

PANEL 3

**ACADEMIC PAPERS DISCUSSION 2
(TRANSCRIPT)**

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Michael Miller – University of Illinois Springfield

**Scott Comparato – Southern Illinois University
Carbondale**

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Mr. Yepsen: Well, with that, I'm going to introduce my colleague, Dr. John Jackson, who will lead off our second panel today. John?

Mr. John Jackson: Thank you, David. Let me start by saying I think these are very good papers. They address the issues that we wanted to address and they complement each other nicely, so even though they're four very disparate papers, they fit together very coherently. We're going to go in the order listed in your program. I'm going to introduce them now and each one will simply start when the other ends.

Our first speaker will be Michael Miller, who is from the University of Illinois Springfield. And when I introduce you, Michael, would you wave to the crowd so we can sort you out? His paper is "Public Election Funding after the *McComish* Case." This is state subsidies for campaign finance, and he's comparing those across the country.

The second paper will be my colleague from SIU Carbondale, Scott Comparato. He's talking "On Court Races and the Problem of Campaign Finance After the Case of *Caperton v. Massey*." Let me just add on that this is a landmark West Virginia origins case. However, it could have been *Karmeier* versus *Maag* in Southern Illinois, for those of you that keep up with the funding of judicial races, and the issues are very much the same in Illinois and that fairly famous \$9 million race for the Supreme Court seat from Southern Illinois.

The third speakers will be Tim Krebs, from the University of New Mexico, and Fraser Turner, from Loyola University here in Chicago. They are writing a paper called "Campaign Finance Reform in Illinois: an Examination of the 2011 Chicago Mayoral Election," and of course the newly passed campaign finance law that impacted it.

And then finally, James Merriner, who is a writer and editor here in Chicago. Jim Nowlan introduced him, actually, a few minutes ago. His paper is entitled, "Undoing Reform: Personal PAC v. Illinois State Board of Elections. Mr. Merriner is totally and completely skeptical of the whole enterprise and says basically that reformers are barking up the wrong tree, as I read the paper, at least, but he can correct me if I'm wrong. So we will start down on the end with Michael Miller.

Mr. Michael Miller: Thank you, John. And welcome to my fireside chat. I'm going to begin by talking about state level public election funding, which is something I devoted the better part of eight years to understanding. We're approaching it this morning from the perspective of corruption. If we diminish the role of special interest

or other contributor money in American elections, we reduce the appearance of quid pro quo exchanges in corruption. That is a given.

I, as an election scholar, also approach this issue from some of the other conventional wisdom problems in American elections such as elections are uncompetitive because incumbents have all the money. It takes a lot of time and effort to raise the necessary money. And elections are just too expensive to begin with. There's too much money in American elections. And it is awfully tempting, then, as a reformer, to look at public election funding as a possible cure-all for all of these problems. And that is something that I have taken up in my work.

But I'm going to caution those of you who are sort of bully on these programs to resist the temptation to see them as something that is a cure-all fix. I'm going to talk about some positive findings, some negative findings, some judicial court action all in ten minutes, with the caveat I am willing to get as nerdy as you'd like in the questions or at lunch, but I'm going to try to keep my findings brief here today.

So the way I oriented this program is in my former life, before I was an academic, I was a campaign manager in federal elections. And people say, well, what kind of races did you specialize in? And I say, well, I picked the most prolific losers. And it would always end the same way, in the darkened hotel room. You make the clichéd call to the congressman and concede the race. And then they would turn to you and say, "Imagine what we could have done if only we'd had the money."

And that is the fixation in American politics. We trace all of these problems back to money. And my argument, when it comes to public funding, is it's not money, it is time. The amount of time, if you've ever been in a campaign office, the amount of time that it takes to run for United States Congress, just to raise the million dollars, is amazing—eight to ten hours a day sitting there dialing for dollars.

And you've got to ask yourself, as a citizen—and I ask myself as a scholar—what could we be doing with that time? Not only as a candidate, but as a representative, as a sitting incumbent member of Congress that could improve our democracy, our governmental functions and our representation. And so I have focused on the time aspects of these things.

By directly granting citizens with subsidies, six states in the United States—and three of them do this in a full fashion—three states, Arizona, Maine and Connecticut, will give you every dollar that you need to run an effective legislative campaign, so long as you meet minimum qualifying thresholds. In Arizona, for instance, about \$33,000 is the average cost of a race, and so long as you get 210 of your friends and neighbors to give you \$5, demonstrate your viability, they will give you all of that money and wish you good luck. You raise no money from private sources.

Moreover, if, say, I run against a wealthy candidate who outspends me as a publicly funded candidate, the programs, as originally constructed, would keep paying me. So if I get my 33,000 originally and my opponent raises 50, every dollar he spends

above my 33, I keep getting matching funds checks. We are locked in financial parity. The idea behind the reform is that money will not determine the election. Practically, for me, as a candidate in this situation, I don't have to devote any effort, once I've got this money, to raising funds.

