



Sunlight as the best disinfectant: Campaign finance in Australia

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Australia prides itself on a strong democratic tradition, and in key respects outdoes the United States in protecting the integrity of the political process. The efficiency and neutrality of election administration here is a stark contrast to the decentralisation and partisanship of the US system. It is therefore something of a surprise to note that Australian campaign finance law is much looser than its American counterpart.

This does not imply government misbehaviour—indeed, Transparency International ranks Australia slightly better than the US on its index of political corruption—but it does raise questions about how the public would know if it had become a problem.

I will focus on two key dimensions of election finance in federal elections: the rules regarding disclosure of contributions and expenditures, and the availability of public funding to parties and candidates.

Disclosure in the US and Australia

US federal campaign finance law limits the size of contributions to candidates and parties, and requires detailed disclosure of both expenditures and donations.

Individuals may generally not donate more than US \$4200 to any federal candidate during any two-year election cycle, and are limited to a total of US \$101 400 to all candidates, parties, and political action committees (organisations that raise money to contribute to candidates as group) over the cycle. *Corporations and labor unions cannot make direct contributions to candidates or parties.* Before 2003, national political parties could raise unlimited amounts of money from any source, but now all party money used in federal elections is subject to contribution limits and source restrictions. While parties, candidates, and interest groups may raise and spend as much as they like, the contribution limits make it harder for any one individual or group to dump large amounts of money directly into campaign treasuries.

The other key characteristic of US campaign finance law is an emphasis on disclosure. The idea is that no matter where candidates get their money, voters should be able to evaluate the sources and possible connections to policy decisions. Candidates must disclose the names, addresses, and employers of any contributor who gives more than US \$200; organisations and individuals must itemise and disclose

their contributions, and candidates must also itemise every expenditure exceeding US \$200, disclosing who receives the money and what it was for. These reporting requirements are so detailed that candidates complain about the administrative and legal burdens of compliance (and election law has become so dense that a noticeable portion of campaign spending goes to lawyers. The ‘summary’ campaign finance guide for congressional candidates is 167 pages long).

These disclosure reports are usually filed every three months, though many candidates make a point of reporting more often than the law requires—a strategy emphasising that they have nothing to hide. Opposing candidates routinely scrutinise each others’ reports, looking for questionable contributors or arguing that some interest group or other has undue influence. Watchdog groups monitor everything, so do reporters: media coverage of campaign finance is a staple of election year journalism. These reports are also tremendously useful to scholars, as they give us data on where candidates get their money and how they spend it.

The average voter pays little attention to campaign finance in the abstract; it is not the sort of issue that people discuss over their kitchen table (unlike, say, taxes or health care). Even so, the fact that candidates are quick to return money from controversial or disgraced contributors – members of Congress raced to see who would be the first to get rid of any money even remotely connected to lobbyist Jack Abramoff, and many legislators connected to him are facing tough re-election fights – shows that disclosure can be effective.

Even the harshest critics of the US system—including columnist George Will, who considers the current law a blatant and unconstitutional limit on the right to speak out during elections, as well as ridiculously complex—sees disclosure as vital. He has proposed near-total deregulation of campaign finance, eliminating every restriction on contributions except for complete disclosure, so that it would be entirely up to voters to evaluate whether candidates are too close to contributors.

In Australia, by contrast, disclosure is far more limited. Starting in 2006, political parties—which play *the* central role in the campaign process—will only have to disclose the source of contributions greater than A\$10 000 annually; there continue to

be no restrictions on who can contribute, or any ceilings on how much they can give. Australian law even allows contributions from foreign sources, a practice banned in the US.

These disclosure limits apply separately to State party units; an individual, corporation, or trade union could contribute up to A\$90 000—\$10 000 to each State or Territory party, and another \$10,000 to the national party—without any disclosure at all. Moreover, these disclosure reports are not available until six months after an election, so voters have no idea during the campaign who is giving to whom. And because the threshold is so high, the picture that voters eventually get is quite limited, with only a few hundred donations disclosed. If the \$10 000 threshold for parties were in place in 2005, only 522 contributors would have been identified.

