

The Erosion of Ethical Standards in Government: Is What It Takes To Get Elected the Root of the Problem?

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Abstract:

In the United States, campaigns for Congress have become exceedingly expensive, necessitating almost constant fundraising, which often involves pandering to various special-interest groups. Most successful campaigns for national office depend heavily on television advertising (one of the reasons they are so expensive). Many of the ads are 30-second attack ads crafted by campaign consultants with few scruples who do not hesitate to distort facts while maligning the opposition. The result is that many successful candidates are ethically compromised by the time they are elected. This paper explores various possible solutions to the problem, among them public financing of campaigns and term limits.

In the United States in the last few years, newspapers have been full of stories about ethical lapses by public officials. It is commonplace to hear people speak with dismay about the erosion of ethical standards in government.

To be sure, misconduct by public officials is not anything new. The presidency of Ulysses S. Grant (1869-1877) became, as one commentator put it, “a carnival of corruption” that some referred to as the “Era of Good Stealings” (a word play on the “Era of Good Feelings,” the label given to the presidency of James Monroe, who served from 1817-1825 during a time when there was very little partisan bickering).¹ A half century after the “Era of Good Stealings,” Charles R. Forbes, a one-time army deserter appointed by President Warren G. Harding (1921-1923) to head up the newly-formed Veterans Bureau got caught with his hand in the till, an unsavory episode followed by the Teapot Dome scandal, in which Secretary of the Interior Albert B. Fall, after receiving a sizeable bribe, let the oilmen who bribed him exploit valuable naval oil reserves.²

While reports of wrongdoing by public officials are widespread, both historically and in contemporary times, it should also be noted that there are individuals with high ethical standards

¹ Thomas A. Bailey, *The American Pageant: A History of the Republic*, 2nd ed. (Boston: D.C. Heath and Company, 1961), 485-88.

² Bailey, *American Pageant.*, 784-785.

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who have chosen lives of public service. An example is provided by Congressman Jim Leach of Iowa, who, prior to serving in Congress, was a foreign service officer with the U.S. Department of State but resigned as a matter of principle when, in what became known as the “Saturday Night Massacre,” President Richard M. Nixon fired Archibald Cox, who had been appointed special prosecutor to investigate the Watergate scandal—a firing which led to the forced resignations of Attorney General Elliot Richardson and Deputy Attorney General William French Smith. Leach, a person of absolute integrity, has never groveled for tainted money or run an attack ad disparaging an opponent.

That having been said, however, few would disagree with the observation that ethical standards in government today are not what they might be. Space does not allow discussing ethical lapses on all levels of government in all governments world-wide. (Would that ethical lapses in government were sufficiently limited in number and scope to discuss in their entirety in thirty pages or less!) Accordingly, this discussion will be limited to issues related to the U.S. House of Representatives and the U.S. Senate. The thesis to be developed here can be stated quite succinctly: *the distorting nature of what it takes to get elected results in many candidates being ethically compromised by the time they are elected, which means that it is not surprising that once they assume office, they are inclined to do things that are unethical.*

Massive Campaign Expenditures

An acquaintance with a passion for politics is fond of saying, “Money is the mother’s milk of politics.” Set against that aphorism is the aphorism that states, “Money is the root of all evil.”³ When it comes to contemporary American politics, both statements are probably correct.

³ The statement is commonly attributed to the Apostle Paul, which is not entirely accurate. I Timothy 6:10 does state, “For the love of money is a root of all kinds of evil, and in their eagerness to be rich some have wandered

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Successful campaigns for Congress today are exceedingly expensive. While the cost of a successful campaign varies somewhat from district to district because of regional differences such as the cost of television advertising, there is no such thing as an inexpensive campaign. In the 2005-2006 election cycle, Vernon Buchanan spent \$8,112,752 in the 13th Congressional District in Florida (as of 31 December 2006). In the 26th Congressional District in New York, Thomas M. Reynolds spent \$5,275,474. In the 15th Congressional District in Illinois, Deborah Pryce spent \$4,696,772 while in the 8th Congressional District in Illinois, Melissa Bean spent \$4,298,167. Even in less expensive contested races, substantial amounts were spent. In the 1st Congressional District in Iowa, which was an open seat, Bruce Braley, who won, spent \$2,235,245 while Mike Whalen, the candidate he defeated, spent \$2,385, 532.⁴

Since candidates for the U.S. Senate run state-wide, rather than in districts that comprise only part of a state as do Congressional candidates (except in states which, because of their smaller populations, have only one Congressional District), it is not surprising that Senate campaigns were even more expensive:

- In a heated race in Pennsylvania, incumbent Rick Santorum, who was defeated, spent \$25,339,209 while challenger Robert P. Casey, who was successful, spent \$17,464,678;
- In Connecticut, Edward M. Lamont, who defeated incumbent Democratic Senator Joseph Lieberman in the primary but lost to him in the general election when Lieberman ran as an independent, spent \$20,318,012 while Lieberman spent \$16,893,416;
- In a hotly-contested race for an open seat in Tennessee, Robert P. Corker, Jr., who won the race, spent \$18,565,935, while his opponent, Harold E. Ford, Jr., spent \$15,557,209;

away from the faith and pierced themselves with many pains” (NRSV). However, the reference here is to the love of money and the desire to be rich. And in any event, many biblical scholars doubt that the Apostle Paul was the actual author of the two letters to Timothy.

⁴ Federal Election Committee, *2005-2006 Summary Reports*.

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- In a bitterly-contested race in Virginia, incumbent George Allen, who was defeated, spent \$16,071,564 while challenger James H. Webb, who was successful, spent \$8,323,744;
- In Montana, one of the smallest states in terms of population but fourth largest geographically, incumbent Conrad Burns, who was defeated, spent \$8,499,041, while challenger Jon Tester, who won, spent \$5,395,513.

Even in states in which there were not competitive races, large amounts of money were spent. In New York, Hillary Rodham Clinton, who did not have strong opposition, spent \$30,789,478, topping the list for net disbursements during the 2005-2006 election cycle.⁵

The magnitude of the money required for a successful campaign for the U.S. House of Representatives or the U.S. Senate is easier to grasp if broken down per diem. Since terms in the U.S. House of Representatives are two years, candidates have 730 days in which to raise the money. If they were to work on fundraising every day (which, in practice, they do not since incumbents are expected to do at least some work for their constituents and many politicians like to spend at least some time with their families), a candidate for Congress would have to raise \$10,959 a day to come up \$8 million in campaign funds, \$8,219 a day to raise \$6 million, and \$5,479 a day to raise \$4 million.