The way that I've studied this is through multiple surveys fielded to national legislative candidate populations and several rounds of in-depth field interviews with candidates trying to decide how this affects their day. What I have found is that when candidates take these full subsidies in these three states, they spend about ten percentage points more of their time per week directly engaging the voting public in a manner of their choosing. When you trace this out throughout an entire campaign, this is four to five hours a week that results in conversations that would not have otherwise occurred because of the opportunity cost of fundraising. This is thousands of direct voter contacts throughout a race. That's one effect.

The second effect, that shouldn't be too much of a leap for you, is that more people vote in these elections. And the reason that more people vote is because somebody knocked on their door and talked to them. And when they're going down the ballot after they've already made the decision to vote, they come to that state legislative race and they say, "Oh yeah, I met that person. That person knocked at my door. Now I've got all the information that I need to cast a ballot."

And the third major finding that I've gotten so far is that, you know, to the other political scientists in the room, our conceptions of quality candidates and what a good candidate is no longer apply in these races, because all of the attributes that you want—experience, name recognition—they no longer matter when you've got all the resources that you need. It's those attributes that lead to more money. So if you take the fundraising element out of the election, these reforms can literally manufacture quality candidates in these elections.

Those are three very, I think, profound findings about the way that these programs affect elections. But I will say that it's not all good. There is an ideological component here. The benefits from these programs do fall more to Democratic candidates because Democratic candidates are more ideologically comfortable with running on public money, so that's worth talking about.

And the other thing that I'm going to end the remarks with by moving into the judicial action is there is pervasive gaming. Candidates shift their incentives, shift their activity to adapt to these new programs. Now, me running against the moneybags candidate I alluded to earlier, if he knows that every dollar he spends above my subsidy amount is going to result in a check being cut to me, he's going to defer that spending. He's either not going to speak, not going to spend money to speak, or he's going to wait.

And what I have found is what they do is these candidates wait until the last days of the election. They have pre-negotiated contracts for ads, mailers, robocalls and walkers, and on the Thursday before the election, that's when the campaign begins.

And the paper I wrote there was called "Gaming Arizona," because these new candidates change the timing of the campaign. And yes, I get the matching funds check on the Wednesday after the election.

And so we really need to be careful here by thinking through the incentives of these programs and the way that they're going to affect actors. Politicians are not stupid people, right? They will adapt. And these reforms are so sweeping and so big that when we are met with reform proposals, we need to game that out.

And presently, before the United States Congress, the Fair Elections Now Act would fully fund all candidates for United States Congress to the tune of \$800,000 a pop. My issue with this, if you believe everything I've just said, is that it's not money, it's time. There are no spending caps in the Fair Elections Now Act.

So I get my \$800,000, but I can keep raising money. There's no reason, as far as I'm concerned, to expect that candidates would stop raising money if they're not statutorily prohibited from doing so. And so this is exactly the kind of thing that I'm talking about. So I've been fairly publicly critical of the Fair Elections Now Act for that reason. I'm happy to talk more about that.

Where are we now? Just to close up. In the *McComish v. Bennett* case, which was argued in 2011 at the Supreme Court, the traditionally funded candidates who would want to spend money against me said, well, the practical incentive here is to prevent me from continuing to spend money past \$33,000, so therefore, this is a First Amendment case. These provisions chill my speech. I'm being oppressed. Help.

The Supreme Court agrees. Despite massive empirical evidence to the contrary that there's actually no diminished spending, no altered behavior in the content of speech, the Supreme Court did find with those candidates. So now the regulatory environment in which we find ourselves is that there can be no triggering provisions in these systems. The subsidies must bear only on the candidates that accept them. That's a big deal, if the goal is to lock people into financial parity. We can't do that anymore.

So we're looking for other alternatives. And this is just part of the cautionary narrative that I'll give you in the post *Citizens United* and post SpeechNow.org environments, where we have super PACs infusing money into the system. Public subsidies are unlikely to completely fix all that ails us. Is it the appearance of corruption that we're after or actual corruption? We can take that up in the questions.

And maybe we feel a little bit better, but I don't think that any public funding system in the present environment is capable of delivering what we want, which is nail-biters in every election on election night and fully accountable representation. I'll leave it there. I'm happy to take up questions at the end.

Mr. Jackson: Thank you, Michael. Scott Comparato.

Mr. Scott Comparato: Thanks, John. I'm actually rather pleased that John decided to start by mentioning the Maag-Karmeier race, because that is how I wanted to start my talk today. In 2006 the U.S. Supreme Court refused to grant certiorari in the case of *Avery v. State Farm*, which came out of the Illinois Supreme Court. And this was a class action suit against State Farm regarding some of the aftermarket parts that they use in their repair of vehicles. And long story short, the lower courts rendered judgment against State Farm in the amount of something over a billion dollars and that case was appealed to the Illinois Supreme Court in the spring of 2004.

In the interim, Gordon Maag and Lloyd Karmeier were engaged in what would become, and still is, the single most expensive state Supreme Court race in history. Those candidates combined raised something on the order of nine, nine and a half million dollars in that race. And again, eight years later, that is still the most expensive race for a State Supreme Court position.

Those candidates received much of their money from the state Democratic and Republican parties. They also received them from individual PACs as well. Karmeier, in particular, received a great deal of money directly from State Farm. He ultimately won that race in the fall of 2004, and then sat on the court when that case ultimately was decided by the Illinois Supreme Court, siding with the majority, and overturning that 1.2 billion judgment against State Farm.

