

# INTERVIEW WITH RUSS FEINGOLD: Campaign Finance, Foreign Policy, and Compromising: Finding Bipartisan Solutions in a Hyper-Partisan Environment

*By Josh Caplan and Maya Khan*

The *Georgetown Public Policy Review* had the opportunity to speak with former US Senator Russ Feingold (D-WI) on a wide range of issues. Sen. Feingold served in the Senate from 1993 to 2011 after having spent 10 years in the Wisconsin State Senate. After losing his 2010 reelection campaign to Republican Ron Johnson, he founded Progressives United, a 501(c)4 political action committee (PAC) devoted to facilitating grassroots mobilization. As a senator, he was known for being on the progressive wing of the Democratic Party yet able to broker bipartisan deals on challenging issues. He worked with future Republican presidential candidate Senator John McCain (R-AZ) to reform the campaign finance system with the Bipartisan Campaign Reform Act of 2002 (also known as the McCain-Feingold Act). In 2001, he was the only senator to vote against the Patriot Act, arguing that the anti-terrorism legislation unnecessarily violated the civil liberties of innocent Americans. Since his time in the Senate, he has been a visiting professor at Marquette University Law School and the Mimi and Peter Haas Distinguished Visitor and lecturer at Stanford Law School. He also served as a co-chair of President Obama's reelection campaign. He spoke with *The Review* about all of these endeavors as well as how he was able to come together with ideological opposites, compromise, and pass legislation.

**Georgetown Public Policy Review: You founded Progressives United. What do you think it means to be “progressive” in the US these days?**

**RF:** Well, I hope what it means is a commitment to having a real democracy and not a corporate-dominated system, where the elected representatives are closer to the corporations than they are to the average person. The *Citizens United* decision sent us in the wrong direction on this, and I’m very concerned that people, who are progressives and otherwise, demand that our system be returned to them.

**GPPR: In recent decades, partisanship and polarization in the US have been consistently increasing. What do you think is causing this divide?**

**RF:** Well, I watched this happen. After I came to the Senate in the early ‘90s, it didn’t seem to be particularly partisan, compared to now. One of the things that happened is a bad cycle, which really began with the Contract With America coming into 1994. That group came in with a very partisan attitude, into Congress. And then Democrats often responded in the same way, and we sort of drew up sides. In the Senate, we used to have a much more bipartisan nature.

A lot of the things that have fueled this are the growth of talk radio

and cable TV, where they need to fill up the time 24 hours a day. You’ve seen the extreme positions and almost bias of both Fox and MSNBC, where people are constantly drilled with, mostly, just one side of the story. That really causes people to have their news and their attitudes filtered in one direction. And, unfortunately, people seem to be demanding that their elected representatives toe a strict line of one side or the other rather than finding good opportunities to work with the other side. I used to feel that we were rewarded or praised if we worked with the other side when I worked with John McCain. That needs to come back again.

**GPPR: Partisanship, filibusters, and an aversion to compromise in the Senate are at all-time highs. Is the Senate broken or can Congress come back away from their culture of brinkmanship we’ve been seeing?**

**RF:** Actually, I’m teaching a course at Stanford Law School on this very subject. Is it just that the Senate needs to take a different attitude, or are the rules so screwed up that it can’t work? My view is that it’s not broken, but it is very, very damaged. Rule change may help in some ways; some modifications on the filibuster, greater than was done [in January 2013]. But I think the biggest thing is for the American people to demand that their elected representatives try to work with one another. That is going to get a better result than just tinkering with the rules. So I don’t think it’s fundamentally broken, and I think it can work, if the message that is sent to elected

representatives is, “We’re not going to vote for you anymore if you don’t work with the other side.”

**GPPR: Is there a reform of the filibuster that you think would help bring compromise, such as the talking filibuster or the Al Franken “41 vote” idea?**

**RF:** Those are both pretty good ideas. The thing I like about the 41 votes idea is that I’ve always pointed out to people that one of the problems of the current filibuster rule—and it hasn’t always been this way—is that, to break a filibuster, you need all 60 people from your side there. The other side doesn’t have to be there at all. If you went 59 to nothing, you still lose. If you make the rule instead that 60 percent of the people who are present and voting, that would really put a different burden on the minority. As I like to say, senators like their weekends, so this would change the deal for them. I would like to see that tried—sort of a variation on the idea requiring that the people who want the filibuster to be present. So, that would have been much better than the very weak deal that was cut [in January 2013].