Since U.S. Senate terms are for six years, candidates for the U.S. Senate have more time to raise money—2190 days compared to 730 days for Congressional candidates—but, because they run state-wide, need even more money if they are to put together effective campaigns. Senate candidates must raise \$13,699 a day to accumulate \$30 million in campaign funds, \$9,123 to accumulate \$20 million, and \$4,566 to accumulate \$10 million.

Where Do Candidates Get All This Money?

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The massive amounts of money necessary for effective campaigns come from a variety of sources. Individual contributions, political action committee (PAC) contributions and contributions by party organizations account for much of it. In the 2003-2004 election cycle, Congressional candidates, on average, received 35 percent of their funding from PACs while individual contributions accounted for 56 percent.⁶

Candidates with substantial personal wealth in some cases put a good deal of their own money into their campaigns. For example, Lamont contributed in excess of \$14 million to his ultimately unsuccessful U.S. Senate campaign in Connecticut.⁷

There are no limits as to how much an individual may contribute to her or his own campaign. There are, however, limits specified by federal law as to how much other individuals (including spouses), PACs and party organizations may contribute to campaigns for the U.S. Senate and the U.S. House of Representatives (as well as to campaigns for President). Current limits allow individuals other than the candidate to contribute up to \$2,300 per election to each candidate while multi-candidate PACs may contribute up to \$5,000 per election to each candidate.⁸

The Bipartisan Campaign Reform Act of 2002 (BCRA—also known as the McCain-Feingold Act after its two chief sponsors) does provide for some exceptions. One such exception, which has become known as the “millionaire’s amendment,” allows donors to give up to three times the normal amount to the campaign of a candidate running against a wealthy candidate

⁵ Federal Election Committee, *2005-2006 Summary Reports*.

⁶ Joseph E. Cantor, “Campaign Finance: An Overview.” Library of Congress: Congressional Research Service (31 July 2006), CRS-4.

⁷ David Lightman, “Senate Foes Keep up Fundraising; Liberman Taps Mix of Democrats and Republicans; Lamont Largely Self-Funded,” *Hartford Current* (31 October 2006), A2.

⁸ Federal Election Commission, “FEC Announces Updated Contribution Limits,” (<http://www.fec.gov/press/press2007/20070123limits.html> [accessed 2 February 2007]).

contributing substantial amounts of her or his own money into his or her own campaign.⁹ Since, as noted, Lamont pumped more than \$14 million of his own money into his 2006 U.S. Senate campaign in Connecticut, Lieberman, who was defeated by Lamont in the primary but ran as an independent in the general election and won, was allowed to accept three times the normal amount from his donors to help offset Lamont's funding advantage derived from his personal wealth.¹⁰

Where Does All This Money Go?

A detailed analysis of cash flow during the 2003-2004 election cycle commissioned by the Center for Public Integrity, a nonpartisan Washington-based organization, determined that more than half the money spent by presidential candidates, national party committees, general election candidates for Congress, and independent political groups (often referred to as "527s") went to campaign consultants. A group of approximately 600 professional consultants were paid a combined total of more than \$1.85 billion, with nearly two-thirds of this amount going to media consultants.¹¹

Media consultants, to be sure, don't keep all of that money for themselves. For example, in Barack Obama's 2004 campaign for the U.S. Senate, his campaign paid \$6.2 million to Chicago-based consultant David Axelrod's firm. Based on an analysis of campaign records, the Center for Public Integrity reports that \$5.7 million of the money the Obama campaign paid Axelrod's firm was used to buy television airtime, with another \$409,000 going for production costs. Only \$80,500 is listed as consultant fees.

⁹ Federal Election Commission, "Millionaires' Amendment (updated January 2007) at <http://www.fec.gov/pages/brochures/millionaire.shtml> (accessed 23 March 2007).

¹⁰ Lightman, "Senate Foes Keep up Fundraising,": A2.

That, however, is only part of what Axelrod's firm made on the Obama campaign. Media consultants also receive a commission for purchasing television airtime, which can be as high as 15 percent. The records examined by the Center for Public Integrity study did not indicate how much of the \$5.7 million the Obama campaign spent on television airtime went to Axelrod's firm in the form of commission.¹² Raymond Strother, the lead partner in the consulting firm Strother-Duffy-Strother, notes that consultants working for candidates in hotly contested U.S. House or Senate races often make as much as \$500,000 per candidate, with the total taken in often adding up to several multiples of that amount since many firms work for several candidates. "We make an enormous amount of money here," Strother acknowledges. "We make the kind of money a brain surgeon would make."¹³

A Massive Increase in Television Advertising

Doug Bailey, a former consultant, observes, "TV ad makers make more money the more ads that are bought. And so the money is poured into television It's just nonstop to the point way beyond what makes any sense."¹⁴ While some consultants, including Axelrod, disagree with this assessment, the fact that campaign consultants get a cut of what is spent on media advertising might be one of the reasons that many campaigns today spend far more on television advertising than was the case just a few years ago. Bailey notes, "In the seventies, a campaign that bought 500 gross rating points a week in a market was considered to be either on the verge of or having crossed the line [of] too much. And yet today, in the closing weeks of any contested campaign, it's not unusual for campaigns to be buying 3,000 gross rating points.

¹¹ Sandy Bergo, "A Wealth of Advice," Center for Public Integrity at <http://publicintegrity.org/consultants/report.aspx?aid=533> (accessed 2 February 2007).

¹² Sandy Bergo, "Airtime Is Money," Center for Public Integrity at <http://publicintegrity.org/consultants/report.aspx?aid=535> (accessed 2 February 2007).

Which is just a massive, massive buy.”¹⁵ (A 500-point buy means that the entire viewing audience, at least in theory, will see the ad an average of five times in one week; a 3,000-point buy means that the entire viewing audience will see the ad an average of thirty times in one week.)

Some suggest that factors other than commissions paid media consultants are the reason for these massive buys. Media consultant John Brabender believes that “political commercials just don’t have the impact they used to,” which is why, he suggests, they have to be run a greater number of times in order to have an impact. In part, this is because today, in contrast to previous years, “somebody’s got a headset on, somebody else is on a computer playing video games or checking their e-mail And so just getting a commercial to resonate and be seen is much more difficult.”¹⁶

But whether the explosion of televising advertising is the result of the greed of media consultants who get a commission for every ad they place or the result of increasingly desperate efforts by campaigns to get the attention of tone-deaf viewers who punch a button on the remote control and switch to another channel whenever a political ad appears, the impact on the bottom line is the same—mushrooming campaign costs. While the cost of living increased threefold between 1976 and 2004, aggregate costs of Congressional and U.S. Senate campaigns increased tenfold.¹⁷ As a result, candidates, including incumbents hoping to be reelected, are increasingly beholden to special interest groups and other financial supporters. Larry Makinson, a senior fellow at the Center for Responsive Politics, observes:

¹³ Quoted by Sandy Bergo in “Airtime Is Money.”

