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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Martin Luther said, ''The very ablest youth should be reserved and educated not for the office of preaching, but for government. Because in preaching, the Holy Spirit does it all, whereas in government one must exercise reason in the shadowy realms where ambiguity and uncertainty are the order of the day.''

Gracious God, infinite wisdom, we thank You for reserving and preparing the women and men of this Senate to serve You in the high calling of government. So often politics and politicians are denigrated in our society. We forget that politics is simply the doing of government. Bless the Senators, their faithful staffs, and all who are part of the Senate family. Give all of them a renewed awareness that they are here by Your appointment and You will give vision in the ambiguities and clear convictions in the uncertainties that occur today. Send out Your light; lead us; empower us. We commit ourselves anew to excellence for Your glory and the good of our beloved Nation. In the name of our Lord. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

SCHEDULE

Mr. LOTT. Mr. President, this morning there will be a period for continued debate on S. 1219, the campaign finance reform bill, with the time equally divided between the two leaders or their designees.

UNANIMOUS-CONSENT AGREEMENT

I understand that there has been a request for an extension of that debate, therefore I now ask unanimous consent that debate be extended until 1 p.m. today under the previous conditions, and further that Senators have until 1 p.m. in order to file second-degree amendments to the campaign finance reform bill as well as first-degree amendments to the DOD bill.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LOTT. I might just note that has been cleared by the Democratic leadership. This just does provide for an additional 30 minutes of debate on the campaign finance reform bill.

At 2:15 today, under the previous order, the Senate will proceed to a rollcall vote on the motion to invoke cloture on the campaign finance reform bill. If cloture is not invoked, the Senate is expected to resume consideration of the Department of Defense authorization bill; therefore, further rollcall votes are expected throughout today's session.

As a further reminder, a cloture motion was filed on the DOD authorization bill last night, with that vote to occur on Wednesday of this week. Also, the Senate will recess from the hour of 1 to 2:15 p.m. today, in order for the weekly policy conferences to meet.

I hope the cloture vote on DOD authorization may not be necessary, but from what I saw last week, the Senate has not yet gotten serious about completing this legislation. We must do it this week. We will do it this week. We just have to get on with the amendments. So we probably can expect to go into the night tonight and may very well tomorrow also.

I might also just say, I plan to meet later on this morning with the Democratic leader and see if we can come to an agreement on how to handle the small business tax relief and minimum wage issue, beginning on Monday, July 8.

I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, leadership time is reserved.

CAMPAIGN FINANCE REFORM

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1219, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1219) to reform the financing of Federal elections, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I want to speak against cloture on this bill, but I also want to talk about what I think is good about the bill and why I am voting against cloture.

First, I want to say, if I were titling this bill, it would be called the Incumbency Protection Act, because that is what limitations on expenditures for campaigns will do. It will take away the right of a challenger to be able to raise more money than an incumbent with the advantage of name identification and to be able to go forward with a message.

What they say in this bill is that it is voluntary. It is voluntary, but you pay quite a price if you do not adhere to the limits. You, then, will be faced with 30 minutes of free broadcast time against you, if you do not adhere to the limits. You will have reduced postal rates against you. This is really coercive. Then there is the cost. My gosh, the Postmaster General has said he will have to raise all postal rates if he has to provide reduced rates.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

So I want to talk about why I think this is the most important part of the bill. But I also want to talk about what I think is good in the bill because, if we ever want to come back to this, there are some improvements that we really ought to make, and I will be supportive of these things. I love the idea of requiring 60 percent of campaign funds to be raised from individuals in a State. I think that is something that will enable the people in the State to have the right say in the election of their Members of the U.S. Congress, in the election of their Senators.

I am for limitations of personal money for a campaign. I think you have to make sure it would be constitutional, so you would say a person can spend any amount of his or her own money that he or she wants to, but he or she could only be repaid a certain amount. I think that is a wise thing, because I, too, am alarmed, as many of us are, by people who would just pour millions of their own money into a campaign and, in effect, be able to buy an election; because that is what people see. They have the access to the airways with money, and it does become, I think, an inequitable situation.

