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REPORT
107–132

CAMPAIGN REFORM AND CITIZEN PARTICIPATION ACT OF 2001

JULY 10, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. NEY, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2360]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 2360) to amend the Federal Election Campaign Act of 1971 to restrict the use of non-Federal funds by national political parties, to revise the limitations on the amount of certain contributions which may be made under such Act, to promote the availability of information on communications made with respect to campaigns for Federal elections, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Campaign Reform and Citizen Participation Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SOFT MONEY OF NATIONAL PARTIES

Sec. 101. Restrictions on soft money of national political parties.

TITLE II—MODIFICATION OF CONTRIBUTION LIMITS

Sec. 201. Increase in limits on certain contributions.
Sec. 202. Increase in limits on contributions to State parties.
Sec. 203. Treatment of contributions to national party under aggregate annual limit on individual contributions.
Sec. 204. Exemption of costs of volunteer campaign materials produced and distributed by parties from treatment as contributions and expenditures.
Sec. 205. Indexing.

TITLE III—DISCLOSURE OF ELECTION-RELATED COMMUNICATIONS

Sec. 301. Disclosure of information on communications broadcast prior to election.
Sec. 302. Disclosure of information on targeted mass communications.

TITLE IV—EFFECTIVE DATE

Sec. 401. Effective date.

TITLE I—SOFT MONEY OF NATIONAL PARTIES

SEC. 101. RESTRICTIONS ON SOFT MONEY OF NATIONAL POLITICAL PARTIES.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

"SOFT MONEY OF NATIONAL POLITICAL PARTIES

"SEC. 323. (a) PROHIBITING USE OF SOFT MONEY FOR FEDERAL ELECTION ACTIVITY.—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value for Federal election activity, or spend any funds for Federal election activity, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(b) LIMIT ON AMOUNT OF NONFEDERAL FUNDS PROVIDED TO PARTY BY ANY PERSON FOR ANY PURPOSE.—No person shall make contributions, donations, or transfers of funds which are not subject to the limitations and prohibitions of this Act to a political committee established and maintained by a national political party in any calendar year in an aggregate amount equal to or greater than $75,000.

"(c) APPLICABILITY.— This subsection shall apply to any political committee established and maintained by a national political party, any officer or agent of such a committee acting on behalf of the committee, and any entity that is directly or indirectly established, maintained, or controlled by such a national committee.

"(d) DEFINITIONS.—

"(1) FEDERAL ELECTION ACTIVITY.—

"(A) IN GENERAL.—The term 'Federal election activity' means—

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election, unless the activity constitutes generic campaign activity;

"(ii) voter identification or get-out-the-vote activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot), unless the activity constitutes generic campaign activity;

"(iii) any public communication that refers to or depicts a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) any public communication made by means of any broadcast, cable, or satellite communication.

"(B) EXCEPTION FOR CERTAIN ADMINISTRATIVE ACTIVITIES.—The term 'Federal election activity' does not include any activity relating to establishment, administration, or solicitation costs of a political committee established and maintained by a national political party, so long as the funds used to carry out the activity are derived from funds or payments made to the committee which are segregated and used exclusively to defray the costs of such activities.

"(2) GENERIC CAMPAIGN ACTIVITY.—The term 'generic campaign activity' means any activity that does not mention, depict, or otherwise promote a clearly identified Federal candidate.

"(3) PUBLIC COMMUNICATION.—The term 'public communication' means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, or direct mail.

"(4) DIRECT MAIL.—The term 'direct mail' means a mailing by a commercial vendor or any mailing made from a commercial list.".

TITLE II—MODIFICATION OF CONTRIBUTION LIMITS

SEC. 201. INCREASE IN LIMITS ON CERTAIN CONTRIBUTIONS.

(a) CONTRIBUTIONS BY INDIVIDUALS TO NATIONAL PARTIES.—Section 315(a)(1)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)(B)) is amended by striking "$20,000" and inserting "$30,000".

(b) CONTRIBUTIONS BY COMMITTEES TO NATIONAL PARTIES.—Section 315(a)(2)(B) of such Act (2 U.S.C. 441a(a)(2)(B)) is amended by striking "$15,000" and inserting "$30,000".

(c) AGGREGATE ANNUAL LIMIT ON CONTRIBUTIONS BY INDIVIDUALS.—Section 315(a)(3) of such Act (2 U.S.C. 441a(a)(3)) is amended by striking "$25,000" and inserting "$37,500".

SEC. 202. INCREASE IN LIMITS ON CONTRIBUTIONS TO STATE PARTIES.

(a) CONTRIBUTIONS BY INDIVIDUALS.—Section 315(a)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(1)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)—

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.".

(b) CONTRIBUTIONS BY COMMITTEES.—Section 315(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(2)) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C)—

(A) by inserting "(other than a committee described in subparagraph (D))" after "committee"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.".

SEC. 203. TREATMENT OF CONTRIBUTIONS TO NATIONAL PARTY UNDER AGGREGATE ANNUAL LIMIT ON INDIVIDUAL CONTRIBUTIONS.

Section 315(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441(a)(3)) is amended—

(1) by striking "(3)" and inserting "(3)(A)"; and

(2) by adding at the end the following new subparagraph:

"(B) Subparagraph (A) shall not apply with respect to any contribution made to any political committee established and maintained by a national political party which is not the authorized political committee of any candidate.".

SEC. 204. EXEMPTION OF COSTS OF VOLUNTEER CAMPAIGN MATERIALS PRODUCED AND DISTRIBUTED BY PARTIES FROM TREATMENT AS CONTRIBUTIONS AND EXPENDITURES.

(a) TREATMENT AS CONTRIBUTIONS.—Section 301(8)(B)(x) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)(B)(x)) is amended by striking "a State or local committee of a political party of the costs of" and inserting "a national, State, or local committee of a political party of the costs of producing and distributing".

(b) TREATMENT AS EXPENDITURES.—Section 301(9)(B)(viii) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(9)(B)(viii)) is amended by striking "a State or local committee of a political party of the costs of" and inserting "a national, State, or local committee of a political party of the costs of producing and distributing".

SEC. 205. INDEXING.

Section 315(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(c)) is amended—

(1) in paragraph (1)—

(A) by striking the second and third sentences;

(B) by inserting "(A)" before "At the beginning"; and

(C) by adding at the end the following:

"(B) Except as provided in subparagraph (C), in any calendar year after 2002—

"(i) a limitation established by subsections (a), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

"(ii) each amount so increased shall remain in effect for the calendar year; and

"(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

"(C) In the case of limitations under subsections (a) and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election."; and

(2) in paragraph (2)(B), by striking "means the calendar year 1974" and inserting "means—

"(i) for purposes of subsections (b) and (d), calendar year 1974; and

"(ii) for purposes of subsections (a) and (h), calendar year 2001".

TITLE III—DISCLOSURE OF ELECTION-RELATED COMMUNICATIONS

SEC. 301. DISCLOSURE OF INFORMATION ON COMMUNICATIONS BROADCAST PRIOR TO ELECTION.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by section 502(a) of the Department of Transportation and Related Agencies Act, 2001 (as enacted into law by reference under section 101(a) of Public Law 106–346), is amended by adding at the end the following new subsection:

"(e) DISCLOSURE OF INFORMATION ON CERTAIN COMMUNICATIONS BROADCAST PRIOR TO ELECTIONS.—

"(1) IN GENERAL.—Any person who makes a disbursement for a communication described in paragraph (3) shall, not later than 24 hours after making the disbursement, file with the Commission a statement containing the information required under paragraph (2).

"(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

"(A) The identification of the person making the disbursement, of any individual or entity sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

"(B) The principal place of business and phone number of the person making the disbursement, if not an individual.

"(C) The amount of the disbursement.

"(D) The clearly identified candidate or candidates to which the communication pertains and the names (if known) of the candidates identified or to be identified in the communication.

"(E) The text of the communication involved.

"(3) COMMUNICATIONS DESCRIBED.—

"(A) IN GENERAL.—A communication described in this paragraph is any communication—

"(i) which is disseminated to the public by means of any broadcast, cable, or satellite communication during the 120-day period ending on the date of a Federal election; and

"(ii) which mentions a clearly identified candidate for such election (by name, image, or likeness).

"(B) EXCEPTION.—A communication is not described in this paragraph if—

"(i) the communication appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate; or

"(ii) the communication constitutes an expenditure under this Act.

"(4) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to file a statement under this subsection shall be in addition to any other reporting requirement under this Act.

"(5) CLARIFICATION OF TREATMENT OF VENDORS.—A person shall not be considered to have made a disbursement for a communication under this subsection if the person made the disbursement solely as a vendor acting pursuant to a contractual agreement with the person responsible for sponsoring the communication.".

SEC. 302. DISCLOSURE OF INFORMATION ON TARGETED MASS COMMUNICATIONS.

Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by section 301, is further amended by adding at the end the following new subsection:

"(f) DISCLOSURE OF INFORMATION ON TARGETED MASS COMMUNICATIONS.—

"(1) IN GENERAL.—Any person who makes a disbursement for targeted mass communications in an aggregate amount in excess of $50,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

"(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

"(A) The identification of the person making the disbursement, of any individual or entity sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

"(B) The principal place of business and phone number of the person making the disbursement, if not an individual.

"(C) The amount of each such disbursement of more than $200 made by the person during the period covered by the statement and the identification of the person to whom the disbursement was made.

