

REAL AND IMAGINED REFORM OF CAMPAIGN
CORRUPTION: A REVIEW OF *DIRTY LITTLE
SECRETS: THE PERSISTENCE OF
CORRUPTION IN AMERICAN POLITICS*

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DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS By Larry J. Sabato and Glenn R. Simpson, Times Books, 1996, 339 pages.

In 1987, University of Virginia political science professor Larry Sabato wrote a short essay entitled, "Real and Imagined Corruption in Campaign Financing."¹ In it, Sabato argued that "the near-obsessive focus by public interest groups and the news media on the purported evils of PACs [Political Action Committees] has diverted attention from . . . more fundamental matters."² While commentators had become fixated on sources of campaign dollars, Sabato warned that more alarming campaign practices were increasing, including fraudulent fund-raising, unaccountable "independent" groups engaging in negative campaign tactics, the abuse of tax-exempt foundations for political purposes, and rapid growth in honoraria and other practices providing direct personal, financial gain to legislators who pleased certain interested parties.³ As to efforts to reform campaign finance by limiting contributions and spending, Sabato warned that past efforts had unfairly benefitted incumbents, helped wealthy candidates, increased negative campaigns, and empowered special interests, both intentionally and unintentionally.⁴ Urging caution in pressing reforms, he summarized his position as, "caveat reformator: let the reformer beware."⁵

A decade after Sabato wrote this provocative essay, public confidence in governmental institutions continues to decline. Recent polls show that fewer than twenty percent of Americans trust the federal gov-

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¹ Larry Sabato, *Real and Imagined Corruption in Campaign Financing*, in *ELECTIONS AMERICAN STYLE* 155-79 (A. James Reichley ed., 1987).

² *Id.* at 156.

³ *Id.* at 171-79.

⁴ *Id.* at 164-67.

⁵ *Id.* at 179.

ernment to do what is right.⁶ Commentators have widely blamed this distrust on America's system of campaign finance.⁷ Books and newspaper editorials are still bemoaning the "buying" of the President and Congress.⁸

Political pressure has also been building for major campaign finance reform. Major campaign finance initiatives were passed by voters in five states in 1996.⁹ In 1996, lobbyists made a concerted effort to pass federal campaign finance reform.¹⁰ Meanwhile, the academic community has proposed elaborate regulatory schemes¹¹ and has organized lengthy symposia to discuss the alleged problems of campaign finance.¹²

But is the campaign finance system really the problem, and if so, is more regulation really the answer? A growing body of research suggests that the premises upon which campaign finance reform efforts have been built are at best unproven and at worst simply wrong. Campaign spending, as a percentage of gross domestic product, has remained steady for many years.¹³ Total spending on all political activity amounts to just a few dollars per year per eligible voter.¹⁴ Candidates on the extreme ends of the American political spectrum have more success raising money from small contributors than candidates who represent more pop-

⁶ Alan Muttay, *Forward to LARRY J. SABATO & GLENN R. SIMPSON, DIRTY LITTLE SECRETS: THE PERSISTENCE OF CORRUPTION IN AMERICAN POLITICS* ix (1996). In 1964, 76 percent trusted the government to do what is right. *Id.* See also Kimberly Coursen et al., *Restoring Faith in Congress*, 11 YALE L. & POL'Y REV. 249, 251-52 and citations therein (1993) (citing polls showing low public opinion of Congress).

⁷ See Fred Wertheimer & Susan W. Manes, *Campaign Finance Reform: A Key to Restoring the Health of Our Democracy*, 94 COLUM. L. REV. 1126, 1126-1131 (1994) and citations therein.

⁸ See, e.g., CHARLES LEWIS, *THE BUYING OF THE PRESIDENT* (1996); PHILIP M. STERN, *STILL THE BEST CONGRESS MONEY CAN BUY* (1992); BROOKS JACKSON, *HONEST GRAFT: BIG MONEY AND THE AMERICAN POLITICAL PROCESS* (2d ed., Farragot Publishing Co. 1990) (1988).

⁹ The five states are Montana, Arkansas, Colorado, California and Maine.

¹⁰ See, e.g., Jackie Howell, *Common Cause Pushes for Action on Campaign Reform Bills*, COMMON CAUSE MAG., Summer 1996, at 36 (describing lobbying efforts by Common Cause and other groups); Andrew Mollison, *Senate Republicans' Vote Hands Campaign Finance Reform Bill a Defeat*, ATLANTA CONST., June 26, 1996 (noting that over 260 newspapers editorialized in favor of the McCain-Feingold campaign finance reform bill).

¹¹ See, e.g., Richard L. Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 CAL. L. REV. 1 (1996); Edward B. Foley, *Equal Dollars Per Voter: A Constitutional Principle of Campaign Finance*, 94 COLUM. L. REV. 1204 (1994); Marty Jezer et al., *A Proposal for Democratically Financed Elections*, 11 YALE L. & POL'Y REV. 333 (1993); Daniel H. Lowenstein, *On Campaign Finance Reform: The Root of All Evil is Deeply Rooted*, 18 HOFSTRA L. REV. 301 (1989).