Limitations on the amounts of contributions by PAC's to the same amount as individuals contribute is good. I do think PAC's, however, have been misrepresented, not only on this floor but around the country, because I think political action committees, most often, are grassroots efforts within a company. Why would we not want the working people of this country to be able to contribute $25 or $100 or $500, if they desire to do it? PAC's are voluntary and they should be voluntary. But if people want to participate in our process, I think they should be encouraged. Frankly, I think many of the companies in this country have done a wonderful job of encouraging their employees to be a part of a PAC. When they do that, the employees are able to have the candidates come before them. They will have the Democrat and the Republican. They will be able to have debates. I think that is healthy. That makes more people interested in the process, have a stake in the process, and be good citizens. That is what we want to encourage in our democracy.

I am for the provision that would not allow the franking privilege for mass mailings in an election year. I do not use the franking privilege for mass mailings at all. I have not detected I am any less in contact with my constituents. I think it is a good thing, in an election year, not to have the franking privilege for mass mailings. I think we could easily do that.

So these are things that I think are great steps in the right direction, and I commend my colleagues, Senator MCCAIN and Senator FEINGOLD, for bringing these forward because these are things I could vote for.

The reason I am going to vote against cloture is because the overriding, most important part of this bill goes against everything that freedom in a democracy stands for, and that is the limitations on contributions, voluntary, but nevertheless I think it creates a very uneven situation.

I am a person who could be on the other side of that because in my personal experience I ran against an incumbent who was much better funded than I was, who had the PAC contributions from Washington that I have heard so much talk about on this floor. I had a very hard time raising money against this incumbent. But you know what? The people were looking at the message. And even though my message was much less generously funded than my opponent's message, nevertheless the people were able to make this choice.

I do not want to limit the incumbent or the challenger. If the message is right, we need to have the freedom to get it out. I, of course, think that limiting an incumbent and saying you can only spend this much, and limiting the challenger and saying you can only spend this much, is going to favor the incumbent. There is just no question about that. And even though I was on the other side of that, I think it is wrong and I think I will stand always against any kind of limitations, whether it is cloaked in a voluntary cloak of armor or not, because it is not really voluntary when you are then going to the television stations or the postal service or going to the radio stations and saying, ''Ah, yes.''—these people that are voluntarily saying that they are going to stay within the limit—''You're going to pay for that difference.''

What is the nexus? Why are we telling television stations or the Postal Service, which is going to have to raise rates on everyone else in America, that you should subsidize this arbitrary limitation that is voluntary? It just does not make sense, Mr. President.

So I am going to vote against cloture because I think the overriding issue here is limitations. If you want to see the hardship of limitations, look at the States that have the limitations in place. Look at the Presidential election right now. One candidate has a primary and therefore has to spend the money in the limitation. The other candidate does not have a primary. This could be reversed. It could be the year that there is a Republican incumbent and the Democrats have a primary. Either way, it makes for an artificial limitation that is not fair. I do not think we want to put that in place now for Members of Congress and Members of the Senate.

Let me just say that we do have limitations on contributions that I think are quite reasonable. Could they be lower? Yes. I mean, $500, $1,000—it could be lower if we wanted it to be lower. I would certainly be flexible in that area. But you know, when I look at the States around this country that have no limitations whatsoever on contributions and there are people taking $100,000 for a campaign for a State office, and we are talking about $1,000 limitations on contributions or $5,000 from a PAC that is an amalgamation of many employees in a company, I think we are assuring that there is going to be a grassroots base. We have that assurance right now.

I had 40,000 contributors to my campaigns for the U.S. Senate. I ran twice within 2 years. Forty thousand. My average contribution was about $100. I think that is a grassroots effort. I had many $5 and $10 contributions. That does make sure that no one has particular access to a person because of some huge contribution.

