

GUEST OBSERVER

By Robert Kelner

**McCain-Feingold II:
It's Déjà Vu
All Over Again**

Throughout the debate over the McCain-Feingold campaign finance law, critics warned that instead of reducing the role of money in politics, it would simply divert million-dollar contributions from broad-based political parties to special interest groups. They warned as well that, once outside the regulated domain of the parties, those contributions would disappear from public scrutiny.

Supporters of the law sponsored by Sens.

John McCain (R-Ariz.) and Russ Feingold (D-Wis.) countered that "soft money"—large corporate and individual contributions—would not migrate from the parties to special interests because only the parties enjoyed the supposed power to "extort" such largess.

We all know how this story ended. According to the Center for Public Integrity, at least half a billion dollars of political money found its way to special interest groups during the 2004 election. Existing groups gorged on the new riches, and an alphabet soup of new ones emerged from the muck.

While political parties raised more money too, the relative balance of power between parties and special interests shifted palpably. And

the true magnitude of this shift is impossible to know, because the half-billion dollar figure cited by CPI includes only funds raised by 527s—groups named for the section of the Internal Revenue Code that governs them, which must publicly report their receipts and expenditures.

Notably, it does not include the millions raised by tax-exempt special interests organized under Section 501(c). This includes such giants as the National Rifle Association, the NAACP, the Sierra Club and AARP. The 501(c)s are not required to itemize their political spending or name their wealthy donors.

In keeping with the century-old progressive tradition of following each failed round of

campaign finance regulation with new "reforms" meant to fix the "loopholes" left under the old ones, Sens. McCain and Feingold are now advocating new legislation to stem the flow of funds to 527s.

What is remarkable about "McCain-Feingold II" is that, like McCain-Feingold I, it includes a gaping soft-money loophole. In an example of regulatory planned obsolescence, McCain-Feingold I left outside special interests free from the restrictions on political parties, making outside groups soft-money magnets. It also carved out an exception to its "soft-money ban" that allows Members of Congress to raise soft money for 501(c)s. So long as a Member is careful to label his or her fundraising a "general" solicitation of soft money, the Member may raise an unlimited amount, which can be used by 501(c)s on electoral advocacy.

Often, 501(c)s, other than charities, use soft money for partisan canvassing, phone banks and direct mail. They may even buy election-related advertising, so long as their ads are tailored to avoid campaign-finance restrictions. Charities raise and spend soft money for purportedly "nonpartisan" voter mobilization, which often is subtly crafted to target particular voter populations. For example, MTV's Rock the Vote campaign was conducted in part through a 501(c)(3) charity.

Exactly how many Members have exploited this loophole is not known, since 501(c)s are shrouded in mystery. Rest assured, if it hasn't happened yet, it will. As the Supreme Court cynically but accurately observed in its decision upholding McCain-Feingold I, "money, like water, will always find an outlet."

McCain-Feingold II, like its predecessor, does not actually ban soft money. Fashionably, it targets only the reformers' latest boogeyman: the 527s. At the same time, it ignores the role of tax-exempt 501(c) groups.

The 501(c)s are largely off limits because of the raw political power of the special interests that operate them, which represent key constituencies for both parties. Predictably, McCain-Feingold II will, if enacted, send soft money cascading away from 527s to the new vehicles of choice, 501(c)s. Political activity conducted through 501(c)s is less tax-efficient than it is through 527s, but that just means interest groups will have to raise more soft money.

This is not to say that the 501(c)s should see their ability to engage in political advocacy undermined, by law, any more so than undermining the political parties or the 527s is good policy for a free society. Rather, by focusing only on 527s, McCain-Feingold II repeats the past sham of banning one soft-money vehicle while ignoring others. A selective ban simply picks new winners and losers in the political process.

This is not an "unintended consequence" of campaign finance regulation. Congress knew what it was doing when it left outside groups free to raise and spend soft money. Sens. McCain and Feingold presumably know what they are doing when they now propose legislation that merely erects a new traffic sign, telling donors to steer away from 527s and toward the now-privileged 501(c)s.

If the proposal is enacted, look for the next federal election to look much like the last one. Soft money will still be there; the only change will be a starring role for 501(c)s. Soft money will be forced even further underground.

The solution to this spiral of failed regulation is not to sweep all speakers within the scope of McCain-Feingold, undercutting free speech. Instead, Congress should reconsider the entire, futile project of campaign finance reform. Expand public disclosure, by all means, but leave the picking of winners and losers to the voters.

Robert Kelner heads the election and political law practice at the firm Covington & Burling.

**Can you name a
smart addition to a
well-balanced diet?****Dietary supplements.**

They can promote good health and help prevent disease. Vitamins, minerals, botanicals, plus sports nutrition and specialty supplements. Some have usage dating back centuries in time. Others are modern day discoveries. Backed by a growing body of scientific research, adding dietary supplements to your daily routine makes good sense. Use them alongside a well-balanced diet and a suitable exercise regime.

Dietary supplements are a key component of a healthy lifestyle.

**DSHEA: It Makes Sense...Let's Make it Work**

FDA regulates the dietary supplement industry under the Dietary Supplement Health and Education Act (DSHEA). The Council for Responsible Nutrition and its member companies support stronger enforcement of DSHEA. More than 150 million Americans take supplements and they deserve the right to choose from a wide variety of high quality, safe and effective products.

**Council for Responsible Nutrition***The Science Behind the Supplements*

For more information contact:
Council for Responsible Nutrition (CRN)
(202) 776-7929 • www.crnusa.org