**GPPR: Recent elections have shown that voters are rejecting moderate candidates in both primaries and general elections. Why do you think this is?**

**RF:** It’s part of the same polarization that I talked about in an answer to an earlier question. When you have a constant diet—in your political party meetings, on cable TV, on talk radio—of people trying to see

whether somebody is completely pure and voting only with the right or the left, they have a tendency to reward those in a primary who are the most extreme or who are on the farther end ideologically. Republicans paid a huge price for this in the US Senate races in 2012 because they nominated people who were very extreme. In fact, it even happened in 2010, where a number of my colleagues probably would have lost, as I did, if they had not nominated people who were so extreme that even the right-wingers generally couldn’t tolerate them. It’s a function of the polarization and partisanship that has arisen in recent years. Karl Rove and others are realizing that it’s devastating, particularly for the Republicans. It hasn’t happened as much on our side, because we have President Obama, which moderates that.

**GPPR: California has recently gone to a nonpartisan blanket primary system where the top two candidates, regardless of party, will move to the general election. The hope was to create more competitive races that would force candidates to appeal toward the middle. What do you think about systems like this? Do you see the California experience as a model for the nation or a failed experiment?**

**RF:** It’s way too early to tell. They only did it for the first time. I was teaching here in California last year when they were talking about it, and now I’m back here now that it’s been done. I’m now in the process of having conversations with people who are interested in this to say, “How do you feel about how

this worked?” It is way too early for me to conclude, but I think that it’s an interesting experiment that may be able to help. To me, it’s way too early to say whether it should be a model. I hope by the time I finish my work here this year I’ll have a clearer sense of whether I feel good about what happened or not. But I give California credit for trying something different.

**GPPR: While being one of the most progressive Senators, you had a history of working with future leaders of the Republican Party. You successfully worked with Sen. John McCain to reform campaign finance and attempted to work with Rep. Paul Ryan and Sen. McCain to institute a line item veto. How were you able to compromise with people you do not ideologically agree with, and are there lessons that current policymakers can take from your experiences?**

**RF:** One of the biggest myths in American politics is that the problem is that we don’t have enough people whose ideology is in the middle and are so-called moderates. That’s not the issue. Sometimes the best coalitions are people who are ideologically farther to the right, or farther to the left, who come together because they agree on a common solution. That’s what happened with me and John McCain. That’s what was going on with me and Paul Ryan on the line item veto. For different reasons, we didn’t like the idea, with Ryan, of waste in government. He would have gone in a direction—if he had the ability to write it—that would have been too extreme for my point of view. And he wouldn’t

have liked some of the things I’d like to do with it with tax policy. But we were able to agree on the idea that the President should be able to line item veto inappropriate earmarks. So, it wasn’t about agreeing on ideology; it was agreeing on a solution.

One of the myths is that it’s better to just have people who are in the middle. Sometimes, the deals that are in the middle are bad. Sometimes, they’re corrupt. Sometimes, they involve giving away goodies to corporations so people from both sides cut a deal. It’s important to remember that it’s not just about moderation; it’s about having people who, in good faith, will consider a solution from somebody who has a different ideology. We need to get away from this idea that it’s just dumbing down everything into the middle.

**GPPR: Do you believe that it is politically possible for a Democratic president to shrink executive anti-terror powers without Congress or the Supreme Court intervening or without risking labeling the Democratic Party as “soft on terror” for an entire generation or more?**

**RF:** I do, and I’m not saying this is easy, but it was exceptionally difficult after 9/11. Unfortunately, the Bush administration went in the opposite direction: trying to do everything they could to expand powers such as torture and illegal wiretapping in an inappropriate way. Now that the President has succeeded in getting rid of Osama Bin Laden and has been overwhelmingly re-elected, it’s a golden opportunity for him and for

Democrats, as well as Republicans, to say, “Wait a minute, it’s been over 10 years since 9/11, do we really need some of these approaches that appear to be inconsistent with American law and tradition, as well as international law?” I believe the climate is right for that. Yes, if anything goes wrong, people will attempt to blame it on the party or the people that did this. But what I saw yesterday, in the questioning of Brennan for the CIA, was a very clear sign that at least some of the members of the Senate feel safe now questioning, for example, a drone policy that isn’t carefully regulated. I think that’s a good sign. It’s a sign that the country is maturing—and getting used to the fact that there’s going to be terrorism—but we don’t want to give up all our values in our law in terms of dealing with it.

