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March 31, 2020

- Please use e-mail since itinerary is fluid

Ms. Meghan McCain
c/o The View
ABC News
47 West 66th Street
New York, NY 10023

Dear Ms. McCain:

Re: Worth The Fighting For – The Honorable U.S. Senator John S. McCain III
His Dream of Campaign-Finance Reform and What You Can Do To Help

As you are probably aware, one of John McCain's fondest dreams was campaign-finance reform – with The McCain-Feingold Act (aka The Bipartisan Campaign Reform Act of 2002) the result of six years of hearings. [NB: The U.S. Supreme Court in McConnell vs. Federal Election Commission (2003) upheld the constitutionality of McCain-Feingold in all important respects.]

The following is a plea to you and your colleagues on “The View” to pick up the fallen banner of Campaign-Finance Reform and champion it for as long as it takes.

This plea comes from a 175-member monthly public-policy study group centered in the vicinity of my Utah ski house that I have facilitated for the past 14.5 years. Its participants from around the country include many attorneys and professors. This plea enjoyed unanimous support from our members.

It is their belief that the way political campaigns are financed has long since meant that only large campaign contributors have any influence on public policy and “Democracy in America” is a myth. And that American Democracy can only be restored with the resurrection and re-invigoration of public finance in political campaigns.

The basic problem???

Politicians routinely engage in fraud vis-à-vis voters and “sell their souls” to campaign contributors.

Why can politicians “sell their souls” with de facto impunity???

Because public prosecutors NEVER prosecute politicians for criminal fraud (which should typically be a “slam dunk”) but instead confine themselves to prosecuting politicians for criminal corruption.

And the U.S. Supreme Court has long since ruled that criminal corruption requires an explicit “quid pro quo” (or “bargained for consideration” in contract-law legalese).

So it is “child's play” for serious campaign contributors who want to bribe a politician to inquire who the “blunder” (aka “bag man”) is for a particular issue so that a sufficient amount of “contributions” (aka bribes) can be bundled to “bribe” the politician without violating campaign-contribution limits.

And it is “child's play” for the politicians and the “bundlers” (aka “bag men”) representing the contributors to avoid a legally-enforceable contract (which is what “quid pro quo” or “bargained for consideration” means) so that there is no criminal corruption per the U.S. Supreme Court.

HOWEVER, the politician knows that s/he can NOT double cross those campaign contributors because doing so means s/he will NEVER AGAIN be able to raise a penny from serious campaign contributors.

So what is the long-standing political joke among voters???

Q: How can you tell when a pol is lying???

A: When s/he is moving her/his lips!!!

A BRIEF OVERVIEW OF FEDERAL CAMPAIGN FINANCE

The first attachment to this letter is the U.S. Federal Election Commission's "Presidential Public Financing Fact Sheet" for 1976-2016 which shows, inter alia --

- The general election grants that were made to Democrats, Republicans and third parties; and
- The primary election matching funds paid to Democrats, Republicans and third parties.

By way of background --

- General election grants require a candidate to forego any private campaign contributions.
- Primary election public financing matches the first \$250 of each contribution from an individual to a candidate meeting a minimum threshold of public support.

As you can see from the first attachment --

- Both major-party candidates foreswore private contributions in order to receive the federal grants from 1976 through 2004 and neither major-party candidate has done so in 2012 or 2016.
- Minor-party candidates continue to receive primary-campaign matching funds (as well as having received general-election grants in 1980, 1996 and 2000).

The main reason why the major party candidates have disdained the federal grants in recent elections is because they are so pitifully small. [The amounts were fixed in 1976, subject to inflation adjustments.]

In addition, total campaign-finance spending has radically increased in recent cycles in the form of --

- Super PAC's (aka Super Political Action Committees) which are allowed to raise and spend unlimited amounts of money to advocate for or against any candidate(s) or issues, as long as there is no coordination, consultation or request by any campaign or candidate.

NB: Super PAC's are often headed by a former high-ranking member of a candidate's campaign and the legal advisers of candidates and their Super PAC's have long since taught their pupils how to operate on "a wink and a nod" basis without violating the law.