"(D) The clearly identified candidate or candidates to which the communication pertains and the names (if known) of the candidates identified or to be identified in the communication.

"(E) The text of the communication involved.

"(3) TARGETED MASS COMMUNICATION DEFINED.—

"(A) IN GENERAL.—In this subsection, the term 'targeted mass communication' means any communication—

"(i) which is disseminated during the 120-day period ending on the date of a Federal election;

"(ii) which refers to or depicts a clearly identified candidate for such election (by name, image, or likeness); and

"(iii) which is targeted to the relevant electorate.

"(B) TARGETING TO RELEVANT ELECTORATE.—

"(i) BROADCAST COMMUNICATIONS.—For purposes of this paragraph, a communication disseminated to the public by means of any broadcast, cable, or satellite communication which refers to or depicts a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if the communication is disseminated by a broadcaster whose audience includes—

"(I) a substantial number of residents of the district the candidate seeks to represent (as determined in accordance with regulations of the Commission), in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

"(II) a substantial number of residents of the State the candidate seeks to represent (as determined in accordance with regulations of the Commission), in the case of a candidate for Senator.

"(ii) OTHER COMMUNICATIONS.—For purposes of this paragraph, a communication which is not described in clause (i) which refers to or depicts a clearly identified candidate for Federal office is 'targeted to the relevant electorate' if—

"(I) more than 10 percent of the total number of intended recipients of the communication are members of the electorate involved with respect to such Federal office; or

"(II) more than 10 percent of the total number of members of the electorate involved with respect to such Federal office receive the communication.

"(C) EXCEPTIONS.—The term 'targeted mass communication' does not include—

"(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

"(ii) a communication made by any membership organization (including a labor organization) or corporation solely to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office; or

"(iii) a communication which constitutes an expenditure under this Act.

"(4) DISCLOSURE DATE.—For purposes of this subsection, the term 'disclosure date' means—

"(A) the first date during any calendar year by which a person has made disbursements for targeted mass communications aggregating in excess of $50,000; and

"(B) any other date during such calendar year by which a person has made disbursements for targeted mass communications aggregating in excess of $50,000 since the most recent disclosure date for such calendar year.

"(5) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

"(6) CLARIFICATION OF TREATMENT OF VENDORS.—A person shall not be considered to have made a disbursement for a communication under this subsection if the person made the disbursement solely as a vendor acting pursuant to a contractual agreement with the person responsible for sponsoring the communication.".

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to elections occurring after December 2002.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 2360 the Campaign Reform and Citizen Participation Act of 2001 is to modify our campaign finance laws in ways that will enhance citizen confidence and participation in our political process. The bill is crafted to enact reforms that will expand political participation and involvement by the citizenry.

We do not believe that increased regulations and restrictions on political activity will make citizens more inclined to involve themselves in the political process. Rather, we fear that imposition of such restrictions will have the opposite effect, discouraging participation and causing citizens to withdraw and disengage from the process, to an even greater degree than they are now. For this reason, H.R. 2360 takes a different approach than that embodied in such legislation as S. 27 (the McCain-Feingold bill), H.R. 380 (the Shays-Meehan bill introduced in January 2001) and H.R. 2356 (the modified Shays-Meehan bill introduced on June 28, 2001 and reported unfavorably by this committee on the same day).

To a large extent, those who advocate a more stringent regulatory approach are responding to an illusory and self-perpetuating "crisis." Public concerns about corruption or appearance of corruption are reinforced by reform proponents who incessantly assert the prevalence of such corruption, but without specific substantiation. Indeed, the record compiled and examined by this Committee does not contain even one single instance or example of the alleged cor-

ruption sought to be remedied by this legislation. Also, reform proponents point to the amount of time legislators are required to spend raising campaign funds, and argue that additional regulations are needed to reduce this burden. In so arguing, they fail to acknowledge that the contribution limits imposed by prior reform advocates in 1974, and never adjusted for inflation in the 27 years since, require Members to spend ever-increasing time with the numerous solicitations required for funding under these outdated limits.

As defined by the regulation proponents, the threshold test of what constitutes reform legislation has been the inclusion of a soft money ban. The term "soft money," which has become part of the political lexicon, refers to funds that are not subject to the contribution or expenditure limits of the Federal Election Campaign Act (FECA). The assertion that these funds are 'unregulated' is not accurate, but such contentions have caused a negative connotation to be associated with the term by advocates of additional regulations. Regulation proponents have historically claimed that a "ban" on soft money is the linchpin of any legitimate reform effort.

The purported bans that have been put forth in the past, and were again put forth in H.R. 380 and S. 27 at the start of the 107th Congress, were never really bans on soft money, in that they sought only to ban soft money donations to political parties, but did not seek to limit soft money expenditures (except for the issue ad restrictions). As drafted, these bills would have prevented a labor union, for example, from making contributions from its treasury funds to a political party. The bills would not, however, have prevented a labor union from spending such treasury funds, or "soft money," on voter registration and get out the vote activities aimed at the union's members and their families. Such activities are explicitly excluded from the definitions of contribution and expenditure contained in federal law, and are therefore unregulated and unlimited. 2 U.S.C. 441b(b)(2)(B). As such, these types of activities are financed with so called soft dollars, yet the legislation touted as a "ban" on soft dollars would not stop any use of these funds in this way.

In the past, therefore, the proposed ban has been limited to banning soft money contributions to party committees without restricting soft money expenditures by the donors. The justification for the ban on soft money donations has been that, through these large, unlimited donations, "special interest" groups are able to exert improper influence over the policy process. Thus to reduce the influence of these groups, reform proponents argue, the donations to party committees must be restricted.

Proponents of this view apparently fail to recognize that by depriving the political parties of the use of such funds, while leaving unions and corporations free to use identical funds however they wish, the power of the very special interests they seek to diminish will actually be enhanced. Just as nature abhors a vacuum, so does political power. If the power or influence of one group is reduced, the power of other groups will expand to fill the void. By making the political parties the only group in American political life to have no access to corporate and labor union funding, while leaving other special interests unencumbered in their use of such funds, the inevitable result will the decrease of the parties power and

stature, coupled with a concomitant increase in the power and stature of the very special interest groups these regulation proponents seek to curtail. This reflects a failure of the regulation proponents to understand the unique role of the parties in our political process.

H.R. 2360, the compromise legislation reported favorably by the Committee, is designed to address the appearance of corruption generated by the donation of unlimited sums to the parties, without debilitating our political parties by rendering them uniquely incapable of having access to funds for beneficial and constructive activities. The principal complaint about soft money donations is that they are unlimited and unregulated by the FECA. H.R. 2360 answers this complaint by limiting and regulating these donations. In addition to regulating the amount of the donations, H.R. 2360 specifies additional limits on the permissible uses of such funds, beyond the existing law, and precludes their usage for defined federal election activities.

While S. 27 as introduced and H.R. 380 banned soft money donations, S. 27 as amended and as reported to the House now permits soft money donations to the state and local parties. Likewise, H.R. 2356 also permits such donations to the state and local parties. As such, these bills now fail to ban even donations of soft money. In this regard, the principle difference between H.R. 2360 and H.R. 2356 is that, while the former permits the national parties to raise these funds, the latter allows only the state and local parties to do so. We do not believe that the national parties should be prohibited from raising such funds for party building activities, generic voter registration, voter education and get out the vote activities. Education and mobilization of voters by political parties should be enhanced and encouraged, not restricted and forbidden.

SUMMARY OF THE LEGISLATION

BAN ON SOFT MONEY FOR FEDERAL ELECTION ACTIVITY

H.R. 2360 prohibits the national party committees from raising funds for federal election activities that are not subject to the limitations and reporting requirements of federal law. Federal election activity includes federal candidate specific voter registration drives in the last 120 days before a federal election and voter identification and get out the vote drives in connection with federal elections. Generic activities that do not mention or promote a clearly identified federal candidate do not constitute federal election activities under the bill. This preserves the ability of the national parties to engage in such generic activities. The national parties, including the national senatorial and congressional committees, are each permitted to raise funds to support such activities, subject to an annual maximum contribution per person of $75,000 per committee.

The bill also prevents the national parties from using such dollars on issue advocacy that refers to or depicts a clearly identified federal candidate. Parties are permitted to use such funds for fundraising and overhead expenses.

These restrictions on how the parties can use soft dollars are unique, in that unions and corporations face no similar restrictions on how they can use such funds. We are not convinced that even these restrictions are fair or necessary, but they have been included to mollify concerns about the presence of union and cor-

porate funds in federal campaigns (a concern that for some reason is noticeably absent when these soft dollars are spent directly by these union and corporate entities in election years). Permitting the parties to use these funds on the described activities puts them on a par with unions and corporations at least in terms of a party's ability to raise funds and pay for voter mobilization and education programs. If the parties ability to do such things were done away with, as some desire, they would be placed in the unique position of having to pay for everything with "hard dollars", money subjected to federal limits and prohibitions. For example, while a union or corporation would still be permitted to use soft dollars to raise hard dollars for a political action committee, the party would have to use hard dollars to raise hard dollars. There is no public policy rationale that justifies hamstringing the parties in this fashion versus special interest groups. H.R. 2360 would permit the parties to continue to play their vitally important role in our political process.

