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H.R. 3: CAMPAIGN REFORM FOR INCUMBENTS ONLY

(Updating *Backgrounder* No. 945, "Advantage Incumbents: Clinton's Campaign Finance Proposal," June 11, 1993.)

Congressmen again are promising to reform the campaign finance system. The purpose, they say, is to reduce the role of money and special interests in elections. Unfortunately, the leading reform proposal, a new version of H.R. 3 offered by Connecticut Democrat Sam Gejdenson, which was approved by the House Administration Committee on November 10 for possible House action before Thanksgiving, is campaign reform for incumbents only. It would hinder challengers by limiting First Amendment free speech rights and creating a blizzard of new federal regulation, while doing little to limit contributions to incumbents from special interest political action committees (PACs). The constitutional problems, and the lack of a tax mechanism to pay for the new spending in the bill, make its implementation uncertain even if it passes. A less burdensome alternative, H.R. 3470, was developed by Louisiana Republican Bob Livingston. It would eliminate PAC contributions, encourage candidates to raise funds in their own districts, and take small steps to aid challenger fundraising, a prime barrier to more competitive elections. Neither plan, however, would reduce incumbent advantages that now make elections uncompetitive and both fail to address adequately the threat of increasing federal regulation of fundamental political freedoms.

Last year, the Democratic Congress passed a campaign finance reform bill confident that it would be vetoed by President Bush, leaving Congress with lots of credit and no consequences. This year, with a President who promised to sign a reform bill, congressional incumbents have been far more careful about the reforms they embrace.

On June 17, the Senate passed campaign finance reform legislation (S. 3) that would establish spending limits ranging from $2.2 million to $8.5 million (including primary spending and fundraising costs), depending on the size of the state. Candidates complying with the limits would receive government-mandated discounted broadcast and postal rates, and would be eligible for vouchers to match independent expenditures or spending by opponents who violated the limits. Receipts of non-complying campaigns would be taxed at a 34 percent rate to fund the benefits for other candidates. If those receipts were insufficient, Senate candidates would be able to tap into the federal treasury for subsidies.

The Senate bill also banned PAC contributions to House and Senate campaigns, making S. 3 dead on arrival in the House. House Democratic incumbents raised $64 million from PACs in 1992 campaigns, outpacing Republican challengers by a staggering fifteen-to-one margin, and seem determined to preserve PAC funding.

Loose Limits and Loopholes. H.R. 3, the House leadership's campaign finance reform plan includes a nominal spending limit of $600,000 for House campaigns, though the effective limit could quickly approach $1 million, given the various discounts, exemptions, and allowances in the bill. Up to one-third of a

House candidate's funds could come from PACs, which would still be allowed to contribute five times the individual donation limit of $1,000. Another third of a House campaign's funds could be raised from individual contributions of $200 or more, and a final third in government communication vouchers. Individual contributions of less than $200 would be limited only by the overall spending cap. Though House candidates could choose to ignore the limits, H.R. 3 includes several punitive provisions, including mandatory disclaimers in ads and government funds for the opponents of non-complying candidates, designed to coerce compliance. H.R. 3 also preserves a loophole that allows interest groups to circumvent contribution limits by soliciting numerous individual contributions and 'bundling' them together, a practice pursued most vigorously by EMILY's List, a PAC supporting pro-abortion women candidates. H.R. 3 would increase partisan fundraising advantages by limiting corporate and individual soft money donations (spending for party-building and get-out-the-vote efforts not associated with a particular campaign) to political parties, where Republicans enjoy an advantage, while overlooking similar union expenditures, which benefit Democrats disproportionately.

Secret Taxes. The November 10 House Administration Committee mark-up added additional provisions, including Rep. William Clay's (D-MO) amendment requiring more thorough disclosure by non-profit organizations that lobby or hire lobbyists, and Rep. Livingston's amendment raising individual contribution limits to state parties from $5,000 to $20,000. The Livingston amendment was the only one approved out of 24 the Republicans offered. The committee also severed the financing provisions from H.R. 3, leaving no way to pay for the bill. Supporters want to postpone the decision about whose taxes would be increased to provide the new subsidies for politicians, making H.R. 3 a hidden tax increase, and violating Congress's own budget rules. Financing options under discussion include registration fees on PACs, a lower tax on all campaign receipts, and a new $10 check-off on individual income tax returns.

House Republicans are supporting an alternative plan, H.R. 3470, that would prohibit PAC donations and bundling, and strictly limit soft money, including union efforts. Fundraising would be limited to individual donations of a maximum of $1,000. Candidates would be required to raise at least half their funds from their own districts, a practice that would "reunite the voting precinct with the financing precinct," according to Rep. Bill Thomas (R-CA), another of the plan's chief engineers. State and national parties would be allowed to make major contributions to challengers to offset large incumbent "war chests" carried over from previous elections. Candidates facing an opponent who spends more than $250,000 of his own funds would be allowed to accept individual donations of any amount.