That race, I think, sort of illustrates a number of the issues that have been going on in state Supreme Court elections in the last 20 to 30 years, perhaps longer, regarding the amount of money, speech, and ultimately concerns that people have over the legitimacy of our state Supreme Courts and more generally, our state courts where individuals are running for election, actually running against opponents in what people have referred to as new style judicial campaigns. That is, campaigns that mimic or mirror what we traditionally see in other kinds of races for legislatures or for the executive.

We tend to think that courts should not operate in that way, and so there is a very serious concern about what impact the influx of money and changes that have occurred over the last 20 years or so, not just in terms of campaign finance, but also decisions that have come down from the U.S. Supreme Court, what impact that might have on the functioning of the court system, and ultimately the legitimacy of our state court systems.

So in terms of campaign finance, really in the last 20 years or so, as I say, costs and amounts have truly skyrocketed. In the decade of the '90s, approximately \$90 million was spent in state Supreme Court campaigns. In the most recent decade, the 2000s, that number had more than doubled, to over \$200 million in state Supreme Court races.

Alabama happens to lead the pack in that regard, having spent over \$40 million. The next four states—Pennsylvania, Ohio, Illinois, and Texas—all come in at about

\$20 million each. What is notable about those five states is that they are all partisan election systems. That is, candidates in those states run against competitors in a partisan election where their party ID is listed on the ballot and voters have the opportunity to see that when they vote.

Illinois, just as an aside, has something of a hybrid system so that once the justice wins that competitive election, they then go up for retention votes in which they do not face a competitor. That differs from some other states, where it is competitive for subsequent elections as well.

And also notable is that the next, say, ten to 15 states on the list are nonpartisan election states. Nonpartisan election states where individuals' voter identification is not listed on the ballot, and so the prices, so to speak, for those campaigns is substantially lower, though there is recent evidence to suggest that, actually, costs associated with nonpartisan elections are also going up.

The third category of judicial races are what we consider merit elections or what are known as Missouri Plan states, that is, where justices are selected by the governor from a group of names given to him or her by a panel, and that individual is then appointed to their position for a number of years and then subsequently runs in retention elections where they do not face a challenger, but simply run against their record, so to speak.

Thomas Kilbride, a couple of years ago, you may have noticed, ran in a retention election here in Illinois for the Illinois Supreme Court. His race, even in a retention race, cost close to \$3 million. So the amount of money flowing into state Supreme Court campaigns, and now, these days, even lower court campaigns, is increasingly an issue.

On top of the actual money that is flowing into these cases, the Supreme Court has had a role to play in this as well, and through a number of cases, one of which John mentioned, *Caperton v. Massey*, involve recusal standards for state Supreme Court justices. In that case, an individual who won the seat for the West Virginia State Supreme Court received close to \$3 million from one of the individuals who had a case currently before the Supreme Court, an almost carbon copy of the *Avery v. State Farm* case here in Illinois, where the individual received the money and then ruled in favor of that litigant, wiping out the judgment against them, I think in that case, in the neighborhood of \$50 million.

The Supreme Court took that case and said that the appearance of impropriety in that instance where a judge received such a large sum from an individual contributor who had a case before them gave the appearance of bias, and as a result set standards for recusal in those circumstances.

On top of that, in 2002 the Supreme Court also decided *The Republican Party of Minnesota v. White*. And in this case, the Supreme Court struck down what are known as, in this case what was known as an announce clause. That is, state

standards that have been adopted to prevent state Supreme Court candidates or judicial candidates generally from taking positions on policy issues that presumably could come before them when sitting on their courts. And the Supreme Court struck that down, basically arguing that there is no connection, necessarily, between speech and the appearance of impropriety.

The last case that I'll mention is *Citizens United v. The Federal Election Commission* that was decision in 2010, which I'm sure we're all aware of, and the effect that might have on campaigns. It might also have a very significant effect on judicial campaigns, because it removed restrictions on the ability of corporations to raise and spend money independent of campaigns. It's still a little bit too early to know just exactly what impact that's going to have on state Supreme Court races, though there is the expectation that it is going to continue to contribute to the rise in money that is going into these campaigns.

All of these have contributed to this appearance of impropriety, problems of legitimacy of state Supreme Courts. And I won't go into all of the empirical research on this that has been done, again, because some of it is very tentative. It is focused on a small number of states, and as in the case of *Citizens United*, we really don't have a whole lot of time or races that we can look at yet to see what impact there has been, if any.

I will say, though, that the results are somewhat mixed as to what effect these decisions of the court have had on these races. There is, however, a pretty consistent finding that the legitimacy of state Supreme Courts is impacted by this influx of money. People have less confidence in judicial institutions where it's clear that justices are receiving large sums of money in competitive elections.

As for reforms, there have been a number of suggestions that have been made, and I'll just detail a couple of them. One of them is public financing for judicial races. These have been adopted in a couple of states, Wisconsin being one of them. However, they have not yet been applied in a race setting, so it's still unclear just exactly what impact that is going to have.