CONTRIBUTION LIMITS

The contribution limits imposed by the Federal Election Campaign Act Amendments in 1974 have not been adjusted since to account for inflation. As a result, the $1,000 contribution limit imposed in 1974 is worth approximately $350 in 2001 dollars. H.R. 2360 would be a first step toward rectifying this problem in the future by applying prospective indexing to all contribution limits.

Additionally, the bill modestly increases some contribution limits for donations to the parties. The aggregate individual contribution limits are also raised from $25,000 per year to $37,500. To strengthen and enhance the productive role of our political parties, we exempt contributions to the national party committees from the aggregate limits.

These modifications are consistent with our belief that reform should enhance, not diminish, the role our political parties play.

IMPROVE AND EXPEDITE DISCLOSURE

We believe that people have the right to know who is communicating with them about elections. We do not want to restrict the right of any American to speak out on matters of public concern, but we do believe that those who make such communications should be required to disclose their identity. Again, this is a reform measure geared toward enhancing debate and communication, not limiting it. H.R. 2360 would accomplish this goal in the future by requiring disclosure to the Federal Election Commission of the name and principal place of business of the person making the disbursement for such communications. The amount spent and the text of the communication must also be disclosed. These disclosure requirements apply to broadcast communications that refer to or depict a clearly identified candidate within 120 days of an election. The disclosure must be made within 24 hours of the disbursement of payment for the communication.

In addition to the broadcast communication disclosure requirements, H.R. 2360 requires disclosure of the source of all targeted mass communications that exceed, in the aggregate, $50,000. This disclosure requirement would encompass such communications as mass mailings and phone banks.

Attached as Appendix A to this report is the testimony submitted by Republican National Committee Chairman James Gilmore at the Committee's June 28, 2001 hearing. The testimony details how our political parties function, and demonstrates why the Shays-Meehan bill (H.R. 2356) would be devastating to the parties.

Appendix B is a letter from Democratic National Committee Chairman Terence McAuliffe.

SECTION BY SECTION SUMMARY

TITLE I—SOFT MONEY OF NATIONAL PARTIES

Sec. 101. Restrictions on soft money of national political parties

- *For federal election activities:* prohibits national political party committees (including officers and agents acting in their behalf and entities they directly or indirectly establish, maintain, or control) from soliciting, receiving, directing, or transferring funds that are not subject to regulation by federal election law.
- *For non-federal election activities:* imposes a limit of $75,000 per calendar year on the amount any person may donate or transfer to a national party committee, that is not subject to regulation under federal election law.
- Defines *federal election activity* to include: (a) voter registration drives in the last 120 days of a federal election, unless for generic activity; (b) voter identification or get-out-the-vote (GOTV) drives in an election with at least one federal candidate on the ballot, unless for generic activity; (c) any public communication (by broadcast, cable, satellite, newspaper, magazine, outdoor advertising facility, or direct mail) that refers to or depicts a clearly identified federal candidate and that supports, promotes, attacks, or opposes a candidate for that office, regardless of whether it expressly advocates a vote for or against a candidate; or (d) any public communication made by broadcast, cable, or satellite.
- Defines *generic activity* as activity that does not mention, depict, or otherwise promote a clearly identified federal candidate.
- Exempts costs of administering and soliciting funds for national party committees from consideration as *federal election activity,* if the funds are designated exclusively for such uses and are segregated accordingly.

TITLE II—MODIFICATION OF CONTRIBUTION LIMITS

Sec. 201. Increase in limits on certain contributions

- Increases limit on contributions by individuals to national party committees to $30,000 per year.
- Increases limit on contributions from PACs (multicandidate political committees) to national party committees to $30,000 per year.
- Increases aggregate limit on contributions by individuals to federal candidates, PACs, and parties to $37,500 per year.

Sec. 202. Increase in limits on contributions to state parties

- Increases limit on contributions by individuals and by PACs (multicandidate committees) to $10,000 per year.

Sec. 203. Repeal application to national party contributions of aggregate annual limit on individual contributions

• Exempts contributions by individuals to national party committees from counting toward the annual aggregate limit on individuals' federal election contributions.

Sec. 204. Exemption of costs of campaign materials produced and distributed by parties from treatment as contributions and expenditures

• Exempts from definition of *contribution and expenditure:* any party committee's costs of producing and distributing grassroots materials (pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) in connection with volunteer activities, thus extending the law's current exemption for state and local parties to national parties as well.

Sec. 205. Indexing

• Provides for future indexing for inflation of all contribution limits in every odd-numbered year beginning in 2003, with 2001 as the base year and all adjusted amounts rounded to the nearest $100.

TITLE III—DISCLOSURE OF ELECTION-RELATED COMMUNICATIONS

Sec. 301. Disclosure of information on communications broadcast prior to election

• Requires disclosure to FEC concerning any broadcast, cable, or satellite communication disseminated within 120 days of a federal election and which mentions a clearly identified federal candidate, by name, image, or likeness.
• Requires statement to be made within 24 hours after the disbursement is made for the communication.
• Requires statement to include: identification of the person making the disbursement, any entity sharing or exercising control or direction over the activity, and of the custodian of the books and accounts; the principal place of business of the person making the disbursement (if not an individual); the disbursement amount; the identity of candidates identified or those to whom the communication pertains; and the text of the communication.
• Exempts: (a) broadcast news stories and commentaries; (b) expenditures as defined by federal election law; and (c) payments by vendors acting solely pursuant to a contractual agreement with the person sponsoring the communication.

Sec. 302. Disclosure of information on targeted mass communications

• Requires disclosure to FEC concerning *targeted mass communications* in excess of an aggregate of $50,000 per year.
• Defines a *targeted mass communication* as a communication disseminated within 120 days of a federal election and which refers to or depicts a clearly identified federal candidate by name, image, or likeness, and which is targeted to the relevant electorate.
• Considers a broadcast communication to be targeted if the broadcaster's audience includes a substantial number of residents of the district (in the case of a House race) or state (in the case

of a Senate race) where the election is being held, as determined by FEC regulations. Other types of communications will be deemed to be targeted: (a) if more than 10% of the intended recipients are members of the electorate involved in that election; or (b) if more than 10% of the total electorate involved in the election receives the communication.

• Requires the first disclosure statement to be made within 24 hours after the $50,000 threshold is exceeded and within 24 hours of each subsequent disbursement in excess of $50,000.

• Requires statements to include: identification of the person making the disbursement, any entity sharing or exercising control or direction over the activity, and of the custodian of the books and accounts; the principal place of business of the person making the disbursement (if not an individual); the amount of each disbursement of more than $200 and identity of the recipient; the identity of candidates identified or those to whom the communication pertains; and the text of the communication.

• Exempts: (a) broadcast news stories and commentaries; (b) communications by a membership organization (including a union) or a corporation solely to its members, stockholders, or executive and administrative personnel, if the entity is not organized primarily for purposes of influencing federal elections; (c) *expenditures* as defined by federal election law; and (d) payments by vendors acting solely pursuant to a contractual agreement with the person sponsoring the communication.

TITLE IV—EFFECTIVE DATE

Sec 401. Effective date

• These amendments shall take effect with respect to elections occurring after December 2002.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFFERAL

On June 28, 2001, Mr. Ney, Mr. Wynn, Mr. Ehlers, Mr. Mica, Mr. Reynolds, Mr. Sweeney, Mr. LaTourette, Mr. Peterson, Mr. Hobson, Ms. Dunn, Mr. Cunningham, Mr. Taylor, Mr. Traficant, Ms. Pryce, Mr. Blunt, Mr. Ballenger, Mr. Norwood introduced H.R. 2360, which was referred to the Committee on House Administration.

HEARINGS

The Committee on House Administration held five hearings on Campaign Finance Reform over four months in 2001.

On March 17, 2001, the Committee held the first hearing on Campaign Finance Reform. This hearing was a field hearing, held in Phoenix, Arizona. Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Doolittle. Witnesses: Eleanor Eisenberg, Executive Director, Arizona Civil Liberties Union; Lynn Wardle, Professor, J. Reuben Clarke Law School, Brigham Young University; Ann Eschinger, President, Arizona League of Women Voters; Landis Aiden, Citizen Activist; Senator Scott Bundgaard, Arizona State Legislature; Dennis Burke, Executive Director, Arizona Good Government Association; Joseph F. Yuhas, Executive Director, Arizona

Restaurant Association; Lee Ann Elliott, Former Chairperson of the Federal Election Commission.

On May 1, 2001, the Committee held its second hearing on Campaign Finance Reform. Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Hoyer, Mr. Fattah, Mr. Davis Witnesses: Mr. Gephardt, Mr. DeLay, Mr. Shays, Mr. Meehan, Senator Hagel, Senator McConnell, Senator Feingold.

On June 14, 2001, the Committee held its third hearing on Campaign Finance Reform. Members present were: Mr. Ney, Mr. Mica, Mr. Linder, Mr. Reynolds, Mr. Hoyer and Mr. Davis. Witnesses: James Bopp, Jr., Bopp, James Madison Center for Free Speech; Cleta Mitchell, Foley & Lardner; Joel M. Gora, Professor, Brooklyn Law School, former Associate Legal Director, American Civil Liberties Union; Laurence Gold, Associate General Counsel, AFL–CIO; E. Joshua Rosenkranz, President & CEO, Brennan Center for Justice; Donald J. Simon, General Counsel, Common Cause.