¹² See, e.g., 1995 U. CHI. LEGAL F. 111-192 (1995); 8 ADMIN. L.J. AM. U. 161-260 (1994); 94 COLUM. L. REV. 1125-1414 (1994); 21 CAP. U. L. REV. 381-500 (1992); 18 HOFSTRA L. REV. 213-420 (1989).

¹³ Robert J. Samuelson, *The Price of Politics*, NEWSWEEK, Aug. 28, 1995, at 65.

¹⁴ Bradley A. Smith, *Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform*, 105 YALE L. J. 1049, 1059 (1996).

ular positions.¹⁵ In predicting electoral outcomes, the critical financial determinant is not which candidate spends the most, but whether a candidate spends enough to deliver his or her message to a critical mass of voters.¹⁶ Perhaps most importantly, campaign contributions have not been shown to have a significant effect on legislative voting behavior, at least when compared to party affiliation and agenda, personal ideology, or perceived constituent interests and views.¹⁷ Given all this, the purpose of campaign finance reform seems more suspect than ever before.¹⁸

At the same time, calls for more regulation often seem to be based more on faith than any rationale analysis. After all, this decline in public trust has come during a period of unprecedented campaign finance regulation. Not only skeptics of campaign finance reform, but even supporters, are beginning to question whether regulation can solve the alleged problems.¹⁹

Now, Professor Sabato, who has the unique accomplishment of being both one of the most respected and most quotable scholars in the field of political campaigns,²⁰ returns to tell us that reformers who focus on campaign finance have indeed been pursuing both the wrong villains and the wrong solutions. In *Dirty Little Secrets: The Persistence of Corruption in American Politics*, Sabato and his co-author, former *Roll Call* and now *Wall Street Journal* reporter Glenn Simpson, show that media and advocacy group focus on campaign finance reform has obscured, and perhaps even contributed to, an alarming increase in many types of corruption thought to be long banished from the American political scene. Such corruption includes vote fraud, buying and selling of votes and endorsements, and gross abuses of government power. Left unchecked, the

¹⁵ *Id.* at 1062-64. This is largely because of the collective action problems prevalent in campaign financing. Political campaigns are public goods, giving rational voters an incentive to "free ride" on the donations of others. See Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. LEGAL F. 111, 129-30 (1995). Those candidates most likely to overcome these collective action problems are those whose electoral base consists of highly ideological, non-pragmatic individuals. Smith, *supra* note 14, at 1064.

¹⁶ CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE, *A STUDY OF CAMPAIGN EXPENDITURES FOR WINNING CHALLENGERS IN U.S. SENATE AND HOUSE RACES: 1978-1994* 12 (1996).

¹⁷ Smith, *supra* note 14, at 1068-70, and citations therein; for an alternative view, see Lowenstein, *supra* note 11, at 313-22 (1989).

¹⁸ See David A. Strauss, *What is the Goal of Campaign Finance Reform?*, 1995 U. CHI. LEGAL F. 141 (1995).

¹⁹ See, e.g., Stephen E. Gottlieb, *The Dilemma of Election Campaign Finance Reform*, 18 HOFSTRA L. REV. 213 (1989); Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390 (1994).

²⁰ Sabato's many books include *CAMPAIGNS AND ELECTIONS* (1989); *PAYING FOR ELECTIONS* (1989); *AMERICAN GOVERNMENT* (with Karen O'Connor) (1988); *THE PARTY'S JUST BEGUN* (1988); *PAC POWER* (1984); and *THE RISE OF POLITICAL CONSULTANTS* (1981). A quick Lexis search found 1145 newspaper references to Sabato from July 16, 1994 through July 15, 1996.

authors claim, such abuses will do far greater damage to American democracy than a few large, publicly disclosed campaign donations.

Dirty Little Secrets is divided into two major parts, which are in many respects two separate books. The first half tells the story of the Republican takeover of Congress in the 1994 elections. Here the book takes a narrative form, starting with the entrenchment of the Democratic majority in the United States House of Representatives during the 1970s and the early political career of Newt Gingrich. This section progresses with the story of how Gingrich created a conservative coalition which used a variety of questionable tactics to break the hold of a long-term Democratic congressional majority; a majority which, the authors stress, was itself maintained through questionable practices.

