

COULD CAMPAIGN FINANCE REFORM HAPPEN HERE?

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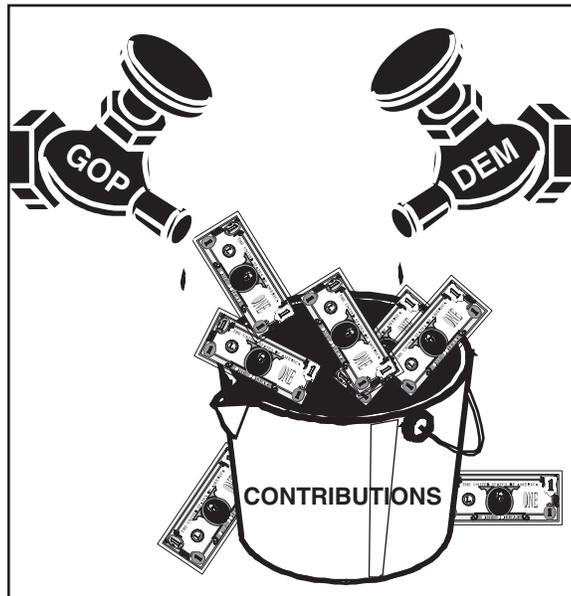
Don't bet on it — especially not at one of Governor Doyle's new, perpetual, full-fledged Indian casinos.

What makes state Senator Mike Ellis think Wisconsin is in need of campaign finance reform? Don't get him started.

"All you've got to do is look at the mess we've got going on in both houses of the Legislature," growls Ellis, a Republican out of Neenah and chair of the Senate Education, Ethics and Elections Committee. "This is the product of how we fund elections."

The high cost of getting elected, says Ellis, "forces candidates to make around-the-clock efforts to raise funds." The candidates are then indebted to those who give them money. It's to the point, he believes, where access to state government is more-or-less openly for sale.

During the two-year session that ended this January, the Legislature, which Ellis has called "a massively corrupting place," passed a total of only 109 bills, by far the lowest output in state history. The budget was passed months late, as usual, stuffed with amendments aimed at satisfying campaign donors and special-interest groups that during this



session spent \$46.6 million lobbying lawmakers. The budget document was so flawed that the Legislature had to reconvene to pass a "budget repair bill." And still it managed to avoid any long-term fix to the state's multi-billion-dollar budget crisis.

Another "good example," says Ellis, "is the most recent governor's race." According to Wisconsin

Democracy Campaign, a nonpartisan watchdog group, a total of nearly \$23 million was spent "in a race marred by repeated volleys of negative and misleading television advertising and devoid of issue discussion vital to voters." (The candidates blew through \$18.8 million, and special-interest groups seeking to influence the race doled out an estimated \$3.9 million.)

But what troubles Ellis most isn't the volume of spending; it is how ingrained the notion has become that money buys access, which results in favorable treatment. He cites a gathering that took place in Chicago last October, just before the 2002 election. Present were several people Ellis describes as former "bag men for Tommy [Thompson]," including the ex-

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governor's chief fund-raiser Phil Prange, Republican lobbyist Eric Peterson, and GOP operatives Nick Hurtgen and Craig Peterson. The gathering, which also included some high-rolling Democrats, was a fund-raiser for Jim Doyle.

"They will give their money to whatever candidate they think they can buy influence from," says Ellis. "It doesn't matter what political party."

Ellis finds an even more troubling display of pay-to-play politics in the \$725,000 "dumped into the Doyle campaign" by the state's Native American tribes. (An additional \$250,000, estimates Wisconsin Democracy Campaign, was spent by the Forest County Potawatomi on issue ads in support of Doyle's candidacy.) This money was given to the Democratic National Committee in late October by three tribes; the DNC then cut a \$1 million check that the state Democratic Party used to buy ads backing Doyle and other Democrats.

"That's how they launder the money," charges Ellis, noting that the arrangement allowed the tribes to circumvent the \$10,000 limit on contributions to a statewide candidate's campaign. It also let the players conduct their business under cover of secrecy. News of this money-washing scheme first broke in late February, just after Governor Doyle announced the signing of the first of several gaming compacts so generous that the tribes promptly began running TV ads to build public support. The compacts grant the tribes the right to have full-fledged, 24/7 casinos in "perpetuity" — as long as rivers run, the sun rises, and the Great Spirit smiles on his people from the Great Craps Table in the Sky.

