
MEMORANDUM

To: George Soros
From: Ann Beeson, Laleh Ispahani, and Thomas Hilbink
Re: Recent developments in work to address issues of money in politics
Date: February 10, 2011
CC: Aryeh Neier
Jonathan Soros

Since the growing influence of money in politics is no longer on the agenda for discussion at the U.S. Programs' February 23-24 Board meeting, we wanted to take this opportunity to update you on our grantmaking and programmatic work in this area since last fall.¹

The Supreme Court's opinion in *Citizens United* has left open few avenues for reform. Given the makeup of our new Congress and of many state legislatures, legislative campaign regulation reforms are highly unlikely to pass. Consistent with your suggestions and based on study and consultation with academic experts and advocates, we remain convinced that the best strategy forward involves changing corporate behavior by encouraging businesses to reduce or end political giving, and supporting shareholder campaigns for greater control over whether and how corporate treasury dollars are spent on elections. As a secondary approach, we are focusing on strengthening litigation efforts to defend existing campaign regulations and to develop new First Amendment jurisprudence that would support regulation.

Some advocates are launching an ambitious effort to rewrite the Constitution's First Amendment to address corporate speech. While they see the effort as largely a public education and organizing campaign rather than one likely to succeed in changing the text of the Constitution, we think any amendment could seriously imperil free speech rights, and might ignite past efforts on the right to push for school prayer and flag burning-related amendments. Aryeh and Jonathan have expressed similar concerns.

I. Transforming Corporate Behavior

Our efforts to curtail spending by corporations in elections involve a mix of strategies to change the practices, and ultimately the culture, of the business community. Many factors suggest this is sound strategy: in a recent Zogby poll, 77% of business leaders surveyed said they believed corporations should disclose all of their direct and indirect political expenditures, including money provided to other organizations to be spent on campaign advertisements; grantee Center for Political Accountability has already convinced almost 80 major American corporations, including half of the S&P 100, to adopt codes of political disclosure; best practices are taking root for managing, deciding and overseeing company political spending; and opposition by mainstream mutual funds to corporate disclosure resolutions receded to below 50% for the first time in 2010.

To advance our goals through grantmaking, we have made the following investments in groups whose efforts reinforce one another and who are collaborating wherever appropriate:

¹ Our prior work is documented in a memo we wrote to Aryeh Neier, dated September 27, 2010, which we shared with you before the November 23 dinner discussion at your home.

- **Committee for Economic Development**, to work with the national business community to build support for campaign reforms and bring changes to business' political practices
- **Main Street Alliance**, to organize small business owners in 15 states to push for reductions in campaign spending or to refrain from it
- **Center for Political Accountability**, in collaboration with the Business Roundtable and the Wharton School of Business, to aggressively push businesses to adopt transparency practices in their political giving, including contributions to trade associations, either voluntarily or through proxy actions
- **CorporateDisclosure.org**, to hold these companies accountable, currently by investigating their largely secret funding of trade association the U.S. Chamber of Commerce, and
- **Common Cause**, to lead campaigns in targeted states: 1) to advance reforms requiring shareholder approval of political spending, and 2) to work with shareholders to press disclosure resolutions at S&P 500 corporations with direct consumer marketing; and 3) to defend a new Securities & Exchange Commission rule that allows shareholders to hold corporate boards accountable by running their own slate of board directors as part of the proxy voting process.

Finally, at your recommendation, we met with New York City Public Advocate Bill de Blasio, who is using his pulpit to reach a new constituency – public officials – to advance reform. Specifically, he is reaching out to officials overseeing the \$1.4 trillion in public pension funds (as well as institutional investors and others), to get them to demand transparency from corporations in which the funds are invested or that seek government contracts. We are considering making a grant to deBlasio's *Coalition for Accountability in Political Spending* to advance this work.

To advance our programmatic goals, we are also:

- Exploring a campaign that brings together business leaders and advocacy groups on the *Publish What You Pay* model, and as one of our first steps, we will host a funder meeting to learn from CSR organizations influential in the *Publish What You Pay* campaign
- Working with grantee the **Committee on Economic Development** to host a forum or debate of diverse set of business leaders on corporate money in the legislative and judicial elections, and
- Evaluating the plans of a broad group recently convened by Public Citizen that plans to coordinate efforts around corporate accountability and the federal Shareholder Protection Act.

II. Strengthening Legal Responses

Next month, the U.S. Supreme Court will hear arguments in *McComish v. Bennett*, a case challenging the constitutionality of Arizona's public financing system's "trigger matching funds" provision. "Trigger funds" are provided to publicly financed candidates who face high-spending non-publicly financed opponents or outside groups. Reform advocates do not expect the Supreme Court will uphold the trigger provision. They are further concerned that the Court - as it did in *Citizens United* - may not restrict itself to ruling on the narrower question presented - the

constitutionality of the trigger provision - but on the entire Arizona financing scheme, possibly striking it down altogether.

