Un-Fair Elections
by Dan Jacoby

On March 31, 2009, a bipartisan group of House members introduced H.R. 1826, and a similarly bipartisan pair of Senators introduced S. 752. Both bills are entitled the “Fair Elections Now Act,” and each bill provides for partial public funding of elections in its respective house of Congress. These bills are an attempt to reduce the prevalence of large donors in congressional elections, the need for elected officials and candidates to spend enormous amounts of time fundraising, and the power large donors have over the legislative process.

Unfortunately, these bills not only fail to achieve their objectives, but in several ways they will actually make things worse.

The plan these bills create would set up a fund that disperses money to congressional candidates who qualify by raising enough money in small donations (between $5-100). Any candidate who participates in the plan would be limited to donations of $100 or less, rather than the current limit of $4,800 ($2,400 for a primary, and another $2,400 for a general election).

A participating candidate who raises enough money from enough small donors would qualify for a lump sum in public money, with the possibility of doubling that sum through “matching funds” for extra money raised. Qualifying candidates would not be allowed to spend their own or their family’s money (except for that $100 per person), would not be allowed to accept large donations to their “Leadership PACs,” and would be required to debate their opponents.

On its surface, this plan sounds like a method for getting rid of large donors (and large fundraisers who raise huge sums for a candidate). It also seeks to end the constant money chase. Currently, both major parties have large phonebanks in Washington, DC, and expect their elected officials to spend a lot of time there, calling donors to raise money for the next election; this plan tries to end that practice.

Dig beneath that surface, however, and it turns out that the endless fundraising, and the large donors, will not be eliminated or even diminished. Instead, the focus of all that fundraising will shift slightly, and that shift will make things even worse for truly independent voices.

Before getting to the core problem of the bill, let us examine an ancillary provision that almost everyone agrees is necessary and good. On examining that provision, however, we learn that something written with the best of intentions can prove to be little more than a waste of money.

Section 524, on page 26 of the bill,[1] is entitled “Political Advertising Vouchers.” This section was created because most people believe that in order to win a campaign for Congress a candidate must buy lots of broadcast advertising. Candidates that lack the funds to buy all those television and radio ads are at a clear disadvantage, and the solution most people suggest is for candidates to get free broadcast air time. The only question, therefore, is how to provide that free air time.

This bill provides “vouchers” totaling $100,000 that can be used to purchase broadcast air time. Alternatively, a candidate can exchange some or all of the vouchers with a political party, getting cash at the face value of the vouchers; the political party must then use the vouchers to buy broadcast air time.

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[1] General Printing Office (GPO) print version of H.R. 1826, available online at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1826ih.txt.pdf

Let's take a look at the real-world applications of this scheme, using two separate House districts.

The second congressional district of Indiana is a swing district. It used to be fairly liberal, but is now moderately conservative. In 2006, Democrat Joe Donnelly defeated Republican incumbent Chris Chocola; Donnelly currently holds the seat.

In the 2010 election Joe Donnelly is facing a challenge from Republican State Representative Jackie Walorski. If this bill were in effect, both candidates would get that $100,000 worth of vouchers. Since there are several television and radio stations whose audiences are primarily within the district, it makes sense to buy broadcast advertising time, and both candidates will certainly be on the air. They would both use those vouchers to buy air time for themselves, rather than exchanging the vouchers with their party committees for cash.

Lets leave aside the question of whether the $100,000 worth of air time each candidate buys would be in addition to what they would already have bought without the vouchers. It's possible that one or both candidates would not buy an *additional* $100,000 worth of air time, but shift some of the money that they would have spent on television or radio ads to doing an extra mailing, adding more canvassers or ramping up phonebanking. But that is, at most, a minor point in this debate.

The major point is that the vouchers are completely unnecessary. Worse, they add a layer of bureaucracy and cost. If the candidates were to get that $100,000 in cash, they would spend it in exactly the same manner as they use the vouchers. Putting the vouchers in just forces the candidates, the broadcast television and radio stations and the government to deal with those vouchers. They also have to create a separate audit trail, which costs even more money. Finally, the government has to print the vouchers, which costs taxpayers.

Let's move to another district, the 12th congressional district of New York. This district is a "safe" Democratic district in New York City, currently held by Nydia Velázquez. Republicans have occasionally put up a candidate against her, although they probably won't in 2010.

If they did, however, then both Velázquez and her challenger would get those vouchers. Since the district is spread over three of New York City's five boroughs (Brooklyn, Manhattan and Queens), any broadcast television or radio advertising would reach and audience composed almost entirely of people who live outside the district. Buying broadcast air time for this race, therefore, would be a colossal waste of money. Both candidates would obviously exchange their vouchers for cash. The vouchers would then be used by the party committees to buy broadcast air time elsewhere.

Here's the key part of that – the air time purchased with vouchers would be exactly the same air time that the party committees would have bought anyway, spending the cash that they sent the candidates in exchange for the vouchers. If the candidates were merely given an additional $100,000 in cash, it would be spent exactly the same way. *The only difference the vouchers make is to add printing and handling costs*!

