

# Letters

*We welcome letters from readers, particularly commentaries that reflect upon or take issue with material we have published. The writer's name, affiliation, address, and telephone number should be included. Because of space limitations, letters are subject to abridgment.*

## **Independent Campaign Expenditures**

### **TO THE EDITOR:**

Michael Malbin raises some very interesting points about our election laws ("What Should Be Done about Independent Campaign Expenditures?" *Regulation*, January/February 1982) and provides the reader with some valuable insights into the way the Federal Election Commission (FEC) interprets our Constitution. As Malbin points out, the *Buckley v. Valeo* decision sent Congress some confusing and contradictory signals. Recently, this confusion was compounded by the Supreme Court's four-to-four split in *Federal Election Commission v. Americans for Change*.

What I found most interesting about the *Americans for Change* case was not the Court's decision, but rather the commission's arguments. According to Malbin, the commission argued that only individuals, not groups, have the right of free speech. This shows a total lack of understanding of the First Amendment on the part of the commission, a lack of understanding that should come as no surprise to anyone who has tried to follow the various court cases in this area.

Although I agree with Malbin's arguments in favor of independent expenditures, I must disagree with his opposition to the use of the disclosure provisions as the primary means of eliminating corruption or the appearance of corruption from our political process. Malbin does not seem to share my respect for the intelligence of the American voter (a view shared not merely by

"conservative Republicans," as Malbin implies). I believe the American people are smart enough to be able to look at the campaign contribution information and make an intelligent decision as to whether or not it means anything.

Many voters, cognizant of the potential "quid pro quo" nature of some contributions, are paying much closer attention to who is financing campaigns. Because of this, many candidates are refusing contributions from certain organizations because of what accepting those contributions would imply.

Malbin also seems to disregard entirely the important role of both the Fourth Estate and a candidate's opponents in the disclosure process. In the aftermath of Watergate, many newspapers have been taking a closer look at the campaign disclosure reports filed by candidates. And I cannot think of one candidate who would not gladly publicize his or her opponent's potential conflicts of interest.

In his article, Malbin presents some worthwhile suggestions for reforming our election laws. Clearly the influence of both parties and "grassroots" campaign efforts has been stifled by the election laws. Any effort to bring about greater participation in the electoral process deserves widespread support. After all, that was supposed to be the purpose behind the federal election laws in the first place, wasn't it?

*Roger W. Jepsen,  
United States Senator,  
Iowa*

### **TO THE EDITOR:**

Michael Malbin has done a genuine service by carefully focusing the issues in his article. I share his confusion about the Supreme Court's recent four-to-four vote on spending limits concerning independent campaign committees in publicly funded presidential races.

If independent expenditures are a constitutionally protected form of speech, as the Court has repeatedly

said, and if they are made by independent persons, who are not subject to the spending limits attached to public campaign grants, what possible constitutional rationale would justify limiting them? Indeed, such a ruling would effectively silence all points of view in a campaign except those of the candidates, of large membership organizations that communicate directly with their members, and of the various media outlets.

I also strongly share Malbin's view that the antidote for independent campaign expenditures is "dilution by addition instead of subtraction"—that is, by heightening the role of other participants in campaigns. It is on the means for achieving this "dilution by addition" that Malbin and I differ.

First, Malbin suggests raising or eliminating the limits on early congressional contributions in order to "let a few early donors give large seed money contributions." Contribution limits were intended, however, to blunt undue influence and potential corruption by preventing candidates from becoming beholden to big givers. This purpose is undercut as much by large early gifts as by later ones. Indeed, candidates may be more influenced by early gifts, since they come at a crucial time in the campaign. Large gifts also demoralize both small contributors and voters, who come to feel that their political role is insignificant.

Second, Malbin argues for the current ban on contributions to publicly funded presidential candidates in general elections on the ground that it forces givers to contribute to the political parties. Even if it does this, its purpose is suspect, since it deprives individuals of the opportunity to support the candidate of their choice directly. But it may not even achieve its purpose. A number of independent expenditure groups specifically aimed their 1980 mass mail appeals at givers who were prohibited from supporting Ronald Reagan directly but could achieve the same result by giving to the independent groups. If individuals could give small sums (perhaps up to \$200) directly to presidential candidates, they would have less reason to give to parallel independent groups.

