

Campaign financing

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No single event has troubled the people of Puerto Rico in recent years more than the indictments against Gov. Aníbal Acevedo Vilá. They have disturbed the process of government, the electoral process, the decisional processes of investors and businesses and have brought sorrow, anguish, anger and perplexity to our people as a whole. In writing this column, I do not pretend to judge the governor. My intention is to look at the root causes of the problem as they would affect any candidate who runs for political office. The root causes are embedded in our campaign financing system, which depends on private donors.

Puerto Rico was one of the first jurisdictions in the U.S., and one of the first countries in the world, to provide public financing for electoral campaigns. But the financing provided only covered a part of the total campaign expenses. As campaigns became more and more expensive through the use of television, more and more private funds—millions and millions of dollars—had to be raised. As the need for fund-raising grew, so did the exposure of the candidates to the risk of corruption.

The intent of donors to a political party or candidate is not always selfless. To be sure, there is a vast majority of people who donate small sums who do so merely because they want their party, their candidate or their cause to prevail. But this is not always so with the larger donors. A candidate must be extremely careful as to his or her relationship with these contributors. He or she must also be extremely careful as to the activities of the members of his or her fund-raising committee.

Big donors looking for influence are rather loose with their money. Private financing puts candidates and their fund-raising surrogates at risk. If there are no moral principles or no strength of character, many will succumb. And some will become corrupt. They will ask for money, alleging it is for the party, while in fact it is for them. The high number of public officials or party operatives who were convicted during the Rosselló administration bears witness to this fact.

Gov. Sila Calderón tried to correct this situation by reforming our law on public financing. She ended up with a system in which in an election year there is a basic grant of \$3 million to all the parties, big and small, old or new, which will appear on the ballot in November. Then, there is an additional amount of \$4 million allotted to each party to be accessed by matching them dollar for dollar.

This is the present system. It is a mixed system. Private funds must be raised to access the additional \$4 million in public funds. So the exposure to corruption is still there. It could not be undone because of *PSP v. Secretario de Hacienda*, an opinion of our Supreme Court issued back in 1980.

Since the time the Muñoz Marín government established our public policy of contributing to campaign financing with public funds back in the 1950s, there has been a basic amount equally allotted to all parties and an additional amount allotted by counting the votes the parties received in the election. This principle prevailed until 1980 when the Supreme Court held it was unconstitutional because it violates the equal protection clause of our Constitution. As a result of the court's opinion, the Legislature must allot public funds in the same amount to each party no matter the number of votes the party received in the last election and no matter that the party may be a new party just registered by petition of 5% of the voters.

This is a serious obstacle if we are going to tackle the collateral problem of exposure to corruption that stems from private financing. Public financing will throw a monkey wrench into the workings of Puerto Rican democracy if it entails that all parties large and small, new or old, will command time and space in the media totally unrelated to their support in the electorate.

The problem with public policy set by the courts is that it cannot be changed until a new case comes up. But it is clear there is a basic flaw in the court's reasoning. It applies the principle of equality not to the citizens that vote but to abstract entities, that is, the juridical entities called political parties that appear on the ballot. This results in a distortion of the democratic process. If public funds are not allocated with reference to the voters, but rather in reference to the parties as abstract entities, then the allocation produces an artificial and skewed correlation of forces emitting their messages through the media, which will bear no relation to the real alignment of forces contending the election.

Democracy works on the principle of one [person], one vote. Political parties represent blocks of these voters. The principle of equality in public financing must be applied in reference to the voters. The political parties are really fiduciaries for the aggregate of voters that they represent. To comply with the principle of equal protection, the amount of funds allotted to the parties must be determined on the basis of the voters who they represent. If it is not done this way, then the voters of the smaller parties will receive a much higher per capita amount than the voters of the larger parties. Therein lies the problem with the application of the court's reasoning.

It would take a new case to be brought before the Supreme Court for the court to reconsider liberating policymakers from the ruling in *PSP v. Secretario de Hacienda*. Yet, there is another way to go about the problem presented for public financing by this opinion. The court leaves the Legislature an opening.

In the *PSP* opinion, the court finds there was a violation of the right to equal protection of the laws because the government did not demonstrate there was a compelling state interest that justified allotting the funds by the number of votes obtained. That was the situation in 1980. Since that time, 28 years have passed during which we have experienced situations which, in 1980, were unimaginable.

There were cases of corruption before 1980, but they were few and the amounts involved were petty. The number of indictments and convictions of corruption after 1993 up to the present is totally unprecedented. And then there are the indictments against the governor based not on misuse of public funds, but on violation of the electoral laws. There is no doubt in my mind that the Legislature can establish that there is a compelling state interest to eradicate the roots of corruption in Puerto Rico by providing complete public campaign financing. This must be done without distorting the democratic process. Public funds for campaign financing must be allocated with reference to voters, not with reference to parties.

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