have crafted a bill to meet their own convenience, rather than to promote fair and ethical campaign practices.

✗ Regulation favors special interests.

PAC money is incumbents' nearly exclusive domain precisely because of the strong undercurrent of quid pro quo contained in the donations of moneyed special interests that run the PACs. As an interoffice memo by a vice president with one contracting firm explained, "Access to these people [Congressmen] is theoretically not bought, but if you want to see them in a timely manner, it is expected for us to make a contribution."[19] Ironically, this unfortunate situation has led many in Congress to denounce

19 Charles R. Babcock, "Buying Access to Congress: How a Company Pays to 'Tell Our Story,'" *The Washington Post*, June 8, 1992.

political action committees as the source of the special interest problem. However, this has not prevented them from accepting PAC largess.

With PAC limits five times higher than those for individuals, many House Members have become far more reliant on PAC contributions, and far more responsive to PAC demands, than to the needs of their district. Ultimately, the imbalance that this regulatory scheme creates will only be solved when the two limits are equalized. Until then, Congressmen will remain under political action committees' disproportionate influence.

A further indication of bias is what is not regulated in the Clinton bill. While the legislation would prohibit political party soft money activities (where Republicans traditionally have had an advantage over Democrats), and heavily regulate such activities by others, it does nothing to regulate or limit labor union soft money activities which disproportionately benefit Democrats.

While the Clinton bill would prohibit the use of physical force, job discrimination, financial reprisals or threats thereof to exact political contributions, it does not address one of the most widespread ways that citizens are compelled to contribute to political efforts—through the collection of union dues. As little as 10 percent to 20 percent of union dues are used for collective bargaining, contract administration, and related union work; much of the remaining amount goes to union-sponsored political activities with which rank-and-file members may or may not agree.[20]

Supreme Court decisions that should protect workers from supporting union political causes, such as *Beck v. Communication Workers of America*, have not prevented union politicking. *Beck* ruled that workers have the right to keep the portion of their union dues that go for political uses if they object. But workers who object generally must sue to have a portion of their dues returned, particularly if union leaders challenge the amount of dues a worker requests to be refunded. Although President Bush in October of 1992 issued an executive order requiring employers to post notices informing workers of their *Beck* rights, twelve days after his inauguration President Clinton issued another executive order that rescinded the Bush order.

✗ Elections will be decided in courts and hearing rooms.

One obvious result of the Clinton scheme's huge increase in regulation is that elections increasingly will be fought out in court rooms, FEC hearings, and congressional committees. Republican Party spending on behalf of Senator Paul Coverdell in his 1992 run-off victory over former Georgia Senator Wyche Fowler was challenged at the FEC, which failed to find fault when Commissioners tied along party lines. While Coverdell was seated with other Senators in January of this year, the dispute is now being pursued in court and in the Senate Rules Committee. Under the far more com-

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20 The Supreme Court in *Lehnert v. Ferris Faculty Association*, 643 F. Supp 1306 (1986) determined that the National Education Association union and its affiliates spent only about 10 percent of dues and fees on union-related expenses. In *Communication Workers of America v. Beck*, 108 S. Crt 2641, 2645 (1988), the Court found that 21 percent of that Union's dues went to collective bargaining efforts. See also Andrew Cowin, "A Conservative Agenda for Comprehensive Campaign Reform," Heritage Foundation *Backgrounder* No. 747, January 22, 1990, p.6.

plex regulations of the Clinton bill, such controversies will multiply. Campaigns will be disrupted by hurried appeals to the FEC and federal courts.

Unintended Consequences: Regulation Doesn't Work

Another lesson of the 1974 reform efforts is that, hard as incumbents try, they will not be able to predict even unsurprising reactions to regulatory schemes. As mentioned above, one obvious result of the proposed new regulations will be to drive political activity from special interests to single interests. Whatever loophole supporters of EMILY's List are able to carve out, for instance, will be exploited by any number of other groups, just as the PAC loophole added as a favor to labor unions was used by corporations and ideological organizations.

One interesting anomaly in the regulations that discount commercial air time, for instance, is that they apply only to broadcast television; there is no provision for cable television, which represents an ever larger proportion of what Americans see on the television screen.