¹⁴ Quoted by Sandy Bergo in “Airtime Is Money.”

¹⁵ Quoted by Sandy Bergo in “The More Media, the Better . . . Consultants Urge Ever-Expanding Amounts of Ad Time,” Center for Public Integrity at <http://publicintegrity.org/consultants/report.aspx?aid=539#> (accessed 23 March 2007).

¹⁶ Quoted by Sandy Bergo in “The More Media, the Better.”

¹⁷ Cantor, “Campaign Finance: An Overview,” CRS-2.

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Fund-raising luncheons, breakfasts, and dinners, held virtually every day in the nation's capital, thrive on the unspoken but universally understood premise that the swiftest way to a politician's heart is through a check to the reelection campaign.

The ever-escalating cost of running campaigns has fed this trend and made virtually every member of Congress carefully solicitous of the interests of two crucial sets of constituents—the voters back home in the district and the “cash constituents” who supply the cash it takes to run.¹⁸

An Epidemic of Negative Ads

The massive amounts spent on television advertising are only part of the problem. The content of many of these ads is also problematic. Negative attack ads, many of which distort the facts and make false accusations, flood the airwaves in the days, weeks and months leading up to an election. Examples of ethically-questionable ads that ran in 2006 include the following:

- In the 3rd Congressional District in Wisconsin, challenger Paul R. Nelson ran ads with “XXX” stamped across his opponent's face, claiming that incumbent Rep. Ron Kind “pays for sex.” The basis for this astonishing claim? Kind (along with more than 200 of his colleagues in the U.S. House of Representatives, including, as noted below, Congressman Brad Miller of North Carolina) opposed an unsuccessful attempt to prohibit the National Institutes of Health from funding peer-reviewed sex studies. Nelson's ads also claimed that his opponent wanted to “let illegal aliens burn the American flag” and “allow convicted child molesters to enter this country.”¹⁹
- In the 13th Congressional District in North Carolina, challenger Vernon Robinson ran an ad accusing Congressman Brad Miller of denying soldiers in Iraq the body armor needed to protect them and, instead, spending the money on sex. Annenberg Political Fact Check, a project of the Annenberg Public Policy Center at the University of Pennsylvania, notes that “it is simply false to claim that Miller tried to ‘deny’ body armor to anybody

¹⁸ Larry Makinson, “What Money Buys” in Candice J. Nelson, David A. Dulio and Stephen K. Medvic (eds.), *Shades of Gray: Perspectives on Campaign Ethics* (Washington, D.C.: Brookings Institution Press, 2002), 172.

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[T]he Pentagon was buying every piece of modern body armor that suppliers could produce” As for the allegation that “Miller voted to spend your money to study the sex lives of Vietnamese prostitutes in San Francisco,” Annenberg Political Fact Check notes that while it is true that Miller voted against an amendment that would have forced the National Institutes for Health to terminate this and other programs, “those who spoke in debate did not defend the specifics of the grants, but argued that NIH uses a system of peer review by scientists to allocate research money, and that the process shouldn’t be made political.”²⁰

- In the 24th Congressional District in New York, the National Republican Congressional Committee (NRCC) ran an ad accusing Democratic Congressional candidate Michael A. Arcuri, a district attorney, of paying for phone sex with taxpayers’ dollars. In the ad, a sexy woman purrs, “Hi, sexy. You’ve reached the live, one-on-one fantasy line.” The basis for this claim? The New York Division of Criminal Justice has a phone number similar to that of a porn line. One of Arcuri’s aides, intending to call the Division of Criminal Justice, inadvertently dialed the wrong number. The misdial cost the district attorney’s office \$1.25.²¹
- A television ad placed by the Democratic Congressional Campaign Committee accused Florida Congressman Clay Shaw of profiting from his vote for the Medicare Prescription Drug Plan. The ad stated, “Shaw’s drug deal was bad for seniors and good for drug companies, but there’s more to the story. As he was writing a bill to give them billions in new profits Shaw bought drug company stock for himself. Once the law was signed,

¹⁹ Michael Grunwald, “The Year of Playing Dirtier: Negative Ads Get Positively Surreal.” *Washington Post* (27 October 2006), A01.

²⁰ Annenberg Political Fact Check, “‘XXX’ Marks the Spot Where Campaign Ads Head South” (27 September 2006) at <http://factcheck.org/article442.html> (accessed 30 March 2007).

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Shaw sold his stock, putting profits in his own pocket.” The ad did not mention that Pharmion, the company in which Shaw bought stock, derives most of its revenue from sales outside the United States. The two drugs Pharmion sells in the United States were already covered by Medicare prior to the passage of the Medicare Prescription Drug Plan.²²

- In the bitterly contested U.S. Senate race in Tennessee, the Republican National Committee (RNC) ran an ad lambasting the Democratic candidate, Rep. Harold E. Ford, Jr., for attending a Super Bowl party sponsored by Playboy. In the ad, a scantily-clad actress winks as she reminisces about good times with Ford. After the ad elicited a firestorm of criticism, the RNC pulled it and replaced it with one saying that Ford “wants to give the abortion pill to schoolchildren.”²³
- In the U.S. Senate race in Michigan, challenger Mike Bouchard placed an ad stating that incumbent Senator Debbie Stabenow “was fighting to give Social Security benefits to illegal immigrants” while Michigan was losing jobs. The basis for this claim? Stabenow opposed an amendment that would have prevented formerly illegal immigrants from receiving credit for Social Security taxes paid before they became legal workers. She at no time advocated paying Social Security benefits to illegal immigrants who had not become legal workers.²⁴

Some of the ethical concerns about ads such as these pertain to the content of these ads.

Other concerns relate to what media analyst Lynda Lee Kaid labels “tricks of technology.” She comments:

²¹ Grunwald, “The Year of Playing Dirtier.”

²² Annenberg Political Fact Check, “A ‘Drug Deal’ Gone Bad” at <http://www.factcheck.org/article448.html> (accessed 30 March 2007).

²³ Grunwald, “The Year of Playing Dirtier.”

