
"There are two things that are important in politics," Marcus Hanna, chairman of the Republican National Committee and United States Senator from Ohio once declared: "The first is money, and I can't remember the second."

More than a hundred years later, things haven't changed all that much. Money influences the outcome of elections, access to politicians, and the content of legislation. And the Supreme Court's 5-4 decision in *Citizens United v. Federal Election Commission* (2010) opened the floodgates of corporate and union spending in elections and paved the way for the emergence of Super PACS.

In *Plutocrats United*, Richard Hasen, a professor of law and political science at the University of California, Irvine and the author of *The Voting Wars: From Florida 2000 to the Next Election Meltdown*, provides a careful and compelling analysis of the role of money in American politics and proposes a legal strategy to reform campaign financing to give all Americans a meaningful opportunity to participate in elections and protect First Amendment rights to free speech and freedom of the press, without allowing the wealthy (and non-human entities, including corporations) to exercise undue influence.

Hasen maintains that debates over campaign finance limits should not turn on whether or not they will reduce corruption. Access, he acknowledges, may be a legitimate expectation of donors to a candidate's campaign - and evidence of outright bribery is scarce. A better approach would cite "political equality as an interest in its own right." Since the Supreme Court called for "one man, one vote" in *Reynolds v. Sims* (1964) and struck down the poll tax in *Harper v. Virginia State Board of Elections* (1966), Hasen points out, it has recognized that voting rules should give equal political power to all citizens. The Court has not yet held that each voter has a constitutional right to equal influence (through the electoral process) in having his or her preferred policies enacted into law, but Hasen believes it could and should do so to limit the likelihood that disparities in resources will be turned into disparities in political influence.

Hasen advocates levelling campaign financing up as well as down. Spending limits of $25,000 per election with a two year aggregate cap of $500,000 (and an exemption for media corporations which cover elections), he claims, would neither benefit incumbents nor inhibit competition. A $100 voucher, which every eligible voter could give to a candidate, political party or advocacy support, might even enhance political participation. Pointing to decades of experience with campaign finance limits in the United States and from the much stricter systems in Great Britain and Canada, Hasen insists that his proposals will not endanger freedom of speech or freedom of the press.

He reminds us as well that the Supreme Court has always recognized that the First Amendment doesn't mandate no regulation ever of speech, expression or the spending of money on speech or expression. Courts have declared that society has a "compelling reason" to
penalize libel and child pornographers, for example, as long as the regulation is "reasonable." Senator Ted Cruz's scare tactics to the contrary notwithstanding, neither Lorne Michaels, the producer of *Saturday Night Live*, the NAACP, the Sierra Club or the little old lady who put up a $5 political year sign are likely to land in jail if *Citizens United* is no longer the law of the land.

Hasen understands that getting any changes in campaign financing through Congress and the courts won't be easy. His own proposals will almost certainly not command majorities in the House of Representatives or the Senate - and if they did wouldn't pass muster with the Supreme Court. And with good reason. Hasen deems a constitutional amendment on campaign finances a non-starter, especially when a solid majority of state legislatures are controlled by Republicans. An amendment, moreover, could well do more harm than good. The original language recently crafted by Senate Democrats, for example, seemed to give local, state, and federal legislatures far too much latitude to suppress political speech. A draft put forward by the group "Move to Amend," Hasen indicates, did not include a press exemption, "raising serious questions about whether a state could stop the *New York Times* or *Fox News* from covering an election. The "simplistic" amendment proposed from former Justice John Paul Stevens allows "reasonable limits" on campaign contributions but does not define "reasonable."

Unless and until the aging Supreme Court justices Antonin Scalia and Anthony Kennedy are replaced by progressives, Hasen writes, "no change is possible." For now, he recommends keeping the issue alive with short term fixes (which, to be sure, will face an uphill battle in Congress), such as more robust and rigorous disclosure requirements for donors and multiple matching funds for small campaign contributions.

Alas, this assessment appears to be born more of resignation than resolve.

MORE:  *Citizens United v. Federal Election Commission*  *Money in Politics*  *Free Speech*  *Campaign Finance Limits*  *"Move to Amend"*  *Campaign Disclosure Requirements*