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A stumble in the wrong direction

Law and Public Issues

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Advocates of campaign finance reform, especially limitations on contributions, claim a small victory. They have bullied and cajoled the Illinois General Assembly into passing a "campaign finance reform" bill.

This "reform measure" has two parts. One strengthens the reporting requirements so that the public can determine who has donated how much to whom. The other part is an elaborate system of limitations upon the amount of money that candidates can raise.

The reformers call this bill a "step in the right direction." I call it a stumble in the *wrong* direction.

Certainly nobody objects to reasonable reporting requirements. Computers can process contributions and place them on Web sites with incredible speed. Technology will make the process even faster. The public will know almost instantly who has contributed to each candidate. Such transparency can only be a benefit.

The problem is with the "caps" on campaign contributions. Whose idea was it to push for limitations just when the U.S. Supreme Court is considering holding some — or maybe all — caps unconstitutional? The reformers surely heard about the oral arguments in Citizens *United v. Federal Election Commissio*n, No. 08-205, heard on Sept. 9. The justices' questions suggested strongly that some of them are willing to overrule prior cases and severely limit caps on campaign contributions. The smart money says that the court will strike down some, if not all, of the limitations in the federal act.

Why didn't the Illinois reformers wait until the Supreme Court specified the federal limitations? The General Assembly realized the danger. It placed this extraordinary language into the bill:

"This Section [on caps] is repealed if and when the United States Supreme Court invalidates contribution limits on committees formed to assist candidates, political parties, corporations, associations, or labor organizations established by or pursuant to federal law." (New 10 ILCS 5/9-8.5 (l) in the House amendment to SB 1466)

In short, if *Citizens United* or any other Supreme Court case holds caps federally unconstitutional, then this part of the Illinois bill is automatically repealed. We might have left only the reporting requirements, which are not controversial, and maybe the caps on contributions by individuals.

Apart from their dubious constitutionality, the caps are simply a very bad idea. First, *it is impossible to write a caps bill that has no loopholes*. The General Assembly passed some bills regulating campaigns in the early 1970s. At that time, I was a lawyer on the House Republican staff. It was my job to assess each proposal. It was easy to find loopholes. At the top of my game, I could find a loophole in five or 10 minutes. (Because I am 30-odd years older now, it took me 20 minutes to find the first loophole in the current bill.)

Second, *the amount of contributions is not the source of corruption in campaigns.* Reformers talked about the "corrupting effect of money" in campaigns. Modern campaigns are expensive. A state-wide TV ad costs at least $100,000. Now that our political parties are weaker than they were in the bad old days of patronage machines, candidates must raise campaign funds themselves. (Remember when getting rid of "patronage machines" was considered a "reform," a good idea?)

Indeed, why should anyone care if Oprah Winfrey gives millions to her favorite candidate as long as we know about it? Or if Michael Bloomberg spends $90 million of his own fortune to become Mayor of New York, again as long as we know about it?

The most ironic statement uttered by the Illinois reformers has been the charge that the four leaders of the General Assembly have too much power. Because "the four tops" control the campaign finance committees, they have substantial control over their members.

This is true, but it's largely a result of another "reform": the Cutback Amendment of 1980. That amendment reduced the size of Illinois House by one-third, a fact that those advocating its passage emphasized. But it also eliminated Illinois' unique system of electing members of the Illinois House: three members from each district, with voters being able to "cumulate" their three votes. To be sure, it was a complicated system and was subject to some electoral game-playing.

However, as one who has observed the House under both systems, I guarantee that the switch to single-member districts has made running for House seats *much* more expensive. Under the old system, "the four tops" controlled campaign finance committees and doled out financial assistance in those races where they thought the money would do the most good. However, candidates could often finance successful campaigns by themselves without much support from the committees. Consequently, when they became legislators they were more independent of their leaders.

Reformers decided this system was too cozy; they wanted "competitive districts." Pat Quinn, then just a political activist, and the League of Women Voters of Illinois led the "reform campaign" in 1980. I don't know why Quinn wanted to abolish the electoral system. The League had long had a position that single member districts were better for the state, even though many of the House members who supported the League's other policies owed their seats to the old system.

The other supporters were a mixed bag. Professors of political theory supported the Quinn-League alliance because, as one said, "political scientists believe in strong political parties in the legislature." Certain Republican leaders supported the alliance because they saw the amendment as a way to weaken the Cook County Democratic party. Finally, certain newspapers, notably The Chicago Tribune, supported the Cutback Amendment for reasons that were never clear.

In November 1980, the voters adopted the Cutback Amendment because Quinn promised that reducing the size of the House would save money. Few voters realized that they were also abolishing an electoral system. (Of course, the amendment did *not* save money.)

Now some members of this 1980 alliance decry the power of "the four tops." They want to limit the leaders' power to raise campaign funds for their candidates. Yet it was the Cutback Amendment, more than any other "reform" that empowered the legislative leaders.

As the saying goes, "be careful what you ask for." The reformers forgot that in 1980 and they have forced all of us to live with the consequences. They have forgotten that in 2009 and, again, I fear we shall all have to live with the consequences. Illinoisans deserve better than a "reform" that promises much, but can deliver little.