On June 21, 2001, the Committee held its fourth hearing on Campaign Finance Reform. Members present: Mr. Ney, Mr. Ehlers, Mr. Linder and Mr. Hoyer. Witnesses: Mr. Hutchinson testified on H.R. 1150, Mr. Wynn, Mr. Price (NC) testified on H.R. 156, Mr. Terry testified on H.R. 1039, Ms. Mink testified on H.R. 289, Mr. Linder testified on H.R. 1080, Mr. Moore testified on H.R. 365, Mr. Doolittle testified on H.R. 1444, Mr. Tierney testified on H.R. 1637, Mr. Faleomavaega testified on H.R. 1447. Mr Linder introduced the written testimony of Phil Kent, President, Southeastern Legal Foundation.

On June 28, 2001, the Committee held its fifth hearing on Campaign Finance Reform. Members present: Mr. Ney, Mr. Ehlers, Mr. Mica, Mr. Linder, Mr. Doolittle, Mr. Reynolds, Mr. Hoyer, Mr. Fattah, Mr. Davis. Witnesses: Mr. Petri testified on H.R. 150 and H.R. 151, Mr. Bereuter testified on H.R. 35, Mr. Shaw testified on H.R. 1516, Mr. English testified on H.R. 1445, Mr. Calvert testified on H.R. 2122, Mr. Barr and Mr. Gonzalez.

MARKUP

On Thursday June 28, 2001, the Committee met to markup H.R. 2360 and H.R. 2356. The Committee favorably reported H.R. 2360, as amended, by a recorded vote (5–3), a quorum being present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

Amendment No. 1

Offered by Mr. Ney. The first vote during the markup came on the amendment in the nature of a substitute offered by Mr. Ney.

The amendment in the nature of a substitute bans soft money to the parties from raising or using soft money for federal election activities, including broadcast issue advertising. However, the amendment would permit the parties to continue to raise and use soft money for generic voter registration and get out the vote activi-

ties. The parties would also preserve the right to use such funds for fundraising and overhead expenses. The amendment was approved by a recorded vote (5–2–1) a quorum being present.

Member	Yes	No	Present
Mr. Ney	X		
Mr. Mica	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer		X	
Mr. Fattah			X
Mr. Davis		X	
Total	5	2	1

The Committee then voted to report H.R. 2360 favorably, as amended. The vote to report favorably was approved by recorded vote (5–3).

Member	Yes	No	Present
Mr. Ney	X		
Mr. Mica	X		
Mr. Linder	X		
Mr. Doolittle	X		
Mr. Reynolds	X		
Mr. Hoyer		X	
Mr. Fattah		X	
Mr. Davis		X	
Total	5	3	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

OVERSIGHT FINDINGS OF COMMITTEE ON HOUSE ADMINISTRATION

The Committee states, with respect to clause 3(c)(4) of rule XII of the Rules of the House of Representatives, that the Committee on Government Reform and Oversight did not submit findings or recommendations based on investigations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law.

COMMITTEE COST ESTIMATE

Clause 3(c)(2) of rule XII requires each committee report that accompanies a measure providing new budget authority, new spending authority, or changing revenues or tax expenditures to contain a cost estimate, as required by section 308(a)(1) of the Congressional Budget Act of 1974, as amended and, when practicable with respect to estimates of new budget authority, a comparison of the total estimated funding level for the relevant program (or programs) to the appropriate levels under current law.

Clause 3(d)(2) of rule XIII requires committees to include their own cost estimates in certain committee reports, which include, when practicable, a comparison of the total estimated funding level for the relevant program (or programs) with the appropriate levels under current law.

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 2001.

Hon. BOB NEY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2360, the Campaign Finance Reform and Grassroots Citizen Participation Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs) and Paige Piper/Bach (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(for Dan L. Crippen, Director).

Enclosure.

H.R. 2360—Campaign Finance Reform and Grassroots Citizen Participation Act of 2001

Summary: H.R. 2360 would make numerous amendments to the Federal Campaign Act of 1971. For elections occurring after December 2002, the bill would:

- Raise the amounts that individuals can contribute each year.
- Place restrictions on the solicitation and use of so-called "soft-money" by national political parties, and
- Require additional filings by political committees with the Federal Election Commission (FEC) for certain expenditures.

CBO estimates that implementing H.R. 2360 would cost about $2 million annually, subject to the availability of appropriated funds, to cover administrative and compliance costs of the FEC. Enacting the bill would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

H.R. 2360 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) would not affect the budgets of state, local, or tribal governments. H.R. 2360 would impose private-sector mandates, as defined by UMRA, but CBO estimates that the cost direct costs of those mandates would fall below the annual threshold established by UMRA ($113 million in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: Based on information from the FEC, CBO estimates that the commission would spend $1 million to $2 million in fiscal year 2002 to reconfigure its information systems to handle the anticipated increase in workload from accepting and processing more campaign contribution filings, to write new regulations implementing the bill's provisions, and to print and mail information to candidates and election committees about the new requirements.

After 2002, the FEC would need to ensure compliance with the bill's provisions and investigate possible violations. Beginning in fiscal year 2003, CBO estimates that implementing H.R. 2360 would cost about $2 million a year, mainly for additional enforcement and litigation staff. All additional spending by the FEC would be subject to the availability of appropriated funds.

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: H.R. 2360 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact of the private sectors: H.R. 2360 would impose new private-sector mandates on national political party committees, contributors to such committees, and persons who pay for certain election-related communications. The bill would prohibit national party committees from using soft money for local election activities. (Soft money is those funds raised by national parties from sources and in amounts that are not subject to regulation under the Federal Election Campaign Act.) The national party committees would have to compile and track soft money contributions by source and by spending activity. Since the national party committees currently perform such administrative bookkeeping for funds raised and spent in accordance with the Federal Election Campaign Act, CBO estimates that the additional costs for the national party committees to perform such functions for soft money would be

minimal. The bill would impose a private-sector mandate on individuals and organizations by limiting soft money donations to national party committees to $75,000 per year. CBO estimates that the cost for individuals and organizations to comply with the soft money limitation would be minimal.

The bill also would impose private-sector mandates on individuals and organizations who make disbursements within 120 days of a federal election for:

- Certain broadcast communications that mention a clearly identified candidate, or
- Communications made through any form of mass media and targeted to voters in excess of $50,000 per year.

The bill would require such entities to report certain information to the FEC within 24 hours. Based on information from the FEC, CBO estimates that the cost of filing this information would be small. CBO estimates, therefore, that the direct costs of the mandates would fall below the annual threshold established by UMRA for private-sector mandates ($113 million in 2001, adjusted annually for inflation).

Estimate prepared by: Federal costs: Mark Grabowicz; impact on State, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Paige Piper/Bach.

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

* * * * * * *

TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

* * * * * * *

DEFINITIONS

SEC. 301. When used in this Act:

(1) * * *

* * * * * * *

(8)(A) * * *

(B) The term "contribution" does not include—

(i) * * *

* * * * * * *

(x) the payment by [a State or local committee of a political party of the costs of] *a national, State, or local committee of a political party of the costs of producing and distributing* campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided,* That—

(1) * * *

* * * * * * *

(9)(A) * * *

(B) The term "expenditure" does not include—

(i) * * *

* * * * * * *

(viii) the payment by [a State or local committee of a political party of the costs of] *a national, State, or local committee of a political party of the costs of producing and distributing* campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided,* That—

(1) * * *

* * * * * * *

REPORTS

SEC. 304. (a) * * *

* * * * * * *

(e) DISCLOSURE OF INFORMATION ON CERTAIN COMMUNICATIONS BROADCAST PRIOR TO ELECTIONS.—

(1) IN GENERAL.—Any person who makes a disbursement for a communication described in paragraph (3) shall, not later than 24 hours after making the disbursement, file with the Commission a statement containing the information required under paragraph (2).

(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any individual or entity sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business and phone number of the person making the disbursement, if not an individual.

(C) The amount of the disbursement.

(D) The clearly identified candidate or candidates to which the communication pertains and the names (if known) of the candidates identified or to be identified in the communication.

(E) The text of the communication involved.

(3) COMMUNICATIONS DESCRIBED.—

(A) IN GENERAL.—A communication described in this paragraph is any communication—

(i) which is disseminated to the public by means of any broadcast, cable, or satellite communication during the 120-day period ending on the date of a Federal election; and

(ii) which mentions a clearly identified candidate for such election (by name, image, or likeness).

(B) EXCEPTION.—A communication is not described in this paragraph if—

(i) the communication appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate; or

(ii) the communication constitutes an expenditure under this Act.

(4) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to file a statement under this subsection shall be in addition to any other reporting requirement under this Act.

(5) CLARIFICATION OF TREATMENT OF VENDORS.—A person shall not be considered to have made a disbursement for a communication under this subsection if the person made the disbursement solely as a vendor acting pursuant to a contractual agreement with the person responsible for sponsoring the communication.

(f) DISCLOSURE OF INFORMATION ON TARGETED MASS COMMUNICATIONS.—

(1) IN GENERAL.—Any person who makes a disbursement for targeted mass communications in an aggregate amount in excess of $50,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) CONTENTS OF STATEMENT.—Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any individual or entity sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business and phone number of the person making the disbursement, if not an individual.

(C) The amount of each such disbursement of more than $200 made by the person during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The clearly identified candidate or candidates to which the communication pertains and the names (if known) of the candidates identified or to be identified in the communication.

(E) The text of the communication involved.