Third, Malbin oversimplifies the steps needed to strengthen the role of political parties. The law now authorizes state and local parties to spend unlimited amounts on registration and get-out-the-vote drives in presidential races; he soundly

suggests that this right be extended to congressional races as well. But the change would be unlikely to generate major new local party activity or sweeping new financial support for state and local party committees. The law, in another section, already authorizes unlimited spending by state and local party committees for campaign materials (virtually everything short of paid media) used by volunteers in both congressional and presidential races. That generous license for local and state party activity did not undercut the independent expenditure groups in 1980.

On the other hand, Malbin objects to raising expenditure limits for national party committees. Yet it is the national Republican party that has taken the lead in competing with independent expenditure groups both in mass mail fund raising and in mass media advertising. Mass fund raising requires technological capability and is susceptible to economies of scale, and the national parties are more likely than the local or state parties to mount such fund-raising drives successfully.

Nor would an enlarged role for the national party committees necessarily give them too great an influence over candidates, as Malbin suggests. Their role in financing congressional candidates is now so small that it could grow dramatically without posing much of a threat. The law specifically excludes inter-party transfers from the contribution limits, so that the national party organizations can now funnel unlimited sums to local or state parties for campaign materials and other volunteer activities on behalf of favored candidates. Permitting more of a direct role for the national party committees, by increasing the direct sums they can spend for or on behalf of candidates, does not therefore add much of a new threat of undue influence or go much further to weaken local and state parties.

One new measure regulating independent expenditures might be joined to legislation which encourages parties. Independent expenditure groups raise most of their funds outside the districts in which they wage campaigns. Where less than 50 percent of the funds a group spends in a jurisdiction comes from its inhabitants, the group could be required to disclose this fact as one of the disclaimers in its media messages. No similar rule is needed for political parties since they are locally organized and their mem-

bers and officers can readily be held accountable for party conduct.

The added steps needed to strengthen party organizations are not yet clear, based on experiences since 1976. But sooner or later we should consider modest government grants to party organizations, following the practice already established in eight states and most other Western democracies. And similar grants to congressional candidates would provide the funding base necessary to fuel vigorous competition and encourage a broader base of private support. But this larger strategy for "dilution through addition," by providing public financing of parties and congressional candidates, must await the more elaborate exposition possible only in another forum.

*David Adamany,  
University of Maryland*

#### TO THE EDITOR:

Independent campaign expenditures sounded great in theory as a way for the public to participate in the political process, but their actual result has been far different from their intent. Now they have blossomed to gargantuan proportions, and I believe that in their current form they are detrimental to our political system.

The issue of independent expenditures should not be confused with that of free speech. Organizations like the W. R. Grace Company should have the right to run full-page advertisements touting the wonders of the administration's economic policies. Grace is clearly identified as the sponsor of the ad and is accountable, at least to its board of directors, for the positions it takes in the ads.

But the American people do not know who is responsible for, or in control of, political action groups. No one, in fact, is accountable for the actions of these groups. As Terry Dolan, director of the National Conservative Political Action Committee (NCPAC), said, "A group like ours could lie through its teeth and the candidate it helps stays clean." Indeed, committees like NCPAC are elaborate—although currently legal—money-washing operations designed to hide who is responsible and why they are doing what they are doing.

PROPAC, the Progressive Political Action Committee, of which I am treasurer, is also involved in making independent campaign expenditures—in our case against can-

didates of the radical right. But PROPAC was formed precisely to illustrate the heinous activities of groups like the Congressional Club and NCPAC, and to convince them and the public that independent expenditures are detrimental to our political system. Judging by the screams of Senator Orrin Hatch, who has probably signed more right-wing independent expenditure fund-raising letters than anyone except Senator Jesse Helms, and who is one of PROPAC's targets, we may have made some progress in our educational efforts.

One way to avoid the problems independent expenditures pose is to publicly finance all federal campaigns. Only independent expenditures that are authorized and controlled by the political parties, rather than "invisible" special interest groups, should be permitted.