This first section of the book seems certain to infuriate many conservatives, and many of the criticisms they will have are legitimate. The authors casually link fringe militia groups and the mainstream term limits movement as expressions of “[p]ublic disgust, anger, and alienation,” with government.²¹ They suggest that the Christian Coalition’s political involvement violates its tax exemption²² without suggesting that the National Education Association’s political activities might do the same. The authors describe President Clinton’s 1993 budget as one “which raised taxes on the wealthy,”²³ which reads like a White House press release for a budget that included a significant increase in gasoline taxes on all Americans and increases in taxes on many social security recipients. Such comments, however, should not distract readers from the authors’ main point: Gingrich’s GOPAC, the Christian Coalition and a variety of other conservative groups engaged in tactics that may be legitimately criticized as deceptive, and they evaded campaign finance laws and other laws through dubious, if not illegal, practices.²⁴

The Christian Coalition, the authors note, is organized as a 501(c)(4) organization under the federal tax code, meaning that contributions to the organization are not tax deductible but the organization itself pays no federal income taxes. Such “social welfare” organizations may engage in some political activity so long as such activity is not their “primary” purpose. Because political involvement is supposed to be an incidental activity, such groups are not required to comply with the Federal Election Campaign Act (FECA), which limits the size and source of contributions and requires disclosure of contributors.²⁵ The authors make a convincing case that the Christian Coalition is primarily a parti-

21 SABATO & SIMPSON, *supra* note 6, at 20-21.

22 *Id.* at 114.

23 *Id.* at 136.

24 *Id.* Chs. 3 and 4.

25 *Id.* at 310-11.

san political organization. As such, its activities violate its tax-exempt status.²⁶ Similarly, the authors present considerable evidence accusing conservative groups, such as Americans for Term Limits, the National Rifle Association, and Newt Gingrich's GOPAC organization, of abusing a variety of loopholes in federal law to hide both the source and amount of their political spending and to evade contribution limits set by law.²⁷ They conclude that "the GOP's long-sought victory was abetted by what were, at best, unorthodox new campaign techniques, and at worst, unethical and illegal practices."²⁸

But while this section of the book is mainly concerned with questionable tactics used by Republicans to capture Congress in 1994, a careful reading leaves liberals with no room to wag "I told you so" fingers. The authors take pains to point out, for example, that Democrats were guilty of "the original sin"²⁹— that of driving competition out of congressional elections through gerrymandered political districts, abuse of the congressional frank,³⁰ the expansion and unlawful use of congressional staffs for campaign purposes, the manipulation of the subcommittee system to extort money from interest groups, and the rigging of campaign finance reform measures to benefit pro-Democratic groups such as labor unions, trial lawyers and Hollywood liberals.³¹ Furthermore, they argue that "Democrats . . . pioneered the tactics adopted so successfully by the Christian Coalition—the use of nominally nonpartisan mass membership organizations to run covert partisan campaigns."³² They also chide the press and academia for their longstanding failure to expose or even question what the authors call an "illegitimate" Democratic majority in the House of Representatives. They suggest that this failure is in part because the idea of an illegitimate Democratic majority "remains an unpopular one in both academia and journalism."³³ Republican partisans might be excused for wondering why it took a GOP victory to bring this type of scrutiny to the electoral system: Democratic

²⁶ *Id.* at 109-17, 125-41. However, it should be noted that the IRS has never ruled on the Coalition's tax status. *Id.* at 311.

²⁷ Shortly after the publication of *DIRTY LITTLE SECRETS*, GOPAC won a significant court victory affirming its compliance with federal election laws. Federal Election Comm'n v. GOPAC, 917 F. Supp. 851 (D.D.C. 1996).

²⁸ SABATO & SIMPSON, *supra* note 6, at 27.

²⁹ *Id.* at 149.

³⁰ The "frank" is Congress' right to taxpayer-financed mailings. Though the frank is intended to inform constituents, in fact most mailings are thinly veiled campaign pieces. The amount of franking increases dramatically in election years. *Id.* at 222-27.

³¹ *Id.* at 49-57.

³² *Id.* at 149.

³³ *Id.* at 101 n.49. The authors also write that in the view of a "complacent" press, "the end of the Democrats' forty-year hegemony was never meant to be." *Id.* at 26.

partisans should be embarrassed at their party's creation and long-term exploitation of the type of tactics the Republicans have finally mastered.

This first section makes for interesting reading for those seeking to learn about the magnitude of the Republicans' 1994 victory and how the Republicans accomplished it. It also contributes to an understanding of the increased partisanship which has arisen in Congress since the mid-1980s. In the end, however, its 150 pages can be distilled into a simple message: Newt Gingrich was right about the illegitimacy of the Democratic majority in the U.S. House of Representatives. His insight and skill broke that majority. Unfortunately, Republicans in general and Newt in particular have "started down the path to becoming that which they so insightfully decried."³⁴ The authors see Republicans already beginning to manipulate the perks of office to extort campaign contributions and to remain in office by using unfair campaign advantages in the same manner as the Democrats before them. Corruption, they stress, is a bipartisan affair.

In the second half of *Dirty Little Secrets*, Sabato and Simpson abandon the narrative style of Part I in favor of a descriptive, laundry list approach to five areas of increasing corruption which have been largely ignored by the media and academia. These include a rise in political "dirty tricks"; the new technique of "push polling"; vote fraud; "street money"; and abuse of government power by incumbent lawmakers.