(3) TARGETED MASS COMMUNICATION DEFINED.—

(A) IN GENERAL.—In this subsection, the term "targeted mass communication" means any communication—

(i) which is disseminated during the 120-day period ending on the date of a Federal election;

(ii) which refers to or depicts a clearly identified candidate for such election (by name, image, or likeness); and

(iii) which is targeted to the relevant electorate.

(B) TARGETING TO RELEVANT ELECTORATE.—

(i) BROADCAST COMMUNICATIONS.—For purposes of this paragraph, a communication disseminated to the public by means of any broadcast, cable, or satellite

communication which refers to or depicts a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication is disseminated by a broadcaster whose audience includes—

(I) a substantial number of residents of the district the candidate seeks to represent (as determined in accordance with regulations of the Commission), in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(II) a substantial number of residents of the State the candidate seeks to represent (as determined in accordance with regulations of the Commission), in the case of a candidate for Senator.

(ii) OTHER COMMUNICATIONS.—For purposes of this paragraph, a communication which is not described in clause (i) which refers to or depicts a clearly identified candidate for Federal office is "targeted to the relevant electorate" if—

(I) more than 10 percent of the total number of intended recipients of the communication are members of the electorate involved with respect to such Federal office; or

(II) more than 10 percent of the total number of members of the electorate involved with respect to such Federal office receive the communication.

(C) EXCEPTIONS.—The term "targeted mass communication" does not include—

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication made by any membership organization (including a labor organization) or corporation solely to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office; or

(iii) a communication which constitutes an expenditure under this Act.

(4) DISCLOSURE DATE.—For purposes of this subsection, the term "disclosure date" means—

(A) the first date during any calendar year by which a person has made disbursements for targeted mass communications aggregating in excess of $50,000; and

(B) any other date during such calendar year by which a person has made disbursements for targeted mass communications aggregating in excess of $50,000 since the most recent disclosure date for such calendar year.

(5) COORDINATION WITH OTHER REQUIREMENTS.—Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(6) CLARIFICATION OF TREATMENT OF VENDORS.—A person shall not be considered to have made a disbursement for a communication under this subsection if the person made the disbursement solely as a vendor acting pursuant to a contractual agreement with the person responsible for sponsoring the communication.

* * * * * * *

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

SEC. 315. (a)(1) No person shall make contributions—

(A) * * *

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed **[**$20,000**]** *$30,000*; **[**or**]**

(C) to any other political committee *(other than a committee described in subparagraph (D))* in any calendar year which, in the aggregate, exceed $5,000**[**.**]***; or*

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) * * *

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed **[**$15,000**]** *$30,000*; **[**or**]**

(C) to any other political committee *(other than a committee described in subparagraph (D))* in any calendar year which, in the aggregate, exceed $5,000**[**.**]***; or*

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(3)*(A)* No individual shall make contributions aggregating more than **[**$25,000**]** *$37,500* in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

(B) Subparagraph (A) shall not apply with respect to any contribution made to any political committee established and maintained by a national political party which is not the authorized political committee of any candidate.

* * * * * * *

(c)(1)*(A)* At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. **[**Each limitation established by subsection (b) and subsection (d) shall be increased by such percent

difference. Each amount so increased shall be the amount in effect for such calendar year.]

(B) Except as provided in subparagraph (C), in any calendar year after 2002—

(i) a limitation established by subsections (a), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a) and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) * * *

(B) the term "base period" [means the calendar year 1974] *means—*

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a) and (h), calendar year 2001.

* * * * * * *

SOFT MONEY OF NATIONAL POLITICAL PARTIES

SEC. 323. (a) PROHIBITING USE OF SOFT MONEY FOR FEDERAL ELECTION ACTIVITY.—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value for Federal election activity, or spend any funds for Federal election activity, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

(b) LIMIT ON AMOUNT OF NONFEDERAL FUNDS PROVIDED TO PARTY BY ANY PERSON FOR ANY PURPOSE.—No person shall make contributions, donations, or transfers of funds which are not subject to the limitations and prohibitions of this Act to a political committee established and maintained by a national political party in any calendar year in an aggregate amount equal to or greater than $75,000.

(c) APPLICABILITY.— This subsection shall apply to any political committee established and maintained by a national political party, any officer or agent of such a committee acting on behalf of the committee, and any entity that is directly or indirectly established, maintained, or controlled by such a national committee.

(d) DEFINITIONS.—

(1) FEDERAL ELECTION ACTIVITY.—

(A) IN GENERAL.—The term "Federal election activity" means—

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election, unless the activity constitutes generic campaign activity;

(ii) voter identification or get-out-the-vote activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot), unless the activity constitutes generic campaign activity;

(iii) any public communication that refers to or depicts a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) any public communication made by means of any broadcast, cable, or satellite communication.

(B) EXCEPTION FOR CERTAIN ADMINISTRATIVE ACTIVITIES.—The term "Federal election activity" does not include any activity relating to establishment, administration, or solicitation costs of a political committee established and maintained by a national political party, so long as the funds used to carry out the activity are derived from funds or payments made to the committee which are segregated and used exclusively to defray the costs of such activities.

(2) GENERIC CAMPAIGN ACTIVITY.—The term "generic campaign activity" means any activity that does not mention, depict, or otherwise promote a clearly identified Federal candidate.

(3) PUBLIC COMMUNICATION.—The term "public communication" means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, or direct mail.

(4) DIRECT MAIL.—The term "direct mail" means a mailing by a commercial vendor or any mailing made from a commercial list.

* * * * * * *

APPENDIX A

TESTIMONY OF GOVERNOR JAMES S. GILMORE, III, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE

Thank you for providing the Republican National Committee ("RNC") with the opportunity to provide testimony on the impact of the Supreme Court's recent decision in *Federal Election Commission* v. *Colorado Republican Federal Campaign Committee,* 533 U.S. _____ (2001) (hereinafter *Colorado II*) on the current campaign finance system, and to comment on the competing campaign finance reform measures currently being considered by the U.S. House of Representatives.

As the House of Representatives turns to campaign finance reform, the touchstone of its deliberations should be extent to which the competing legislative measures would enhance, rather than impair, the critical grassroots, activities of political parties, including voter education initiatives, voter registration drives, absentee ballot programs, and get-out-the-vote efforts. One thing is abundantly clear: The McCain-Feingold bill in the Senate, and its companion Shays-Meehan measure in the House, would drive a stake through the heart of grassroots voter education and registration efforts. More American should vote, not less. On this basis alone, the House should reject Shays-Meehan, and should insist that any meaningful campaign finance reform encourage and stimulate these essential party-sponsored grassroots activities that are critical to broadening voter participation and involvement in the American political process. The RNC also remains steadfastly opposed to the censorship of gag-order provisions in the Shays-Meehan bill that are a clear violation of our First Amendment rights as Americans.

SUMMARY OF TESTIMONY

First, the Supreme Court's narrow 5 to 4 majority opinion in *Colorado II* merely affirmed the status quo. The limit on coordinated expenditures upheld by the Court has been in place for the past quarter-century. Significantly, the *Colorado II* ruling in no way restricts or even concerns the legal status of non-federal or so-called "soft money" donations to political parties.[1] Soft money, in fact, is not even referenced in the Court's opinion. Although *Colorado II* does not concern soft money, the Court nevertheless sent a strong signal to Congress that the McCain-Feingold and Shays-Meehan

[1] "Soft money" is generally defined as money that does not fall under the limits and prohibitions of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 et seq.) ("FECA" or "the Act"). All soft money is regulated and spent in connection with state and local electoral activity consistent with relevant state law. By definition, "soft money" may not be used "for the purpose of influencing any election for federal office." 2 U.S.C. § 431.

bills would not pass constitutional muster if they ever became law, because the Court emphasized and reaffirmed that political parties have a fundamental constitutional right to spend non-coordinated money. The Court also made clear that Congress cannot, consistent with the Constitution, hold out political parties for disfavored treatment as these two wills seeks to do.

Second, McCain-Feingold and Shays-Meehan would cripple both political parties' grassroots voter education and mobilization activities, would federalize all elections, and would leave such activities in the hands of unaccountable special-interest groups. When Congress last amended the federal election laws in 1979, there was broad consensus that generic party-building programs were good for democracy, were increasingly being threatened by federal regulations and restrictions, and needed to be encourage and strengthened. Accordingly, the 1979 amendments made clear that political parties can and should be involved in grassroots voter education and get-out-the-vote activities. McCain-Feingold and Shays-Meehan seek to roll back the 1979 amendments and would cause a dramatic reduction in grassroots involvement. This misguided approach cuts at the very heart of participation in American democracy and should be squarely rejected.

THE COLORADO II COURT DECISION

I. Colorado II merely reaffirms the status quo regarding coordinated expenditure limits

The Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 et seq.) (hereinafter "the Act" or "FECA"), included in the definition of "contribution," "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents." 2 U.S.C. § 441(a)(7)(B)(i). This treatment of coordinated expenditures as contributions to the candidate with they are coordinated—whether made by a political party or anyone else—has been part of the regulatory regime for nearly thirty years. In this regard, *Colorado II* is a status quo decision.

While the RNC continues to believe strongly that any limits on political party coordinated expenditures are unconstitutional, the RNC will continue to operate within the coordinated limits as it has done for the past three decades. However, for those that seek to pursue avenues of assault on the constitutional rights of political parties, many aspects of the *Colorado II* ruling are very troubling.

