



Citizens for a Sound Economy Foundation
Seventh Floor
1250 H Street, NW
Washington, DC 20005

James C. Miller III
Counsel

Tel.: 202-942-7617

Web: www.cse.org

Fax: 202-942-7668

E-mail: miller@cse.org

December 17, 1997

INCUMBENTS ADVANTAGE

by

James C. Miller III¹

This preliminary work is part of a broader book project on political competition sponsored by the Pew Charitable Trusts. The focus of the project is competition in political markets -- that is, the institutional arrangements within which we select agents to make choices on our behalf. Because of its importance, because of data availability, because of the abundance of research in the area, because most people are more familiar with this market, and because of its clear-cut anticompetitive features, the federal legislature is the subject of most of the examples and analysis.

I plan to address later, but not here, why one should presume that more competition in political markets would result in more efficient outcomes. For now, I will simply assume that more competition would improve performance -- that is, lead to more efficient, or otherwise preferred outcomes. Nor will I deal here in particular detail with

¹The author is Distinguished Fellow at both Citizens for a Sound Economy Foundation and the Center for Study of Public Choice at George Mason University. He is also a Senior Fellow (by courtesy) of the Hoover Institution. Support by the Pew Charitable Trusts as well as able research assistance by Parker Normann are gratefully acknowledged. Comments are welcome.

the principal-agent problem nor with the two major problems of indivisibilities in political markets: (a) majority or plurality vote selects one agent to represent everyone, and (b) once an agent is selected, the choice cannot be changed easily for a fixed period of time. Finally, I am not yet in a position to make specific recommendations. Those will come later also.

Contrast with Competition in Commercial Markets

I've found it useful to contrast competition in political markets with competition in commercial markets, primarily as a pedagogical device. It is not my purpose here to assess the competition/efficiency nexus in commercial markets nor to defend the federal antitrust laws and their enforcement.² Rather, I want to get people interested in the anticompetitive features of political markets and their implications. This is a difficult task inasmuch as most people have problems thinking of elections as a process in a political market. On the other hand, if people start with a market they know and understand and can be led to draw parallels, the greater the chances of their understanding the importance of competition in political markets.

Simply put, people know, intrinsically, that restraints on trade in commercial markets are inefficient and unfair. Moreover, when they experience poor performance in commercial markets, they are likely to suspect restraints on trade and demand redress. The situation is very different when it comes to political markets. In brief summary, people generally don't trust, feel alienated from, and don't think much of the performance of the institutions characterizing political markets.

²For my views on the latter, see James C. Miller III, The Economist as Reformer: Revamping the FTC, 1981-1985 (Washington: American Enterprise Institute, 1989).

As shown in Attachment A, people put relatively little trust in government, and this trust has been declining, at least in the current decade.³ Also shown is the low and decreasing tendency of people to trust the federal government most of the time. Attachment B illustrates the degree of alienation people feel toward the federal government -- namely that government tends to listen to the people only some of the time and that people are split on whether they even have a say in what the government does. Attachment C illustrates the propensity of people to give government mediocre marks with respect to overall performance (responsiveness and approval of congress).

Interestingly, the same polls show that while people generally hold the institutions of elective government in relatively low esteem -- particularly congress -- they generally support their own agent over challengers. This is illustrated in Attachment D. Rather than being a case of familiarity s breeding approval, the phenomenon is better understood as a case of the familiar prisoners dilemma. That is, the voting public may be critical of the general scheme of things, but be supportive of their agent because, everything else equal, their incumbent agent can do more for them than could a challenger. They will advocate overall reform of congress, but will not turn out their agent unless given a very good reason.

³The trust in government score is a summary statistic of trust in the federal government (as depicted in the lower part of Attachment A), whether the government serves the interests of a few big interests vs. the benefit of all, whether people in government waste a lot of taxpayer money, and whether people running government are crooked.

To the extent people are displeased with the performance of government, their first instinct is to throw (all) the bums out and replace them with better people. Yet, for the reason just described, they feel constrained not to take such action unless everyone else (other districts, other states) take the same action. There is ample reason to believe, however, that throwing the bums out would have little effect on overall performance. Certainly, this is the lesson of the research on the good man hypothesis in regulatory settings.⁴ A new set of decision makers -- even a somewhat angelic crowd -- would behave in much the same way as the old crowd. What matters much more than the agents' expertise-integrity-commitment is the institutional environment and the incentives they face.