Although the two halves of the book are rarely linked directly, they are complimentary. The abuses described in Part I relate to efforts by each party to create systemic and institutional advantages for its candidates. One of those abuses may have the parties dodging and weaving to evade tax and campaign finance laws. However, the tactics discussed are not things that, save for those laws, would generally be viewed as morally reprehensible. That is to say, while the tactics and strategies outlined in the first part of the book may be troubling, one suspects that political partisans and cynics will be able to explain them away.

For example, did the Democrats squeeze out competition through gerrymandering? Well, gerrymandering is an old tradition, and redistricting is inherently partisan. Was the Congressional frank expanded and abused? Perhaps, but Congress has a legitimate need to communicate with constituents, and it is hard to police the line where that legitimate use becomes unfair, taxpayer-subsidized campaigning. Certainly the Democrats expanded Congressional staff for constituency service matters and used these services as a steady source of favors for which payback could be collected at the polls. Then again, it was the public that demanded that its congressional representatives become ombudsmen

³⁴ *Id.* at 150.

as well as legislators. Additionally, while one can make a good case that GOPAC and the Christian Coalition abused their legal status to engage in federal campaign activity, the IRS has not challenged the Christian Coalition's status or activities for six years, and most of GOPAC's actions were recently approved by a federal court.³⁵ Such tactics may not appear in a civics textbook, but then we all know that "politics ain't beanbag."

However, even the most cynical observer would be hard pressed to justify any of the tactics and strategies described in Part II of *Dirty Little Secrets*. In five chapters that should be greatly disturbing to anyone concerned about American democracy, the authors explore in detail resurgent corruption in American politics. Unlike the ardent proponents of campaign finance reform who have controlled the good government debate for the last quarter century, when Sabato and Simpson discuss corruption, they are not talking about individuals giving money to candidates who share their views. These authors are concerned with real, old-fashioned corruption such as stolen elections, rigged voting machines, and the vilest slander. Whereas a growing number of scholars are expressing skepticism of campaign finance reform and even whether the alleged problems of campaign finance can truly be called "corruption" at all,³⁶ no one would publicly defend the tactics described in these pages.

There is not much need to detail here the evidence and many examples presented by the authors, but a quick skim through each chapter should give the reader of this review a flavor for what is going on in American politics. In Chapter 6, entitled "Dirty Tricks," we learn of "opposition researchers" blackmailing opposing candidates with embarrassing personal and family information. They obtain such information easily through America's vast computer databases or by secretly employing private detectives. We learn of illegal eavesdropping on cellular calls and unlawful raiding of credit files and medical records to obtain embarrassing information on candidates. We discover increasingly sleazy campaign tactics meant not to advance a candidate's campaign but merely to disrupt a political opponent. For instance, someone called a Chicago hotel and canceled a scheduled fundraiser for Republican candidate Michael Flanagan by falsely informing the hotel that Flanagan's mother had died.³⁷

³⁵ Federal Elections Comm'n v. GOPAC, 917 F. Supp. 851 (D.D.C. 1996).

³⁶ See, e.g., Smith, *supra* note 14, at 1067-71; Cain, *supra* note 15, at 134-37; Strauss, *supra* note 18, at 142-149; Lillian R. BeVier, *Campaign Finance Reform: Specious Arguments, Intractable Dilemmas* 94 COLUM. L. REV. 1258, 1269-76 (1994); FRANK SORAUF, *MONEY IN AMERICAN ELECTIONS* 316 (1992); Gottlieb, *supra* note 19 at 273-76.

³⁷ SABATO & SIMPSON, *supra* note 6, at 185. The story turned out well for Flanagan, though. Because of the confusion, the hotel reduced Flanagan's bill for the event by \$4000, so that his net gain from the fundraiser was greater than if the caller had not attempted to disrupt the event. *Id.*

In Chapter 7, Sabato and Simpson explore the dirty world of “street money,” monetary payments used to secure voter turnout. Republicans had developed the use of street money in the last century, but it is a tactic now used mainly by Democrats, especially in minority communities. “Increasingly,” write the authors, “money has become a key to securing the party’s minority base.”³⁸

The use of street money is often legitimate, as when parties make small cash payments to “flushers” who go through neighborhoods reminding the party’s registered members to vote, and “drivers,” who drive vans of these voters to the polls. In recent years, however, the use of street money has gotten out of control. The authors cite instances of black ministers demanding “honorariums” of up to \$5000 in return for endorsements. They also tell of ministers, politicians and community leaders who, in return for campaign help, require the party to funnel thousands of dollars in “contracts” to firms owned by friends or relatives. These firms may or may not actually do any work.³⁹

Street money can also take the form of bribes to voters. For example, in the Alaska governor’s race in 1994, won by Democrat Tony Knowles by just 583 votes, party leaders in one overwhelmingly Democratic borough set up a “Gas for Votes” program to guarantee a high borough turnout.⁴⁰ Legally, the amount of gas given to voters could not exceed the actual amount needed by them to travel to polls, and the gas had to be targeted to the Native Alaskan population. In fact, however, campaign workers gave voters vouchers good for 10 gallons of gas to any borough voter who asked, regardless of the voter’s race or the distance traveled to vote.⁴¹ Although street money payments and bribes have primarily been a Democratic Party tactic, the Republicans hardly come away with unstained hands: the authors also report on underhanded tactics and use of street money by Republicans intended to suppress minority turnout.⁴²

Chapter 8 focuses on the abuse of government power by incumbent officeholders, especially through their improper use of the congressional frank and the use of their paid congressional staff for political purposes. Though the latter practice is clearly illegal, Sabato and Simpson show how numerous loopholes in the law, such as one allowing congressional staffers to campaign in their “free time,”⁴³ are used to provide incumbent congressmen with government paid campaign staff. Similarly, in the

³⁸ *Id.* at 188.