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Today most concerns in this area center around television's capabilities for altering or enhancing reality. Among the most common concerns with use of television technology are: (1) editing techniques, (2) special effects, (3) visual imagery/dramatizations, and (4) computerized alteration techniques Each of these four major categories of technology has the potential to interfere with the ability of an informed electorate to make rational choices.²⁵

A textbook example of ethically-questionable editing techniques is the television ad run by the Nixon campaign in 1968 that interspersed horrifying battle scene footage from Vietnam with images of Hubert Humphrey (Nixon's opponent) laughing. Other examples are provided by several of the ads noted above, among them the ad that challenger Paul R. Nelson ran in the 3rd Congressional District in Wisconsin charging that the incumbent "pays for sex" and portraying him with "XXX" stamped across his face. Writing in 2000, Kaid notes a "tremendous increase in the percentage of distortions in recent campaigns." Even more disturbing is her finding that technological distortion "rewards the perpetrators." Drawing upon experimental studies she has done, she reports that "such distortions enhance the image of the candidates who sponsor such spots and increase the likelihood that voters will select the sponsoring candidate, to the detriment of the opponent who is damaged by the spots."²⁶

Others concur in this assessment. The commentary on a survey conducted by the Project on Campaign Conduct notes, "The conventional wisdom among campaign professionals is that negative ads do, in fact, work [W]hile voters might not like negative ads, their perceptions of candidates attacked in negative ads are tarnished by the information they are exposed to."²⁷

²⁴ Annenberg Political Fact Check, "Republican Campaign Theme Debunked: Social Security for Illegal Immigrants" at <http://factcheck.org/article447.html> (accessed 30 March 2007).

²⁵ Lynda Lee Kaid, "Ethics and Political Advertising," in Robert E. Denton, Jr., *Political Communication Ethics: An Oxymoron?* (Westport, Conn.: Praeger, 2000), 157. See also Lynda Lee Kaid, "Political Advertising," in Lynda Lee Kaid (ed.), *Handbook of Political Communication Research* (Mahwah, New Jersey, Lawrence Erlbaum Associates, Publishers, 2004), 155-202.

²⁶ Kaid, "Ethics and Political Advertising," 158.

²⁷ "Do Negative Campaign Ads Work?" Posted on ThisNation.Com: American Government & Politics Online at <http://www.thisnation.com/question/031.html> (accessed 24 March 2007). The commentary, however, adds two qualifications to this general observation: "First, according to the survey data presented above, voters do not treat all negative information equally. If the allegations or information presented in a negative ad are not perceived as relevant, the effects of the ad will probably be less significant. Second, while negative ads have the capacity to

The Disclaimer Requirement

In an effort to diminish the number of negative ads, the Bipartisan Campaign Reform Act of 2002 (BCRA) requires that radio and television ads authorized by a candidate include a statement by the candidate herself or himself identifying himself or herself and stating that she or he has approved the ad by making a statement such as “My name is (name of candidate) and I approved this message.” In the case of television ads, this statement must be accompanied either by a full-screen view of the candidate making the statement or a “clearly identifiable photographic or similar image of the candidate that appears on the screen during the voice-over statement.”²⁸ The hope was that this would discourage candidates from running negative ads that distort the facts since, it was assumed, they would not want their voices and images to appear in such ads.

In practice, it has not worked out that way. In the attack ad noted above accusing North Carolina Congressman Brad Miller of denying body armor to troops in Iraq and instead spending money for sex, challenger Vernon Robinson appeared in the ad and stated, “I’m Vernon Robinson and I approved this message because Brad Miller is out of touch and soon, he’ll be out of Congress.”²⁹ And in the ad falsely accusing Sen. Debbie Stabenow of “fighting to give Social Security benefits to illegal immigrants,” challenger Mike Bouchard had no qualms about going on camera and saying, “I’m Mike Bouchard and I approve this message.”³⁰ The practical impact of the candidate appearing in a negative ad that plays loose with the facts and stating “I approve

weaken political support for a candidate’s opponent, ‘going negative’ in a campaign can also diminish the attacking candidate’s stature among voters.”

²⁸ Federal Election Commission, *Party Guide* (Chapter 9: Communications) at <http://www.fec.gov/info/PartyGuide/Chapter9.htm> (accessed 30 March 2007).

²⁹ Annenberg Political Fact Check, “‘XXX’ Marks the Spot Where Campaign Ads Head South.”

³⁰ Annenberg Political Fact Check, “Republican Campaign Theme Debunked.”

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this message” is that the candidate is ethically compromised with his or her reputation tarnished by being publicly portrayed as approving false or misleading statements.

“Merchandise Packaged to Be Sold”

But, some might ask, why don’t candidates, who are the ones whose reputations are on the line, stand up and say, “I’m not going to run attack ads distorting the record of my opponent”? A few, including Congressman Leach of Iowa, have done precisely that. In many cases, however, candidates do not control their own campaigns. In virtually all cases in which elections are hotly contested, campaigns are run by a cadre of professional political operatives ranging from campaign managers and fundraisers to the ever-present media consultants. In part, this is because most candidates do not have the expertise to do such things as put together an effective media campaign. In part, this is because the time demands on candidates’ schedules are so immense that they scarcely have time to do anything other than meet with potential donors and dash from campaign appearance to campaign appearance, while gulping down gallons of strong coffee and clogging their arteries with a steady diet of fast food. The result is that professional political operatives run the show, with candidates becoming, as one unsuccessful candidate in a hotly-contested race put it, nothing more than “merchandise packaged to be sold.”

Just as there are conscientious people like Congressman Leach of Iowa who have been elected and reelected to Congress, there *are* media consultants and other professional political operatives who are highly-principled people of integrity. There are others who are not—unscrupulous operatives who are perfectly willing to distort the facts or do whatever it takes to get their clients elected. The impact of the latter is impoverishment of our political processes in an era in which, as former president Gerald R. Ford put in an address he delivered in the Old

Senate Chamber on May 23, 2001, “so much of what passes for public life consists of little more than candidates without ideas hiring consultants without convictions to stage campaigns without content.”³¹

Hired Guns or Conscientious Professionals?

Carol Whitney, who is the president of a political consulting firm, notes with dismay that “calling oneself a *political consultant* is, in the public’s mind, the equivalent of staking out territory somewhere below lawyers, used-car salesmen, and con artists, and around the level of pond scum. It is no wonder political consultants are not taken seriously when we talk about setting an ethical tone for a campaign.”³²

Given the negative public perception of political consultants, it might surprise some to discover that there is a professional association of political consultants that has a code of ethics. The mission statement of the American Association of Political Consultants (AAPC), a bipartisan association of professional political consultants founded in 1969, begins with the assertion that they have joined together to “raise the standards of practice in political consultation, thereby enhancing the political process and improving public confidence in the American political system.”³³ The organization’s code of ethics states the following:

As a member of the American Association of Political Consultants, I believe there are certain standards of practice which I must maintain. I, therefore, pledge to adhere to the following Code of Professional Ethics:

³¹ Gerald R. Ford, Leader’s Lecture Series Address, 23 May 2001 at http://www.senate.gov/artandhistory/history/common/generic/Leaders_Lecture_Series_Ford.htm (accessed 30 March 2007).