People support a range of institutional reforms for congress, though few such changes would improve the competitive vigor of the political marketplace. For example, according to a recent Rasmussen poll, 84 percent support full disclosure (or banning) of meetings between congress and government officials to discuss constituent issues. Some 81 percent support campaign spending limits, and 75 percent support term limits.

⁴This research tests whether an improvement in the performance of regulatory agencies is more likely with a change in key personnel or a change in the institutions and thus the incentives faced by those personnel. The research comes down on the side of the latter. See, for example, George J. Stigler, *The Theory of Economic Regulation*, Bell Journal of Economics and Management Science, 1971, pp. 3-21; Sam Peltzman, *Toward a More General Theory of Regulation*, Journal of Political Economy, 1976, pp. 211-40; et seq.

There is some evidence that people have a suspicion about the fairness, if not the efficiency, of the political market environment. According to another Rasmussen poll, just half of Americans believe that elections are fair to voters, and 72 percent answered in the affirmative that in American elections, . . . members of congress have unfair advantages over people who want to run against them. Moreover, in addition to the polling evidence on alienation, by about two to one, people think the federal government is too powerful -- which itself is a symptom of monopoly power. Yet Rasmussen also reports that 54 percent of Americans believe that members of congress who favor disclosure of campaign contributions do so primarily to learn who is giving to their political opponents; and by a two-to-one margin think members of congress might use agencies to harass those who contribute to their opponents. Finally, a Terrance Group poll found that 71 percent of the sample would be less likely to vote for a candidate who voted for a version of campaign finance reform that made it easier for them to be reelected.⁵

Despite this sliver of contrary evidence, the long and the short of it is that people perceive that political markets aren't very efficient, but they aren't likely to attribute this poor performance to a lack of competitive vigor. Indeed, they often support reforms that would make political markets less competitive. Thus, if they can be shown why political markets perform poorly and can be convinced that they should be at least as adamant in demanding competition in these markets as they are in demanding competition in commercial markets (and can be guided in what constitutes an improvement in the competitiveness of the political marketplace), some important

⁵As cited in Peggy Ellis, 10 Big Lies about Campaign Finance Reform. . . , Washington Times,

reforms may well emerge.⁶

Ways Incumbents Secure Competitive Advantage

October 7, 1997, p. A21. The poll was dated June 1997.

⁶Maintaining an openly competitive environment is more important in political markets than in commercial markets, because the latter are much more self-regulatory. That is, except where the state stands ready to enforce restrictions on competitive behavior, efforts to monopolize commercial markets seldom succeed.

Let s address more directly the competitiveness of the political marketplace, specifically the market for representatives to the federal legislature.⁷ Just how do members of congress insulate themselves from competition? In a variety of ways. They provide themselves with privileges such as free mail, telephone, internet access, and web pages. They pass ambiguous laws and promote complicated regulations in order to increase the demand for constituent service -- which only they can provide, usually through taxpayer-funded caseworkers at various home offices in the district or state.⁸ Attachment E shows the cost of Franked mail, both in total and the average for members of congress. The attachment shows also the number of House and Senate staff and the proportion in district or state offices. (Both the base and the proportion are rising, indicating that the typical member has a growing presence in the district or state.)

⁷I must confess to a certain amount of pique here. When I was chairman of the Federal Trade Commission (1981-1985), I was frequently the object of criticism by certain members of congress for not being sufficiently aggressive in enforcing the antitrust laws (in commercial markets). Yet, these same members of congress feigned ignorance of their own culpability in restraining competition in political markets.

⁸See, for example, Morris P. Fiorina, Some Problems in Studying the Effects of Resource Allocation in Congressional Elections, American Journal of Political Science, 1981, pp. 543-67; Diana Evans Yiannakis, The Grateful Electorate: Casework and Congressional Elections, American Journal of Political Science, 1981, pp. 568-80; George Serra and Albert D. Cover, The Electoral Consequences of Perquisite Use: The Casework Case, Legislative Studies Quarterly, 1992, pp. 233-46; and George Serra and David Moon, Casework, Issue Position, and Voting in Congressional Elections: A District Analysis, Journal of Politics, 1994, pp. 200-13.

Attachment F illustrates the growing complexity of laws and regulations with which people have to cope and with which members of congress offer to be of assistance.

Members of congress intimidate⁹ major contributors to support them, not their opponents, and use Federal Election Commission reports to police their behavior. For example, in response to a letter requesting a contribution to a candidate challenging an incumbent, I received from a major trade association (which shall go nameless) the following reply (in part): [O]ur by-laws preclude us from providing support in primaries to non-incumbents. From personal experience in trying to raise money, I know that incumbents often remind major contributors that even if they lose, they will be around long enough to help them or hurt them. Moreover, because of single-member districts, except in rare instances where redistricting reduces the number of representatives in a state, incumbents never compete with each other.¹⁰

⁹I use this word in the milder form of pressure and implied threat, not outright violation of criminal law.