³⁹ *Id.* at 194-201.

⁴⁰ The program provides free gas in order to help voters get to the polls.

⁴¹ SABATO & SIMPSON, *supra* note 6, at 201-02.

⁴² *Id.* at 202-05.

⁴³ *Id.* at 213.

name of improving “constituency service,” members of Congress have developed, at government expense, vast databases containing information about their constituents. This information can then be used at campaign time.⁴⁴

Chapter 9 explores the noxious, yet booming tactic of “push-polling” by which candidates and campaigns spread false rumors about their opponents through phony “polls” asking hypothetical questions. For example, in the 1994 U.S. Senate race in Minnesota, some voters were asked as part of a “poll”: “Would it make a difference if you knew that [Democratic candidate] Ann Wynia was a lesbian?”⁴⁵ Leaving aside any question of the morality of gay baiting as a campaign strategy, Wynia was not a lesbian. The intent of the question was clearly to leave voters with a false impression. Another poll, this one conducted for Virginia Democrats, asked voters if they would still support Republican State House of Delegates candidate Terry Kilgore if they knew that he had “taken” \$4000 from a client. In fact, Kilgore, a lawyer, had received the payment in return for legitimate legal services rendered.⁴⁶

Other forms of telephone sleaze are also described. For example, in one incident that eventually did draw press attention (but only long after the election), Florida Democratic Gubernatorial candidate Lawton Chiles paid for phone bank calls that falsely accused Republican nominee Jeb Bush of having cheated on his taxes and his running mate as being in favor of abolishing Social Security. In addition to these falsehoods, recipients of these calls were told that the calls were being made on behalf of various non-existent “senior” and “Republican” groups.⁴⁷

Finally, in Chapter 10, Sabato and Simpson document a rise in traditional, old-fashioned vote fraud. Examples they cite include, but are not limited to, campaign workers intimidating and lying to elderly and immigrant voters to obtain their signatures on absentee ballots. These campaign workers would then often complete the ballots themselves.⁴⁸ Other campaign workers obtained absentee ballots and “assisted” comatose patients in filling them out.⁴⁹ The authors also described gross irregularities in the handling and counting of ballots⁵⁰ and the rigging of election machines.⁵¹

⁴⁴ *Id.* at 229-36.

⁴⁵ *Id.* at 265.

⁴⁶ *Id.* at 266.

⁴⁷ *Id.* at 257-58. See also Michael Griffin, *Senate Passes Misleading-Call Bill*, ORLANDO SENTINEL, Apr. 20, 1996, at D3.

⁴⁸ SABATO & SIMPSON, *supra* note 6, at 280-82.

⁴⁹ *Id.* at 285.

⁵⁰ *Id.* at 285-87.

⁵¹ *Id.* at 285-86.

As Sabato and Simpson pass through this parade of modern campaign horrors, at every stage they criticize the press for failing to investigate and expose these unsavory and often illegal tactics. The main reason for this failure, the authors suggest, is simply cynicism. However, in some cases, such as the press' reluctance to investigate the use and misuse of "street money" to turn out minority voters, they blame media bias and a climate of "political correctness in the newsrooms of America."⁵²

Surely another reason for the failure to discover, disclose and discuss the resurgence of political corruption is the same problem identified by Sabato a decade ago: the fixation of the press, academia, and the public on the size and sources of publicly disclosed campaign contributions. As Sabato and Simpson stress repeatedly, the ultimate solution to the problems they document must be vigilance by the press and public coupled with punishment at the polls for those who engage in such acts. Yet, instead of looking for vote fraud, slanderous push-polls, street money bribery, and the unlawful use of government staff for campaign purposes, news agencies are devoting their resources, time, and space to the chimera of campaign finance reform. Does Phil Gramm get monetary support from the National Rifle Association's PAC? That is corruption, howls the press, even though Gramm's views on gun control are consistent with those of his Texas constituency and hardly unknown to even the most casually informed voter. With the press focused on such non-corruption, the public remains largely unaware of the serious campaign abuses documented by Sabato and Simpson. Emboldened by their success and the lack of public outcry, the purveyors of such sleazy or illegal tactics feel free to go still further in the next campaign.