II. The Colorado II majority and dissent agree that political parties may not be discriminated against

All nine Justices held in *Colorado II* that Congress may not place political parties in a disfavored position *vis-a-vis* other participants in the political process. First, Justice Souter's majority opinion reaffirmed the conclusion in *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U.S. 604 (1966) (*Colorado I*), that there is

> no reason to see * * * [political party independent] expenditures as more likely to serve or be seen as instruments of corruption than independent expenditures by

> anyone else. So there * * * [is] no justification for subjecting party election spending across the board to the kinds of limits previously invalidated when applied to individuals and nonparty groups.

Colorado II Slip Op. at 8.[2] Justice Souter later concluded that "[a] party is not, therefore, in a unique position. It is in the same position as some individuals and PACs, as to whom coordinated spending limits have already been held valid * * * Id. at 20.

Going further, the dissenting opinion in *Colorado II,* authored by Justice Thomas, stressed that political parties are entitled to more constitutional protection than other political actors, noting that the majority "offers no explanation for why political parties should be treated the same as individuals and political committees." Dissent Slip Op. at 10. See also id. at 5 ("The source of the 'contribution' at issue [in this case] is a political party, not an individual or a political committee * * * Restricting contributions by individuals and political committees may, under *Buckley* [v. *Valeo*], entail only a 'marginal restriction,' * * * but the same cannot be said about limitations on political parties.") (internal citations omitted).

Taken together, the majority and dissenting opinions in *Colorado II* lead to the inescapable conclusion that the baseline of Supreme Court consensus is that political parties, at the very least, must be treated the same as other political actors. Moreover, at least four Justices believe that the Constitution requires placing political parties in a favored position—with greater First Amendment proteciton—than other political actors.

III. Colorado II calls into question key features of McCain-Feingold

The concept from *Colorado II* that political parties may not be treated worse than other political actors has major implications for two provisions of the current McCain-Feingold bill—namely, the so-called "ban" on soft money and the issue advocacy provisions.

A. McCain-Feingold bans soft money only to national political parties

Notwithstanding the rhetoric from supporters of McCain-Feingold that their bill, and only their bill, "bans" soft money, the fact of the matter is that McCain-Feingold does not ban all soft money, but instead selectively bans only national political parties from raising and spending soft money. Left untouched, however, are the hundreds of millions of soft dollars spent directly by corporations and labor unions every election cycle. For example, in the recent special election in Virginia's Fourth Congressional District, labor unions used 100% soft money to mail attack pieces against Republican (and now Congressman) Randy Forbes. Under a McCain-Feingold regime, corporations and unions would still be able to spend soft money to mail such attack pieces. In addition, labor unions often send field staff around the country to conduct grassroots voter mobilization in hotly contested Congressional districts. Again,

[2] In *Colorado I,* the Court ruled that political parties have a fundamental constitutional right to engage in unlimited independent expenditures on behalf of their candidates. The Court stressed that "[t]he independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees." 518 U.S. at 616.

under McCain-Feingold, corporations and unions would still be able to spend 100% soft money to fund these electoral activities.

In a show of breathtaking hypocrisy, the campaign finance reform industry has spent over $70 million in soft money running advertisements and lobbying to pass their pet "reform" projects (primarily in support of the McCain-Feingold bill).[3] Under McCain-Feingold, groups like Common Cause and the Brennan Center would still be able to spend unlimited amounts of soft money attacking and attempting to restrict the speech of political parties, yet the RNC and state Republican parties could not legally spend any soft money to defend the policy and political views of members of the Republican Party.

Whether or not one likes and supports the goals of national political parties like the RNC, the Democratic National Committee ("DNC"), the Green Party, or any other political party, what is indisputable in the wake of *Colorado II* is that Congress may not constitutionally put political parties in a disfavored position *vis-a-vis* other political actors. McCain-Feingold unambiguously tells political parties that they, and they alone among political actors (including corporations, unions, PACs, and "reform" think tanks), can be silenced and prevented from using soft money for grassroots get-out-the-vote, voter registration, voter education, and lobbying activities. Such invidious discrimination has no place in America and cannot be squared with the First Amendment.

B. Issue advertisements by political parties face extraordinary restriction under McCain-Feingold

It is almost beyond question that government restrictions on issue advocacy are unconstitutional. Federal courts have consistently struck down attempts to ban or restrict issue advertising,[4] and even the McCain-Feingold bill's own sponsors gave the provision a "no confidence" vote by insisting that the issue advocacy provision of their bill be severable, so that when the issue advertising restrictions are inevitably struck down, the rest of the legislation is not invalidated.

Now, in the wake of *Colorado II*'s reaffirmation of the principle that political parties cannot be placed in a disfavored position, it is clear that the discriminatory McCain-Feingold scheme, which re-

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[3] See "Who's Buying Campaign Finance 'Reform,'" ACU Foundation Election Law Enforcement Project, p. ix. (March 2001) ("Since 1996, the campaign finance reform 'campaign' has raised and spent more than $73 million: $67 million by national organizations and at least $6 million at the state and local level.")

[4] See e.g., *Right to Life of Michigan, Inc.* v. *Miller,* 23 F. Supp. 2d 766 (W.D. Mich. 1998), and *Planned Parenthood Affiliates of Michigan, Inc.* v. *Miller,* 21 F. Supp. 2d 740 (E.D. Mich. 1998) (both ruling that issue advertisements enjoy more, not less, constitutional protection the closer they are in time to an election). See also *Buckley* v. *Veleo,* 424 U.S. 1 (1976); *FEC* v. *Christian Action Network,* 110 F.3d 1049, 1051 (4th Cir. 1997) ("That is, the Court [in *Buckley*] held that the Federal Election Campaign Act could be applied consistently with the First Amendment only if it were limited to expenditures for communications that literally include words which in and of themselves advocate the election or defeat of a candidate * * * The Court adopted the bright-line limitation that it did in *Buckley* in order to protect our cherished right to political speech free from government censorship. Recognizing that 'the distinction between discussions of issues and candidates [on the one hand] and advocacy of election or defeat of candidates [on the other hand] may often dissolve in practical application,' id. *[Buckley]* at 42, 9 S.Ct. at 646, the Court concluded, plain and simple, that absent the bright-line limitation, the distinction between issue discussion (in the context of electoral politics—and candidate advocacy would be sufficiently in distinct that the right of citizens to engage in the vigorous discussion of issues of public interest without fear of official reprisal would be intolerably chilled." (emphasis in original); *Faucher* v. *FEC,* 928 F.2d 468, 472 (1st Cir. 1991).

stricts issue advertisements for some entities, but then adds even more onerous restrictions for issue advertisements by political parties, is patently unconstitutional. Revealingly, if the McCain-Feingold legislation were in effect this summer, a special interest group like Common Cause could use soft money to run as many television advertisements as it wants supporting Senators McCain and Feingold's legislation. By contrast, the RNC and DNC would be completely banned from using that same type of money to run the same type of advertisements supporting or opposing the legislation. Little wonder, then, that McCain-Feingold has been described as the ultimate in incumbent protection legislation.

THE IMPACT OF MC CAIN-FEINGOLD TYPE LEGISLATION ON CRITICAL POLITICAL PARTY ACTIVITIES

When considering any modification to the federal campaign finance system, it is crucial that we keep the following fundamentals in mind. First, no legislation should be passed that in any way impairs the free speech rights of anyone in America. Second, we should recognize the unique value of strengthening political parties as the major mechanism by which individuals come together and participate in the political process. By these key standards, the McCain-Feingold bill in the Senate, and the Shays-Meehan legislation in the House, fail miserably and should be rejected.

I. Congressional recognition of the role of political parties

Congress in adopting and, more importantly, in amending the FECA recognized the unique role party committees play in our political system and took affirmative steps to preserve and encourage political party activities at the grassroots level.

A. Federal contributions and expenditures

Under the FECA, additional financial resources are made available to party committees in conjunction with their federal election related activities. For example, a national party committee can receive up to $20,000 per year from an individual contributor, while political committees are permitted to contribute up to $15,000 per year to the national party. Unlimited federal transfers between and among party committees are also permitted under FECA.

In addition to the direct contributions the party can make to its federal candidates, additional moneys can be spent on behalf of the party's federal candidates within certain limits in direct coordination with those candidates. These so-called "coordinated party expenditures," which were at issue in *Colorado II,* may not be made by any other political entity. Under this coordinated expenditure authority, national and state parties can each spend an additional 2 cents x the voting age population in a state for their Senate candidate. In 2000, for example, the national and state party, together, could have spent up to $1,559,420 on behalf of their U.S. Senate nominee in Florida and up to $178,000 for their Senate candidate in Nevada. The party also could have spent an additional $67,560 for each U.S. House race.

Currently, non-federal donations are regulated in the states where they are spent, not by federal law.

B. Party grassroots activities

Congressional recognition of the importance of political parties in our election process is evident, not only by this additional party funding and spending authority, but more importantly, by what parties are allowed and encouraged to do at the grassroots level. Political parties have the responsibility and have been given the financial capacity under current law to build grassroots support and enthusiasm within the electorate for their ticket and agenda, to educate voters, and to get-out-the-vote. In fact, except for a narrow period of time in the 1970s, throughout the history of our nation political parties have always had the ability to use soft money to fund grassroots activity.