Though the Republican bill would take one significant step to aid challenger fundraising, which is one of the major barriers to more competitive elections, neither bill would address the overwhelming advantages enjoyed by incumbents. Both bills—H.R. 3 more than the Republican alternative—would add to the mountain of federal regulation of political campaigns and activities. Congress should make room in the campaign finance debate for discussion of incumbent advantages and the freedom of speech implications of heavy regulation of political activity. Among the overlooked issues are:

Spending limits hamper challengers. While it is not essential for challengers to outspend incumbents to gain victory at the polls, they must spend several hundred thousand dollars to become seriously competitive. Incumbents outspent challengers by a ratio of three and a half to one in 1992, and incumbents were reelected at a 93 percent rate. Challengers who were able to raise $500,000, however, had a 40 percent chance of winning. If spending limits are imposed, challengers should be permitted a higher limit to offset incumbent advantages, and should be granted easier access to "seed money," as provided in H.R. 3470.

Contribution limits only intensify fundraising efforts. The significance of money in congressional campaigns has spiralled since passage of the 1974 campaign finance law, which first established donation limits. In constant 1992 dollars, spending has more than tripled, from $195 million in 1978 to $678 million in 1992. Owing to the five-to-one advantage granted to PACs in the 1974 law, special interest PAC funding has grown even faster than overall campaign spending. Incumbents have been the principal benefi-

ciaries of this funding growth, spending an average of $560,000 in 1992 elections in comparison to $160,000 by challengers. PACs contributed over $94 million to incumbents while donating only $12 million to challengers in the last congressional election.

Incumbents benefit from the franking (free mailing) privilege and other taxpayer spending. The ability of a congressman to send, at taxpayer expense, hundreds of thousands of dollars worth of political advertising and public relations materials to voters under the guise of district newsletters represents an enormous advantage to incumbents. Around half of a typical Congressman's staff is devoted to casework activities, which generate political good will for the incumbent. Incumbents also enjoy taxpayer-subsidized advantages in transportation and media production. An aggressive House incumbent, in fact, might effectively double his spending limit at taxpayer expense. If these advantages are not eliminated, challengers should receive offsetting benefits.

Federal regulation of campaigns is already significant and growing. The Federal Election Commission (FEC) processed over 4 million transactions in the last decade, with more than a third of that total in 1992 alone. The Commission recently requested a 26 percent increase in funding for fiscal year 1995, warning that election law is becoming increasingly complex because of regulatory and court decisions. The absurd situations which can arise in the attempt to regulate fast-paced campaigns was illustrated in a court challenge of the 1986 Colorado Senate race. The state's Republican party was accused of an unfair action against then-Representative Tim Wirth, who nonetheless went on to win the Senate race and serve a six-year term, and who has since retired from the Senate. The 1986 Colorado Senate campaign, however, stretches on pointlessly and indefinitely in court. The real danger is that a powerful FEC vigorously enforcing new and arcane regulations will terrorize challengers and other politically active private citizens with visions of spider webs of red tape and lawsuits. Increased regulation, of course, benefits the incumbents and special interests who are parties to the formulation of regulatory blueprints.

Newly proposed regulations may violate the First Amendment. Major portions of the original 1974 campaign finance law, including mandatory spending limits, were ruled unconstitutional by the Supreme Court (*Buckley* v. *Valeo*, 424 U.S. 1 1976). The new schemes for "voluntary" limits may well run afoul of the Constitution as well since the advantages of complying and the penalties for refusing to do so amount to virtual compulsion.

Term Limits are the real campaign reform. The most significant campaign reform legislation that is ignored by both the Republican and Democratic strategies is also the most obvious—term limits. If elected officials were turned out of office every six to eight years, campaigns would be much more competitive and special interest influence would be greatly reduced. Powerful alliances between politicians and influential lobbyists would be neutralized by the realization that every relationship is only temporary. Term limits would bring Capitol Hill back to the "Citizen Congress" the founders envisaged.

Useful campaign reforms would reduce existing political regulation and lower barriers to challengers. H.R. 3470, the Republican alternative, meets at least the second test by eliminating incumbents' PAC advantages and allowing state and national parties to equalize funding in contests where incumbents hold vast war chests. H.R. 3, on the other hand, would increase the control of Washington bureaucrats over American democracy. The bill's promised regulations would help incumbents, hinder challengers, and limit the political liberties of all Americans.

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