Ellis says the landmark campaign-finance-reform bill he's been pushing for years — its current incarnation is known as Senate Bill 12, or Ellis-Erpenbach, after Democratic cosponsor Jon Erpenbach of Madison — would put an end to such shenanigans. Among its many provisions, SB-12 would bar soft-money transfers between political campaign committees;

require groups running issue ads on behalf of candidates to submit to regulation including disclosure requirements; and provide matching public grants to candidates who have such ads run either against them or in support of their opponents.

And that's precisely why Ellis is "very pessimistic" about its chances of passage. Governor Doyle, he asserts, has had "a change of attitude" toward campaign finance reform. Now that he has personally benefited from the loopholes that reformers want to plug, he may be asking, says Ellis, "Why level the playing field?" Ellis thinks it's typical of the political mindset that has blocked campaign finance reform in Wisconsin for years, despite overwhelming public support. (In fall 2000, advisory referendums calling for legislation to "limit campaign spending, require stricter contribution limits and require full and prompt disclosure of election related activities" were backed by 90 percent of voters throughout Wisconsin.)

"Going into an election, challengers are always for campaign finance reform," observes Ellis. "After the election, they become distant. I'm afraid Governor Doyle has become distant."

Doyle, through top spokesperson Jessica Erickson, rebuffed requests for an interview, despite having more than a month of lead time to set aside a few minutes. His administration has put the issue of campaign finance reform on the back burner, saying efforts to solve the state's budget crisis must be Job One. It now appears unlikely that SB-12 will come up for a vote until the legislative session that begins this fall, if at all. Even more unlikely is that the bill will pass in a form that preserves its distinction as one of the most sweeping, clever and efficient reform measures ever conceived.

But Jay Heck, executive director of Common Cause in Wisconsin, remains hopeful that the state could pass meaningful reform in time for next year's elections: "I think this is the best chance we've ever had." While he says there are certain groups, including Wisconsin Manufacturers and Commerce and Wisconsin Right to Life, who "will never support

reform,” he’s buoyed by Ellis’ clear and passionate advocacy from within the ranks of the Republican Party.

“Mike Ellis is what makes this viable,” says Heck. “If it was just Democrats, it would certainly be killed.” Much more important, he believes, is Doyle’s level of commitment: “The governor’s got to be engaged. So far, he hasn’t been.”

Heck and members of his group’s board met with Doyle in March. The meeting lasted about 45 minutes, longer than Heck expected. He thought Doyle asked good questions and seemed well informed. “He’s definitely interested,” says Heck, noting that, as attorney general, Doyle defended an earlier state attempt to regulate issue ads. “I was very pleased.”

Mike McCabe, executive director of Wisconsin Democracy Campaign, is also optimistic. “The chances are better than ever,” he says, citing several factors, all of which seem to be variations on the theme that Wisconsin is becoming an ethical cesspool. First, he notes brightly, “You’ve got five top legislative leaders sitting in court on felony charges,” all having to do with allegedly illegal campaign activity. The Legislature may be more inclined to pass reform owing to this “dark cloud” hanging over its reputation.

McCabe also thinks pressure will build as a result of the current budget process, which he expects — okay, hopes — will produce “an awful lot of disillusionment about how decisions are made.” It will be made even clearer how special interests get special treatment. “A lot of people are going to feel real pain,” says McCabe, citing plans to hike tuition dramatically and cut 2,900 state jobs. “But WMC [Wisconsin Manufacturers and Commerce] and WEAC [the state teacher’s union] will not

be among them.” And then there is the whole business involving the gaming compacts.

“I think anger is building,” says McCabe. “As I go around the state, I find that people who did not have campaign finance reform on their radar screen a year ago do so now.” Citizens are convinced there is a problem, although they “don’t believe it’s within their power to change the system.”