The 1976 elections were the first elections held without soft money. At the time, there was basic confusion as to what, if anything, could be done by state and local party committees under the new FECA rules, resulting in little, if any, of the traditional grassroots party voter education and get-out-the-vote efforts. In fact, the new law seemed to discourage any local party involvement in elections whenever a federal candidate appeared on the ballot.

In 1979, out of concern that the federal campaign finance laws were inhibiting state and local grassroots election activities, Congress amended the FECA to re-enforce the ability of political parties to engage in grassroots efforts. Congress recognized that grassroots activities support the party's entire slate of candidates up and down the ticket. Because grassroots action was perceived to benefit all candidates, there had not been any Congressional attempt to limit party spending for these ticket-wide efforts to federal funds. As a matter of fact, the opposite was true. State parties were expected to pay expenses for grassroots activity out of non-federal dollars.

In the past, Congress has recognized the reality that parties do more than support federal candidates. It has acknowledged that "[m]oney used to pay the costs attributable to state and local candidates is subject to the limits and prohibitions of state law."[5] Nothing has changed since the adoption of the 1979 FECA amendments to require "federalizing" such voter education and get-out-the-vote programs.

C. McCain-Feingold and Shays-Meehan: "Federalize all elections"

McCain-Feingold and Shays-Meehan would end the ability of parties to pay for grassroots programs with non-federal, state regulated funds, whenever a federal candidate is on the ballot. The presumption under both bills is that party spending is motivated solely to benefit a federal candidate. Obviously, from the party's perspective, that is a ludicrous presumption. In effect these bills federalize all elections, except in those five states that conduct their elections in non-federal election years. These bills would require national parties to cover all generic costs with federally regulated "hard money." These bills would also prevent the national parties from transferring any non-federal funds to the states for the non-

[5] Report to accompany H.R. 5010, Committee On House Administration, Report No. 96–422 96th Congress 1st Session, September 7, 1979, p.8.

federal share of a state party's grassroots effort, even though that money meets all the legal requirements of state law.

A state party's ability to spend state regulated "soft dollars" would also be restricted for any get-out-the-vote effort beginning four months before an election, the period when such activity would normally take place, even if the entire statewide slate were up for election, if only one federal candidate were also on the ballot. For example, in the 2002 election in Ohio, a party's nominees for Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, as well as for the state legislature and state judicial races, will all be on the ballot. There will be no statewide federal race in Ohio in 2002; only the Congressional candidates seeking election in a particular district. Every other candidate on the ballot will be non-federal.

If McCain-Feingold or Shays-Meehan were to become law, the RNC would be prohibited in 2002 from sending non-federal funds to the Ohio Republican Party to assist its non-federal Republican candidates or to assist with any portion of its get-out-the-vote effort or voter education program, even though all statewide races on the ballot in Ohio that year will be non-federal, and even though all transferred funds would be in compliance with Ohio state law. (All funds transferred would be from individuals because corporate funds are prohibited in Ohio). Similarly, the Ohio state Republican Party itself would be restricted to using federally sanctioned funds for any get-out-the-vote drive or voter education program, even though its state-wide campaign effort would be 100% non-federal.

II. Political parties as coalition builders

Political parties do not represent any single special interest or group, but rather are coalitions of individuals and entities espousing various ideas. Parties are successful in electing their candidates and governing with their ideas only if the majority of the electorate agrees with the "party package."

What is disconcerting about McCain-Feingold and Shays-Meehan is that these two bills either fail to understand how a political party functions, or if they do understand, cynically ignore the role of parties in the American political process. These bills only focus on party support for federal candidates, not on grassroots party-building efforts that support all of the party's nominees from the courthouse to the White House.

These critical party-building efforts do not begin within 60 or 120 days of an election, nor should they be required to stop within this timeframe as proposed by these misguided bills. Rather, party building is an ongoing party function that should not be artificially stifled. It involves voter registration efforts, communicating the party message and positions, absentee ballot programs, voter education activities, and aggressive get-out-the-vote programs. Under these so-called "reform" proposals, national parties would be unable to continue their current level of assistance to state and local party-building programs. State party activities would also be dramatically curtailed since most party-building programs are currently paid for with a portion of non-federal, state regulated funds. National parties would no longer be able to support gubernatorial candidates and legislative candidates with funds raised under a

particular state's laws, but could only use federally regulated funds. Another point these so-called "reformers" fail to understand—or simply ignore—is the fact that in some states the use of such federal funds would be prohibited. This would preclude any involvement by a national committee in any non-federal race in those states.

It is important to keep in mind that the political parties are not just the parties of federal candidates, but are national organizations that work in concert with state and local affiliates sharing non-federal funds, in compliance with state law, to promote state and local candidates. For example, in the 2000 election cycle, the RNC and the Republican Governors Association donated $11 million to gubernatorial candidates and another $7 million for state legislative races—all soft money donations that were regulated by the state law where the donations were made. These state and local donations would be illegal under the soft money ban in McCain-Feingold and Shays-Meehan.

The net effect of McCain-Feingold and Shays-Meehan would be the federalization of all elections and party grassroots activities. Some state party chairs have threatened to get out of the federal election business rather than have their entire state party-building apparatus federalized. Should that be the end result of campaign finance reform? Should Congress encourage the elimination of party grassroots efforts and force reliance on "others" to get-out-the-vote and provide the infrastructure to register voters, maintain absentee ballot programs and educate the electorate on the party's slate of candidates?

The RNC agrees with Congressman Albert Wynn (D–MD), Chairman of the Congressional Black Caucus Task Force on Campaign Finance, that party grassroots voter programs should be enhanced, not eliminated, and that national parties should play a role in that process. As Congressman Wynn explained in his testimony before the Committee on House Administration's hearing on campaign finance reform on June 21, 2001:

> Pundits and academics argue that other private entities can promote voter education programs as well as the national parties, but I would point out that, that approach puts our political system entirely in the hands of—you guessed it—the same special interests, [whose] influence they claim to abhor. While the National Rifle Association or Planned Parenthood certainly have the constitutional right and the resources to mobilize voters, I think it would be a great mistake if national political parties did not have access to resources to educate and mobilize voters as well.

Congressman Wynn further testified that:

> [T]he Florida experience has taught us two things: (1) soft money used properly can mobilize minority voters and increase turn-out, and; (2) that these funds can be used for voter education tools, such as, sample ballots to help voters avoid confusion and protect the voting rights of minority voters.

The RNC urges every Member of the House of Representatives to seriously study Congressman Wynn's testimony before they make a final decision on how they will vote on campaign finance reform.

III. The practical effect of McCain-Feingold and Shays-Meehan on 2000 party activity would have been devastating

Do the "reformers" really want to eliminate party grassroots get-out-the-vote programs? Do we want to end party voter education programs, particularly in light of the problems that surfaced during the 2000 election? The motivation for banning national party "soft money" has been the issue ad controversy. Although the RNC disagrees with those arguments, what is lost in the debate is how dependent state parties are on national committees to help fund their grassroots voter education efforts. For example, in the 2000 election cycle, the RNC alone transferred over $35 million to the state parties to finance grassroots programs. The vast majority of this funding was in non-federal dollars.

Under McCain-Feingold and Shays-Meehan, this national party assistance would evaporate. The state parties themselves would be restricted by federal law in how much non-federal funding could be used for grassroots voter education programs, even though their own state laws would place no restrictions on these programs. According to political scientist Raymond La Raja of the University of California at Berkley:

> In 1996, when parties aired all those issue ads, I found that they actually doubled their spending on voter mobilization programs and grass roots efforts. Again, in '98, they spent as much on these as they did on issue ads.[6]

The bottom line is that under McCain-Feingold and Shays-Meehan, national party financial support for voter education programs would dry-up and state party grassroots efforts would be severely curtailed, making their limited effort almost irrelevant.

Non-federal funding from the national committees to the state parties supports a wide array of voter outreach and participation initiatives, including registration drives, absentee ballot programs, and get-out-the-vote efforts, that strengthen and extend the political party system. During the 2000 election cycle, soft money helped the GOP fund:

- Over 110 million get-out-the-vote mail and issue pieces
- Over 25 million absentee ballots
- Over 65 million issue and get out the vote phone calls

A soft money ban would place at risk these basic organizational activities, all good government in nature, which the political parties can and should undertake on behalf of all candidates. While preventing the parties from continuing their mail, absentee ballot and phone programs, other entities, particularly corporations and unions, can continue these efforts unregulated under McCain-Feingold and Shays-Meehan.[7] McCain-Feingold's and Shays-Meehan's

[6] Raymond La Raja, "Political Parties Under McCain-Feingold," Remarks at Forum sponsored by Campaign Finance Institute, George Washington University, May 17, 2001.

[7] It is estimated that unions, in the 2000 cycle, spent an estimated minimum $300 million supporting candidates, virtually all to help Democrats, through a massive network of phone banks, literature drops, and get-out-the-vote efforts. Leo Troy, Professor of Labor Economics at Rutgers

Continued

ban on soft money to national political parties does nothing to diminish the onslaught of this unregulated, unreported campaign activity.

Labor unions and corporations are not alone in these types of endeavors. Third party special interests groups are also permitted to raise and spend soft money for issue advocacy purposes. Special interest groups spent record amounts candidates in 2000. In fact, of the $500 million spent on issue advertisements during the 2000 election cycle (the apparent legislative catalyst for the national party "soft money" ban and state party restriction), 68% ($347 million) was spent by third party special interest groups—more than twice the amount spent by both political parties combined.[8] McCain-Feingold and Shays-Meehan, in what is almost certainly an unconstitutional provisions, seek to control such activity two months before a general election, but these third-party groups will simply begin their issue advocacy earlier.