We need a political system with inherent qualities of responsibility and accountability. If we stay with the current system of independent expenditures, the long-term result will be an even more politically apathetic public and, more significant yet, a public which does not perceive the democratic system as "good." In fact, 1980, the heaviest year yet for independent expenditures, was the poorest in memory for voter participation. So much for increasing citizen involvement.

Independent expenditures transcend partisan politics. This issue affects the very foundation of the democratic system, and it must be addressed quickly if we are to restore a positive public attitude toward politics. I am looking forward to an intelligent exchange of alternatives in an effort to solve this troubling problem.

*Victor Kamber,  
The Kamber Group*

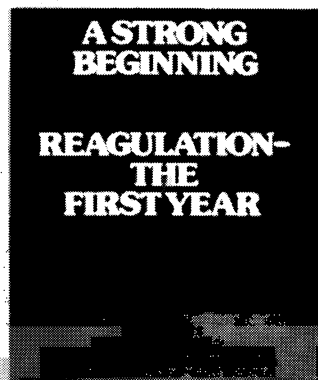
#### MICHAEL MALBIN responds:

The three letters by Senator Roger Jepsen, Victor Kamber, and David Adamany all raise important issues that I hope will become part of any future public discussion of the campaign finance laws. There are a few points, however, on which I must register disagreements or clarifications.

Jepsen suggested that I oppose "the use of disclosure provisions as the primary means of eliminating corruption or the appearance of corruption." On the contrary, my article said that "disclosure is the linchpin of the campaign finance law"—far and away its most im-

portant feature. Still, I believe that disclosure by itself would not be enough. The problem with relying solely on disclosure comes primarily, in my view, in the late stages of a campaign when it is too late for opponents or the press to raise issues of campaign financing effectively. And disclosure is simply irrelevant for postelection campaign contributions.

Victor Kamber takes a different approach in his letter, suggesting that all independent expenditures be authorized and controlled by the political parties. I agree with Kamber that independent expenditures, in the abstract, are detrimental in their current form. The real question, however, is compared to what? Ads produced by independent campaign organizations surely do more to inform voters about legitimate campaign issues than do ads that show candidates strolling down the beach barefoot.



Yes, it would be better to make independent spending groups more accountable. But Kamber's proposal to channel all of their money through the parties amounts to taking away the groups' independence—an approach that I believe would deprive them of their legitimate First Amendment rights.

David Adamany's proposals seem more directly to the point and more constitutionally acceptable. Modest public grants to parties might be a good idea, and I wholeheartedly endorse his suggestion that advertisements bought primarily with out-of-district funds should disclose that fact.

Despite the many specific disagreements indicated in his letter, it is clear that Adamany's thinking and my own run along parallel tracks. We both want to dilute the importance of independent spending by increasing the parties' role, but we differ over how to do it.

Adamany would permit direct contributions to presidential candidates in order to reduce the incentive the law now gives people to contribute to independent groups. I agree that such a provision would hurt such groups, but I fear that it would also hurt the parties. While I did not say that prohibiting private contributions to the presidential candidates "forces" people to give to the parties, as Adamany has me saying, I do believe that the law gives presidential candidates an incentive they would not otherwise have to raise funds for the party instead of for themselves.

Also, I do not object "to raising expenditure limits for national party committees." I object to a Republican National Committee proposal that would do away with such limits entirely. Such a proposal would mean a dramatically increased role for the national committees and that, in my view, would mean a much stronger hand for the President in dealing with Congress.

Adamany is surely correct in saying that much of the money that went to state parties in 1980 was raised by the national party committees. Nevertheless, I believe the political system is helped when those funds have to be spent through state and local organizations. If the parties could spend unlimited amounts at the national level, they would almost surely pour the money into mass media advertising and not into grass-roots organization.

I agree that my own recommendations about state and local party spending might have only modest financial consequences. I do believe, however, that they would be significant organizationally. State and local parties now are allowed to spend unlimited amounts at any time on printed handouts in behalf of a slate, but they can spend unlimited funds on telephone canvassing and get-out-the-vote drives only in presidential years. I believe that permitting state and local parties to do telephone canvassing every two years would give them much more of an incentive than they now have to build up a permanent base of volunteers—and volunteer organizations is what we should be trying to encourage. ■

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