

Got Milk?

Kit Kat Club Essay
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Introduction

Over the past 50 years, it's been one of America's expanding industries with growth far exceeding the national average rate of inflation.

As with many high-growth industries, this one has made millionaires overnight, created celebrities, and ruined careers.

While I could be talking about Hollywood, I'm certainly not talking about the dairy industry.

Tonight my topic is election campaign financing. Or, as former Speaker of the House Tip O'Neill and others politicians have called it "...the mother's milk of politics." We're talking about money, of course.

In an analysis of data from a 2001 nationwide survey undertaken by The Ohio State University, Dr Brett Joyal stated that the survey results suggest

the America public strongly perceives that money has a significant negative impact on the election process.

John Gardner, founder of Common Cause, stated: “There is nothing in our political system today that creates more mischief, more corruption, and more alienation and distrust with the public than does our system of financing elections.”

Tonight, however, we’re not going to explore mischief, corruption and public distrust; rather, we’ll examine the growth of the political campaign industry, drivers of that growth, and future trends in uses of the funds and fundraising at federal and state levels with some local aspects blended in.

And grown it has. Here are a few examples.

1. According to the Campaign Finance Institute, total spending for federal elections increased from \$1.4 billion in 1990 to over \$3 billion in 2006.
2. The cost of winning US Senate elections (which is the average amount of dollars spent by winning Senate candidates) jumped to

\$8.8 million in 2006 from \$5.6 million (inflation-adjusted dollars) in 1986. And those averages include the \$63 million spent in 2000 by US Senator Jon Corzine of New Jersey and nearly \$30 million spent by Hillary Clinton in her Senate race the same year.

3. Examining *personal* contributions which exclude political parties, political action committees and others made in Presidential races, nearly \$20 million was raised by Presidential candidates in 1995. Through the third quarter of 2007 – still a year away from the election - Presidential candidates had raised nearly \$340 million in personal contributions.
4. In the Ohio General Assembly in 2007 (a non-election year), legislators and caucus’ held nearly 400 fundraising events just in Columbus. If an individual would have contributed the “suggested” amount to each, he or she would have spent nearly \$115,000.

In the Past

Looking back through the 20th Century, money always has played a role in elections. Campaigns had “giveaways” items like combs, pencils and lapel

pins; needed some signs or brochures; and, definitely required some “walking around” money to get voters to the polls.

However, the key drivers of a campaign in those days were the political parties and party bosses, unions, and volunteers whose jobs were dependent on political patronage. It was grass-roots campaigning – upfront and personal in its early form. These were the folks who could deliver the message (if one was needed), but more importantly deliver the votes. Newspapers also played a role, because they were numerous and an additional source of information. So again, while money was needed for some election activities, it was not the determining factor in an election outcome.

What fundamental changes occurred in the last half of the century that caused and enabled campaign dollars to play an increasingly critical role in election outcomes?

Many factors drove the change, but I submit two were key: the growth of government itself; and, changes in personal communication patterns.

A. Government Growth

As government has grown, its impact on citizens has grown as well.

Whether more regulations to deal with increasingly complex issues, more proposed “revenue enhancements,” more mandates passed onto state government, greater defense needs of the county – the list goes on and on – government was having a far greater impact on our daily lives. With more impact came greater need from more people and groups to advocate – “make their voice heard” - for their respective issues before the government decision-makers.

Access to a non-increasing number of government-decision makers (federal and state elected officials are not growing) became more competitive given the increasing number of groups who needed to discuss an increasing number of issues. Means of access to government decision-makers became more competitive and in turn increased in value. Thus, groups felt the need to develop and deploy strategies to ensure access. I do not mean to imply that every group needed a means to ensure access; many did not beyond their issue itself. Yet, in the political Machiavellian world, ensuring access and how to do so remained a key focus.

Over the past few decades, the assumed or implied means of gaining access meant demonstrating support for the decision-maker through political contributions to the decision-makers' (or his bosses) campaign. In its purest and earlier forms, those contributions were given to support an administration or legislators whose decisions (or votes) were seen as supportive of the interest groups.

Before you get carried away with thoughts of a pay-to-play system, it's worth noting Capital University Law Professor Bradley Smith's report on campaign finance regulations stated, " Those who have studied voting patterns in a systemic basis are almost unanimous in finding that campaign contributions affect very few votes in General Assemblies."