Others have also suggested, because of the money going into these campaigns, that states ought to have more stringent recusal standards because of cases like *Caperton* and because of the situation in the Maag-Karmeier Avery situation. That is still something of an open question. The Supreme Court, unfortunately, in *Caperton* said \$3 million from an individual donor is too much, but we're not going to give you a specific dollar amount as to exactly what triggers the situation, so we're still left to our own devices as to how much is too much in that regard.

And so I think, just in closing, we are in a very unique position right now in the history of state Supreme Court campaigns, and the years coming up, and the elections coming up I think are going to be very instructive in terms of how the influx of money, what effect the influx of money has on the running of judicial campaigns and the functioning of our state Supreme Courts.

Mr. Jackson: Thank you, Scott. Tim Krebs is next.

Mr. Timothy Krebs: Thank you. First I want to say thank you to Professor Jackson and the staff at the Paul Simon Institute. This is a great event, and I'm very appreciative of your support of our research efforts and our opportunity here to present our work on an important topic, and an interesting topic, and something that I've actually been looking at for a fair amount of time.

We do have corruption in Albuquerque, New Mexico, and in the state of New Mexico generally. Illinois corruption tends to be a little bit more interesting. [*Laughter.*] What we tried to do was to look at—and this is a piece of a larger paper on the 2011 Chicago mayoral election. What we tried to do here was to look at the effect of the new campaign finance law in Illinois on campaign contributions in this particular contest.

And the election itself was interesting from the standpoint of it was the first open seat race for mayor of Chicago in decades. Chicago mayoral elections tend to draw a lot of attention. They tend to draw a lot of campaign contributions, a lot of large donations. From a research standpoint, though, the most interesting thing was that the reforms occurred in the middle of the contest.

And so we've got basically 17 weeks of campaigning before these reforms kick in, and then about another 12 weeks...less than 12 weeks, but 12 weeks' worth of data on campaign contributions and on fundraising for the mayoral election, so we've got a nice before and after test here to look at the influence of the new campaign finance law, and so from that standpoint it was very interesting to us.

Our expectations were that candidates will rely on more and smaller donations in the reform period of the campaign. Those were our expectations. If you have a system that basically has no limits and all of a sudden you place limits on them, and if there are no major changes to the cost of campaigning, candidates are going to have to do something different in order to raise the same amount of money that's required to compete. And so our expectation was that the candidates would try to expand their donor base, and we of course expected that the average donation to candidates would decrease in the reform period.

We studied the week-to-week flow of donations in this contest. We think that that is a suitable unit of analysis for this kind of study, since day-to-day doesn't make a whole lot of sense, and month-to-month misses too much, it's too aggregated. There's only five months in the campaign. It doesn't make a lot of sense. So we thought that the week-to-week flow of contributions would be the best unit of analysis for this particular study.

On your table is a handout from us which shows the graphs that we put together and shows a table that we also put together. We also, at the end of the paper, we estimated a regression model, and so that's not a part of your handout, but it's in the paper. And so what we see is that the number of contributions to the candidates,

the four major candidates in the race, the number of contributions is not affected by reform, so they're not going out, it's not causing them to reach out more.

It's not democratizing the process in the sense of candidates are now reaching out more aggressively to develop their donor base, to get more contributors in the process. We do, however, find an effect for the average donation that's coming into the campaign. And so in that sense, we look at this as reform in Illinois has had a kind of a...it's a mixed bag in terms of the success of the reform efforts.

One of the things that we're really worried about, or interested in, or thinking about is whether or not the contribution limits are too low, and how unusual was the Chicago case vis-à-vis other elections in Illinois. And part of the issue was that we had, in Rahm Emanuel, such a tremendous fundraising performance at the end of 2010, vis-à-vis the other candidates. They simply couldn't... I mean, the figures are astonishing, and you can see the chart.

Emanuel's fundraising, he buried his opponents in the first ten weeks of the campaign. Carol Mosley Braun, Miguel del Valle, Gary Chico, all good public servants, have been in office, they're experienced candidates. They were all drawn into this race because they're experienced and they're sort of big-time local elected officials. Emanuel just swamped them. And there was no way for them, really, to recover in that period before the reforms kicked in.

And so one of the things that we were worried about is that the contribution limits are too low. We actually re-estimated our regression model on the average contribution to candidates, with Emanuel excluded from the analysis. And the results are...the bottom line story is still the same, that the reform actually did have an impact, a significant effect on the average donation going into campaigns.

But then we say, well, Chicago mayoral elections are really quite different, and so are these reforms really going to have an effect if campaigns don't look like this on a regular basis. And so one of the other examples that we looked to was the 2010 Cook County Board President's race in the Democratic primary. And there we see that the average donation to candidates in that contest is significantly below the cap for individual donations under the new law, which is \$5,000.

And so one of the issues going forward is to think about where those caps are set, especially for individual donors, because if candidates are never reaching that threshold, the reform is not going to have any effect. And so you can end up in a situation where Illinois legislators have done something good, they're reformed the system. They can go back to their constituents and say we produced campaign finance reform. But if nobody's reaching the thresholds that they've put in place anyway, the reform is potentially meaningless.