**GPPR: What do you think the biggest threat to national security is, and do you think the US is doing enough to prevent it?**

**RF:** I generally respond to that question by talking about the threat of organizations like al-Qaeda and affiliated groups who are really dedicated to the idea of destroying the United States and the West. But frankly, I usually don’t like that sort of question, because I think it’s a mistake for us to sort of say, “This one’s the most important, this one’s second, and this one’s third.” What we need to learn to do is to balance the complex issues that we face. I think politicians and people that talk about government need to avoid this trap. When you talk about terrorism, you should also talk

about Iraq. You should talk about what China is doing. You should also talk about what’s happening in developing countries, particularly in Africa. You should talk about issues of nuclear weapons, and others, being proliferated around the world. There are so many important issues that we need to be able to walk and chew gum at the same time.

**GPPR: You were the only Senator to vote against the Patriot Act in 2001, citing civil liberty concerns. Why were you the only one to vote against the Patriot Act, and do you still oppose it?**

**RF:** I absolutely oppose it, and the reason I voted against it is I actually read it. I was Chairman of the Judiciary Committee’s Subcommittee on the Constitution, and I had already voted for the Afghanistan resolution, to invade Afghanistan to get Bin Laden. I assumed I was going to be able to vote for an updated bill for law enforcement, which came to be known as the USA Patriot Act. The problem is I found that, in that bill, there were a series of provisions that the late Bob Novak called “an old wish list of the FBI.” A number of provisions—relating to library records, whether you could search people’s houses without giving them notice—appeared to be overkill and not really directed at the terrorist threat. So those things have not been fixed and certainly if the same bill came before me today, and I happened to still be in the Senate, I would of course vote against it. And guess what? More people would also vote against it.

**GPPR: Do you believe that the targeted killing of individuals believed to be hostile to the US is effective in the War on Terror? Does it matter if they are US citizens overseas?**

**RF:** It certainly can be effective, if it involves people who are actually involved with al-Qaeda and who are planning attacks on the United States, and it is definitely different when it is a US citizen. US citizens have protections of due process and other protections that are clearly the law of the land. Now, that doesn't mean you can't go after them, like in the al-Awlaki case. It's complicated, because we have not seen specifically what the justification was for going after him. There is an exception if there's no other way to get a person like that. He is actually an easier case than some of the other ones that are being considered right now. But I feel pretty strongly that we need a balance here, and we need to have somebody, other than just the executive, considering whether this is appropriate across the board.

**GPPR: According to the FEC, in the 2012 election candidates, parties, and outside groups spent \$7 billion. How do you think money affected the shape and outcome of these past elections?**

**RF:** I think it had a real crushing impact on the way in which the average person felt they could be involved in the election. In 2008, I think a lot of people, especially young people, felt because we did not have these unlimited corporate contributions,

that they could have an effect on what happened—not only in the Presidential election but in other elections. I think the presence of these huge unlimited contributions—and the amount of awful, negative ads that come as a result of it—makes people feel disconnected from the whole process. It seems like there was more anxiety than enthusiasm about the 2012 election.

So, I think it has a crushing effect, but it goes well beyond that. It's not just about the outcome of the election. It's about what kind of corruption is going on in terms of raising these contributions. What kind of pressure does this put on corporations, who all want to play the game, to give contributions that they would really rather not give. It's like a form of extortion. And, most importantly, it means to both sides cozying up to large corporate interests so that regardless of who wins the election, certain corporations have bought off the process. That's ultimately even more important than who wins or who loses, if it doesn't matter who wins or loses because big money has corrupted the process.