The growth of government not only meant increases in issues and actions that affected citizens, it also meant increases in government expenditures at all levels. Government is a major source of contracts. The same analogy on issues applies to contracts: rather an assumed or implied need, many felt they needed to ensure better access to decision-makers (or the person appointing the decision- maker). And again, the prevalent strategy that emerged was financial contributions to the political campaigns.

So, as government grew in all aspects, the stakes became higher. With the goal being “access to decision-makers” and the strategy being demonstrating support for the decision-maker, how then did campaign contributions emerge as the dominant tactic?

B. Changes in Personal Communications Patterns

With the invention and subsequent emergence of television, people’s communications patterns changed. In a simple analysis, people were entertained by watching TV, and therefore had less need for other means of entertainment which usually entailed personal interaction such as bowling, playing card games, fraternal club meetings, and political party activities.

As a result and also at the same time, election campaigns changed. Less interacting with others meant less public discussion of candidates and issues; if TV was your growing source information, then TV advertising became the most effective means of reaching voters. It clearly replaced the previous dominance of political parties, newspapers and other communication avenues. Candidates could now communicate to voters in their homes, therefore bypassing some of the traditional means of campaign

communications. And you could even target specific demographic groups based on the programs they watch. Not new for Procter and Gamble, but much newer for electoral candidates.

Purchasing TV ads (and believe me, all candidates wants to have TV commercials so they can see themselves on TV) is an increasingly expensive proposition. Concurrently, campaign strategists see TV commercials as a critical – actually an absolute – necessity. And as more campaigns seek to buy more ads, TV stations realize a commodity when they see one and therefore charge accordingly.

In turn, more contributions were needed to the point where dollars became the dominant need of campaigns. Thus, if you wanted to demonstrate support for your government decision-maker, the acknowledged means to do so was a campaign contribution – lots of contributions. You were helping the elected official win re-election and thus enabling him or her to make “good” decisions in your best interests. It was a win-win.

The Last 10 years

Until the last 10 to 20 years or so, campaign funds were primarily raised during the campaign year and spent during election time to win an election. Increasingly, however, funds were being used for additional purposes outside of elections. And more purposes mean more contributions were needed – especially in the off-year of the election.

Here are a few examples of how campaign funds are being used for purposes other than for a candidate’s election campaign.

1. Discouraging potential opponent candidates from filing for election.

The goal is not only to have enough cash to undertake a successful election campaign, but it’s also to build a “war chest” in non-election years as a strategy to discourage potential opponents from filing as the candidate. If you are thinking about running for office and you see that the incumbent already has amassed a considerable sum of campaign cash on hand, then you may be discouraged from filing as a candidate.

A variation of this theme occurred in Columbus last year during an appointment of a Columbus City Council member to replace one who

resigned. During the interview process, one candidate touted that he already had \$50,000 in campaign commitments if he was the appointee and there was plenty more where that came from. His strategy to win the appointment was a political one: to use his campaign fund (and ability to raise funds) as a show of strength and support to win the election. He did not talk about issues of importance, his experience in the community, or other seemingly more pertinent reasons for seeking appointment. He simply had the dough or could raise it. By the way, he did not receive the appointment.

2. Gaining support from other elected officials.

Incumbent elected officials contribute to other candidates for many reasons, but a political reason is to gain support from those elected officials.

Whether it's building support of legislative caucus members, seeking potential endorsements of elected officials in future elections, trying to garner future support for an important issue to the giver, or being a supporter of a candidate who is in dire need of campaign financial support, elected officials continue to use more funds to support of other candidates rather than their own election.

3. Sustaining a year-round political operation.

Not that long ago, election campaigns usually began after Labor Day. Now campaigning and the subsequent political operation are year-round. An increasing amount of campaign funds are dedicated to off-season activities and communications designed to keep a positive image and awareness of the candidate to his/her constituents. Many higher-level elected officials have paid staff year-round to undertake numerous activities designed to keep the campaign operating and to “keep it fit” until the next election.

4. Supplementing state funds and enhancing life styles.

Although campaign funds cannot be used for personal purposes, the broad spending definition of “campaign related purpose” offers a wide loop hole if an elected official or campaign chooses it. Dinners, gifts, travel, OSU football tickets are a few of the examples of expenditures that run a fine line between campaign-related purposes and enhancing life styles.