And unlike the US, where candidates and parties have to itemise their spending, here parties only have to report a single number: total spending (candidates also must disclose their contributions and expenditures, but because the parties are so dominant only a relative handful report any activity). Because parties disclose so little information, we have little understanding of how parties allocate their money, which seats they consider most important, and what the relationship is between what they spend and how their candidates do. Because so little information is revealed, the media give the annual and election disclosures only a perfunctory treatment.

The argument against detailed disclosure is that contributors have privacy rights that must be balanced against the public's right to know who gives to whom. But that is an unusual position, given that in most other contexts privacy gives way to the public interest. Privacy rights, in general, have much less protection here than in the U.S. Even so, our low disclosure thresholds have been repeatedly upheld in the Supreme Court, as a minimally intrusive and time-honored way of preventing corruption. Whether or not a contribution is, or is not, potentially corrupting is something for voters to decide.

Public election funding

One way to eliminate the potential problems with private money altogether is to give candidates a chance to run without it. Public election funding is designed to reduce the

influence of private money in the election process and assist candidates and parties that do not have access to traditional channels of raising money. In the US, presidential candidates are eligible for public funding for both their primary and general election campaigns, while in Australia party organisations can qualify. Several US states have public funding for state elections.

In the US, public election funding has an additional purpose, which is to induce candidates to agree to certain conditions: without exception, candidates must agree to limit their overall spending in order to receive public funds, and in some cases must agree to forego private fundraising altogether. The First Amendment prevents the government from imposing mandatory expenditure limits. But the Supreme Court has held that *voluntary* public funding programs, in which candidates may choose to participate or not, can come with conditions attached.

The presidential funding system has weakened in the last few cycles, because the spending limits that come with public funding are unrealistically low. In 2004, candidates who accepted public funding for the primary process had their overall spending capped at \$50 million. Both President Bush and Senator John Kerry opted to rely instead on private contributions during the primaries, which freed them from this cap. Bush raised nearly \$300 million, and Kerry \$235 million: far more than they could have spent under the public funding system.

In Australia, by contrast, at the federal level public funding is an entitlement: parties or Independent candidates get a fixed amount per vote (now set at A\$2.05) when they receive more than 4 per cent of first preference ballots in any division. In 2004, public funding amounted to A\$42.9 million. The major parties—the Coalition and the ALP—received the largest grants, about \$21 and \$17 million, respectively. The parties do not even need to show that they actually *spent* the money they receive: a group that reaches the threshold can spend the money on a party secretariat or even pocket the difference between the public grant and what was spent. The Australian Labor Party made precisely this claim about Pauline Hanson, alleging that in the 2004 election she received nearly \$200 000 in public funds, even though she only reported spending \$35 426 on her campaign. Even if the charge is true, it would not have

violated the law. A candidate in the US who tried to do something like this would go to gaol.

In its 2004 report, the JSCEM agreed that the current system could result in individual profiteering, but recommended against returning to a reimbursement scheme. The reasoning was that tying public grants to actual spending could impose an unfair administrative burden and penalise volunteer activity.

Differences in outlook and culture

The differences between the Australian and US election finance system reflect differences in political culture. In Australia, the debate over disclosure revolves around the question of whether a \$10 000 contribution could have a corrupting effect on political parties. In a system in which parties raise and spend well over \$100 million in a federal election, the answer is most likely 'no'. But in the US, the dominant view is that it should be up to the voters to reach their own conclusions. Even under the most libertarian campaign finance system, detailed disclosure is a crucial part of democratic accountability. Privacy interests give way to the public interest in political integrity.

Similarly, in the US the notion that candidates or parties stand to personally benefit from taxpayer funding would cause an uproar. Critics of public funding already object to the very concept of subsidising election activity, arguing that no one should be compelled through taxes to fund political speech they find objectionable.

Given Australia's dedication to democratic principles and electoral integrity, I am surprised that these basic reforms have not generated more support.

Supporters of campaign finance deregulation could perhaps point to the Australian experience and conclude that deregulation (which is what the Australian system amounts to) does not necessarily lead to corruption. That may well be true. The problem, though, is that without better information, it isn't possible to know.