- "Dark Money" organizations which are allowed to raise unlimited amounts from individuals and corporations, and to spend unlimited amounts in any way they wish (subject, of course, if they make contributions to particular campaigns, etc., to the regular limits under the Federal Election Campaign Act of 1971, as amended -- but otherwise unlimited). "Dark Money" organizations do not have to disclose the identity of their donors, the identity of the campaigns or candidates or other entities receiving money, and the amounts raised and spent.

NB: "Dark Money" organizations exist despite 8 of the 9 Justices of the U.S. Supreme Court stating, in focusing on the peripheral issue of "independent expenditures" under McCain-Feingold in Citizens United vs. FEC (2010), that legally requiring disclosure does NOT violate free speech.

The second attachment to this letter is the U.S. Federal Election Commission's table of examples of limits on campaign contributions for 6 different kinds of donors and 5 different kinds of recipients.

They are authorized by the Federal Election Campaign Act of 1971, as amended, and updated every two years for inflation.

The U.S. Supreme Court in Buckley vs. Valeo (1976) had held that some of FECA's limits do NOT impermissibly limit "freedom of speech" (which Law School 101 has always taught does NOT entail the right to shout "fire" in a crowded theater) because "Congress may regulate campaign contributions to protect against corruption or the appearance of corruption."

However, the limits in the second attachment to this letter are the survivors of Buckley vs. Valeo which also disapproved some limits on the grounds that Congress "may not, however, regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others."

And 38 years later in McCutchen vs. FEC (2014), the U.S. Supreme Court ruled that whereas so-called "base limits" that had been approved in Buckley vs. Valeo, such as the examples in the second attachment to this letter, do NOT violate "free speech," so-called "aggregate limits" do. In other words, the "base limit" of \$2,800 per "person" per candidate per election is permissible in order to prevent corruption or its appearance, but an "aggregate limit" prohibiting a "person" from contributing \$2,800 to each of a zillion different candidates does violate "free speech."

THE WAY FORWARD

As explained above, the main reason why the major party candidates have disdained the federal grants in recent elections is because they are so pitifully small.

It should be "child's play" for any law school graduate to draft amendments to the Federal Election Campaign Act that would --

- Extend public financing to Senatorial/Congressional Campaigns for any candidate who renounces campaign contributions and who can show a modicum of support by the voting public, and
- MOST IMPORTANTLY, provide levels of public financing equal to what would be available to any opponents (and their Super-PAC's) from campaign contributions, such as gearing it to the amount of campaign contributions being received by competitors (or to recent historical levels if all competing candidates have chosen public financing).

Indeed, it strikes us that in such a New World, "independent expenditures" accompanied by full disclosure of the sources of such expenditures, would become comparatively insignificant.

It should be noted that public financing under FECA has NEVER been a "Freedom of Speech" issue with the U.S. Supreme Court because the renunciation of private campaign contributions in order to receive the public grants is VOLUNTARY.

MISCELLANEOUS

First, appointing public prosecutors to prosecute politicians for criminal fraud (which we noted should typically be a "slam dunk") has the obvious drawback of being partial and being seen to be partial.

Second, the public finance grants have been financed by an election on individual tax returns for \$3.00 of the tax to go to a fund that finances the grants. Obviously, the amount of financing we envision should not be dependent on such a mechanism, but should come from general revenues of the U.S. government.

Third, it is noted that Sen. Jodi Ernst has introduced a bill “To Eliminate Federal Funds For Presidential Campaigns.” This is the WRONG DIRECTION and ignores the fact that the fund has continued to finance primary-campaign matching grants in 2012 and 2016 (please see the first attachment to this letter).

Thank you very much for your consideration.

We would be delighted to receive any comments or questions at john@johnkarls.com.

Respectfully submitted,

John S. Karls
JD, Harvard Law School, 1967
Who’s Who in American Law, 1988-2003
Who’s Who in America, 1988-2003
Who’s Who in The World, 1994-2003

PS: Identical letters have been sent to Mses. Joy Behar, Whoopi Goldberg, Sunny Hostin, Hilary Estey McLoughlin and Barbara Walters, and to Mr. Brian Teta.