In California, the lavish travel and entertainment expenses of elected officials paid for by their campaign treasuries has created such concern that officials are considering imposing per diem expense limits aligned with state

employee travel and entertaining as means to reign in these legal yet seemingly inappropriate expenditures. *(More about reform efforts later)*.

Future Trends

Let's now turn to future trends in campaign financing issues.

What does the future hold? What trends are worth noting?

One trend is easy to predict: the growth of campaign contributions and expenditures will continue to increase.

The following are others:

A. Efforts to legally by-pass disclosure requirements, to exceed political contribution limits, and to utilize contributions that cannot be accepted by candidate campaign committees.

A prime example to by-pass campaign limitations and use funds that otherwise are not permissible for candidate campaigns is the independent committees which have emerged in the past few election cycles. The most common is the so-called 527 Groups – which are named after IRS code that

allows for such operations as long as they do not expressly advocate for the election or defeat of a candidate. 527 groups can make unlimited expenditures in campaigns as long as that don't advocate for or against the candidate, accept corporate or union dollars, and until the past few years not disclosing the contributions deposited into the groups' accounts. The most well-known example was the 527 group that ran the Swift Boat Veteran ads against Senator John Kerry in the presidential campaign.

In 2006, 527 groups spent \$143 million. A breakdown of the contributions shows that \$53 million – nearly half – came from 104 individual donors while another \$42 million came from labor groups. The total spent is more than either political party spent individually on elections in 2006 (\$108 million, Democratic Party; \$115 million, GOP).

Some of these funds we used to produce advertising in last year's 15th Congressional district race that pitted Deborah Pryce against Mary Jo Kilroy. These were the ads that usually were nasty and ended with a message to call one of the candidates and tell her stop doing this or that she doesn't represent the district. Keep in mind that these ads are independent of the respective candidates' campaign and strategy.

In the past few years, federal and state laws were changed to require 527 groups to register with the Secretary of State's office and file disclosure reports. So while the contributions remain unlimited, public reporting of contributions and expenditures is now required.

With the new registration and campaign finance disclosure laws, 527 groups have lost part of their incentive for operating, and so some have gone out of business, and many are now spending less. For example, the previously stated amount of \$143 million spent by 527 groups in 2006 pales in comparison to amount spent in 2004 -- \$424 million.

However, due to new IRS rulings and disclosure requirements for 527 groups, a new trend is emerging. More are now using existing or creating new 501(c) non profit categories as the vehicle for undisclosed campaign contributions. 501(c) 4 and 6 entities are permitted to contribute to campaigns (and again, the contribution is reportable, but not the individuals, union funds or corporate funds that make up the 501c's revenues) as long as a political campaign is not the primary activity or major purpose.

B. Stealth Campaigns

Another trend emerging is the stealth campaign – outside individuals or loosely formed groups becoming heavily engaged in election races through contributions in campaigns where the targeted candidate is unaware of the efforts.

What’s driving this – and so far it’s coming more so from Democrat or Democrat-leaning side – is the tremendous new wealth created by entrepreneurs, especially in technology. The new wealth is moving in many directions (Bill and Melinda Gates Foundation is one example), and one of them is politics.

An example of a stealth campaign was reported in the March, 2007 edition of *Atlantic Magazine*. A technology mogul named Tom Gill had coordinated a group of wealthy gay philanthropists to send personal campaign contributions to targeted election races intended to defeat an incumbent or candidate who was not supportive of gay issues.

In this case, the target was Danny Carroll, the Speaker Pro Tempore of the Iowa House of Representatives. He met Tom Gill’s criteria: sponsored

legislation to ban gay marriages; faced a challenging re-election not related to his position on gay issues; and, if defeated, the majority in the Iowa General Assembly could change from GOP to Democrat, which it did.

Tom Gill and his supporters wrote personal checks (none over \$1,000 so as not to draw public attention) to Mr. Carroll's opponent for a collective large sum of money. Because the contributions were personal checks – they were not collected through and distributed by a political committee - there was no special committee or group (as in the 527 group example) to identify it with; because contributions are usually received from other cities and not in large amounts, they did not receive notice from any Iowa political operatives.