I think we can do a lot to improve our campaign finance in this country, Mr. President, but I just think this bill is not the right approach. I hope that we can work on this and continue to work on it, because as I said, I think, having limitations on personal use of funds, having the 60 percent requirement of raising money in your home State, not using the franking privilege in an election year are very good, solid recommendations from this bill. So I hope that we will be able to work on something, but, Mr. President, this is not the right vehicle. Thank you, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Let me thank my good friend from Texas for her excellent statement on the issue before us. I appreciate her contribution to this debate, not only at this time but in previous rounds. She is right on the mark, it seems to me, in concluding that this bill falls well short of anything the Congress ought to foist on to the American people, and particularly the restrictions on all the individuals across the country that want to participate in the political process.

I would just say to my friend from Texas—I did not get a chance yesterday to tell her this—even the National Education Association, almost never aligned with people like the Senator from Texas and myself, wrote me a letter yesterday saying how awful this bill was, and said they hoped it would be defeated. They also pointed out that the average contribution to the NEA PAC was $6, and asked the question, why in the world participation of that sort would be a bad thing for American democracy and something the Congress ought to eliminate?

Mrs. HUTCHISON. Will the Senator yield for a question?

Mr. MCCONNELL. Certainly.

Mrs. HUTCHISON. Is it not true that the Postmaster General has raised serious questions about this bill, and what he would be required to do is in the way of raising postal rates for everyone because of the subsidy that would be required under this bill for lower postal rates in an election year?

Mr. MCCONNELL. In a letter I received from the Postmaster General

yesterday, he comes out against the bill. Obviously, the Postmaster General is not accustomed to taking positions on legislation up here. But his point is that this is in effect a transfer of cost to the postal ratepayers across America.

That is one of the reasons the Direct Marketing Association, the direct mail people—they are a private business—also opposes this, because in effect it is passing on to the postal ratepayers an enormous expense.

This bill is not free. The notion has been put forth that somehow the spending limits are free. In fact, it passes the cost on to the broadcasting industry and on to the postal patrons of this country.

Mrs. HUTCHISON. Not only that, since we have virtually a monopoly in the postal system, it is like a taxpayer subsidy because it is requiring every person in America that wants to send a letter to pay more for this limitation that we are putting in place. It just does not qualify as a true voluntary limitation.

Mr. MCCONNELL. No, it is not voluntary and not free, I say to my friend from Texas. It is not voluntary because if you choose not to shut up, if you choose not to take the Government prescribed speech limits, you have to pay more for your television. So it is not voluntary. And it is not free because the broadcasting industry is called upon to subsidize campaigns and the postal patrons are called upon to subsidize campaigns. So it is neither voluntary nor free.

I thank very much my friend from Texas for pointing this out.

Mrs. HUTCHISON. I yield the floor back to the Senator from Kentucky. But I commend the Senator from Kentucky for his great leadership in this area because he is the person who has studied this issue thoroughly and has taken things that sound very good, and has talked about what the real impact is going to be on the consumer that has to pay 32 cents to send a letter right now. And that is a lot to ask when you look at the fine print here. I commend the Senator from Kentucky for helping us understand it.

Mr. MCCONNELL. I thank the Senator from Texas.

Mr. President, how much time does my side have left?

The PRESIDING OFFICER. The Senator has 87 minutes.

Mr. MCCONNELL. I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, how much time do the proponents of the bill have?

The PRESIDING OFFICER. The Senator has 103 minutes.

Mr. FEINGOLD. I thank the Chair.

Mr. President, before I turn to my very distinguished colleague from West Virginia for his remarks, let me just make a couple points in response to the Senator from Texas and the Senator from Kentucky.

First of all, it seems, almost as if in an effort to stop this bill from even being amended, that the kitchen sink is being thrown at this bill. Now we hear the Postmaster General is one of the lead opponents of the bill. But this completely disregards the resolution that we have placed in the bill, the Senator from Arizona has placed in the bill, that would provide that the money that is saved from preventing Members of Congress from franking during an election year would be used to provide a relatively modest funding necessary to provide the postal discounts which will only be given to those Senators and Members of Congress who agree to the spending limits. So that again is another red herring.