Presidential Public Funding Fact Sheet
(Updated August 2017)

	2016	2012	2008	2004	2000	1996	1992	1988	1984	1980	1976
Primary Matching Funds Paid to											
Republicans	\$0	\$0	\$2,682,428	\$0	\$26,961,587	\$43,996,636	\$15,858,508	\$35,495,826	\$10,100,000	\$20,760,487	\$9,745,918
Democrats	\$1,088,929	\$0	\$17,948,612	\$27,541,917	\$29,366,520	\$14,036,890	\$25,207,639	\$31,114,983	\$26,225,670	\$10,671,173	\$15,203,592
Other Parties	\$456,035	\$1,356,108	\$1,097,461	\$891,968	\$5,933,267	\$504,831	\$2,366,483	\$938,798	\$193,735	\$0	\$0
General Election Grants											
Republicans	\$0	\$0	\$84,103,800	\$74,620,000	\$67,560,000	\$61,820,000	\$55,240,000	\$46,100,000	\$40,400,000	\$29,440,000	\$21,820,000
Democrats	\$0	\$0	\$0.00	\$74,620,000	\$67,560,000	\$61,820,000	\$55,240,000	\$46,100,000	\$40,400,000	\$29,440,000	\$21,820,000
Other Parties	\$0	\$0	\$0.00	\$0	\$12,613,452	\$29,000,000	\$0	\$0	\$0	\$4,242,304	\$0
Party Convention Grants*											
Republicans		\$18,248,300	\$16,820,760	\$14,924,000	\$13,512,000	\$12,364,000	\$11,048,000	\$9,220,000	\$8,080,000	\$4,416,000	\$1,963,800
Democrats		\$18,248,300	\$16,820,760	\$14,924,000	\$13,512,000	\$12,364,000	\$11,048,000	\$9,220,000	\$8,080,000	\$4,416,000	\$2,185,830
Other Parties		\$0.00	\$0.00	\$0	\$2,522,690	\$0	\$0	\$0	\$0	\$0	\$0
Total Public Funding Payouts	\$1,544,965	\$37,852,708	\$139,473,821	\$207,521,885	\$239,541,516	\$235,906,357	\$176,008,630	\$178,189,607	\$133,479,405	\$103,385,964	\$72,739,140

*On April 3, 2014, President Barack Obama signed legislation to end the public funding of presidential nomination conventions.

CONTRIBUTION LIMITS FOR 2019–2020

DONORS	RECIPIENTS				
	Candidate Committee	PAC ¹ (SSF and Nonconnected)	State/District/ Local Party Committee	National Party Committee	Additional National Party Committee Accounts ²
Individual	\$2,800* per election	\$5,000 per year	\$10,000 per year (combined)	\$35,500* per year	\$106,500* per account, per year
Candidate Committee	\$2,000 per election	\$5,000 per year	Unlimited Transfers	Unlimited Transfers	
PAC Multicandidate	\$5,000 per election	\$5,000 per year	\$5,000 per year (combined)	\$15,000 per year	\$45,000 per account, per year
PAC Nonmulticandidate	\$2,800* per election	\$5,000 per year	\$10,000 per year (combined)	\$35,500* per year	\$106,500* per account, per year
State/District/Local Party Committee	\$5,000 per election (combined)	\$5,000 per year (combined)	Unlimited Transfers		
National Party Committee	\$5,000 per election ³	\$5,000 per year			

*- Indexed for inflation in odd-numbered years.

¹ "PAC" here refers to a committee that makes contributions to other federal political committees. Independent-expenditure-only political committees (sometimes called "super PACs") may accept unlimited contributions, including from corporations and labor organizations.

² The limits in this column apply to a national party committee's accounts for: (i) the presidential nominating convention; (ii) election recounts and contests and other legal proceedings; and (iii) national party headquarters buildings. A party's national committee, Senate campaign committee and House campaign committee are each considered separate national party committees with separate limits. Only a national party committee, not the parties' national congressional campaign committees, may have an account for the presidential nominating convention.

³ Additionally, a national party committee and its Senatorial campaign committee may contribute up to \$49,600 combined per campaign to each Senate candidate.

This publication provides guidance on certain aspects of federal campaign finance law. This publication is not intended to replace the law or to change its meaning, nor does this publication create or confer any rights for or on any person or bind the Federal Election Commission (Commission) or the public. The reader is encouraged also to consult the Federal Election Campaign Act of 1971, as amended, Commission regulations, Commission advisory opinions, and applicable court decisions.



For further information, please contact:
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