By contrast, all national party "soft money" is currently disclosed to the Federal Election Commission ("FEC"). All national parties must publicly disclose all nonfederal funds raised with the FEC, and the RNC reports soft money donations and expenditures to the FEC each month. Soft money is raised and spent by political parties subject to state, not federal, election law. Soft money is voluntarily contributed, disclosed, and regulated. Every penny of soft money invested by the national party committees in the states must be spent and reported in accordance with state law in the state in which it is spent. The consistent disingenuous reference to "unregulated soft money" in the "reformers" rhetoric is simply untrue. All soft money spent by political parties is regulated by the state in which it is spent.

Strong political parties, at both the national and state level, empowered with the capability of lawfully raise and spend nonfederal funds for get-out-the-vote and other party building purposes, are our last and best defense against the biased influence of third party special interest groups and the elite media. Money given to the parties will, out of necessity, be used by the parties in a broad fashion in support of the party and its issues as a whole. Furthermore, unlike the single-issue special interests, the parties are unifying institutions which literally cannot afford to be strictly ideological nor narrowly bound to specific views, because their interests lie in the ability of their candidates to win office rather than on specific ideological propositions.

IV. Conclusion

McCain-Feingold's and Shays-Meehan's ban on soft money to the national parties is flawed public policy that would greatly undermine the existing two-party system while raising a host of alarming political, ideological, and constitutional issues that penetrate to the heart of our American system of politics.

Given all of the above, what, one has to ask, are the motivations and goals of the advocates of McCain-Feingold's and Shays-

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University [Robert Zausner, "After Raising Record Sums, Both Sides Talk Campaign Reform," Philadelphia Enquirer. November 4, 2000].

[8] See Annenberg Public Policy Center of the University of Pennsylvania. Issue Advertising in the 1999–2000 Election Cycle, p. 4.

Meehan's? The campaign finance crusaders' most common refrain, when justifying outlawing nonfederal contributions to political parties, is that there is "too much money in politics," and that the time has come to shut down the "unregulated Washington soft money machine." While these make for appealing sound bites, such claims do not fare well upon informed review.

Consider, for example, that in the 2000 election cycle Americans spent $3 billion total on all federal elections. In comparison, during that same period, Americans spent $4 billion at Starbucks, $7.46 billion going to the movies, and $6.5 billion on video games—more than double the cost of all federal campaigns combined. Is anyone prepared to seriously argue that less money should be spent on politics than in buying cups of coffee?

More importantly, how comfortable should we be at having the government decide how much money is "too much money" spent on politics, especially on critical party-sponsored grassroots voter-education activities that are often the difference between voters going to the polls or staying home on Election Day? Most people would flatly reject such a proposition in the abstract, yet this is precisely the practical consequence of the McCain-Feingold and Shays-Meehan schemes.

Fair and balanced reform that promotes and encourages grassroots involvement in our election process is a useful cause for change. The McCain-Feingold and Shays-Meehan proposals, however, impose radical new restrictions on state and local political activity that would severely compromise the ability of ordinary Americans to come together, pool their resources, and participate in the political process through the political party of their choice. This fundamental constitutional right is a core national conviction upon which our country was founded and upon which it has thrived ever since. We cannot allow it to be endangered.

APPENDIX B

DEMOCRATIC NATIONAL COMMITTEE,
Washington, DC, June 27, 2001.

Hon. ROBERT W. NEY,
Chairman, Committee on House Administration, House of Representatives, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you very much for your June 25 letter inviting the Democratic National Committee to submit written testimony to your Committee with regard to the impact of the Supreme Court's decision and proposals for reform that may be considered by the House.

Due to the shortness of time, we will not be able to submit detailed written testimony by June 28 on that subject. With respect to proposals for reform, as you know, the DNC strongly supports the McCain-Feingold legislation passed by the Senate and the Shays-Meehan legislation that has previously been passed by the House. Our attorneys have advised that they believed the basic provisions of these measures, banning the raising and spending of soft money by national party committees, are constitutional and will ultimately be upheld by the courts.

Thank you again for your letter. If you or your staff have any questions about the DNC's position or if there is any other way we can be helpful to your Committee's deliberations, please contact me at 202–863–8121 or our general counsel, Joe Sandler at 202–479–1111.

With kind regards,
Sincerely yours,

TERENCE R. MCAULIFFE,
Chairman.

MINORITY VIEWS OF STENY H. HOYER, CHAKA FATTAH, AND JIM DAVIS

True campaign finance reform aims to accomplish three goals:

1. Completely end the unregulated, unlimited flow of soft money into the political parties;

2. Require that political advertising that any reasonable viewer would say are designed to influence a federal election be paid for with hard money.

3. Respect the right of organizations to communicate with their members about key issues affecting them.

While H.R. 2360, the "Campaign Reform and Citizen Participation Act of 2001," attempts to reach these goals, we regret to conclude that it falls short.

To its credit, H.R. 2360 recognizes, and seeks to address, two key problems in our campaign finance system: (1) the proliferation of soft money and (2) undisclosed issue advocacy. Unfortunately, it is not a comprehensive effort to address either. Worse, it is so riddled with loopholes that rather than solve the problems it identifies, H.R. 2360 effectively legitimizes them by bringing them under the auspices of the Federal Election Campaign Act.

With respect to soft money, H.R. 2360 is deficient in three significant ways:

(1) H.R. 2360 fails to staunch the total flow of soft money because it only proposes capping soft money contributions to political parties at $75,000 a year, or $150,000 in an election cycle. In a nation where the median income for a family of four is approximately $59,000, we believe a cap of $75,000 is not a cap at all. To make matters worse, this "cap" would apply to each of three national committee in the two parties. In theory, a corporation, union, or wealthy individual could give as much as $900,000 in soft money in a two-year election cycle, assuming it sought to curry favor with both parties and contributed the maximum amount to each. Combined with H.R. 2360's proposed increases in hard money contributions, a wealthy individual could contribute as much as $1,335,000 in hard and soft money in a two-year election cycle.

(2) To the extent that H.R. 2360 "caps" soft money, it does so only with regard to the national political parties. To be sure, limiting soft money raised by national political parties and federal candidates may be a positive first step to ridding politics of unlimited, unregulated contributions. However, H.R. 2360 would not limit, any more rigorously than current law does, soft money activities that are conducted by state and local political parties that have an indirect but unmistakable impact on candidates running in federal elections.

(3) H.R. 2360 does nothing to prevent federal officeholders from raising unlimited soft money for state parties to spend in ways that help their federal campaigns.

These are serious inadequacies that, for example, would not stop a wealthy energy wholesalers or tobacco companies from making a soft money contributions. Rather, the corporation would simply redirect the contribution to a state party, possibly attracting less scrutiny. Under H.R. 2360, corporate and union contributions could still flood state and local parties in all 50 states. These contributions, in turn, could be spent on "generic" party state and local "grass roots" activities that boost a federal candidate's prospects.

Failure to address soft money on the state and local levels, even if it is limited on the national level, will only preserve the loophole that has undermined faith in the federal campaign system, encouraging wealthy individuals and corporations to divert huge contributions that now go to national non-federal accounts to state parties. As a consequence, it is unlikely that H.R. 2360 would shrink the total volume of unregulated soft money, or neutralize its considerable impact federal elections. The bill merely re-channels where special interests send these unlimited contributions.

The loopholes in H.R. 2360 are not limited to soft money. Unlike the Shays-Meehan bill reported out of Committee on July 28, H.R. 2360 does not seek to make special interests that exploit the issue ad loophole to run thinly disguised campaign ads play by the same rules that govern federal candidates and political action committees. H.R. 2360 contains no requirement that hard dollars be used to pay for "sham" issue ads, and requires disclosure of the advertising only when it exceeds $50,000 per year.

Perhaps most troubling, however, is that H.R. 2360 purports to require better disclosure of issue advertising, but in fact fails to provide the voter the necessary information about who is paying for these confusing ads. While H.R. 2360 requires disclosure of the amount of money spent on a particular advertisement, unlike every other disclosure provision in the campaign finance system, it does not require disclosure of the source of funds used to pay for advertising. This is not a trivial problem that supporters of real reform can accept. Voters have significant difficulty determining how much credibility to lend a communication when they do not know the source of the communication. Without real disclosure of the sources of money funding sham issue ads, the ability of the voters to make informed decisions is severely undermined.

For these reasons, we urge our colleagues to oppose H.R. 2360. In the final analysis, H.R. 2360 will ratify—not reform—pernicious campaign fundraising practices that call into question the sacred trust that exists between elected officials and all Americans whom they are constitutionally charged with representing.

In our view, Shays-Meehan is the only measure before the House that deserves to be called true reform because (1) it outlaws all soft money to the national parties; (2) requires all activities intended to influence federal campaigns be paid for with hard money; and (3) respects the right of organizations to communicate with their members about vital issues affecting them.

We are confident our colleagues on both sides of the aisle will agree. If history is any guide, they will. In 1998 and 1999, a similar Shays-Meehan bill passed 252–179 and 252–177, respectively. We urge our colleague to show this same strong bipartisan support this year and pass H.R. 2356.

STENY H. HOYER.
CHAKA FATTAH.
JIM DAVIS.

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