¹⁰On this matter, Randall Holcombe concludes: Thus, political markets are divided in the same way that cartels would divide markets in order to make each member a monopolist in his own territory to help enforce the cartel agreement. See Randall Halcombe, A Note on Seniority and Political Competition, Public Choice, 1989, p. 287.

Incumbents also sneak district- or state-specific projects (that is, pork) into appropriations measures and claim credit with constituents.¹¹ Although as shown in Attachment G the amount of such pork is a relatively small (less than 1 percent of total federal spending), it is highly visible (to constituents) and is a growing phenomenon. Incumbents distribute other goodies through a seniority system and through a system of committees, where the incumbent always has a leg up on any challenger.¹² In years when they have no effective opposition, they amass enormous war chests from vested interests to intimidate would-be challengers at some later date.¹³ Members of the same party collude by agreeing not to support any challenger in a primary, and members who do not have hotly contested races work for other incumbents -- raising money for them and making personal appearances -- expecting the same help in return if ever needed. They also make sure a full menu of pork is available to those incumbents who are in

¹¹See, for example, Robert M. Stein and Kenneth N. Bickers, Congressional Elections and the Pork Barrel, Journal of Politics, 1994, pp. 377-99; Kenneth N. Bickers and Robert M. Stein, The Electoral Dynamics of the Federal Pork Barrel, American Journal of Political Science, 1996, pp. 1300-26; and Gerald W. Scully, Congressional Tenure: Myth and Reality, Public Policy, 1995, pp. 203-19.

¹²See, for example, Holcombe, ibid., pp. 285-8; Randall W. Bennett and Christine Loucks, Savings and Loan and Finance Industry PAC Contributions to Incumbent Members of the House Banking Committee, Public Choice, 1994, pp. 83-104; Christine Loucks, Finance Industry PAC Contributions to U.S. Senators, 1983-88, Public Choice, 1996, pp. 219-29; Randall S. Kroszner and Thomas Stratmann, Interest Group Competition and the Organization of Congress: Theory and Evidence from Financial Services Political Action Committees, Working Paper No. 126, Center for the Study of the Economy and the State, University of Chicago, 1996; and James Larue and Lawrence Rothenberg, Institutional Features of Congressional Decisions: The Fight to Prohibit Smoking on Airlines, Public Choice, 1992, pp. 301-18.

¹³For example, Magleby and Nelson report that [a]bout 40 percent of the expenditures of the average major-party House candidate occur before the general election period. . .[--]. . .an advantage enjoyed by incumbents far more than by challengers. . . See David B. Magleby and Candice J. Nelson, The Money Chase (Washington: The Brookings Institution, 1990), p. 66. Janet Box-Steffensmeier finds war chests particularly effective in deterring high-quality challengers. See Janet M. Box-Steffensmeier, A Dynamic Analysis of the Role of War Chests in Campaign Strategy, American Journal of Political Science, 1996, pp. 352-71.

tight races.¹⁴

Incumbents work with their state legislatures and governors to redistrict in such a way as to protect, and possibly improve, their voting populations. They also work to limit ballot access to third party candidates.¹⁵ Just how significant are the impediments to ballot access can be gleaned from the summary contained in Attachment H. In at least one case (Virginia), incumbents have preferential power over the method of nomination.¹⁶ Last, but certainly not least, they pass campaign finance reform laws and establish an agency to enforce the law s restrictions.

¹⁴On the importance of pork to vulnerable incumbents, see Bickers and Stein, ibid.

¹⁵See, for example, James T. Hamilton and Helen F. Ladd, Biased Ballots?: The Impact of Ballot Structure on North Carolina Elections in 1992, Public Choice, 1996, pp. 259-80.

¹⁶Incumbents who were nominated by means of a primary the previous election cycle may demand a primary in the current cycle. This preference applies to both state and federal elections.

Passage of the Federal Election Campaign Act of 1974 was a true watershed in the competitiveness of the market for congressional representatives. Prior to the 1974 Act, the major restraint was a prohibition on contributions from aliens and from U.S. subsidiaries of foreign corporations. The 1974 Act made certain changes in presidential campaigns: (a) it provided public funding from a checkoff on the individual income tax form, (b) it placed ceilings on spending by those presidential candidates who accept federal funds, and (c) it limited the amount any person could contribute to a presidential campaign. The 1974 Act also set restrictions on congressional campaigns: (a) it placed limits on the amounts individuals could contribute, and (b) it placed limits on amounts a candidate for congress could spend (a provision later held unconstitutional by the Supreme Court in the famous Buckley¹⁷ decision).

