

Much of these arguments apply to Municipal Elections - cjk

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Putting a fair price on free speech 1

Politics: Set limits on the individual donor instead of trying to regulate third-party groups

The fall election campaign has not yet officially begun, but of course it has begun in every other sense. Parliament has not been dissolved, the parties have not yet nominated all of their candidates, but the advertising campaigns are well underway.



ANDREW VAUGHAN/THE CANADIAN PRESS FILES

Some groups — such as the HarperPAC, which supports Prime Minister Stephen Harper — are open about their political allegiances.

Some of these are actual partisan advertisements, paid for by the parties. If not yet subject to the spending limits that kick in once the writ has dropped, they must at least be paid for out of funds raised and regulated in the usual way: that is out of individual donations, whose amounts are capped and whose sources must be disclosed.

But much else is outside even this loosely drawn ambit. There are the raft of government advertisements, paid for by the taxpayer but nakedly partisan in their promotion of the Conservative party's interests. Virtually everyone agrees that these are an outrage and should be subject to restrictions of the sort imposed in Ontario, requiring all such ads to be vetted by the auditor general (or some similar office) for partisan content.

More problematic is the current wave of advertising by so-called "third-party" groups. Some bear ostensibly non-partisan names like Engage Canada (on the left) or Working Canadians (on the right); others, such as the new HarperPAC, which announced itself to the world this week, make no bones about their allegiances — though disavowing any formal connection.

The ads, on either side, are about as tendentious and as mean-spirited as one would expect nowadays — though no more so than the ones the parties take direct responsibility for. That's not the issue. The issue is that they make a mockery of the campaign finance laws. It's one thing to run ads saying "cut taxes now" or "no to free trade," but when the point of the ads is quite avowedly to support (or more usually oppose) parties and candidates by name, then what we have are partisan ads in all but name.

The same unions, corporations and well-heeled individuals whose ability to contribute to political parties has been severely curtailed in recent years, at least at the federal level, can pour millions of dollars into these off-writ ads, without even having to disclose their activity. That doesn't automatically translate into electoral success — indeed, with both left and right spending furiously, they may simply battle each other to a draw.

But if money doesn't necessarily buy elections, it can always buy the odd politician. Whatever legal niceties may be observed with regard to non-co-ordination, it is impossible to imagine the parties would be unaware who was footing the bill for these "non-partisan" campaigns, or that they would not be grateful. These are essentially campaign contributions, only unregulated and undisclosed. Money may be speech, as the saying has it, but past a certain point it can also be bribery.

And yet the answer cannot be to prohibit such spending — or, what amounts to much the same thing, to hold outside groups to vastly tighter spending limits than the official parties are allowed, as is current practice during the writ period. (While parties may spend more than \$20 million each, third-party groups may spend no more than about \$200,000.) If free speech is to have any meaning, citizens groups must surely be free to advertise their issues and concerns — especially at election time. What if no party is taking up their cause?

How do we resolve this dilemma? As a starting point, let's ask another question. What is an election? It is a conversation among the voters. Every adult citizen gets to vote, but only citizens get to vote, and each gets only one vote. It makes sense, then, that the debate that goes on

before the vote should be similarly restricted to individuals, at least so far as it involves spending money. That's the argument for restricting corporate and union donations. But what about beyond that?

The key to thinking clearly about the party versus nonparty issue is to look through these groups to the individuals of which they are composed. Whether you choose to donate money to a political party, or to an advocacy group, you are projecting your voice into the political arena. How you do so should be up to you: the law should not discriminate between them. But how much you contribute should be under some ceiling, if we want to preserve the bedrock democratic idea expressed by "one person, one vote."

If you take that idea seriously, then it will become apparent that it isn't fairness between the different parties — or between the parties generally and advocacy groups — we should wish to achieve, but fairness between the individuals that contribute to them. Setting the same spending ceiling for each party arguably violates that principle: if a party with a million members can spend no more than a party with 1,000, then each individual member of the larger party is allotted a thousandth the capacity to contribute to the conversation of their counterparts in the smaller.

Limiting the size of each contribution isn't the answer: that only encourages people to make multiple contributions among multiple organizations. Rather, set an annual global ceiling on the total amount an individual can contribute to all political causes — political here defined as supporting or opposing a party or candidate. If every individual had the same income, after all, we would have no need to limit their contributions. This is the closest thing to it.



Beyond that we need impose no further regulation. There would be no need to regulate third-party groups, in particular, separately from parties: the more you contributed to one cause, the less you would have left over to contribute to another. Compared with the status quo — excessively restrictive during the writ period, a total free-for-all outside it — this strikes a better balance, I think, between the competing values of free speech and fairness.

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