In fact, not only the fixation on campaign finance, but the campaign finance laws themselves may be contributing to many of the problems discussed by Sabato and Simpson. For example, the Federal Elections Campaign Act boosted incumbent fund raising advantages and helped to eliminate electoral competition, entrenching the Democratic congressional majority.⁵³ It was in response to this entrenchment that the conservatives gradually founded GOPAC, the Christian Coalition and other groups that could claim exemption from federal campaign contribution laws and thus equalize the money side of campaigning. By squeezing money out of the political system, FECA has also had the perverse effect of making candidates more dependent than ever on special interests that can provide either dollars or manpower.⁵⁴ The Federal Elections Com-

⁵² *Id.* at 188.

⁵³ *Id.* at 328. See also Smith, *supra* note 14, at 1072-75.

⁵⁴ SABATO & SIMPSON, *supra* note 6, at 333. It has also locked special interests into a strategy of attempting to affect legislation, rather than electing sympathizers. Smith, *supra*

mission (FEC), its resources unequal to the task of monitoring contributions, policing “independent” expenditures and “direct advocacy,”⁵⁵ and enforcing its arcane, 264 page code of regulations, has become largely ineffective. Its ineffectiveness has, in turn, eroded respect for all laws governing elections.⁵⁶

In response, campaign finance reform advocates argue that more laws are needed, and more power ought to be given to the FEC to enforce those laws. Sabato and Simpson suggest, however, that it makes no sense to complicate the law still further:

The last two decades have produced greater regulation of politics than occurred in all of the proceeding two centuries, and yet many critics contend that the problems are worse now than they have ever been. Is the logical step really more regulation?⁵⁷

Furthermore, they note that a stronger FEC runs afoul of a core American value, that of unfettered political participation. They also question whether a benign “political police” can exist.⁵⁸

Instead of more regulation, Sabato and Simpson propose what they call “deregulation plus.” They would deregulate much of the campaign finance system, sharply increasing the limits on personal contributions and abolishing limits on political party contributions. At the same time, they would increase disclosure requirements, using federal securities regulation as a model.⁵⁹ Groups such as organized labor, GOPAC and the Christian Coalition would be required to fully disclose all of their political activities, and campaigns would have to disclose more information on individual donors, particularly the donor’s place of employment and profession. This would allow “a well-informed marketplace . . . [to] be the judge of whether someone has accepted too much money from a particular interest group or spent too much to win an election . . . If the facts are as awful as reformers contend . . . then the public will be moved to demand change.”⁶⁰ Penalties for failure to disclose would be ratcheted upward. Full disclosure would push the involvement of the Christian

note 14, at 1075-76. Such “legislative” strategies are generally viewed with greater concern than “electoral” strategies. Cf. Lowenstein, *supra* note 11, at 308-13.

⁵⁵ “Independent” expenditures, that is to say, those not coordinated with a candidate’s campaign, are exempt from regulation under FECA, *Buckley v. Valeo*, 424 U.S. 1, 45 (1976), as are expenditures by political parties which do not directly advocate the defeat or election of a candidate. *Colorado Republican Fed. Campaign Comm. v. FEC*, 116 S. Ct. 2309 (1996).

⁵⁶ SABATO & SIMPSON, *supra* note 6, at 326.

⁵⁷ *Id.* at 327.

⁵⁸ *Id.* at 326-27 (quoting Jan Baran, counsel for the Colorado Republican Federal Campaign Commission in *Colorado Republican Fed. Campaign Comm. v. FEC*, 116 S. Ct. 2309 (1996)).

⁵⁹ *Id.* at 330-35.

⁶⁰ *Id.* at 330.

Coalition, U.S. Term Limits, labor unions, trial lawyers and the businesses funding GOPAC out of the shadows and into the open. Voters, in turn, could use the information to place candidates on the political spectrum and to identify the likely legislative interests of candidates. Such "sunlight" should also reduce any appearance of corruption caused by large contributions.⁶¹

Sabato and Simpson leave many details of such a plan unexplored. For instance, would they allow direct corporate and union contributions, which are banned under current law? Doing so would be consistent with their idea of bringing sources of financial support into the open. Corporations and unions are now allowed to contribute "soft money" directly to political parties. If Congress removes the limits on party contributions to candidates, corporations and unions may give indirectly to candidates through the parties.⁶² It may be better just to allow direct contributions.⁶³ Unfortunately, the authors do not discuss the issue. While they argue for raising the personal contribution ceiling from \$1000 to \$5000 and indexing it for inflation, it is hard to see, using the logic of "deregulation plus," why any limit should remain. Indeed, though Sabato and Simpson skim over such questions, perhaps complete deregulation is their real goal: "The regulation of sources of funds and sizes of contributions," they write, "could be greatly loosened *or even abandoned altogether*."⁶⁴ Wisely, the authors would exempt relatively small political spenders, both groups and individuals, from the increased disclosure requirements, thereby assuring that a federal regulatory web does not entangle grassroots political activity.⁶⁵

Disclosure does not address the concerns of those who favor campaign finance reform as a means to silence some speakers in an effort to enforce their notions of political equality.⁶⁶ Sabato and Simpson do not

⁶¹ *Id.* at 331-32, citing *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

⁶² The right of parties to spend freely in support of their own candidates was recently upheld by the Supreme Court in *Colorado Republican Fed. Campaign Comm. v. FEC*, 116 S. Ct. 2309 (1996).