McCabe disagrees with this assessment. As a former legislative aide, he knows that if a lawmaker receives even a half-dozen letters on a given bill, that’s enough to make an impact. If lawmakers were to get hundreds of letters, they would get serious about passing real reform. Conversely, though, “they can get away with not doing anything about campaign finance reform so long as they sense that voters consider it an inside issue.”

Heck and McCabe, through their respective groups, form a kind of good cop/bad cop team in their common pursuit of reforms that would put them out of business. Heck seeks to work cooperatively with elected officials and even special interests, while McCabe screams bloody murder at how corrupt the system has become. Thus, in the week in March when Heck was meeting with the governor and lauding his apparent receptivity to a reform agenda, McCabe was suggesting that the fix was in on the Indian gaming compacts. McCabe told one reporter, “The speed with which these deals were put together suggests to me that they must have been cut during the campaign.”

Both groups, with some caveats, strongly support SB-12. “If enacted, it would make a major difference,” says McCabe. “It would change the landscape considerably.” He says no state has passed a better bill through legisla-

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tive initiative, although some, like Maine and Arizona, have enacted “even more ambitious” reforms as the result of citizen referenda. (In Massachusetts, a citizen-initiated reform package has been stalled by the refusal of the governor and legislature to provide funding.)

SB-12 would provide candidates for state office with public financing at 45 percent of the spending limits for each office, plus additional grants to match whatever their rivals spend in excess of these limits. More importantly, it would match contributions made against candidates by third parties, in the form of independent expenditures or issue ads. And it would eliminate leadership-controlled legislative campaign committees, impose limits on contributions from conduits (which are similar to PACs), bar soft money transfers between campaign committees, and ban campaign fundraising during the state budget process.

What makes Wisconsin’s bill “nationally unique,” says Heck, is its call to match outside contributions dollar-for-dollar for all state offices. This also makes it problematic, since SB-12 as written prescribes no upper limit. If the Forest County Potawatomi spend \$2 million in support of a given candidate, will taxpayers have to come up with \$2 million for her opponent? Heck says that if the state adopts this feature, it will almost certainly limit the amount of the match.

According to a fiscal analysis, the state could provide statewide public financing for about \$4.1 million a year — a mere drop in the state’s \$23 billion budget bucket. This estimate assumes that every office would have two contenders and every candidate would qualify for and receive public financing. But it does not include any money to match candidates who engage in profligate spending or have issue ads and independent expenditures made on their behalf, since it’s unclear whether these outlays would continue if candidates were promised matching funds.

SB-12, in its current form, would require any group running ads that refer to an identifiable candidate or party 60 days prior to an election or primary to register with the state

Elections Board and disclose where its money comes from and on whose behalf it is spent. This means it would no longer be possible for corporations, which are barred under state law from contributing to candidates, to funnel money to groups for candidate-specific issue ads.

The matching fund requirement would not prevent unions, tribes or a PAC funded by corporate executives from spending, say, \$250,000 on behalf of a particular candidate. But it would create what McCabe calls “a pretty powerful deterrent,” since interest groups may think twice about spending \$250,000 if they know “the candidate they are trying to beat would be provided with an equivalent amount of money.”

Any effort to regulate groups seeking to run issue ads will almost certainly be challenged on constitutional grounds. Already, this aspect of SB-12 is under fire not just from Wisconsin Manufacturers and Commerce, but also the ACLU of Wisconsin, both of which claim it would stifle speech. WMC’s James Buchen, testifying before Ellis’ committee, warned that this provision would “fly in the face of the First Amendment and take the electoral process away from the people.”

Some clarification as to the constitutionality of regulating issue ads is expected when the U.S. Supreme Court weighs in, either early this summer or this fall, on a challenge to a similar provision in the McCain-Feingold federal campaign finance reform bill passed by Congress last year. Don Simon, general counsel for national Common Cause, is optimistic that the high court will uphold the provision, which he says is “narrowly tailored to regulate the ads at the core of the problem” and congruent with the court’s past support of efforts to bar corporate and union contributions to federal campaigns. “The ads that are regulated by the new law,” says Simon, “are clearly efforts to evade this ban.”