Second, it does not matter how many times the other side says that this bill is not voluntary, it is voluntary. There are no such mandatory restrictions across the board for citizens as has been suggested by the Senator from Kentucky and the Senator from Texas.

It does not matter how many special interests—whether it is the NEA, the AFL–CIO, or business PAC's—it does not matter how many times they tell you our scheme for allowing people to voluntarily abide by limits and give them benefits; it does not matter how many times they say that is not voluntary. It is. It is voluntary.

Mrs. HUTCHISON. Will the Senator yield?

Mr. FEINGOLD. I am happy to yield to the Senator.

Mrs. HUTCHISON. I want to ask the Senator, what would happen under your bill if there was not enough money saved from the use of the frank to cover the cost of the discounted mailing?

Mr. FEINGOLD. If that happens, which I doubt, it would have to come out of the budget of the post office.

Mrs. HUTCHISON. In other words, it does not necessarily cover all of the costs?

Mr. FEINGOLD. Our estimates are from——

Mrs. HUTCHISON. The Postmaster General says he would have to raise all of the rates, because it comes from the post office.

Mr. FEINGOLD. Our estimates are that it would cover it. We go on the basis of estimates here. That is our assumption. Even if there was a small gap, the effect would be minimal.

Let me quickly wrap up—because I want to turn to the Senator from West Virginia—and indicate again a very serious distortion. The Senator from Kentucky keeps saying that it will cost people who do not abide by the limits more. That is just not true. They will not pay a dime more than they pay today. They will still be eligible for the lowest commercial rate as the TV stations are required to give them. They will not have to pay more for their postal rates. It is simply untrue they will have to pay more than they do today. True, they will not get the lower costs that those who abide by the limits will get, but do not let anyone tell you people have to pay more under our bill. They can still spend as much as they want, and they will not have any higher cost for what they do.

Finally, Mr. President, what this is about, really, is whether candidates who are more rooted back in their home States will have a better chance, or whether those who are dominated by big money or by D.C. special interests will dominate.

I have this cartoon from one of the most distinguished political cartoonist of the 20th century. This is the context in which the vote today is being seen. We can talk here about how important PAC's are, and somehow this will put artificial limits on candidates. This is what the American public knows today's vote is about. It shows a gentleman from the U.S. Congress talking to a lobbyist with a lot of money and a cigar. The guy says, ''No more little gifts or junkets—from now on, it's strictly campaign cash.''

Mr. President, the American public knows we have finally done something about lobbying disclosures. The American public knows we have cracked down on the practice of gift giving, one of the most offensive practices to the American people. But they also know the big granddaddy of them all, the important issue is the money that is awash in this campaign because of campaign financing.

If we do not take the action today to move this bill forward, if we fail in this bipartisan effort, this cartoon will be prophetic. This cartoon will show that all that has happened is that the gifts and the lobbying are being transferred through the campaign cash system. I do not think we should let that happen.

Mr. President, with that, I yield 15 minutes of the proponents' time to the distinguished Senator from West Virginia.

The PRESIDING OFFICER (Mr. BROWN). The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill, and I thank the Chair.

Mr. President, for nearly 2 years now many of our Republican colleagues, particularly those in the House of Representatives, have trumpeted the glories of their so-called Contract With America. To listen to some, this was the document that held the secrets to solving the Nation's problems. It was the primer for a reform-minded Congress—something that would bring great respect to this institution and its Members. Yet, there is one item conspicuously absent from the much-touted, so-called contract. I note with amazement that what is completely missing from that celebrated ideological text is any mention of campaign finance reform. I have looked and I have looked and I have looked and it is just not there.

We are told by those who promote the contract that a balanced budget constitutional amendment is good for

the country. We are told that the line-item veto is good for the country. But, for seemingly inexplicable reasons, many of those who have spent their time clamoring for change have decided that putting an end to our current grotesque and out-of-control campaign spending system is just not worthy of attention.