⁶³ On the other hand, there are benefits to requiring contributions to move through political parties. *See* Lowenstein, *supra* note 11, at 351-55, 361. There are also some reasons for continuing to ban direct contributions by corporations (and labor unions). *See* *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990). However, the force of Sabato and Simpson's argument would seem to favor unrestricted contributions, precisely to avoid gamesmanship and efforts to find loopholes in the law.

⁶⁴ SABATO & SIMPSON, *supra* note 6, at 330 (emphasis added).

⁶⁵ They suggest a reporting threshold of \$25,000 to \$50,000 per election cycle. *Id.* at 332. This may, in fact, be constitutionally required. *See* *McIntyre v. Ohio Elections Comm'n*, 115 S. Ct. 1511 (1995). For a quick overview of some of the problems attendant to disclosure laws, *see* Bradley A. Smith, *Congress Shall Make No Law . . .*, WASH. TIMES, Dec. 29, 1994, at A 19.

⁶⁶ *See e.g.* Hasen, *supra* note 11; Foley, *supra* note 11; Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160 (1994). For critiques of these conceptions of "equality," see

address this alleged problem. Their goal is to expose and eradicate real corruption within the American political system, not to create a new political regime. Theirs is a practical tome. Although they hint at a lack of enthusiasm for such leveling efforts,⁶⁷ they seem to consider the point moot by stating that: “Practically speaking, it may be unrealistic to think that political participants—and the courts—will ever abide the draconian new restrictions on political activity contemplated by some reformers.”⁶⁸ Indeed, the United States Supreme Court has forcefully rejected the equality rationale as a sufficient governmental interest to justify the burden campaign finance regulation places on the First Amendment.⁶⁹

Beyond campaign finance, disclosure is also the preferred remedy for a variety of illnesses discussed in the book. For example, many campaigns hide their dirty tricks, negative phone campaigns, push-polls, and street money payments behind lump sum payments made to law firms or innocuously named consulting firms. These entities then make the actual payments to the vendors and persons involved in such tactics. A person reviewing the reports would have no idea that the \$60,000 payment made to the “ABC Group” or a law firm might be for street money or push-polling.

Sabato and Simpson would require candidates to include on their disclosure reports any subcontractors to whom contractors make campaign-related payments. They would also require candidates to make payments by check, thereby creating a traceable record.⁷⁰ Pollsters and phone banks would have to disclose the campaign or organization paying them to poll and provide a copy of the poll questions on request.⁷¹ In addition, the authors would require congressmen and senators to disclose all contacts with regulatory agencies, making it easier for the press and watchdog groups to spot inappropriate interference and conduct.⁷² Sabato and Simpson suggest several other incremental reforms, such as

BeVier, *supra* note 36; Charles Fried, *The New First Amendment Jurisprudence: A Threat to Liberty*, in *THE BILL OF RIGHTS AND THE MODERN STATE* 225 (Geoffrey R. Stone et al. eds., 1992).

⁶⁷ SABATO & SIMPSON, *supra* note 6, at 327 (“it is perhaps too idealistic and naive to suppose that the FEC can be ‘the first benign political police in the history of mankind’ . . . The United States has thrived on unfettered political activity; it is a core national value”) (citation omitted); *id.* at 329 (“the right to organize and attempt to influence politics is a fundamental constitutional guarantee . . . that need[s] to be forcefully protected. To place draconian limits on political speech is simply a bad idea.”).

⁶⁸ *Id.* at 327.

⁶⁹ *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (“[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . .”).

⁷⁰ SABATO & SIMPSON, *supra* note 6, at 313, 315.

⁷¹ *Id.* at 319-20.

⁷² *Id.* at 335-36.

tax credits for small contributions, but the active ingredient in their prescription is sunlight.

Yet sunlight, the authors are acutely aware, requires more than mere laws requiring disclosure. It requires a press willing to take the information disclosed to the public and willing to dig deeply in its efforts to root out illicit vote fraud and other tactics that would not appear on disclosure forms. It further requires a public willing to act on such information. Campaign finance reform efforts, by distracting the press and public from more serious issues, have hindered, rather than helped, efforts to root out corruption and restore confidence in American democracy.