Heck says the beauty of SB-12 is that it’s “balanced” in terms of its impact, matching both independent expenditures of the sort that have tended to go to Democrats from groups

like WEAC, as well as issues ads that have most often been run by groups like WMC in support of Republicans. And it contains a clause stating that restrictions on both types of advocacy will be struck down if either is deemed unconstitutional.

More than 30 public-interest groups, from the AARP to United Cerebral Palsy of Wisconsin and the Wisconsin Federation of Teachers, have signed on in support of SB-12. “The Ellis bill is gaining support, it is gaining momentum,” says McCabe.

Still, the bill’s backers know that success is far from assured. McCabe shares Ellis’ concern about how incumbents — not just Doyle but all 132 members of the state Legislature — have “a personal interest in keeping the status quo in place.” During the last election, he notes, nearly half of the 116 legislators up for reelection had no challengers, and those who were challenged enjoyed a 16-to-1 cash advantage as of the July reporting periods. Under SB-12, a candidate who raised enough to qualify for public financing and thereafter didn’t raise another cent would be outspent by no more than two to one.

“There are an awful lot of people in the Legislature,” says McCabe, “who like the status quo and will go to great lengths to protect it.” Or, as he wrote in an op-ed piece, “achieving real political reform amounts to taking a bone from a dog. The people in power will never be persuaded to give up their ill-gotten electoral gains voluntarily. They’ll have to be forced.”

Ellis agrees, saying it’s not just Doyle’s “attitude change” that makes him pessimistic, but also the “continued opposition on the part of certain Assembly Republicans and Senate Republicans.” Ellis sees the decision to put the

budget ahead of campaign finance reform as an ominous sign: “In my judgment, that translates into, ‘The budget is for sale again.’” Another problem is that, “after the budget, there will be no funds left for campaign finance reform.”

But Senate Majority Leader Mary Panzer, a Republican from West Bend, thinks it makes sense to wait until fall, so that the state can see what the U.S. Supreme Court decides regarding the regulation of issue ads. She also says the state must fix its “worst fiscal crisis” in years before taking up measures that entail new spending. As far as fixing Wisconsin’s broken electoral system, she expresses support

for such measures as “full and timely disclosure” through electronic filing, a bill to clarify that lawmakers may not trade legislative favors in exchange for contributions to sources besides themselves, and general reform of the electoral process, through bills to simplify recounts and require voters to show ID.

Panzer, with a nod to colleagues who fret about the use of public funds for campaign purposes —

i.e., public financing — suggests that moves in this direction be taken incrementally, perhaps starting with a plan to shore up public funding for judicial races, the “Impartial Justice Bill,” which she says has the broadest support. As for Ellis’ more sweeping grab bag of reforms, Panzer pronounces it DOA: “SB-12, as it’s currently written, is not going to pass.”

Ellis seems prepared for this possibility, saying he’s not sure what will happen after his bill makes its way to the Joint Finance Committee: “I don’t know if they’ll take it up at all.”

McCabe is less grim, but his optimism is tempered by realism. “I fully understand what this cause is up against,” he says. “We’re up

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against the most powerful economic interests in the state and also some widespread legislative resistance.” Like Heck, he put the onus on Doyle.

“This is a strong-governor state,” notes McCabe. “Our system puts enormous power in the hands of the governor. If he wants campaign finance reform, he can play a major role. Time will tell. If the governor were to spend some political capital to get it, I think the chance that reform will pass is better than 50-50. If he doesn’t, it’s less than 50-50.”

McCabe notes that the last incarnation of reform, which passed the Legislature last summer, did many of the things that SB-12 would do, but included what reform advocates early on recognized as “a poison pill”— a nonsever-

ability clause holding that the whole bill would be rescinded if any one of its provisions were declared unconstitutional. The bill’s drafters, including now-indicted state Senator Chuck Chvala and Representative Scott Jensen, thoughtfully included a clearly unconstitutional provision. McCabe calls this “one of the most cynical laws I’ve ever seen passed.” It allowed lawmakers to say they were for reform while effectively blocking it. (As expected, federal Judge Barbara Crabb spiked the provision, and the bill, last December.)

The moral of the story, says McCabe, is this: “Saying you’re for campaign finance reform doesn’t mean a lot. Jim Doyle says he wants campaign finance reform. The important thing is what he does.”