³² Carol Whitney, “Wolves or Watchdogs?” in Nelson, Dulio and Medvic, (eds.), *Shades of Gray*, 98. She concludes somewhat wistfully, “As consultants, we face more questions than answers. Most political consultants are more than willing to play a role in fostering ethical campaigns. But we need the help of the public and the media if we are to succeed” (109).

³³ American Association of Political Consultants, “Mission Statement” at <http://www.theaapc.org/content/aboutus/missionstatement.asp> (accessed 3 April 2007).

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- I will not indulge in any activity which would corrupt or degrade the practice of political consulting.
- I will treat my colleagues and clients with respect and never intentionally injure their professional or personal reputations.
- I will respect the confidence of my clients and not reveal confidential or privileged information obtained during our professional relationship.
- I will use no appeal to voters which is based on racism, sexism, religious intolerance or any form of unlawful discrimination and will condemn those who use such practices. In turn, I will work for equal voting rights and privileges for all citizens.
- I will refrain from false or misleading attacks on an opponent or member of his or her family and will do everything in my power to prevent others from using such tactics.
- I will document accurately and fully any criticism of an opponent or his or her record.
- I will be honest in my relationship with the news media and candidly answer questions when I have the authority to do so.
- I will use any funds I receive from my clients, or on behalf of my clients, only for those purposes invoiced in writing.
- I will not support any individual or organization which resorts to practices forbidden by this code.³⁴

But is this code of ethics simply window dressing? Or is it indicative of high ethical standards that are honored in practice? If the latter, why are viewers bombarded with grossly misleading ads such as those noted above?

It is worth noting that while all AACP members sign a statement saying they support the code of ethics when they apply for or renew their membership, there is no enforcement mechanism that imposes penalties on those who fail to comply with its provisions. This problem is exacerbated by the fact that fewer than half of those who do political consulting are AACP members. Thus it is not surprising that AACP members and non-members alike see the code as having little effect on professional conduct.³⁵

³⁴ American Association of Political Consultants, "Code of Ethics" at <http://www.theaapc.org/content/aboutus/codeofethics.asp> (accessed 3 April 2007).

³⁵ Candice J. Nelson, Stephen K. Medvic, and David A. Dulio, "Political Consultants: Hired Guns or Gatekeepers of Democracy" in Nelson, Dulio and Medvic, (eds.), *Shades of Gray*, 88-90.

Is There A Solution?

In a fascinating but troubling book entitled *Politics Lost: How American Democracy Was Trivialized by People Who Think You're Stupid*, veteran political reporter Joe Klein, after chronicling the negative impact of campaign consultants on the political processes, writes:

The ceremonies of consultancy have become threadbare and transparent; they may still work, but only in the absence of a real alternative.

And what might that alternative be?

A politician who refuses to be a “performer,” at least in the current sense. Who does not orate. Who never holds a press conference in front of an aircraft carrier or in a flag factory. Who does not assume the public is stupid or uncaring. Who believes in at least one idea, or program, that has less than 40 percent support in the polls . . . Who radiates good sense, common decency, and calm. Who is not afraid to deliver bad news. Who is not afraid to admit a mistake.³⁶

A compelling vision. But is it realistic? Would that it were. The reality, however, is that in campaigns for federal office, no candidate is going to be successful without gaining access to television. That means working hard to raise the money to pay for television advertising (unless like Lamont in Connecticut the candidate is wealthy and willing to put millions of dollars of his or her own money into the campaign). It means being, as Makinson put it, “carefully solicitous of the interests” of those who supply the money needed to run a successful campaign. And it means holding press conferences in front of aircraft carriers and in flag factories in the hope of getting what media consultants refer to as “earned media”—i.e., making the local (or better yet the national) news with a fifteen-second sound bite. (Campaign consultants with stopwatches in hand coach candidates until they can get their message across in 15 seconds or less, with the message often being scripted by consultants—a conditioning process that does nothing to contribute to thoughtful debate of important public policy issues.) In short, because of the

³⁶ Joe Klein, *Politics Lost: How American Democracy Was Trivialized by People Who Think You're Stupid* (New York: Doubleday, 2006), 240.

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stranglehold that money and television have on the political processes, nothing is going to change until the milieu in which the political processes operate changes.

How might this milieu be changed? Three structural changes that merit consideration are (a) extending public funding for campaigns to candidates for the U.S. House of Representatives and the U.S. Senate, (b) authorizing the Federal Communications Commission (FCC) to charge spectrum licensing fees for television and radio stations applying for renewal of their licenses, with the provision that these fees could be reduced or entirely waived if television and radio stations make specified amounts of airtime available to candidates for federal office, and (c) enacting term limits to diminish the power of incumbency.

Public Funding for Congressional Campaigns

For years, U.S. Senator Dick Durbin of Illinois was opposed to public financing of Congressional campaigns because, as he puts it, he “didn’t want to see one public dime going to David Duke if he runs for public office.”³⁷ (Duke, a white supremacist and former Ku Klux Klan grand wizard, ran unsuccessfully for the U.S. Senate in 1996 in Louisiana and the U.S. House of Representatives in 1999.) But now Durbin has changed his mind about public funding. While he still does not want to see a dime of public money going to candidates like Duke, he believes that “the stakes are too high now not to change.” Accordingly, he has joined Sen. Arlen Specter of Pennsylvania, and Congressman John Tierney of Massachusetts in introducing two bills, one pertaining to U. S. Senate races, the other pertaining to races for the U.S. House of

³⁷ “Senator Durbin’s Statement on the Floor of the U.S. Senate, Tuesday, March 20, 2007” at <http://durbin.senate.gov/issues/campaignFinanceReform.cfm> (accessed 27 April 2007).