Now, we see an effect in this contest in part because Emanuel was there, but also in part because the Chicago mayoral election is a much bigger deal than your average election in Illinois. I think it would clearly have an effect if we were studying the

governor's race instead of the mayor's race. We would probably find something very similar here. But the issue, I think, going forward is to think about those caps and whether they are set too high.

One thing I'll say, just in closing, is that the State Board of Elections—we've sort of beat up on bureaucrats a lot in this conference, but the State Board of Elections actually does, I think, a really terrific job of collecting data and making it available. The data now are electronically available.

When I started doing this kind of work back in the 1990s as a graduate student at Loyola, the way that I got the campaign finance data was to go to the Thompson Center. And it basically had an office on, I think, the 14th floor. And I sat up there with, I don't know, a half a dozen Rolodexes in front of me. And I wanted information on each candidate.

And I sat in this room and I flipped through the Rolodexes, and I got the addresses for the campaigns, and I got the treasurers' names and so forth, and then I had to make a request for the information, which all came to me in microfiche. I still have in my office in Albuquerque a silver box that's filled with microfiche, and I keep it there as a reminder of what I went through to complete my dissertation.

So now when I look at the system and it's all electronic, and we can simply just download all the data and then begin manipulating it from there, it's a huge benefit to researchers. There are some issues in the actual reporting in terms of how we identify who the donor is and what their interest represents. There are some problems there, because we could have more categories, I think, in terms of the receipt type.

Right now we get transfers in, and we get individual donors, and it would be better, probably, to have something that's a little bit more extensive in terms of identifying who the donor is. But by and large the data are there, it's electronically available, and I think it's important, as we move forward, to really begin to analyze these data and the effect of reform in the state. I think that's the next thing. The data are there. It just needs to be worked on.

Mr. Jackson: I believe it's correct to say we are one of the leading states in the nation in terms of transparency on that particular mirror.

Mr. Krebs: Yeah, exactly. And again, when I started this work a long time ago, I remember thinking to myself, if I could just get that information, I'll have a good project here. And lo and behold, I could get that information. It took a lot of work, but it was there.

Mr. Jackson: Thank you, Tim. James Merriner, finally.

Mr. James Merriner: Thank you, Professor Jackson. We now have a 40 year historical record by which to judge the results of campaign financial reforms—not the intentions, the results. The first serious federal law was passed in 1971, totally

rewritten in 1974 at the height of Watergate. And incidentally, '74 was also the year of the first Illinois disclosure statute. So there followed many, many iterations at the state and federal levels, statutes and litigations. But there's been a concentration of events in the last three years, especially as it affects Illinois.

In 2009 we passed this Contribution and Expenditures Act, which the study references, which took effect in this election cycle, '11 and '12. Then in 2010, the *Citizens United* came down. Last spring the Montana case came down which reaffirmed *Citizens United*. Also this year, the 2009 law, which was fatally flawed to begin with, was further weakened by a federal judge, and then all but gutted by the General Assembly itself. The governor signed that bill in July. So that law is functionally meaningless.

So 40 years of experience tell us that campaign financial reforms have failed. They have not influenced, or they have not reduced the influence of money in politics. They have not delivered on any of the other public benefits that the advocates claim for it, for example, elevating public trust in government. Now, if you don't believe me, go home, turn on the television, and watch these attack ads. Has the funding of these ads been curtailed in the slightest? Has the tone of them, has the content been elevated?

Remember McCain-Feingold? It was going to reduce both the frequency of these ads and subdue the viciousness of them, the untruthfulness of them. So promised John McCain on the floor of the Senate. And we've seen how that worked out.

Now, as I understand the impulse of reformers, their primal urge is to say, well, statutes and regulations haven't worked, so let's write some more of them. Let's keep doing it until we get it right. When it comes to taking money out of politics, there is no getting it right. It's trying to square the circle, trying to make water run uphill. As long as the courts uphold the First Amendment. Now, that could change.

What doesn't change is that we are fixated on the costs of campaigns, but not on the costs of reforms. These reforms carry costs. They protect incumbents in office, they suppress participation in politics, they curtail First Amendment freedoms. Now, maybe these costs would be worth it if there were some aggregate public benefit. Where is the public benefit? That's not a rhetorical question. I'd like to know.

I'll take just a couple more minutes to challenge one of the assumptions behind campaign finance limitations. It's that the history of corruption in Illinois justifies, in fact, it almost makes necessary limitations on campaign finances. You might think so from a common sense standpoint, but the courts have consistently said no. So the only justification for curtailing political speech is to prevent corruption or the appearance of corruption, not a record of corruption. That's irrelevant, from a legal standpoint.

So earlier this year an interest group, a personal PAC, goes to federal court to overturn parts of this 2009 law as it relates to independent expenditures. They say it

runs afoul of *Citizens United* and the First Amendment. So how did the state of Illinois defend this lawsuit? History of corruption. And the judge...well, as judicial rulings go, it was somewhat sharply worded. He said I'm not going to listen to this political history. That's irrelevant. And the Montana case comes down and says no history of corruption.