Clearly, there is no reason to have vouchers. Merely giving participating candidates an additional $100,000 in cash achieves exactly the same result at far lower cost.

The point is that this section of the bill, while written with the best of intentions, fails to take into account the entire picture and leads to what are often called "unintended consequences" without actually achieving its objective. The vouchers are a complete waste of money, and nothing else.

Now that we have seen how this section of the bill doesn't achieve what it sets out to achieve, and makes some things worse, let us move to the real problem.

A key sentence that should serve as a warning sign is found on in Section 513, on page 17. It reads, "For purposes of this subsection, a payment made by a political party in coordination with a participating candidate shall not be treated as a contribution to or as an expenditure made by the participating candidate." Currently, political parties can only make "coordinated" expenditures for House candidates totaling $10,000.[2] Section 104 of this bill adds a second method of determining, and possibly lowering, that limit. So far, so good.

The problem is that "independent" or "uncoordinated" expenditures by party committees are still unlimited, and the firewall is never perfect. Party committees know what the candidate is saying, who the candidate is reaching out to, where the candidate is appearing, etc. They are able to supplement the candidate's efforts with "independent" activities. Party ads and direct mail efforts include both "issue" ads ("Can you believe that other candidate is opposed to this great issue?") and "advocacy" ads ("Vote for our candidate."). Thanks to this bill, those party committees are going to be awash in a flood of extra money to spend on these activities.

How will the party committees get all that extra money? Instead of a candidate trying to raise $4,800 directly, the candidate will ask for $100 for his or her campaign. Candidates will be under tremendous pressure to get those donors to send the other $4,700 to the candidate's political party committee. In addition, candidates will also be pressed to raise smaller donations for party committees from people who have donated over $100 to candidates in the past. The money won't disappear; it will merely shift from a candidate's campaign committee to the party's campaign committee. And the fundraising efforts will not diminish; instead, they will be ramped up even higher as candidates respond to the pressure to raise even more money for party committees.

Party committees will be flush with hundreds of millions of dollars they never had before, and will be able to spend that money to overwhelm direct spending by candidates. As a result, party committees will decide who wins and who loses, and they will base that decision on two factors: 1) How much money does a candidate raise for the party; and 2) How closely does the candidate hone to the "party line" on key issues? Independent thought and action will go out the window, while the money chase becomes even more important.

Just to add more power to party committees, Section 201(a)(1) on page 47 of the bill requires broadcast stations to offer advertising time to political parties at the lowest rate available. Candidates are already given this preferred rate, but now political parties will get more bang for their advertising buck as well, allowing them to wield even more power.

In addition, we will be throwing about $1 billion of tax money into the mix.

Where does that leave us? So far, this bill:

- Creates a worthless waste of money in the "voucher" scheme;
- Fails to reduce fundraising;
- Adds power to party committees, reducing independence among candidates and elected officials; and
- Wastes $1 billion of taxpayer money.

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[2] 2 U.S.C. 441a(d)(3)(B), available online at: http://www.law.cornell.edu/uscode/2/usc_sec_02_00000441---a000-.html

Finally, the bill will result in ever-increasing use of tax money every election cycle. The amount of fundraising and spending will continue to increase far faster than the inflation rate.

Section 522(c), on page 24, sets the “base amount” of public funding per candidate based on the average amount spent by “winning candidates in the last two election cycles.” A candidate can get up to 200% of the “base amount” in public funding (80% for a primary, and 120% for a general election, but only one-fourth of the maximum in an uncontested race), and winning candidates will almost certainly qualify for at least 120% of “base amount,” the maximum allowed in a general election, plus 10% of “base amount” in public funding for an uncontested primary election. In addition, a candidate receiving 120% of “base amount” will also have raised at least 50% of “base amount” in direct private contributions.

This number will be larger if there are primary challenges, and smaller if there are a lot of uncontested general elections. In 2008, there were 56 uncontested House races, out of 435. Even assuming no primary contests, the uncontested general election winners will have spent at least 40% of “base amount” (15% in public funding, plus 25% in private donations). The average amount spent by the winners will then be at least 144% of “base amount.” As a result, by the third cycle, the “base amount” will be increased by at least 15%, and will go up at an even faster rate every cycle after that.

A 15% increase in four years is a compounded inflation rate of just over 3.5%, about twice the actual inflation rate. In other words, the cost of mounting a successful campaign (and the amount of taxpayer money being spent) will increase at least twice as fast as the inflation rate. That’s assuming no primary contests, and minimal spending by the winners – the actual numbers will be a lot higher.

In short, these bills do nothing to reduce fundraising or large donations, strengthen party machinery at the expense of individuality, throw taxpayer money away, and will become far more expensive very quickly. They were written with the best of intentions; unfortunately they have gone down the road that is paved with those intentions.

These bills are getting a lot of support from good people who just haven’t taken the time to understand fully just how rotten these bills are. At this point, our best hope is that time runs out on this congressional session before the bills can be voted on; that would give everyone time to understand what they are doing.