Representatives. Both bills would allow qualified candidates to receive financing from a public fund.³⁸

The proposal that the federal government should provide funding for federal campaigns is not a new one. It was included in the state of the union message President Theodore Roosevelt sent to the Senate and the House of Representatives on December 3, 1907. In his this message, President Roosevelt stated:

There is a very radical measure which would, I believe, work a substantial improvement in our system of conducting a campaign, although I am well aware that it will take some time for people so to familiarize themselves with such a proposal as to be willing to consider its adoption. The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money. Then the situation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor; and the necessary publicity for receipts and expenditures could without difficulty be provided.³⁹

Congress was in no hurry to enact the “very radical measure,” waiting until 1966 to enact the first public funding legislation, which would have made U.S. Treasury funds available to presidential candidates via payments to their political parties—essentially what Roosevelt proposed.⁴⁰ The 1966 act precipitated a firestorm of controversy. Congress, which few would characterize courageous, suspended the act a year after passing it but revisited the issue four years later, passing the 1971 Revenue Act, which provided for public funds going to candidates, rather than to party organizations. The 1971 revenue act specified that the funds come from the Federal Election Campaign Fund, into which are channeled the dollars (initially one but now three) voluntarily checked off by taxpayers on their federal income tax forms. (Since the check off is not in addition to the amount of taxes owed, it in effect allows taxpayers to allocate three

³⁸ “Durbin, Specter, Tierney Introduce Bills to Reform Financing of Congressional Elections” at <http://durbin.senate.gov/record.cfm?id=270951> (accessed 27 April 2007).

³⁹ Theodore Roosevelt, “State of the Union Message,” 3 December 1907 at <http://www.theodore-roosevelt.com/sotu7.html> (accessed 27 April 2007).

⁴⁰ Federal Election Commission, *Public Funding of Presidential Elections* (published in August 1996 and updated April 2007) at <http://www.fec.gov/pages/brochures/pubfund.shtml#1> (accessed 29 April 2007).

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dollars of their taxes to the Federal Election Campaign Fund.)⁴¹ Candidates who accept public funding must agree to spending limits which are adjusted annually for inflation. They are currently \$40.89 million for primaries (with this amount broken down into limits for each state) and \$81.78 million for the general election.⁴² (Because of these limits, candidates such as Hillary Clinton and Barack Obama who are able to raise large sums of money frequently choose not to accept public funding, particularly for primary elections.)

The legislation which Sens. Durbin and Specter and Congressman Tierney are introducing—legislation they have labeled the “Fair Elections Now Act”—draws upon the experiences of Arizona, Connecticut and Maine, which fund statewide and legislative campaigns. For U.S. Senate candidates, the proposed legislation would work as follows:

- In **Stage One**, the proposed act would allow a U.S. Senate candidate to solicit and accept contributions for seed money of up to \$100 from individual contributors (but not from PACs or other special interests). Seed money expenditures would be limited to a total of \$75,000 plus \$7,500 times the number of Congressional Districts in the state, minus one. In California, which has 53 Congressional Districts, this would amount to \$390,074, while in Montana, which has only one Congressional District, the candidate would be limited to spending \$75,000.
- **Stage Two** would involve qualifying as a publicly financed candidate. To do this, a major party candidate would be required to gather a specified number of \$5 contributions from residents of the candidate’s home state. The minimum number of qualifying \$5 contributions in a particular state would be equal 2,000 plus 500 times the number of Congressional districts, minus one. Independent and minor party candidates would have

⁴¹ Federal Election Commission, *Public Funding of Presidential Elections*.

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to raise half again as many \$5 contributions from state residents. Thus a U.S. Senate candidate in California would need to gather \$5 contributions from 28,000 individuals while a U.S. Senate candidate in Montana would only need contributions from 2,000 individuals.

- **Stage Three** would involve allocating funds to qualified candidates with qualified candidates receiving general election funding equal to \$750,000 plus \$150,000 times the number of Congressional Districts, minus one, in addition to 67% of this amount for a primary election. Thus a U.S. Senate candidate in California would receive \$5.276 million for a primary election and \$7.875 million for the general election while a U.S. Senate candidate in Montana would receive \$502,500 for a primary election and \$750,000 for a general election. Participating candidates would receive additional funds if facing a non-participating candidate who raised funds in excess of the amount determined by the formula. The allocations would also be adjusted for cost differences in various media markets.⁴³

Some of the particulars of this proposal are debatable. For example, the funding formula might be unfair to candidates running in states with smaller populations. As noted above, in the 2006 race for U.S. Senate in Montana, incumbent Conrad Burns, who was defeated, spent \$8,499,041, while challenger Jon Tester, who won, spent \$5,395,513. The formula in the legislation proposed by Senators Durbin and Specter would only allow each candidate in Montana a total of \$1.253 million for the primary and general elections combined. And, as has

⁴² Federal Election Commission, *Presidential Spending Limits "If the Election Were Held in 2007"* at http://www.fec.gov/pages/brochures/pubfund_limits_2007.shtml (accessed 29 April 2007).

⁴³ Dick Durbin, "Campaign Finance Reform: Fair Elections Are Needed" at <http://durbin.senate.gov/issues/campaignFinanceReform.cfm> (accessed 27 April 2007).

been the experience with public funding for presidential candidates, the adjustments made for inflation might not keep up with escalating campaign costs.

Another possible problem with this proposal is that while it would free candidates from the need for non-stop fundraising, it would not necessarily do anything to change the corrupting impact of attack ads that distort or misrepresent the facts. This problem might be addressed by reducing the allocations to candidates whose campaigns place attack ads that distort or misrepresent the facts, as determined by an independent adjudicatory body such as the Center for Public Integrity or the Annenberg Public Policy Center at the University of Pennsylvania, which sponsors the Annenberg Political Fact Check Project. Granted, it is uncertain whether penalizing candidates for ads that distort or misrepresent the facts would pass the test of constitutionality. However, there is something to be said for leaving it to the courts to decide whether such a policy would constitute an abridgement of First Amendment rights, rather than dismiss it out of hand.

While there is room for debate about some of the details of the bills that Senators Durbin and Specter and Congressman Tierney are sponsoring, public financing of Congressional and U.S. Senate campaigns is an idea whose time has come. The authors of a report issued by the Brennan Center for Justice got it right when they observed that public financing “would free public officials to respond to the interests of voters without worrying about their ability to raise money from deep-pocketed donors.”⁴⁴

Spectrum Licensing Fees and Campaigns for Federal Office

⁴⁴ Brennan Center for Justice, “Breaking Free with Fair Elections: A New Declaration of Independence for Congress” (March 2007) at http://www.cleanupwashington.org/documents/breaking_free.pdf (accessed 27 April 2007).