The disclosure approach requires voters to penalize those who compete unfairly or engage in illegal or sleazy tactics and to reward those who attempt to clean up the system. Unfortunately, Sabato and Simpson seem reluctant to give much credit to the efforts made by Republicans to clean up the system. Though the authors argue that the congressional franking privilege has been long abused and needs to be reformed, they give Republicans no credit for cutting franking budgets and limiting mailings during the ninety days before an election. Instead, they attack the Republicans for “refus[ing] to do away with or even seriously curtail” the frank.⁷³

Similarly, having argued against the growth and misuse of congressional staff, the authors nevertheless dismiss Republican cuts in congressional committee staffs for “leaving unscathed large personal staffs.”⁷⁴ Yet, another trick used by Democrats to control the House of Representatives from the mid-1960s until 1994 was the expansion of subcommittees, allowing more than half of the House’s Democrats to claim the title “chair.” From these fiefdoms, the Democrats extracted political contributions from affected interests and acquired additional staff resources that proved helpful to their reelection campaigns.⁷⁵ Although the authors favor reductions in the number of subcommittees,⁷⁶ the Republicans are not even mentioned in connection with the book’s passing reference to “the House” making a major reduction in subcommittees in early 1995.⁷⁷ While it is true that the Republican efforts in each area leave much to be desired, the authors might have viewed them as positive first steps. Why should any party in power take steps that might harm its future electoral chances when doing so engenders so little praise and so much scorn from the same people arguing for such reforms?

⁷³ *Id.* at 317.

⁷⁴ *Id.* at 317-18.

⁷⁵ *Id.* at 49-50, 57.

⁷⁶ *Id.* at 313.

⁷⁷ *Id.*

The book suffers from other defects which bear mentioning. The authors bill it as an “unusual undertaking,” one of a handful of collaborations between a journalist and political scientist.⁷⁸ The academic reader may not find this a plus. The book often falls into a muckraking style. In one passage, the authors tell us that campaigns are “sinking ever deeper into a bog of sleaze and slime—a primordial political ooze whose toxicity is increased by new technologies that make voters who are already turned off hate politics all the more intensely.”⁷⁹ This hardly seems necessary as Sabato has long been an eminently readable scholar. Many of the attacks on the Christian Coalition needlessly smack of ad hominem ridicule. For example, they tell us that Coalition Executive Director Ralph Reed “had undergone a religious conversion in a Capitol Hill bar.”⁸⁰ In a typical passage, Reed does not exhort his members but rather makes “promises to his disciples.”⁸¹

While the authors disclose many truly alarming cases of true corruption, they sometimes cheapen the work by sensationalizing the mundane. For example, they discuss a \$2.5 million contribution from privately held Amway Corporation to the Republican National Committee to help establish a party television studio. They then tell us that after the Republicans assumed control of congress in 1995, Amway began “cashing in” by helping to persuade Senate Majority Leader Bob Dole to support amendments to the telephone deregulation bill that benefitted the company. Only in a footnote do they reveal that Amway officials merely co-signed a letter with telecommunications managers at thirty-six other corporations, urging the senator to support an amendment to the bill allowing all would-be competitors to enter the market simultaneously.⁸² Further, it is no secret that Amway’s founder and primary shareholder, Richard DeVos, is a long-time conservative activist, political contributor and outspoken supporter of deregulation.⁸³ This type of selective reporting of facts only serves to damage the credibility of the book. Credibility is

⁷⁸ *Id.* at xiii.

⁷⁹ *Id.* at 3. Whether such tabloid prose was needed to reach a mass audience is doubtful: Sabato is normally one of the most readable political scientists around.

⁸⁰ *Id.* at 110.

⁸¹ *Id.* at 112.

⁸² *Id.* at 121-22 and n.7

⁸³ See, e.g., Daniel Morgan, *Selling Free Enterprise: Amway Battles Liberal Ideology in Politics*, WASH. POST, Mar. 14, 1981, at A1 (noting that Amway headquarters features a prominent sign reading “Center for Free Enterprise” and that DeVos and Amway have made financial contributions to the Education Voucher Institute, the Heritage Foundation, Hillsdale College, religious broadcasting stations and other conservative groups, and they have sponsored workshops to train high school teachers in free market economics); Sandra G. Boodman, *Views of Four AIDS Panelists Hit*, WASH. POST, Aug. 26, 1987, at A1 (discussing DeVos’ involvement in the 1980 Reagan campaign; past support of the National Conservative Political Action Committee and the Christian Freedom Foundation; and his appointment by President Reagan to the President’s Commission on AIDS).

important for a work that must frequently rely on confidential sources for its tales of corruption.

Despite such flaws, this book deserves to be read. The first two sections, with their details of corruption, are shocking and at times depressing. The story they tell is vital to those who care about improving American democracy. As depressing as these first two sections of the book are, the concluding section of proposed reforms is ultimately optimistic and refreshing. The authors generally avoid the “correlation equals causation” reasoning that is so typical of popular writing on campaign finance reform, thus allowing them to engage in some serious analysis. They do not present the reader with elaborate schemes and convoluted justifications for evading the First Amendment and regulating political life in an effort to stamp out the alleged, but unproven “corruption” of political campaign contributions, or to promote some chimeric view of equality. Sabato and Simpson may not have all the answers, but at least they begin to address the real problems. Their proposed solutions are sensible, realistic and appropriately modest. They do not propose a new law for every problem.

What our democracy needs more than new campaign laws is an informed, vigilant public. This book is a needed first step to inform that public of the resurgent corruption in politics. It is also an important reminder to the press and academia of our duty to share in that process of education.