¹⁷See Buckley v. Valeo, 424 U.S. 1 (1976).

More than two decades of research has concluded that the major effect of the 1974 reforms was to help incumbents ward off challengers.¹⁸ To see how this is so, reflect for a moment on the limits individuals may contribute. First, a slew of studies have concluded that the marginal product of spending by challengers is higher than it is for incumbents.¹⁹ To see why this is so, examine the first panel of Attachment I, which assumes that the effect of campaign spending on generating votes (or vote margin) is both positive and declining. It also assumes that the relationship is the same for both the incumbent and for the challenger. Since a challenger usually spends less than the incumbent, the challenger's marginal product (of spending) is higher.

Or, consider the lower panel of Attachment I, which allows the marginal product curves for the challenger and the incumbent to differ. Everything else equal, a history of having invested in advertising and constituent service may make the incumbent's marginal product higher at each level of expenditure than the challenger's.²⁰ Even so, if the challenger's spending is much less than the incumbent's, the challenger's marginal product may exceed that of the incumbent. Of course, everything else equal the fact

¹⁸See, for example, Peter H. Aranson and Melvin J. Hinich, Some Aspects of the Political Economy of Election Campaign Contribution Laws, Public Choice, 1979, pp. 435-61; and Burton A. Abrams and Russell F. Settle, The Economic Theory of Regulation and Public Financing of Presidential Elections, Journal of Political Economy, 1978, pp. 245-57.

¹⁹See, for example, Gary C. Jacobson, Money and Votes Reconsidered: Congressional Elections, 1972-1982, Public Choice, 1985, pp. 7-62 and The Effects of Campaign Spending in House Elections: New Evidence for Old Arguments, American Journal of Political Science, 1990, pp. 334-62; K. Filip Palda and Kristian S. Palda, Ceilings on Campaign Spending: Hypothesis and Partial Test with Canadian Data, Public Choice, 1985, pp. 313-31; John L. Mikesell, Election Periods and State Tax Policy Cycles, Public Choice, 1987, pp. 257-65; Bender, ibid.; John R. Lott, Does Additional Campaign Spending Really Hurt Incumbents?: The Theoretical Importance of Past Investments in Political Brand Name, Public Choice, 1991, pp. 87-92; Christopher Kenny and Michael McBurnett, A Dynamic Model of the Effect of Campaign Spending on Congressional Vote Choice, American Journal of Political Science, 1992, pp. 923-37; and Amihai Glazer, On the Incentives to Establish and Play Political Rent-Seeking Games, Public Choice, 1993, pp. 139-48.

²⁰See esp. Lott, ibid.

that incumbents typically have much more contact with constituents than do challengers means that such additional contact that may be purchased through campaign spending has lower value in terms of producing votes or vote share. In this case, the incumbent's curve would lie below that of the challenger's, meaning that even if the challenger outspent the incumbent, the former's marginal product could exceed the latter's.²¹

²¹As should also be obvious, there is no reason why the two curves might not intersect, in one or more places. Also, if the incumbent has high negatives, the curve may scarcely be positive, consistent with the adage that Nothing can save the incumbent who's lost touch with her constituency.

That incumbents tend to spend far more than challengers is a matter of public record, as summarized in Attachment J. Also, the advantages of incumbency in enabling contacts with constituents are clear: (a) polls which show that voters are much more likely to have had personal contact with an incumbent than with that incumbent's challenger,²² (b) constituent service office work undertaken at both the district or state and Washington offices, and (c) the fact that many incumbents spend more on Franked mail than their challengers spend on their entire campaigns.²³

It should come as no surprise, then, that reforms which make it more difficult for both an incumbent and a challenger to raise and spend money hurt the challenger more than the incumbent. This is why such reforms are often championed by incumbents. For those who might like to believe that members of congress promote campaign finance reforms out of a regard for the public interest, consider evidence demonstrating that voting behavior on the campaign finance reforms of 1974 are explained far better by incumbents' interests in being reelected than by any notion of a broader public interest. For example, Bender found that when various spending limits were considered

²²For example, in 1994, 76 percent of respondents to a poll indicated they had come in contact with the incumbent (personal or through mail, advertizing, et cetera), but only 40 percent had come in contact with the challenger. Source: National Election Studies.