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Charles M. Firestone, executive director of the Communications and Society Program at the Aspen Institute, has suggested using a spectrum check-off as an alternative to public interest regulation of broadcasters. Stripped to its essentials, his proposal would (a) charge television and radio stations an annual spectrum fee, based on market factors, and (b) allow them to “check-off” (reduce) this fee, up to the full amount, by airing programs or spots that the Federal Communications Commission (FCC), consistent with parameters established by Congress, determines to be in the public interest. He suggests that money collected from radio and television stations that choose to pay the annual spectrum fee, rather than provide public interest programs or spots, could be used for public interest purposes.⁴⁵

While Firestone’s proposal defines public interest more broadly than political commercials (though he does include political commercials as an example of what might be done), the spectrum fee check-off approach might well be an effective means of ensuring television and radio access for candidates for federal office either directly or indirectly—directly if radio and television stations chose to make time available to candidates, rather than pay the annual spectrum fee, or indirectly if the money collected from radio and television stations that chose to pay the annual spectrum fee were allocated to candidates running in those coverage areas in the form of vouchers that could be used to purchase television and radio time.

Firestone’s proposal is set against the backdrop of a complex history of federal licensing of the airwaves. The story begins in 1912 when Congress gave the Commerce Department the authority to assign radio spectrum frequencies. Secretary of the Commerce Herbert Hoover, who was to become the 31st President of the United States (1929-1933), had his hands full trying impose some semblance of order on the radio stations that were sprouting up all over the place,

⁴⁵ Charles M. Firestone, “The Spectrum Check Off Alternative to Public Interest Regulation of Broadcasters” (Aspen Institute 2006) at <http://www.aspeninstitute.org/site/pp.aspx?c=huLWJeMRKpH&b=613849&printmode=1>

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many of which simply chose to ignore the frequency spacing that Hoover assigned. Among those ignoring the assigned frequency was Aimee Semple McPherson, a popular evangelist whose Los Angeles radio station operated on, as one historian put it, “whichever airwave her engineers and the Lord felt obliged to utilize.”⁴⁶

Something clearly had to be done about this chaotic situation. In 1922, a coalition of radio station managers formed the National Association of Broadcasting (NAB) and called for more effective government regulation to prevent interference with one another’s frequencies. Responding to this demand for regulation, Congress enacted the Radio Act of 1927, a measure introduced by Senator Clarence Dill of Washington. The bill created a five-member Federal Radio Commission (FRC) with the power to allocate frequencies, which Hoover and Dill viewed as a limited national resource, similar to public land.⁴⁷ The Radio Act of 1927 was succeeded by the Communications Act of 1934, which established the Federal Communications Commission (FCC) and, as amended, continues to be the law of the land. FCC responsibilities include regulating interstate and international communications by radio and television. Among these responsibilities is the licensing of radio and television stations.⁴⁸

The characterization of the airwaves as a limited national resource similar to public lands suggests that just as the grazing rights and other uses of public lands can be auctioned off, so also can use of the airwaves. And indeed, in recent years, that is precisely what has happened as cell phone companies and other potential users of the airwaves have been invited to submit bids for

(accessed 29 April 2007).

⁴⁶ James L. Baughman, *Television’s Guardians: The FCC and the Politics of Programming 1958-1967* (Knoxville, Tenn.: The University of Tennessee Press, 1985), 5.

⁴⁷ Baughman, *Television’s Guardians*, 6.

⁴⁸ Federal Communications Commission, “About the FCC” at <http://www.fcc.gov/aboutus.html> (accessed 4 May 2007).

specified portions of the spectrum.⁴⁹ Just as the rancher who submits the winning bid for grazing rights for a particular parcel of public land has the exclusive right to graze her or his cattle on the land, the business entity submitting the winning bid for a particular portion of the spectrum has the exclusive right to use that portion of the spectrum.

Auctioning off the use of designated portions of the spectrum is a relatively recent development. However, from the earliest days of the licensing of radio (and in time television) stations, it has been understood that when the FCC grants exclusive use of a particular frequency to a radio or television station, the federal government is giving them something of value, just as granting a lease to ranchers to graze their cattle on public land is giving them something of value. While it has not been the practice of the federal government to charge radio and television stations (apart from application fees) for the use of their designated portions of the spectrum, the expectation has been that radio and television stations include public service programming on the frequencies for which they have been granted exclusive use. The Radio Act of 1927, for example, stated that the FRC “from time to time, as public convenience, interest or necessity requires, shall . . . prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”⁵⁰ The Communications Act of 1934 repeats the phrase “public convenience, interest or necessity” (which has roots in an amendment to the Interstate Commerce Act⁵¹), noting that the FCC “if public convenience, interest or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefore a station license provided for by this Act.”⁵²

⁴⁹Craig Bomberger, *Spectrum Auction Process and Integrated Spectrum Auction System* Federal Communications Commission (27 July 2005) at <http://wireless.fcc.gov/auctions/62/CBomberger.ppt#1> (accessed 4 May 2007).

⁵⁰ The Radio Act of 1927 (Sec. 4) at <http://showcase.netins.net/web/akline/pdf/1927act.pdf> (accessed 4 May 2007)

⁵¹ Baughman, 6.

⁵² Communications Act of 1934 (Sec. 307) at <http://www.fcc.gov/Reports/1934new.pdf> (accessed 4 May 2007).

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In the course of the years, exactly what this public interest might entail has been far from a settled matter, in part because of First Amendment considerations. While grazing Hereford cattle on public lands does not raise any freedom of expression issues, the same is not true with respect to radio and television. A report issued by the National Telecommunications and Information Administration (NTIA), a federal agency created in 1978 to advise the president with respect to telecommunications and information policy, states, “The FCC’s authority, while extensive, is constrained by traditional First Amendment principles. Government may not censor broadcasters . . . nor may it regulate content except in the most general fashion, such as favoring broad categories of programming such as public affairs and local programming.”⁵³ The extent to which public service programming expectations can be mandated without violating radio and television stations’ First Amendment rights, however, has been—and continues to be—a matter of considerable controversy.⁵⁴

This brief historical overview sets the context for Firestone’s proposal. Charging an annual spectrum fee, based on market factors, would be consistent with the view that the spectrum is a national resource similar to public lands. Reducing or waiving the annual spectrum fee for radio and television stations that do public service programming would be a way of ensuring that the public interest is served without programming regulations that might not sit comfortably with First Amendment guarantees. Allowing check-offs for air time made available to candidates for the U.S. House of Representatives and U.S. Senate, provided it is done in a manner consistent with the fairness doctrine specified in Sec. 315 of the Communications Act of 1934, would give candidates access to airtime without cost to their campaigns, thus reducing

⁵³ National Telecommunications and Information Administration, “The Public Interest Standard in Television Broadcasting” at <http://www.ntia.doc.gov/pubintadvcom/novmtg/pubint.htm> (accessed 4 May 2007).

campaign costs. And as noted above, the funds generated by annual spectrum fees paid by stations opting not to provide candidates with uncompensated airtime could be allocated to candidates in the form of vouchers to purchase airtime, thus ensuring all qualified candidates access to radio and television while holding down campaign costs.

