

Political Corruption: Democracy's Hidden Disease

by Marcin Walecki



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The Government as Shadow Donor: The Case of Argentina

Because they have access to the resources of the state, government candidates for public office require special scrutiny under any political finance regime.

by Delia Ferreira Rubio

One of the purposes of campaign finance regulation is to create a level playing field for candidates and political parties vying for public office. Regulatory mechanisms—such as limits on donations/expenditures, the obligation to disclose finances and a system of public funding for campaigns—are designed to prevent a candidate's economic resources from determining whether he or she wins office. In consolidated democracies with strong institutions and respect for the rule of law, such measures might be sufficient to accomplish this goal. However, in weak democracies with feeble institutions and little respect for the rule of law, they are not. In such circumstances, the government can exert deci-

will *manage* those resources for the good of the society as a whole.

The abuse of public or state resources during elections is not new in Argentina. During Menem's administration, for instance, the opposition argued that the government was misusing ATN (*aportes del Tesoro de la Nación*)—funds from the National Treasury—as shadow campaign financing. However, this was not a main concern of Argentina's reform of party finance and campaign rules in 2002. In this article, I will examine five arenas in which the government is most likely to act as a shadow donor—and the possible ways to prevent this—while considering the case of Argentina.

On the one hand, if such restrictions are too general, they might impede the right and duty of the administration to inform the public about its activities, which—in turn—would hinder freedom of speech and public access to information. On the other hand, a narrow description of the prohibited activity—like the one used by Argentina above—is not useful as a limit because it allows almost all publicity except that using the formula “Vote for Candidate X.”

2. Activities intended to recruit voters (proselytism). The delivery of public goods to party clients is one of the most common activities of governments as shadow donors. During campaigns, the government usually increases the number of public meetings, the distribution of subsidies, the announcement of new initiatives or the inauguration of public works. Such activities recruit votes for the official candidates, who often take part in these publicly funded events and do not register them as campaign expenditures.

In an attempt to limit such activity, Argentina's electoral code bans, during the last week before the election, “the inauguration of public works, the announcement of plans or programs and all acts of the Administration that might promote the vote for any of the candidates to national elective positions” (National Electoral Code of Argentina, art. 64 quater). However, in spite of these legal restrictions, during the 2005 congressional campaign, there were many claims of such vote-recruitment activities both on the part of President Kirchner and other highly ranked members of the administration. In particular, there were several complaints of activities that favored the candidacy of Mrs. Kirchner for the Senate.

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sive influence on the campaign—as a shadow donor—by diverting public resources to benefit an official candidate.

When government resources are used to fund an official candidate's campaign, it is useless to limit his or her campaign expenditures or regulate how he or she spends public financing for campaigns since the government's support for the candidate has already unfairly tilted the playing field in his or her favor. Such governmental action not only violates the principles of good campaign finance, it also distorts the purpose of public resources by “privatizing” them, i.e., using them as the property of a political party. Elections do not determine who *owns* public resources; on the contrary, through elections a society decides who

1. Publicity. The government may use publicity as political propaganda to benefit official candidates who do not register the use of these public resources as campaign expenditures. In many countries, laws restrict—or simply ban—this illegitimate use of public resources (known as “institutional publicity”) during campaigns, unless an emergency justifies the use of governmental publicity or promotional activity.

To address this issue, Argentina's electoral code was amended in 2002 to state that “during the campaign period, publicity of government activity shall not include any element that directly promotes or fosters the vote for any of the candidates nominated for national elective positions” (National Electoral Code of Argentina, art. 64 quater).

3. Unfair management of public campaign funds. In most countries where campaigns are publicly funded, an independent agency is placed in charge of the administration and distribution of these funds, and this agency enforces the law equally for all candidates and political parties. In some countries, the government is in charge of the distribution of these public resources, and in such cases, it can use this power to benefit official candidates to the detriment of competing candidates.

For example, in Argentina, the home secretary (minister of the interior) distributes the public campaign funds by depositing the correct amount in the bank account of each party. However, though the rules determine how and when the deposits are to be made, sometimes opposition party deposits are delayed or accidentally placed in the wrong account. Curiously, the official party and its allies never face similar problems.

4. Purchase of campaign items with public resources. Unless there are specific restrictions, governments often use public resources to pay for opinion polls, political marketing advice, transportation services or communications. Sometimes they even use public employees in party-oriented campaign activities. Despite the fact that these are in-kind donations, official candidates usually do not register such expenditures as campaign expenses.

In Argentina, there are no specific restrictions on this kind of use of public resources, which is contrary to the most elementary principles of public resource management. During the 2005 congressional campaign, the opposition parties severely criticized Kirchner's administration for its use of presidential airplanes and helicopters as transportation to campaign events. The government responded that it had acted to safeguard the president and his wife (who was a Senate candidate). Complaints were also raised over official candidates' use of public employees (press aides, photographers, speakers, administrative personnel, etc.) in the course of their campaign activities.

According to a report by the NGO Poder Ciudadano, the campaign balance sheets of the Frente para la Victoria (President Kirchner's political party) show debts to publicity companies for nearly US\$400,000. Not surprisingly, these companies are state

contractors. As the party has not reported how the debts will be paid, it is suspected it will be done through governmental contracts and other deals.

5. Use of discretionary or secret resources. The use of public funds for the campaigns of government party candidates is proportional to the size of any discretionary or secret resources that the government can use without accounting for them. In Argentina, there is a broad margin for governmental discretion in the use of public resources, including the so called *fondos reservados* (used at the president's discretion), which can easily be devoted to campaign purposes without leaving tracks.

Preventing Government Shadow Donations

To prevent the government from playing a role as a shadow campaign donor, it is necessary to employ a strategy that combines:

- reducing/eliminating discretionary or secret resources;
- specifying the activities the government cannot undertake during the campaign period;
- creating efficient control mechanisms that have the power to halt any illegitimate campaign activity undertaken by the government;
- disclosing fully the use of public resources during the campaign period; and
- making citizens aware of the importance of distinguishing between the government and the official political party.

The use of public resources to favor some candidates or political parties cannot be avoided just by passing rules, regardless of how strict they are. In addition, it is necessary to create an independent body that has sufficient power and resources to detect any illegitimate activity of the government as a shadow campaign donor in a timely manner. If infractions are noted, the body should apply appropriate penalties, though in most cases such penalties would not be levied until after the election. Since this is too late to redress any unbalancing of the playing field, procedures should be established that allow the restoration of the neutrality of government as administrator of public resources within the campaign period. Campaign finance monitoring by NGOs can also help to detect abuse of public resources and to create significant pressure on regimes to limit this form of illegal funding.

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References

Poder Ciudadano, www.poderciudadano.org

Articles in *La Nación* (newspaper) that ran September 6-11, 2005 and April 16, 2006. Available at www.lanacion.com.ar.

Lanata, J. "¿Cuánto nos Kuesta la Kampaña," *Perfil* (newspaper), September 25, 2005.

Ferreira Rubio, D. "El control del financiamiento de los partidos políticos en Argentina. ¿Qué cambió con la nueva ley." Serie Documentos de Trabajo N° 292 (2005). Available at www.cema.edu.ar/publicaciones/.

In this cartoon, which ran in *La Nación* on Sept. 9, 2005, President Kirchner fuels his wife's car from a gas pump carrying the official symbol of the Argentinian state. Cristina Fernández, the president's wife, ran successfully for a Senate seat in the 2005 elections.

