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## Political Law

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# Bankrupting Democracy

by Frederick K. Lowell

The recent enactment of AB 1430, a bill which prohibits California localities like San Francisco and Los Angeles from imposing restrictions on political communications between member organizations and their own members, may have signaled the beginning of the end of the over-regulation of politics in California.

Ever since the Watergate scandals 30 years ago, laws which regulate political activity have proliferated at every level—federal, state and local. California has one of the most complicated schemes in the country, outdone only by the maze of almost incomprehensible laws that have been enacted in the city and county of San Francisco and which are administered by the San Francisco Ethics Commission.

Such laws necessarily restrict, and therefore conflict with, First Amendment rights, which is why they are frequently invalidated by federal courts. Last month, for the second time in eight years, a federal judge granted an injunction against the enforcement of San Francisco's limits on contributions to independent expenditure committees.

San Francisco would be a good place to start simplifying campaign finance laws.

Laws that restrict political activity are generally supported by political reform lobbyists, academics and, interestingly, editorial boards of major news media publications (which are exempt from campaign laws and free to speak as much as they wish). To the extent needed to prevent corruption, such laws may be appropriate. But in reality, the laws currently on the books seem designed to prevent people—particularly so called “special interests”—from trying to influence the outcome of elections. The supporters of these laws believe that the private financing of elections gives special interests undue influence over public officials, thereby impeding public policy and creating legislative paralysis.

There are several problems with this argument. First, there is really no such thing as a “special” interest. They are just not that special anymore. The term has no agreed meaning beyond “an interest that you oppose.”

In any case, there are special interests on every side of every issue. No matter how bizarre your beliefs may be, you probably have unknown allies who are organized around your issue and are attempting to lobby government and elect

like-minded candidates for office. The political reformers are themselves a special interest.

Our system of government was designed to foster a competition of interests and provide all such interests an opportunity to be heard. Thus, for example, if you want to reform health care, you are going to have take into account the interests of doctors, nurses, employee unions, patients, indigent advocacy groups, research organizations, insurance companies, distributors, hospitals, and pharmaceutical companies, all of which are well-organized and ready to protect the interests of their constituencies. Each of these groups have the right to speak out and be heard.

The ability of like-minded people to organize, contribute resources and try to influence the political process is fundamental to our freedom as citizens. San Francisco's limits on independent expenditures were designed to prevent persons from pooling their resources to pay for communications advocating the election or defeat of local candidates for office. But from a First Amendment perspective, it's difficult to see how chilling opportunities for political participation has a positive effect on political discourse.

Another problem with the argument for campaign restrictions is that the draconian limits and burdens placed on political activity force political activists to contort their participation in strange and convoluted ways.

In the 2004 federal election, after the McCain-Feingold reforms prevented political parties from raising "soft" money, we saw the rise of so-called "527 organizations," nonprofit activist groups and independent Political Action Committees that raised and spent millions of dollars to avoid the restrictions championed by campaign reformers. Putting a lid on the political teapot simply means that the steam is going to come out somewhere else, often in a less accountable way than otherwise would be the case.

Finally, the more complex the regulatory scheme, the more government pre-empt the ability of the average citizen to participate in a campaign or run for office. As the process becomes increasingly criminalized by reform laws, it also becomes more professionalized.

Big business, big labor and wealthy people have the resources to hire batteries of political lawyers and accountants to ensure that the amounts they spend on political activities comply with even the most Orwellian maze of regulation. Most ordinary people do not have those resources and thus run the risk of incurring civil and criminal penalties for running afoul of laws that are hardly intuitive. One should not have to hire a lawyer to run for public office or to raise money for a favorite candidate or ballot measure.

It's time to reverse the over-regulation of politics. Why the fear of letting people talk? Why is money spent by advocates and candidates to advertise their positions and educate the electorate on their cause considered to be so threatening?

Some say that public financing is a solution, but allowing incumbents to set the rules for financing their re-election is dangerous and, in any case, all candidates should be required to prove their viability by raising their own money, albeit in a more permissive environment.

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We should pursue regulatory schemes that provide for ample, but simple disclosure laws and reasonable limits on campaign contributions and expenditures. San Francisco's burdensome and overly technical reporting laws are much too complex, its \$500 contribution limit is much too low and its prohibition on political contributions from corporations—but not from labor organizations—is disingenuous.

It's time to start again. Government regulation needs to get out of the way of political reality. Politics should be left to the people.

## **Bankrupting Democracy**

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