²³Compare, for example, the last columns in Attachment E. The point about spending of Franked mail vs. challenger's entire spending is noted in Steve Symms, Campaign Finance Reform Gainers, Washington Times, August 13, 1997, p. A14.

in the House, members' votes were highly correlated with forecasts about the effects such limits would have on their chances for reelection.²⁴

²⁴See Bruce Bender, *An Analysis of Congressional Voting on Legislation Limiting Congressional Expenditures*, *Journal of Political Economy*, 1988, pp. 1005-21. The spending limits at issue were later declared unconstitutional in *Buckley*.

In addition to the effects of the various restraints contained in the Act, there is the business of dealing with the Federal Election Commission (FEC), a matter about which incumbents have a natural advantage, both in terms of experience and possible influence.²⁵ Consider what is involved in running for office. Imagine you are a small businesswoman in Iowa, or a social worker in South Carolina, or a truck driver in Oregon, and you get fed up and decide to run for Congress. What then?

Assuming that you know you have to make an initial FEC report (directly to the FEC in the case of the House, or to the Secretary of the Senate) and have to send a copy to the relevant state agency, you must recruit a treasurer and have that person file on your behalf.²⁶ In return, your treasurer will receive the following from the FEC: (a) a pamphlet on committee treasurers, (b) a copy of the FEC's latest newsletter, The Record, (c) a copy of FEC Disclosure Form 3: Report of Receipts and Disbursements for an Authorized Committee, together with instructions, (d) a list of state offices where copies of all reports must be filed, (e) a reprint of an article describing how to file disclosure reports electronically, (f) a copy of the reporting schedule for the year, (g) a notice about the FEC's fax line, (h) an announcement of upcoming FEC conferences (with no indication whether they are optional or compulsory), (i) a compendium of

²⁵That is, by definition each incumbent will have gone through at least one campaign dealing with the FEC, and the agency, of course, must come before congress for its authorization and annual appropriation. See, for example, Jeanne Cummings, Louisiana Republican Gives Election Plan a No Vote, Wall Street Journal, December 15, 1997, p. A24.

²⁶Interestingly, the candidate cannot file; only the campaign treasurer.

federal election campaign laws, and (j) a copy of the issue of the Code of Federal Regulations dealing with federal elections. A total of 618 pages, weighing 1 pound and 12.5 ounces. It s enough to make a candidate reconsider!

That, of course, is only the beginning. Dealing with the FEC can be frustrating and time-consuming -- after an election as well as before. As an example, consider the letter of inquiry I received following a mid-year report made more than a year after I had lost a primary election for the U.S. Senate. In relevant part the inquiry reads:

Your report discloses a . . . loan from the candidate on Line 13(a) of the Detailed Summary Page. It appears that this loan was used to finance expenditures made directly by the candidate (pertinent portion attached). Please note that expenses advanced by the candidate or other committee staff members constitute debts rather than loans; and should be reported in the following manner: the advance should be itemized as a contribution on Schedule A and listed as a memo entry. If, however, the advance was paid in the same reporting period in which it was made, the filing of a Schedule A is not required. When the repayment is made, the transaction should be itemized on a Schedule B supporting Line 17. If the ultimate payee (vendor) requires itemization, it should be listed on Schedule B as a memo entry directly below the entry itemizing the repayment of the advance. Continuous reporting (on Schedule D) of all outstanding debts is required. Please amend your report, if necessary.²⁷

The letter was dated September 26, 1997. That very same day, the New York Times carried a story entitled, F.E.C. Budget Is No Match For Its Task, Panel Is Told.²⁸ I report this not to poke fun at the staff of the FEC, whom I have always found to be highly professional and whose job it is to enforce a statute so byzantine that the agency is always short of funds. Rather, the purpose is to illustrate a system designed by

²⁷As was not obvious from the inquiry, the fault lay in my having made a transcription error in my report to the FEC, indicating that a major deposit to the campaign account had been made the day after the campaign had written a major check to a vendor.

²⁸See Francis X. Clines, F.E.C. Budget Is No Match For Its Task, Panel Is Told, New York Times, September 26, 1997, p. A22. The article describes FEC testimony before the Senate Committee on Governmental Affairs the previous day.

incumbents to protect incumbents, one which imposes tremendous costs on those least able to cope -- challengers.