Some months pass and another interest group goes to court to overturn parts of this law. Illinois Liberty Lobby. And this case raises 14th Amendment as well as First Amendment issues, equal protection of the law. It says this contribution and expenditure law creates a privileged class, the four tops, that's unconstitutional, they say.

So how did the Attorney General of Illinois defend this lawsuit? History of corruption. They even tacked on, they filed as a legal exhibit a copy of the Blagojevich indictment from three years ago, saying, you don't believe us, Judge? Get a load of this. If that doesn't justify the law, what would?

Well, you see how we just tread water with these issues after 40 years? I mean, I think the Attorney General's defense shows how weak is the case for campaign financial reforms. If our goal is anti-corruption—I think there are other agendas behind these financial reforms as well—but if the end is anti-corruption, we need to rethink the means, because campaign funding limitations as a means has not worked and cannot work. It's time to shoot this sacred cow.

Mr. Jackson: Okay. With that, let me note that we apparently are having some sound problems, so I'm going to try, if I can, to repeat the question. But I would like to start with giving the panel a chance to respond, or questions among the panelists. They get the first go and then I will turn to the audience. Panelists, any points, contributions, rebuttal or defense that you would like to make?

Mr. Merriner: With respect to public financing, I would just point out we tried that. We had public financing of presidential campaigns, post convention presidential campaigns from 1976 until 2008, when it was destroyed by Barack Obama.

Mr. Jackson: Well, a footnote on that. It started in 2000, with George W. Bush refusing to take the money in the primaries, and that started the beginning of the downfall of the whole regime, and then it went 2004.

Mr. Merriner: Good point. I stand corrected.

Mr. Jackson: Kerry and Bush refused to take money in the primary. And the point of that is if you refused to take the money, you refused to take the caps. And then Obama exploded whatever was left of it. So in terms of sequence, I would argue with you a bit.

Mr. Merriner: Yes, thank you for that correction.

Mr. Jackson: Okay. Among gentlemen, did I see Michael down there, and then I'll come to you here. Michael.

Mr. Miller: The question I wrote down, you know, the assertion that campaign finance reforms don't work because campaigns are negative, I'm not aware of much evidence linking campaign finance to negativity. Politicians will behave badly regardless of the source of their money. Negative ads work, to some extent. That's why we still see them. The market forces are there. So to conclude that because we have negative campaigns still, after enacting what I assume is the FECA and the BCRA at the federal level, I don't see linkage there.

The rationale given, the FECA, as amended in 1974, as I understand it, and the BCRA as constructed in 2001, is to prevent the appearance of corruption. Do we have less apparent corruption at the federal level, I think would be the question, if we're going to be discussing efficacy, not do we have negative campaigns. So that would be my question. Do you take up the question of appearance of corruption in criticizing campaign finance reform? Because I think that's the fairer angle.

Mr. Merriner: Is that question directed at me? If campaign financial limitations reduced the appearance of corruption, would not we see it in public opinion polls? They've cleaned up the financing; we're cleaning up corruption, so therefore we have more trust in government. I looked for any poll by anybody that related public trust in government to imposition of finance reforms. I could not find one. There might be one. I couldn't find it.

Mr. Jackson: I saw this hand right here down front.

Mr. Miller: John, can I hold the floor? I'm sorry. Just one more question.

Mr. Jackson: Yeah, go ahead, Michael.

Mr. Miller: Is there a policy recommendation here?

Mr. Merriner: My policy recommendation is one sentence. Congress shall make no law abridging the freedom of speech.

Mr. Miller: That's all I need to know.

Mr. Jackson: Down here, I saw your hand first, so I'll take you first.

Female: Well, my question might be answered now, based on your sentence. But can you expand on the costs of reforms to society? You mentioned the costs of the reforms did not really outweigh the benefit of them. Can you expand on the severity of the costs to society?

Mr. Merriner: All right. I addressed the contribution side and not the disclosure side just for the sake of time. Disclosures, I'm in favor of disclosure. I think everything

should be posted online within 24 hours. But there's no such thing as a cost-free reform. I'll tell you an old war story.

Years ago I was talking to a candidate for the U.S. Senate in another state. He was a conservative Republican, so he makes the rounds to the board rooms and the CEOs asking for campaign contributions. And he keeps hearing, "I believe in you. I'd love to help you out. But I can't risk the incumbent seeing my name on your contributors list because he will punish me."

I heard this, and I thought, well, you lost. You're a sore loser. That's an excuse. But then I heard that often enough from Republicans and Democrats in Illinois that I started to take it seriously. So disclosures carry privacy costs and privacy is a constitutional right, although not in the Bill of Rights. But the costs are outweighed by the public benefit of transparency.

And on the contribution side, I would say go back to this FECA of 1974. There were two anomalous elections, Republican waves, 1994 and 2010. Look at the incumbency reelection rates even in those elections. Most incumbents are reelected easily at the state and federal level, regardless of whatever election cycle it is. The reason these incumbents pass the restrictions they do is because it benefits them. It erects barriers to entry to the political market.

Mr. Jackson: I have the microphone here. I'm going to take this one next. Emily, do I need to repeat the question, since they're miked? I'm going to go over here next.

