Campaigns Will Be Reformed When Pigs Fly

by SUSAN F. RASKY

Milwaukee Journal Sentinel, April 6, 2002: A15

The headlines called it the most sweeping overhaul of campaign finance laws since Watergate. Editorial writers rhapsodized that it would sever the link between federal officeholders and the raising of huge, unlimited sums from rich individuals, corporations and unions. And when the Senate finally sent it to President Bush for his signature, its chief sponsor, flush with the praise of his Capitol Hill colleagues and an almost fawning political press corps, declared that this newest installment of campaign finance reform would take about $500 million of "soft money" out of political campaigns.

Maybe it will cure baldness, too.

Nothing seduces Washington as much as a reform crusade, especially if the adjective "bipartisan" can be attached to it. That the substance of the reform is questionable from the get-go, that it is guaranteed to prompt legal challenges, that it ultimately amounts to far less than the ardent reformers once promised, is beside the point. What matters, as any accomplished storyteller knows, is the crusade itself. Long and difficult are good. Better still is an aura of struggle against sinister forces -- organized labor, big business, special interests. Not just soft money but sewer money in the overheated rhetoric of one East Coast editorial page. Add a charismatic leader who prevails against all odds -- in this case, maverick Republican senator and chief Bush nemesis John McCain of Arizona -- and the plot is obvious.

Straight-talking Vietnam War hero battles sewer money. It's almost mythic.

In the final telling, that campaign finance story -- as opposed to the messier one explaining what soft money really is and how little about it will actually change under the new law -- became irresistible to members of Congress and to Washington insiders who have followed the reform crusade for the past several years.

The most important change in the law actually deals with "hard money," substantially raising contribution limits that Congress set for individuals in 1974. Hard money contributions are subject to strict reporting requirements and are easily traceable, and their increase will almost certainly benefit Bush in his re-election campaign.

The president underscored the splendid absurdity of what the reformers ultimately embraced. He signed the legislation without cameras or ceremony, then immediately flew off to raise $3.5 million in behalf of GOP candidates in the South, a sizable chunk of which was soft money. Since the law won't take effect until after the November election, collecting that soft money is perfectly legal.

And with some relatively simple accounting and organizational changes for political activists, collecting it will also be perfectly legal once the law kicks in. That will be true even if the U.S. Supreme Court upholds the dubious constitutionality of provisions that ban certain types of political advertising within 30 days of a primary or 60 days of a general election.

But the new law specifically bans soft money contributions to national political parties, so how could that be? Contemplate what attorney Steve Lucas and others call the "shadow party." Lucas is a campaign finance expert at a Republican political law firm. In fairly short order, he expects that both the Republican and Democratic parties will be spinning off what amount to soft money subsidiaries, entities that will be able to collect unlimited sums from corporations, unions and wealthy individuals and then dole the money out, as the parties themselves have been able to until now, for either issue advocacy or independent expenditures in behalf of candidates.

Issue advocacy is the term of art for political advertisements, most commonly TV commercials, that stop just short of saying vote for or against a particular officeholder. "Tell Congressman John Doe you don't approve of federal budget boondoggles" is an example of the type of ad that might air in the House member's district around election time -- or, perhaps, with the appropriate name adaptations, in the districts of a dozen House members targeted by the national party.

Independent expenditures are made expressly in behalf of a particular candidate, but they cannot be coordinated with the candidate's campaign. An example: "Vote for Jane Smith, the candidate who cares about clean air and water."

Both types of political communication are already being used by politically active interest groups such as the Sierra Club or the National Rifle Association. And the new law may lead to more such activity by these groups, financed with soft money.

But the shadow parties Lucas describes are another animal altogether. On paper, they would look something like the interest groups, which for tax purposes are generally organized as non-profits under Section 501(c)(4) of the Internal Revenue Code. In reality, they would operate with the know-how, sophistication and unofficial blessing of the national political parties, although under the new law they would be prohibited from coordinating with any candidates or the national and state political parties.

So why not the "Friends of Republicans Club," headed by former Republican National Committee chairman Haley Barbour? Or the "Friends of Democrats Club," headed by Charles Manatt, former chairman of the Democratic National Committee?

The way Lucas reads the new law, shadow parties could probably maintain under the same legal roof separate bank accounts to handle their 501(c)(4) issue advocacy and their more explicit, non-profit political activity covered by Section 527 of the tax code. Names of individual soft money donors would have to be disclosed to the Internal Revenue Service for the 527 accounts, but donors to the issue advocacy account could likely still hide behind such meaningless labels as "Citizens for Good Government."

In other words, almost nothing about soft money -- which the public has been told is the rotting core of democracy -- actually changes.

Even the ban on federal candidates acting as soft money fund-raisers -- the "solution" to the much-proclaimed problem of the appearance of quid pro quo and impropriety -- turns out to be pretty flimsy. Nothing in the new law prevents a federal candidate or officeholder from being the keynote speaker at a fund-raising event for a shadow party (or interest group).

True, the candidate or officeholder cannot directly solicit funds, but nothing prevents said candidate from having a private meet-and-greet with the biggest of the big donors before the main event or from being chatted up about a donor's legislative wish list.

Since they can't talk about political money, what else are they going to speak privately about, except the very thing we regard as a conflict of interest, Lucas observes with some amusement.

At a law firm that handles political lawyering for Democrats, veteran attorney Joseph Remcho sees much the same scenario of shadow parties replacing the national parties as vehicles for collecting and dispensing soft money. "The new law is one more step in making individual candidates less accountable," he says. "There is no way you keep the money out of politics. You are simply pushing it to private entities."

It's funny, Remcho adds, "We think it's perfectly OK to spend $1 billion to see 'Titanic,' but to spend $500 million on core political speech is somehow bad, because people have been told there is too much money in politics."

That perception about money and politics, indeed about politics in general, isn't likely to improve in a system where political parties are replaced by elite fund-raising circles operating with minimal obligation to ordinary voters. It may actually be the biggest overhaul of the campaign finance system in a generation, but hardly one anybody should be proud of.