On a related note, any challenger (or incumbent, for that matter) is liable at any time to have a formal complaint to the FEC lodged against them. As some have noted, this device has become a routine way of orchestrating a hit on an opponent -- a charge that is leveled but whose veracity is never adjudged by the agency until long after the elections return are in. Moreover, when the agency investigates the complaint and decides to take no action, it typically responds with the following boilerplate:

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action. . . This case was evaluated objectively relative to other matters on the Commission s docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file on the matter...²⁹

The problem with this language is that a truly innocent party, should they decide to run again, can be tarred not only with the fact they were the subject of a formal complaint

²⁹This language is taken from a letter from the FEC to my counsel, dated August 29, 1997. It reported the outcome of the FEC s inquiry responding to a complaint lodged by my opponent in my 1996 race for the Republican nomination for the U.S. Senate. To make matters in the case more interesting, my opponent chairs the Senate committee of jurisdiction for the FEC.

Such cautious legal language is fairly routine among government agencies. When I was chairman of the FTC, similar language was used to notify parties of the closing of an investigation stemming from a complaint lodged by a rival firm.

but that after an investigation the Commission made no formal finding of innocence.³⁰

³⁰As further evidence of the FEC's having to enforce rules that would seem counterintuitive, I note without further comment O'Keefe and Steelman's observation that the FEC ruled (correctly) that CompuServe's offer to make free websites available to challengers and incumbents alike would violate federal elections law. See Eric O'Keefe and Aaron Steelman, *The End of Representation: How Congress Stifles Electoral Competition*, CATO Policy Analysis No. 279, 1997, p. 5.

The competitiveness of political markets is further restrained by the incentives and opportunities candidates have to deceive voters. Deception seldom works in commercial markets because, if duped, a consumer can switch providers immediately.³¹ But if an incumbent candidate is later caught lying or breaks promises, constituents have to wait until the next election, when the incumbent's insincerity may well have been forgotten. And because of various interpretations of the First Amendment, the applicability of libel and slander laws in political markets is very limited.³²

In summary, incumbents rig markets to their own advantage. Moreover, as shown in Attachment K they engage in behavior or conduct that would violate laws and result in fines and/or imprisonment if they behaved in an analogous fashion in commercial markets. They form a cartel and enforce the cartel's rules. They establish a system of distributing favors that help incumbents. They agree to come to the aid of each other, in opposition to challengers. Such a pattern, if practiced in commercial markets, would be the subject of rapid legal action, not to mention congressional hearings and extensive commentary in the media. Yet, this all passes for business as usual in political markets. Moreover, as we shall see, serious attention is now being given to proposals to make

³¹On the role of advertizing in commercial markets, see John E. Calfee, Fear of Persuasion: A New Perspective on Advertizing and Regulation (Washington: AEI Press, 1997).

³²See John L. Mikesell, Election Periods and State Tax Policy Cycles, Public Choice, 1978, pp. 99-106; Bruce T. Coram, Why Political Parties Should Make Unbelievable Promises: A Theoretical Note, Public Choice, 1991, pp. 101-5; and Michael L. Davis and Michael Ferrantino, Toward a Positive Theory of Political Rhetoric: Why Do Politicians Lie?, Public Choice, 1996, pp. 1-13.

political markets even less competitive.

Misguided Reforms

What is needed is a direct attack on the numerous anticompetitive features of political markets, not a plinking away at symptoms. That is to say, the excesses that are driving current attempts to reform the campaign laws are mere symptoms of competition s breaking out. Just as interfirm rivalry and searching by consumers tend to break down or circumvent competitive restraints in commercial markets, candidates and other participants find ways over and around financial restraints in political markets. Illegal contributions and non-reporting of same is one method. But legal means are also available. Contributions through business and labor PACs are one method. As shown in Attachment L, PAC contributions now account for over one-third of total contributions in the House and over one-fifth in the Senate. Attachment L also indicates that PACs fund incumbents far more than challengers (by a ratio of almost five to one), and that in the last election they split evenly in the House between Democrats and Republicans vs. roughly two to one for Republicans in the Senate.³³ Finally, Attachment L summarizes contributions of soft money to political parties. These are funds that individuals may contribute without limit directly to the parties and which can be used for general support of the party s goals and objectives, but not explicitly to support a party s candidate or oppose his or her rival. Not summarized in Attachment L is the incidence of issue ads in targeted markets. This highly controversial exercise of free speech by various non-party organizations (labor unions, advocacy organizations, and other interest groups) is estimated to have totaled between \$135 million and \$150 million during the 1995-1996

³³By contrast, during the previous election cycle, before the Republicans took control in both

cycle.³⁴

chambers, PAC support split evenly in the House and went for Democrats two to one in the Senate.