How unfortunate, Mr. President, because I, along with many of my colleagues, truly believe that until Members of Congress come to grips with the simple fact that campaign finance reform is much more important than any of these other reforms, this institution will continue to be perceived as the property of the special interests—that is exactly what it is, the property of the special interests—owned lock, stock, and barrel. We all know it. And, as the public opinion polls indicate, the American people know it, too.

It is a great disappointment to me that too few Members seem to understand this. Time and time again, those of us who have pushed for these reforms have seen our efforts rebuffed. Indeed, Mr. President, as Majority Leader in 1987 and 1988, I tried eight times—eight times—to get cloture on campaign finance reform legislation. And eight times I lost. More importantly, however, eight times the American people lost.

That is why this legislation before us today is so important. It is an effort, a bipartisan effort, to put a stop to the noxious system currently in place for the financing of senatorial campaigns. It is a measure that does not favor challengers or incumbents, or candidates from either political party. On the contrary, this bill, the McCain-Feingold bill, takes a balanced approach that will go a long way toward creating a level playing field.

Mr. President, one needs to look no further than this Chamber to see the pressing need for this type of reform. I believe that the primary problem in this body, the root problem plaguing the Senate today is what I would term the ''fractured attention''—the fractured attention of Senators. Countless times, action on the Senate floor has been slowed or delayed because Senators are not in Washington, or if they are, they are away from the Capitol. That absence is not because those Senators are off on vacation or taking their leisure. They are not off somewhere lounging in the sun, neglecting their duties here. On the contrary, as each of us knows all too well, Senators are often elsewhere because of the need to raise unthinkable sums of money—unthinkable sums—money essential for running for reelection.

Plato thanked the gods for having been born a man, and he thanked the gods for having been born a Greek. He also thanked the gods for having been born in the age of Sophocles. Sophocles said, ''There's nothing in the world so demoralizing as money.'' Sophocles was not an American politician, but he knew what he was talking about.

I can say after 50 years in politics, there is nothing so demeaning, nothing so demeaning as having to go out with hat in hand, passing a tin cup around and saying, ''Give me, give me, give me, give me.'' Not that old song, ''Give me more and more of your kisses,'' but ''Give me more and more of your money. Give me more and more of your money.''

Sophocles said, ''There's nothing in the world so demoralizing as money.'' And, indeed, in this Senate, the need for Members to constantly focus on raising the huge sums necessary to stay in office has taken a heavy toll.

The incessant money chase is an insidious demand that takes away from the time we have to actually do our job here in Washington. It takes away from the time we have to study and to understand the issues, to meet with our constituents, to talk with other Senators, and to be with our families and to work out solutions to the problems that face this Nation.

Mr. President, consider this: According to data provided by the Congressional Research Service, the combined cost of all House and Senate races in the 1994 election cycle was $724 million, a sixfold increase from 1976. Even more troubling, though, at least from the perspective of our colleagues, is that the average cost of a winning senatorial campaign rose from barely $600,000 in 1976 to more than $4 million in 1994. Four million dollars. And that, of course, is just the average.

In 1994, nearly $35 million was spent by the two general election candidates in California, while the candidates in the Virginia Senate race spent $27 million.

What do those astounding numbers say to someone who may wish to stand for election to the Senate? What does the prospect of needing $35 million, or $27 million, or even $4 million say to the potential Senate candidate? What it says, Mr. President, is that unless you win the lottery, or unless you strike oil in your backyard, or unless you are plugged into the political money machines, unless you actively compete to be part of the ''aristocracy of the money bag'' you are a long shot, at best, to win election to the United States Senate. And that fate is meted out to prospective candidates before they have even presented an idea, or given a speech, or offered a policy position.