Female: I have a question about the judicial issues. It seems that there's less money spent in merit selection states. Is a recommendation that states go to merit selection? Can we make that leap? Or what would be your recommendation in judicial races?

Mr. Comparato: Well, those are two different questions. As for what a lot of reformers are pushing, it's definitely merit retention systems. Because of, obviously, the growth in money in particular in partisan election states, and now what appears to be bleeding into the nonpartisan election states, that is a push.

Now, that plan started in the 1940s, the Missouri Plan, and through the '50s and '60s and into the '70s, there was a lot of momentum moving that way. It has stalled in recent years, for a number of reasons. But that is what most people who do want to try and take the money out of the campaign, so to speak, want to do.

My personal opinion is the money's already now going into those merit selection states, so even in those retention elections, where judges are running against their own record, the amount of money being spent in campaigns against them is going up as well. So I don't know how effective that's going to be in going that route.

The other issue is I think that with merit election states, you technically...there's a belief that you get rid of the politics in the system by going to a merit retention type of system, when in fact you really just move the politics to a different place, because

you then give the judicial nominating commissions, who give the governor basically three names to choose from, you move it from the election itself to presumably something that is less transparent, and about which we know a lot less.

There are those who argue that partisan elections, there's nothing wrong with the system, that in fact partisan election systems serve a very beneficial purpose, and that is to provide more information to voters, and that—I didn't talk about this—but ballot roll off is a huge issue in state Supreme Court elections.

People get to the end of their ballot and they see a bunch of names of people they have no idea who they are, and they just don't vote. They have no idea. And so there's been some research suggesting by actually having partisan elections and by having this money being spent, you're actually informing the public about these people, and that you are actually doing a service by that.

Mr. Jackson: I've got two questions, one on each side of the column, and the microphone's over here now.

Ms. Christine Walker: Good morning. I'm Christine Walker with Chasing Hope, and I've enjoyed your remarks this morning. But I'm surprised that we're not talking more about the other side of the equation, which is the electorate. By virtue of being in this room, we're all very engaged and passionate and interested. And I think there's an element here that we haven't talked about, which is the process. Money, sure, but there's process, which I believe, in my personal experience, keeps good people out, which is part of the equation of why the corruption, why the reforms, why aren't they working.

And good people are staying away. And I think that we all know someone who we think would be great in office, and they say, "Oh, god no, I'd never run. I'd never put my family through it. I don't like asking my friends for money. I want my privacy. They'll do awful things to me. They'll destroy me." And it keeps good people out from being on the ballot.

But I think it also, the process, you mentioned negative ads work. I think by the time you get to the last week in October, people are not only fast-forwarding through the commercials on their DVR, they tune them out. So then you get an electorate that says, you know what, it doesn't matter who's in office, Democrat, Republican, they're all crooks, or the policies are all the same.

And I'm wondering, this gap between voter engagement and the really good people that we want, in addition to how candidates are now reaching their voters. It used to be where you had your precinct committeemen walk and drop the literature at the door. You don't need to do that anymore if you have Facebook. So how do you address this issue of the lack of voter engagement, both on the candidate side—people aren't running—and people are less engaged.

And in Illinois, we have an open primary, but it's still confusing to voters. And Beth, you understand this. Someone says, "Oh, I want to vote for you," and then you lose

in the primary. And then they say, "Well, I went in to vote and I didn't see your name on the ballot. Oh, I took a Democratic ballot. Oh, I didn't know that." So you have confusion, you have a lack of a compelling reason to stay engaged. And I'm wondering if you could speak to that element that may or may not directly relate to the financial engagement, but it's a really crucial piece.

Mr. Jackson: Michael, I'm going to ask you and then Tim or Fraser if you want to follow. You haven't had a chance to answer.

Mr. Miller: Two broad points with regard to public funding. The reforms, the comment made here about reforms enacted to keep incumbents in office. I see public funding as shaking up the market forces that would protect incumbency, and the reason for that is that if you're a retired teacher, or I know a ceramic...she makes ceramics, pots and whatever, and is an Arizona senator. No connections, but was willing to work and raise the \$5 contributions to become viable. Got all the money, where she otherwise maybe would have raised \$800, \$1,200.

Now she's got \$35,000, which is enough to send out the mailings and maybe make a radio ad. But more than that, if they're not making the effort at raising the money, public funding does return the candidates, to some extent, to the electorate, and fosters this kind of engagement. I mean, civic education, what better education than having somebody with the time to knock on your door and talk to you? And I see that to the tune of, like I said, five more hours a week in publicly funded elections.

And the comment about roll off, we see much less roll off because of that information in these elections. So we have more people running without being well connected, one, and then when they do run, there is more interaction between them and the public.

Mr. Jackson: You guys want to add to that? Okay, I'll go over here. I've got against the column over here.

Mr. Al Manning: Al Manning. I'm retired, but I have a question looking to the future, and that is about an issue that House Speaker Nancy Pelosi brought up this week, that if the Democrats win control of the House, then they will try and push for a reform again, and that would include a constitutional amendment that would be required on *Citizens United*. You've discussed *Citizens United*. Do you care to offer an opinion on what you think of a possibility constitutionally and everything else?

Mr. Jackson: Who wants that one? *Citizens United*.