Term Limits

Several years ago, an editor from *USA Today* asked if I would write a piece on term limits, with the length not to exceed 450 words. In this piece, I argued that “if a term-limit amendment prevented making a career of serving in Congress, it is reasonable to expect that those elected would be more inclined to make courageous decisions on controversial matters In the current climate, it is doubtful there is a better means at hand for assuring responsibility in government.”⁵⁵

In the course of the years, there are some matters about which I have changed my mind, among them the question of whether there should be public funding for campaigns for the U.S. House of Representative and the U.S. Senate. A constitutional amendment specifying term limits for members of Congress, however, is not one of them.

At the Constitutional Convention in 1787, there were various proposals for the length of congressional terms.⁵⁶ Little attention, however, was given to the question of how many terms one could serve—an omission that provided grist for the mills of the antifederalists opposed the new constitution. One of the *Letters from the Federal Farmer to the Republican*, written in opposition to the new constitution, called for rotation of members of the U.S. Senate, suggesting,

⁵⁴ Baughman provides a useful overview of this debate in *Television's Guardians*, see esp. pp. 3-53. See also Mara Einstein, *Media Diversity: Economics, Ownership, and the FCC* (Mahwah, New Jersey: Lawrence Erlbaum Associates, Publishers, 2004), 1, 8-11.

⁵⁵ Dan Lee, “Term Limits: Old Argument Still Valid,” *USA Today*, 17 March 1995, 15A.

“Even good men in office, in time, imperceptibly lose sight of the people, and gradually fall into measures prejudicial to them.”⁵⁷ While the antifederalists were mistaken on other matters and we can be grateful their opposition to the proposed constitution did not prevent its ratification, on this matter, they were right: it is possible for long-term incumbents to “lose sight of the people.”

Granted, as opponents of term limits are quick to point out, terms of office for members of Congress are already limited—two years for members of the U.S. House of Representatives and six years for members of the U.S. Senate. In theory, voters can limit the time members of Congress serve by choosing not to reelect them when their terms expire. As Charles R. Kesler, an opponent of term limits, puts it, “If the American people want to vote all incumbents out of office . . . they can do so with but a flick of a lever.”⁵⁸

In a certain technical sense, Kesler, is, of course, right. In practice, however, incumbents are rarely defeated. Incumbents enjoy tremendous advantages in everything from name recognition to fundraising. Even in years in which political power shifts from one party to the other, the vast majority of incumbents are reelected. In 1994, when Republicans gained control of both houses of Congress, 349 of the 387 incumbents seeking reelection were reelected, a success rate of 90.2 percent. And in 2006, when control of both houses of Congress shifted to the Democratic Party, of the 405 incumbents running for reelection, 380 won—93.8 percent of those running for reelection. While the percentage of U.S. Senators winning reelection tends not to be quite as high, the vast majority of incumbents in these races win as well.

⁵⁶ See, e.g., Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention May to September 1787* (Boston: Little, Brown and Company, 1966), 99, 122, 205-206.

⁵⁷ “The Senate” in *Letters from the Federal Farmer to the Republican*, ed. Walter Hartwell Bennett (University, Alabama: University of Alabama Press, 1978), 73. For a history of the notion of rotation in office, see Mark P. Petracca, “Rotation in Office: The History of an Idea” in Gerald Benjamin and Michael J. Malbin, eds., *Limiting Legislative Terms* (Washington, D.C.: Congressional Quarterly, Inc., 1992), 19-51. A useful overview of the federalist-antifederalist debate is provided by Michael J. Malbin in “Federalists v. Antifederalists: The Term-Limitation Debate at the Founding” in Benjamin and Malbin, eds., *Limiting Legislative Terms*, 53-62.

The simple fact of the matter is that if we are not to have a situation in which members of Congress in time “lose sight of the people,” term limits are a necessity. *Washington Post* columnist George F. Will put it well in a book entitled *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy* when he stated, “My reflex is to recoil from proposals for constitutional change. However, under the accumulating weight of evidence, I, like millions of other Americans, have been driven to the conclusion that something must be done to restore Congress to competence and respect, and that term limits can do it.”⁵⁹

Will might be overly optimistic about what term limits can accomplish. Term limits alone won’t restore Congress to competence and respect. And they come with their own set of costs. Even if the limits allow sufficient time in office to build up expertise (my own preference is five terms for a total of ten years for members of the U.S. House of Representative and two terms for a total of twelve years for members of the U.S. Senate), they would have the deleterious effect of forcing experienced legislators who are serving their constituents well—and there are a number who do—to leave office once they reach the limit of the number of terms that can be served.⁶⁰ When all things are considered, however, the advantages more than offset the disadvantages. Chief among these is that if members of Congress knew they were going to be there for only a limited period of time, they might be more inclined to take courageous positions on the issues that face us, rather than simply being preoccupied with perpetuating their power.

Summing It All Up

⁵⁸ Charles R. Kesler, “Bad Housekeeping: The Case Against Congressional Term Limits” in Benjamin and Malbin, eds., *Limiting Legislative Terms*, 250.

⁵⁹ George F. Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy* (New York: The Free Press, 1992), 3.

⁶⁰ Congressman Jim Leach of Iowa, who has been cited throughout this paper as an example of a member of Congress with high ethical standards, was first elected in 1976. A five-term limit would have forced him to leave

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The bottom line in all of this is that what it takes to get elected can—and often does—ethically compromise candidates for the U.S. House of Representatives and the U.S. Senate. Public financing of campaigns can marginally improve the situation. So can a spectrum fee check-off system giving candidates access to airtime and enacting a constitutional amendment limiting the number of terms that anyone can serve. Taken together, the collective impact of these three measures might well exceed the sum total of the parts, restoring a measure of decency and conscientiousness to government.

At the same time, we are naïve if we think that these measures, either singly or in combination, can fully resolve the problem. As long as greed and lust for power are part of human nature, ethical lapses are inevitable. The three measures noted above, however, can marginally improve the situation. Though we might hope for more, marginal improvement is surely preferable to no improvement at all. A glass half full is surely preferable to a glass that is entirely empty.⁶¹

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office in 1987. As it turned out, to the surprise of most election observers, he was one of the 25 incumbents defeated for reelection in 2006, after having served in the U.S. House of Representatives for 30 years.