The money chase is like an unending circular marathon. Since the share of money coming from small contributors has declined while the share contributed by big political action committees has increased, candidates have to look more and more outside their home States to raise big bucks. The traveling, the time away from the Senate, the time away from talking with constituents, the time robbed from reading and reflection, the personal time stolen from wives, children, and grandchildren, the siphoning off of energies to the demands of collecting what has been called campaign grease is making us all less able to be good public servants. Ironically, we spend much time and raise huge sums of money in order to be reelected to the Senate so we can serve our States and our country. Then, once here, we cripple our ability to serve our State and our country by spending an inordinate amount of our time on the money treadmill so we can come back for yet another try at serving our States and our country.

That kind of system sends the clear message to the American people that it is money, not ideas and not principles, that reigns supreme in our political system. No longer are potential candidates judged first and foremost on their positions on the issues, or by their experience and capabilities. No longer. Instead, potential Senators are judged by their ability to raise the millions of dollars that are needed to run an effective campaign. Publilius Syrus said that, ''a good reputation is more valuable than money.'' Senators should stop and reflect on that observation because our reputations and the feeling that we can be trusted by the American people are both in severe free-fall.

The American people believe that the key to gaining access and influence on Capitol Hill is money. Can anyone blame them for coming to that conclusion?

Now, Mr. President, if I were starting out in politics today, with a background like mine—working in a gas station, being a small grocer, a welder in a shipyard, a meatcutter, just common ordinary trades—I could not even hope to raise the sums of money needed for today's campaigns. In 1958, when Jennings Randolph and I ran together for the two Senate seats that were open—he ran for the short term, and I ran for the full 6-year term—we ran on a combined war chest of something like $50,000 or less. When I first started out in politics, I would win a campaign for the House of Representatives and spend as much as $200, perhaps. Think of it. If I had been forced to raise $1 million, $2 million, $4 million, or $10 million the first time I ran for the Senate, in 1958, I would not have given it a second thought. In fact, I would not even have gotten past the first thought. I would not have been able to even contemplate running for office—a poor boy like myself.

The ever-spiraling cost of public office is not a healthy trend. The Congress could become the exclusive domain of the very wealthy. The common man, without the funds to wage a high-powered, media-intensive campaign could be removed from effectively competing in the political arena, reserving it for the exclusive use of the very wealthy and the well-connected.

That is why we must stop this madness. We must put an end to the seemingly limitless escalation of campaign costs. We must act to put the U.S. Senate within the reach of anyone with the desire, the spirit, the brains, and the spunk to want to serve once again.

We must bring into check the obscene spending which currently occurs. The Bible says, ''The love of money is the root of all evil.'' In politics, the need for huge sums of money just to get elected is certainly at the root of most of what is wrong with the political system today.

Mr. President, I congratulate Mr. MCCAIN and Mr. FEINGOLD. I urge my colleagues, for the sake of this institution if for no other reason, to support cloture on this vital legislation.

I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the Senator from West Virginia. I cannot think of a more eloquent testimony to the need for this reform than the statement that this great Senator, if he were starting out today, probably would not even have considered running for the U.S. Senate because of the incredible barrier of the money to be raised.

Our bill is a voluntary scheme that allows people who would try to follow in Senator BYRD's tradition to raise a modest amount of money and have benefits for agreeing to do that. I greatly appreciate that.

Mr. BYRD. Mr. President, I thank the Senator.

Mr. FEINGOLD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 82 minutes remaining, and Senator MCCONNELL has 89 minutes.

Mr. FEINGOLD. Mr. President, I now yield up to 15 minutes to the distinguished Senator from California, who has been a stalwart in support of campaign finance reform.

Mrs. FEINSTEIN. Thank you, Mr. President.

I thank the Senator from Wisconsin and the Senator from Arizona. I want to compliment both Senator MCCAIN and Senator FEINGOLD for this effort.

I intend to vote for cloture, and should cloture on this bill be successful, I will either propose a substitute of the whole or two second-degree amendments to this bill.

I would like to take the time allotted to me this morning, Mr. President, to explain my position on campaign finance reform.

I believe very strongly that the time has come to engage the debate. If nothing else, I believe I am kind of a walking, talking case for campaign spending reform. In the 1990 race for Governor, I had to raise about $23 million. In the first race for the Senate in 1992, $8 million; in the second race, $14 million.

