

Limits are necessary

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Given the explosion of spending on political campaigns in recent years, everyone knows that the average citizen with average financial resources might as well forget running for elective office. But things have really gotten bad when multimillionaires can no longer keep up with the fund-raising arms race.

Senator Mark Dayton, D-Minn., the heir to a department store fortune who spent \$12 million of his own funds to win office in 2000, recently announced he is leaving Congress. "I cannot stand to do the fund raising necessary to wage a successful campaign," he said, "and I cannot be an effective senator while also being a nearly full-time candidate." On both counts, of course, Dayton was simply saying out loud what a growing number of politicians already believe: The demands of campaign fund raising are simply incompatible with the practical and ethical demands of the office itself.

The real issue here, of course, is not fairness to millionaires. The core problem is that far too many talented people of all income levels are frozen out of politics because they can't pay the skyrocketing price of admission. Office holding soon will be the preserve of two groups: an economic superelite (merely wealthy folk need not apply) and candidates who don't mind becoming full-time fund-raisers beholden to the big special interests that can generate the necessary cash to compete with the first category.

Laws putting limits on the amounts candidates can spend on their races could do much to remedy these problems. The Supreme Court's 1976 *Buckley v. Valeo* decision however, struck down spending limits for congressional races as a First Amendment violation. Since then, many have assumed that spending caps could never survive constitutional scrutiny.

Key ruling in the 2d Circuit

A legal battle that started in Vermont could change all this. In *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004), the 2d U.S. Circuit Court of Appeals has ruled that, despite *Buckley*, mandatory spending limits may now be able to pass constitutional muster. Because the 2d Circuit ruling is binding for New York and Connecticut as well as Vermont, those states now are free to adopt spending limits as well, so long as the caps are carefully tailored to avoid unduly restricting candidate speech. The 2d Circuit's ruling expressly disagrees with a 2004 ruling by the 10th Circuit, which struck down Albuquerque, N.M.'s spending limits as a per se constitutional violation, setting the stage for a potential showdown in the U.S. Supreme Court.

The Vermont decision makes a compelling argument that spending limits are not only legal, but necessary to protect the integrity of the democratic process. As the appeals court observed, "Vermont has shown that, without expenditure limits, its elected officials have been forced to provide privileged access to contributors in exchange for campaign money. Vermont's interest in ending this state of affairs is compelling: the basic democratic requirements of accessibility, and thus accountability, are imperiled when the time of public officials is dominated by those who pay for such access with campaign contributions." Moreover, the Vermont law allows challengers to spend more than incumbents, a unique feature that assures spending limits will not disadvantage challengers who lack the name recognition of incumbents.

Buckley assumed that limits on contributions alone, without limits on campaign spending, would be enough to deter the corrupting influence of special interest money. But, as the 2d Circuit found, a generation of experience with unlimited campaign spending has proven that prediction to be wildly optimistic.

Plaintiffs in the Vermont case have now filed a petition for certiorari with the Supreme Court, seeking to overturn the Vermont law. Briefs for the defendants, who argue that the court should take the case to affirm the 2d Circuit, were filed in mid-June. And now it's up to the Supreme Court.

With total candidate spending in the most recent federal elections having approached \$2 billion, is the Supreme Court ready to reconsider the constitutionality of mandatory spending limits? Four of the current justices have suggested, in recent opinions addressing other campaign-finance issues, that they may be ready to do just that. As Justice Anthony Kennedy observed in one case, "I would leave open the possibility that Congress, or a state legislature, might devise a system in which there are some limits on both expenditures and contributions, thus permitting officeholders to concentrate their time and efforts on official duties rather than on fundraising."

As even the multimillionaires of the Senate will confirm, the arms race for campaign cash occupies far too much of a candidate's time and attention. Worse, it leaves many citizens wondering what debts were incurred in gathering the war chest. This kind of public cynicism about the electoral process is debilitating for our democracy. The time has come to change this with reasonable upper limits on candidates' campaign spending.

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