In fact, until the reporter from *The Atlantic* magazine spoke to Danny Carroll after the election, Mr. Carroll was not aware that he was the target of a stealth campaign which was a major factor in his defeat.

According to the article, “A surge of new wealth has created a generation of givers eager to influence politics but barred from traditional channels of participation by recent campaign finance laws designed to limit large gifts to candidates and political parties.” Thus, the new stealth campaigns enable

people with wealth and passion for issues to independently contribute large amounts of contributions to targeted election contests.

It's worth noting the extent of Tom Gill's, who organized the effort and sought individual contributors in targeted state races throughout America, contributions. He gave \$300,000 in political donations in 2000; \$800,000 in 2002; \$5 million in 2004; and \$15 million in 2006.

C. Use of internet

The internet is a changing force in campaigns. However, its full effect is not yet realized, nor are campaign consultants certain how best to use it. For now, it's an information dissemination tool: position papers, newspaper/video news clips, upcoming rallies, etc.

What clearly is emerging is its potential as a campaign fundraising tool.

According to Don McTigue, a local attorney who specializes in election law, 50-70% of all *personal* campaign contributions are now coming from on-line solicitations.

The rapid advances in technology also make the internet uses for campaign eye-opening, if not downright scary. The Center for Government Studies, located in California, cites an example of a future high-tech internet role of beaming holographs of a candidate into your living room speaking to you directly. It combines the door-to-door aspect of campaigns, which is most efficient, with the TV presence which is most effective. So now it's confirmed: former California Governor Jerry Brown, commonly referred to as "Governor Moon Beam" was truly ahead of his time.

Campaign Finance Reform

Throughout this paper, I have not dwelled on campaign finance reform.

While I do not discount the importance of ongoing reform, the proposals are as numerous as fundraisers. Most are usually ruled unconstitutional as a limitation of free speech, and others are effective only until someone figures out another way to go around the system.

Nonetheless, I do want to mention a few of the more notable proposals:

Stricter definition of campaign fund expenditures for "election related purposes." The intended goal of the tighter definition would be to limit the

types of expenditures, particularly in a non-election year. For example, most elected officials pay for OSU football tickets with campaign funds. Is this expenditure an election-related purpose?

Elimination or lower limits on contributions from one election campaign committee to another. As I previously stated, candidates give from one to the other. The theory goes ... eliminate these contributions and that would eliminate the need for more dollars from multiple sources.

Enhanced disclosure requirements on expenditures. For some expenditures the permissible vagueness of the expenditures purpose, makes it more difficult for the public to know how the funds are being used.

Limiting the use of campaign funds for traveling to the same per diem levels of state government employees. I mentioned this example previously.

Conclusion

But is reform really necessary? Michael Malbin of the Rockefeller Institute of Government reminds us of the common sense element to the debate when

he said, “Having money means the ability to be heard. It doesn’t mean that voters will like what they hear.”

That’s certainly true for former multi-millionaires who used their personal fortunes to finance their campaigns – which lost. Texas Governor John Connally, U.S. Senate candidates Mark Dayton, and Michael Huffington are a few examples. Is Milt Romney learning the same lesson tonight?

On the flip side, spending less doesn’t elevate the level of debate, according to report by Capital University Law Professor Bradley Smith. He says that less spending results in less public awareness and understanding the issues. Furthermore, he concludes in his report that actual spending limits hurt challenges more than incumbents.

For the foreseeable future, however, voters will continue to pay less attention, candidates will continue to be perceived as less interesting (although this primary season is changing that), and thus more expenditures will be made to try to reach voters, gain their attention, and persuade them. Therefore, money will continue to play an important role in the electoral process.

For campaign finance, the ultimate reform does not deal in the disclosure, spending limits and other piece-meal proposals – although these are good ideas. Rather, true reform is an educated, aware, and attentive voter. If a voter seeks, receives, analyzes and digests more information from unbiased sources so that he/she can make an informed decision, then the primary purpose of the campaign is diminished and fewer funds for election campaigns should be needed. Quite a utopia indeed.

The dairy industry has touted that milk helps develop strong minds and bodies. If that's what it takes to become a more informed and educated voter, then truly and literally it will fulfill its description as the mother's milk of politics.

Got milk? Let's hope so.