³⁴See Deborah Beck, Paul Taylor, Jeffrey Stanger, and Douglas Rivlin, Issue Advocacy Advertising During the 1996 Campaign, Report No. 16, Annenberg Public Policy Center, University of Pennsylvania, 1997.

A few comments are in order about these efforts to get around strictures on competition in political markets. First, the constraints contained in the 1974 Act have become more binding over time. The original \$1,000 ceiling on personal contributions is equivalent to \$3,258 today if adjusted for inflation.³⁵ And, as incumbents have found additional ways to insulate themselves from competition, it takes more money to mount a credible challenge. Second, some of the exploited loopholes were themselves advertized as solutions to previous abuses -- such as soft money and issue advertizing.³⁶ Third, the solution involves more hard thinking than evidenced by President Clinton's oft-repeated admonition that campaign finance reform must be bipartisan, limit spending, and level the playing field³⁷ -- with the second and third criteria, of course, being mutually inconsistent.

A broad variety of proposals have been advanced to address the current excesses in the political marketplace for the U.S. congress. Many of the more salient proposals are summarized in Attachment M. Interestingly, most of the media hype is over alleged violations of existing law. But the major reforms go not to tightening the enforcement of existing law but to additional restraints on campaign finance. A few observations about these approaches to reform are in order.

³⁵Alternatively, \$1,000 today purchases what \$307 purchased in 1974.

³⁶See, for example, Bradley Smith, Why Campaign Finance Reform Never Works, Wall Street Journal, March 19, 1997, p. A19.

³⁷See Pruden on Politics, Washington Times, February 4, 1997, p. A4.

First, those which would tighten the regulation of campaign finance seem to be driven, at least in part, by a notion that campaign spending is somehow out of control and must be reigned in. But let's make a reality check. Think of campaign spending in political markets as analogous to advertising outlays for products and services in commercial markets. A few figures for 1996: GDP was \$7,576 billion; federal spending was \$1,560 billion, or 20.6 percent; advertising in the commercial sector was \$175 billion; and spending on federal campaigns during the 1995-1996 cycle was approximately \$2.2 billion.³⁸ Let's make two rough and very conservative assumptions: (a) all campaign spending is on advertising, and (b) all such advertising appears in the last month of the two-year cycle. Then, $[(\$175/.794)(.206)]/12 = \3.8 billion, which suggests that the rate of advertising in political markets is about half that in commercial markets.

But is campaign spending growing dramatically? Not according to the calculations summarized in Attachment N.³⁹ During the election cycles from 1982 through 1996, sometimes spending per candidate grew faster than the federal budget (E greater than 1.0), sometimes less fast (E between 0 and 1.0), and sometimes it fell (E less than 0). PAC contributions showed an uneven record, growing at times greater than GDP and at

³⁸See Jill Abramson, "96 Campaign Costs Set Record at \$2.2 Billion," New York Times, November 25, 1997, p. A18 (reporting on a new study by the Center for Responsive Politics).

³⁹Relating candidate spending to federal spending and PAC spending to GDP is somewhat arbitrary, but other denominators (including candidate spending vs. GDP and PAC spending vs. federal spending) show a similar pattern.

times less than GDP or even contracting. Comparing the 1982 and 1996 cycles, spending per candidate grew only 80 percent as fast as federal outlays, while PAC contributions grew only 10 percent more than GDP -- hardly a cause for alarm.

Second, consider the \$600 thousand spending limit for House races incorporated in the campaign reform bills receiving the most attention -- McCain-Feingold and Shays-Meehan. As noted by Bradley Smith,⁴⁰ in 1996 every incumbent who spent less than \$500 thousand won vs. only 3 percent of challengers who spent that little. Challengers who spent between \$500 thousand and \$1 million won 40 percent of the time; and of those challengers who spent more than \$1 million, five of six won. With respect to McCain-Feingold's variable limits for Senate races (from \$1.50 million to \$8.25 million), in 1994 and 1996 every challenger who met the limit lost, and every incumbent won.

In other dimensions as well, McCain-Feingold would make political markets even less competitive. By banning soft money, by treating any ad that uses a candidate's name or likeness as a political expenditure (and therefore subject to more stringent regulation), and by strengthening reporting requirements, giving the FEC more enforcement tools, and increasing penalties, the bill would further strengthen incumbents over challengers. By barring coordinated expenditures on behalf of candidates who do not limit expenditures from their own pockets to \$50 thousand, the bill would cut down on what recently has been one of the few avenues for successful

⁴⁰See Smith, ibid.

challenges -- the self-financed candidate.⁴¹

⁴¹See Larry J. Sabato and Glenn R. Simpson, Money Talks, Voters Listen, Wall Street Journal, December 28, 1994, p. A12.