As the *McComish* case demonstrates, *Citizens United* was not the final attack on the campaign regulatory system. Conservative attorney James Bopp and his team at the James Madison Center continue to bring a tidal wave of coordinated challenges to rules intended to prevent corruption and encourage broad participation in the electoral process. We need a robust and long-term legal strategy that defends existing policies, develops affirmative litigation, and nurtures First Amendment scholarship that would support reforms.

To advance our goals through grantmaking, we have made grants to:

- **Brennan Center for Justice** and the **Campaign Legal Center**, who are working collaboratively on the *McComish* case, defending other existing campaign regulations, developing affirmative litigation, nurturing First Amendment scholarship that would support reforms, and working to ensure Federal Election Commission and Internal Revenue Services enforcement.

To advance our programmatic goals, we are also:

- Considering a partnership with the **American Constitution Society** to lead a series of high-level (but closed-door) discussions that bring together election law experts with top litigators to explore potential litigation in this arena. (For example, Jonathan Soros has suggested affirmative litigation that would distinguish between the various forms of association based on their underlying holders and their voluntariness.)
- Exploring a possible meeting of tax and corporate governance regulatory experts to discuss the possibility of using existing regulatory systems (i.e., tax regulations, accounting standards, SEC rules) to curtail or create disincentives for corporate election spending.

We look forward to any further thoughts or feedback you have on this work.

Public Affairs Television, Inc.

February 7, 2011

George Soros
Open Society Institute/The Soros Foundation
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New York, NY 10019

Dear George:

After reading your excellent op-ed article in *The Washington Post*, which concludes with a call for "constitutional" reforms (among others) in Egypt, I am writing in hopes of persuading you and your colleagues to reconsider your reluctance to support the campaign for a Constitutional amendment to reverse *Citizen's Union*. We seriously need some constitutional reform in America and we have a chance to make the argument for it through a sustained campaign using *Citizens United* as the leverage

That case was made the other day at a gathering of more than 40 philanthropists who met at the Nathan Cummings Foundation for a discussion that I moderated. Many came skeptical but left excited. They were impressed by the serious public opinion research by Peter Hart and Associates, the firm that conducts the *WSJ/NBC polls*, on how Americans feel about money in politics, the power of corporations, democracy, and the viability of an amendment to challenge that power. They listened carefully to the arguments put forth by John Bonifaz and Jeffrey Clements, whose bios I have included, that the fight for a Constitutional amendment can be a catalyst for winning a bigger struggle to trim the political power of corporations without inhibiting their role in the economic sphere.

I am aware that you and your colleagues are dubious about this approach. I know that you fear that such an amendment campaign could endanger free speech rights, open the door for amendments that undermine the First Amendment, and distract from other reform efforts. There are reasonable responses to those fears and they were made at this session at Cummings. Let me summarize them briefly:

- This is not a proposal to amend the First Amendment. Justice Stevens was correct in calling the *Citizens United* majority decision a "radical departure" from First Amendment principles, and an amendment to overturn *Citizens United* would leave the First Amendment exactly how it was for more than 200 years of American history. If there has been any amending of the First Amendment, it has come from the Supreme Court's misstep in creating a new idea that the corporate spending of corporate general treasury funds in elections is speech. Furthermore, several

previous amendments have overturned Supreme Court errors. The clearest example is the 19th Amendment for women's suffrage, which reversed a Supreme Court ruling that the 14th Amendment's equality and liberty provisions did not confer a right to vote for women.

- This amendment campaign would not make it any easier (or any harder) for other amendments to be enacted. Only a Constitutional convention "opens the door" to other amendments, and this campaign is not calling for such a convention. Article V of the Constitution sets forth two different ways the people may amend the Constitution. One way involves the passage of an amendment by two-thirds of the US House and Senate and ratification by three-quarters of the states. The other way involves two-thirds of the states calling a constitutional convention and three-quarters of the states ratifying any amendments proposed by such a convention. The campaign led by Bonifaz and Clements is pursuing a 28th Amendment in the same way that we have enacted each of the 27 previous amendments (passage by two-thirds of the US House and Senate followed by ratification by three-quarters of the states).
- This will not distract from other reform efforts. This constitutional amendment campaign has the potential to serve as the engine that supports all other reforms in this field. By framing this issue around the bedrock principle that people, not corporations, govern in America, the aim of this campaign could unite various constituencies around the country dealing with the manifestations of unchecked corporate power subverting our democracy and our government. In doing so, this campaign could seize this unique and powerful moment in our history to help build a broader movement that preserves toward democracy.

I believe you would find it very useful to hear these arguments directly and to quiz their advocates personally, as did the participants who came to the Nathan Cummings event. If you and Jonathan and OSI were to see the merit in this fight, your participation could be as significant as France's decision to come to the aid of the American Revolution. We are, after all, in the next round of that revolution, although in this case the aim is independence not from the British Crown and the East India Company but from a new and different type of corporate state.

All the best,

Bill Moyers

cc: Jonathan Soros
Ann Beeson