CONCLUSION

President Clinton's proposed campaign finance reform scheme is likely to worsen rather than solve the problems it seeks to address. In fact, the plan is largely a retread version of the Watergate-era campaign finance law that initiated the money chase and special interest politics Clinton decries. None of the proffered solutions—spending limits, public financing and increased regulation—will solve these problems. Instead, the bill would further entrench incumbent politicians, fail to tame special interests, and bureaucratize campaigns, effectively removing politics from democratic control.

The punitive provisions enforcing the allegedly voluntary limits are so extreme as to beg for a ruling of unconstitutionality on First Amendment grounds. Public financing is likewise a violation of First Amendment principles, and is so unpopular that its inclusion constitutes a reason to reject the entire plan as undemocratic. The public financing provisions are designed to aid incumbents most by eliminating or countering two of the most serious threats to incumbency: anti-incumbent independent spending efforts and self-financed challengers. The bill's sweeping new regulatory requirements will do more to limit the political rights of average citizens than to control special interests or to clean up campaigns. While incumbents and well-heeled interest groups will find ways to live with the heavy regulatory burden (if they haven't already provided themselves with convenient exemptions), challengers, grassroots organizations, and local political committees will find the far larger federal election bureaucracy much harder to deal with.

Genuine Election Reform

Real campaign finance reform should focus on eliminating inequities and reducing incumbent and special interest advantages in existing campaign regulations.

Limiting terms. While campaign finance reform is no substitute for term limits, term limitation would fulfil the entire campaign reform agenda. With open seats every six to eight years, elections would naturally be more competitive. With limited tenures for lawmakers, special interests would have less to gain by attempting to buy influence, and legislators would have less temptation to accept such offers. The recent attempt by

Republican Senators Hank Brown of Colorado, Dan Coats of Indiana, Lauch Faircloth of North Carolina, and Dirk Kempthorne of Idaho to put a term limitation amendment on the campaign finance reform bill suggests the relevance of term limits to campaign finance reform; the amendment was defeated, however, by 57 to 39.

Limiting incumbent advantages. The electoral advantages incumbents enjoy at taxpayer expense should be eliminated by limiting the use of the franked mail privilege to responding to constituent inquiries. Congressional constituent service staffs should be sharply reduced, with arrangements for addressing most citizen complaints through ombudsmen or similar methods.

Limiting special interests. The disparities created by the present system of contribution limits should be abolished. Individuals may now give $1,000 per election, or one-fifth the limit on special interest political action committees. PAC and individual limits should be the same, and the same limits should apply alike to House and Senate races. Whatever rules are adopted, exceptions should not be made for politically favored organizations. The *Beck* decision should be codified into law, to protect rank and file union members from being compelled to support political efforts they disagree with. Rather than pursuing constitutionally suspect efforts to prohibit soft money expenditures, minimal regulation and disclosure requirements should be applied equally to business, labor, political parties, and other groups.

Giving challengers a chance. Fundraising restrictions should be eased to aid challengers. Political parties should be allowed to make significant contributions to challengers, and contribution limits should be raised for early "seed money" funding. If spending limits are instituted, the limits should be higher for challengers in recognition of the inherent advantages of officeholding and to offset campaign-related official spending. Winners should not be allowed to roll over campaign war chests year after year.

Empowering constituents. Money from outside a Members' state or district has played an increasing role in elections. This has at least the appearance of transferring elected officials' loyalty from constituents to big campaign contributors. While this problem was created by existing contribution regulations, unless those rules are substantially eased, they should be revised in favor of fundraising among constituents. Two appealing methods are restricting the percentage of a candidate's funding that can come from outside a district or state, or increasing contribution limits for in-state donations.

Because federal elections can determine matters of tremendous consequence, there will always be many who are willing to expend tremendous amounts of time, effort, and money to swing elections their way; their numbers increase to the degree that the federal government is a consequential force in the life of the nation. The aggregate efforts of such actors, when channeled into the political system, can overload it—not unlike an old, weak hose that springs numerous leaks when forced to channel too much water at too fast a rate. The Clinton approach, of using regulatory tape and patches to close off some of the leaks while not addressing the underlying pressures, can only make matters worse. That is why systemic reforms, such as term limits, are the ultimate solution to the

political ills now being blamed on special interests and the campaign financing system. For more immediate relief, Congress simply could iron out some of the regulatory wrinkles—such as unequal contribution limits and differing treatment of similar soft money activities—in the current system. The Clinton solution, however, is clearly worse than no action at all.

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