**GPPR: In the landmark campaign finance case *Buckley v. Valeo*, the Court held that Congress can regulate campaign contributions in order to prevent “corruption or its appearance.” Under what framework, and in a post-*Citizens United* world, can Congress revisit campaign finance legislation, and, if so, what would be the best policy that can pass in this environment?**

**RF:** Well, really, the answer is to overturn *Citizens United*. It was only a 5 to 4 decision, and that has got to be our goal. If we don't do that, the whole system is being swallowed by these unlimited contributions that were prohibited since 1907 and only in the last couple of years have been allowed. So, to me, that is the most important thing.

*Citizens United* created a horrible problem, but it did not eliminate the ability to limit direct contributions. Those limits are still in effect, and they apply. So, overturn *Citizens United*. We have currently limits on contributions that are sufficiently generous. I think people can give \$10,000 per couple, and I think that's quite a bit. But at least it's limited. In that context, what we need to do is pass public financing, overturn *Citizens United*, fix the presidential public financing system that is no longer working, and create, for the first time, Congressional public financing for both House and Senate races. That—along with getting rid of the Federal Election Commission and replacing it with a real enforcement agency—would go a long way toward fixing the system. Frankly, the system was improving a great deal after we passed McCain-Feingold and before *Citizens United*. We simply need to do a few more things to get it to be, I think, in a better place.

**GPPR: As a follow up on that question, the Federal Election Commission was deadlocked on key questions in this past election. Has the FEC outlived its usefulness on**

**regulating campaign finance, or can it be reformed to be more effective?**

**RF:** Unlike the Senate, the FEC is structurally hopeless. It does get deadlocked because of the way it has partisan appointments. The way it's done is that both parties don't appoint people who are going to try to come together, to try and come to a solution. They appoint the toughest, most partisan lawyers they can find. The structure has to change. That's why John McCain and I, when I was in the Senate, proposed getting rid of the Federal Election Commission and creating more of an administrative enforcement agency where somebody is in charge of actually bringing enforcement action. It is completely nonfunctioning. In other words, you can overturn *Citizens United*, you can make the reforms I just suggested, but if there's no effective enforcement agency, all of that will not work. So we need a new agency.

**GPPR: There is a tension between campaign finance regulation and proponents for freedom of speech, who argue that money is tool for exercising their First Amendment rights. How can reformers balance these concerns?**

**RF:** This is something that has been done, I think successfully, many times in American history. The Tillman Act of 1907 said corporations should not be able to dominate the political process using their treasuries, the money we spend on products. But corporations are allowed to create political action committees (PACs), as are labor

unions, with limits so that they can participate in the political process. They are able to use their free speech for other purposes outside of campaigns. For example, BP has this big television ad program now saying, they've cleaned up the Gulf, things are better now, and they're committed to the preservation of the environment. There is no restriction on that, and I don't know anyone suggesting a restriction on it. The only area where we have to make sure there's not unlimited spending is when it undercuts and destroys the election process itself. So I think it's a balance that has worked in the past, and can work again, if we overturn *Citizens United*.

**GPPR: There are reform advocates who have argued that the amount or sources of money going into campaigns is not a problem as long as voters know exactly who is behind a message. The DISCLOSE Act, which you voted twice to overcome filibusters on in 2010, attempts to provide voters with more information about campaign contributions. Do you think that the DISCLOSE Act, or similar legislation that provides contribution and expenditure information, is sufficient to ensure fair elections?**

**RF:** It's definitely not sufficient. I was one of the original authors of the bill, and I strongly support it. It is necessary, but not sufficient, to solve the problem. I'm also working actively to help pass the DISCLOSE Act in other states, such as California, but that's just the first step. What that does is show people what's going on. And then what people

realize is that there are \$10 million contributions being funneled from special corporate interests. At that point, people, I think, are going to want to put the genie back into the bottle. They're going to want to say, "Look, you shouldn't be able to do this." You know, people are very busy. They don't have time to check on who gave what contribution and do all that research in order to vote. There are certain things that need to be simply not allowed. One of the things that shouldn't be allowed is that, when you get a gallon of gas, that that money can be immediately used on a candidate that you don't believe in. The people of this country, for a hundred years, didn't believe in that, and it's only because of *Citizens United* that it's allowed.