Mr. Krebs: I don't know if I necessarily want that one, but I did want to say something about the other thing, about engagement. I think the thing about engagement...competition is what produces engagement. And so the finance part of it is just one piece of competition.

And so to the extent that competition is engendered by reforms, engagement is going to increase. If reforms reduce competition or if they sort of product a rigging of

the system in favor of incumbents or one party or the other, it's going to reduce competition, it's going to reduce engagement. So I think it's very hard to leave out the finance part in that discussion of competition.

And it's not even clear in terms of—we talked a lot about negative advertising and so forth, the effect that it has on the electorate. The negative advertising, the research on negative advertising for voter turnout, for who wins elections, who loses, whether there's blowback to candidates who run negative spots, it's very, very murky. The entire field is very murky. Some studies show that negative spots demobilize the electorate, other ones say no, it does the exact opposite, that it brings people into the process.

So this is a really multifaceted thing. But I think at the heart of it is, in terms of engagement, at least, it's about electoral competition. And so to the extent that can be engendered across the board, whether it's redistricting, or whether it's campaign finance, or any other types of reforms that might draw good people into the process. And that is a problem. That really is a problem. I can't imagine running for office.

Mr. Jackson: Quick answer on *Citizens United*, and then I've got two more and we're going to quit. I see Kent and then David over here. But Michael.

Mr. Miller: Okay, so on *Citizens United*, I would just say, echoing what's already been said, is we don't know what the effect of *Citizens United* is on elections. It very well could be nothing. And I personally, and this is strictly a personal opinion, think we ought to amend the Constitution very carefully. We need to carefully consider when we might do that. And I would defer to any empirical evidence that emerges after this election.

Practically speaking, I think such an amendment would be very difficult to undertake because people don't care. When we look at the process of constitutional amendment and calling state conventions or state legislatures, you're going to have to have some popular force behind this. And unless people are very angry, I don't see it happening personally.

Mr. Jackson: Okay, Kent, if you would, a microphone for him, please.

Mr. Redfield: We talked a lot about elections, and I want to broaden the discussion a little bit to talk about public policy. About half of the money that comes into Illinois in terms of political contributions has absolutely nothing to do with elections. This is money given by interest groups to try and affect public policy.

And if you want an example, when the Republicans controlled the state senate, beer money was 60/40 Republican from the beer distributors, and when the Democrats took control of the state senate, beer money was 60/40 Democrat. They didn't care about Rs and Ds. All they wanted to do was have access.

And so I think before we throw out limits in terms of Illinois politics, or more generally in terms of the country, you have to look at what limits do in terms of campaign

contributions where you've got policy following money. Sometimes we have money following policy. Lots of times we have policy following money.

So I'd like to broaden the discussion to talk a little bit about money that's coming in from people who really don't care who wins the elections, they just want to have access. And frankly, interest groups like limits, if you're not a big player, because that limits what the Speaker can ask you for. He can't ask you for 20 if the limit is ten.

Mr. Jackson: That's really a statement instead of a question. *[Laughter.]* You're Kent Redfield, you can make a statement. David, this is your house. You get the last question.

Mr. Yepsen: Thank you. I appreciate it. This is been an illuminating conversation. On the subject of the campaign fundraising and its corrupting effect, perhaps, I think we can all agree that the reason that most money is raised, certainly at the state and at the federal level, is to pay for television advertising. That's the bulk of the expenditures.

I wanted to ask the panelists for their reaction to a proposal that has come up from time to time to try and ameliorate this a little bit, and that is to compel broadcasters to provide to every legally qualified candidate, at least at the federal level, a certain amount of free advertising time, which will drive the National Association of Broadcasters right out of their minds.

But the idea is that as a condition of public licensure—and the airwaves are a public asset—that broadcasters should be compelled by law to provide, during election cycles, a certain amount of free time to every legally qualified federal candidate for purposes of getting their message across, which might, perhaps, undercut the need to raise enormous sums, primarily for television. What is your reaction to that concept?

Mr. Jackson: Okay, panel, who wants that one?

Mr. Krebs: I guess immediately I would worry about sort of the local affiliates, and their revenue streams and so forth. They make so much money off of political seasons. I don't know enough about it to say whether they would really be harmed, but in terms of local news and coverage of local politics and so forth, that's going away. And so to the extent that something like that would affect their ability to function, I think that would be a problem.

In general, I think it would be a great idea, because the cost of running campaigns, the inflation in campaign advertising, the cost of running campaigns, has far outstripped regular inflation over the decades, so it is clearly a problem.

Mr. Miller: I also don't know enough to make a broad comment, but I would just rather them grant time for debates instead of ads, just as a citizen and somebody who

loves politics. I think it would be better TV, and probably more informative and more helpful at reducing these roll off issues on a very deep level.

Mr. Jackson: I want to thank the panel for an enlightening discussion. [*Applause.*] I think we have lunch instructions.

Mr. Yepsen: Thank you. We're going to break for a quick bite to eat here now. The food is ready, so help yourself to a sandwich, and try to be ready to go right at 12:30. I want to give Dick Winters plenty of time. We're adjourned for lunch.

[*End of recording.*]