McCain and Feingold have agreed to a provision that would require unions to inform their members that they may apply for a refund of dues devoted to political activities (in keeping with the Supreme Court's decision in Beck⁴²). But Republicans want more on this front -- they want unions to obtain written approval from individual members before any dues are spent on political advocacy. Moreover, the Republicans would like to see better policing of voter registration (under the theory that Democrats cast more illegal ballots than Republicans) and higher ceilings on individual and PAC contributions (under the theory that while these measures might hurt some Republican incumbents, they would advantage Republicans over Democrats even more).

Why would members of congress go to such extremes as they have already, much less support even more stringent restraints on competition, given that the system presently works quite effectively from their standpoint? After all, incumbents almost always win, with typically two-thirds or three-fourths of them winning by greater than 60 percent of the vote. As President Reagan was fond of noting, there was more turnover in the Soviet presidium than in the U.S. congress.

A partial answer may be found in Attachment 0, which depicts the trade-off members face between voting their constituents' interests and voting their own consciences.⁴³ It may also explain to some extent why voluntary retirements come up

⁴²Communications Workers of America v. Beck, 487 U.S. 735 (1998).

⁴³On this generally, see Ryan C. Amacher and William J. Boyes, Cycles in Senatorial Voting Behavior: Implications for the Optimal Frequency of Elections, Public Choice, 1978, pp. 1-13; and Rebecca G. Morton, An Analysis of Legislative Inefficiency and Ideological Behavior, Public Choice, 1991, pp. 211-22.

Certainly one of, if not the, most important votes of conscience is over the biennial pay raise. Despite rhetoric to the contrary, the vast majority of members of congress welcome the prospect of a pay increase and believe they deserve it. Aside from constituent and media pressure, their only reluctance is that higher pay might attract more highly qualified and/or highly motivated challengers. (By law, every two years the president's budget must propose pay adjustments for members of congress, judges, and

unexpectedly on occasion and why there is some evidence that members who announce their retirements change their behavior.⁴⁴

As shown in the graph, a member of congress faces a trade-off between maximizing her chances of reelection -- by voting her constituents interests -- and voting her own conscience -- for which she will pay a price in terms of a lower probability of reelection. (Of course, slavishly voting constituents interests will not assure reelection, nor will always voting one s conscience assure defeat.) Presumably, a member will choose that degree of freedom that maximizes her utility -- where her indifference curve is tangent to the possibilities frontier. Initiatives to increase the probability of reelection by erecting barriers to competition may be seen, then, as efforts to expand or raise the possibilities frontier. (Ideally, the incumbent would want to face a horizontal possibilities frontier at the 1.0 probability of reelection.) Thus, members of congress may be going to truly great extremes (erecting legal barriers to challengers,

chief executive officers, based on a study of comparable pay in the private sector; these increases go into effect automatically unless congress disapproves.)

It is said that House Speaker Jim Wright, who was forced to resign in June of 1989, might have survived, but what nailed his coffin shut was his mishandling of the pay raise. In the end, members of congress received enormous heat, but no more money.

⁴⁴See, for example, Mark A. Zupan, The Last Period Problem in Politics: Do Congressional Representatives Not Subject to a Reelection Constraint Alter their Voting Behavior?, Public Choice, 1990, pp. 167-80. Note, however, that Vanbeek finds evidence to the contrary. See James R. Vanbeek, Does the Decision to Retire Increase the Amount of Political Shirking?, Public Finance Quarterly, 1991, pp. 444-56.

working hard to raise money, intensifying constituent service, et cetera) at least in part in order to purchase the freedom to vote their own consciences rather than their constituents interests.

Concluding Remark

This preliminary work is only part of a larger project that will address other issues, such as the efficiency of a competitive political market, and will draw conclusions for public policy. It will also address additional hypotheses within the scope of the work outlined here, including the following:

- Do incumbents win so frequently because voters have chosen them and simply like them? (Compare with the incidence of switching in commercial markets.)
- Is there any difference in the marginal products of positive vs. negative ads? (Didn't wider use of negative ads coincide with passage of 1974 Act? Are negative ads relatively more effective when used by incumbents rather than by challengers?)
- Wouldn't disclosure-only bills give a big advantage to the wealthy candidate who can avoid disclosure of last-minute supporters by holding checks and lending money to meet final expenditures?
- To the extent that pork matters, is it always positive? (Ask former Representative Jack Brooks.)

Musings on these hypotheses, suggestions for additional work, and comments on the analysis presented above are all welcome.