One newspaper just estimated that in the big States a candidate really has to raise about $2,000 a day just to run for reelection to the Senate of the United States. It certainly should not have to be this way.

Essentially I agree with the basic tenets of the McCain-Feingold legislation. I agree that the time has come to try a system that would voluntarily cap campaign spending with a high of about $8.2 million in the big States like California, going down to $1.5 million in States with lesser population.

I believe that efforts should be made to limit the amount of personal funds that can be used in a campaign. I believe that an effort to promote honesty in advertising and reducing the influence of connected PAC's in the outcome of elections is important.

As always in an election year, we hear a lot of talk about Congress enacting meaningful campaign spending reform. But when it comes to actually doing something about it we tend to hide behind one procedural maneuver or another that allows us to vote the right way but gets us nowhere toward achieving a piece of legislation.

In the last Congress a campaign finance bill passed both the Senate and the House but got bogged down because the necessary 60 votes to invoke cloture on a motion to proceed with a conference were not present in the Senate. I understand that this will likely be the problem here today. I hope we do get the 60 votes for cloture, and I hope that in the ensuing debate a solid campaign finance reform bill can emerge.

Legislation I introduced last year and which, for the most part, forms the basis of McCain-Feingold, addresses what I believe are the areas most in need of reform: The limiting of spending; creating a level playing field between wealthy candidates who finance their own campaigns and candidates who rely on contributions; and finally ensuring honesty in campaign advertising.

One of the problems where I have a very real difference with the present bill is on the issue of a candidate using vast sums of his or her own money to finance a campaign. Either the substitute bill, or a second-degree amendment which I will offer if we gain cloture on this bill, mirrors parts of the campaign finance bill introduced by Senator DOLE in the last Congress. It also attempts to limit the ability of a wealthy candidate to buy a seat in Congress. The provisions of the amendment I would propose are a little different than anything that has been introduced before now.

Under my substitute bill, after qualifying as a candidate for a primary, a candidate must declare if he or she intends to spend more than $250,000 of their own funds in the election. If the candidate says ''I am going to spend more than $250,000 of my own money in this election'' then the contribution limits on his or her opponent are raised from $1,000 to $2,000. If a candidate declares that he or she will spend more than $1 million on the race from their own pocket, then the contribution limit on his or her opponents would be raised to $5,000. This is different from McCain-Feingold where there is only the jump to $2,000. And the reason it is different is because in the larger States, if an individual is going to spend more than $1 million, as happened in my case where my opponent spent about $30 million of his own money, it is impossible to catch up with the smaller contributions. Therefore, raising the limit to $5,000 only in instances where in individual States they are going to spend more than $1 million of their own money would enable a more level playing field.

The amendment I will propose would also address the issue of PAC's. As you know, McCain-Feingold would prohibit all PAC contributions whether or not these PAC's are connected PAC's; that is, connected to a business or a labor union or a nonconnected PAC. By that, I mean organizations that are developed let us say to promote women for public office, or let us say to support a cause in candidates who support that cause for public office. The law permitting nonconnected PAC's would remain unchanged in my amendment. As a fallback, if the ban on connected PAC's is found to be unconstitutional, it provides that contributions from connected PAC's be limited to 20 percent of a campaign's receipts.

In my view, a blanket ban on all political action committees in a sense throws the baby out with the bath water. I think we need to be encouraging people to be involved in politics and not discouraging them. Virtually every legal scholar who has examined this question believes that a complete ban on all PAC's is unconstitutional.

The Congressional Research Service has advised the Senate, and I quote: ''A complete ban on contributions and expenditures by connected and nonconnected PAC's appears to be unconstitutional in violation of the first amendment.''

I support the ability of a group or organization to encourage small donations from their members to candidates of their choice. In some cases, these members send their contributions made out directly to the candidate's campaign to that organization to be gathered or bundled and presented collectively to the candidate. In other cases, the organization simply asks for donations to be made directly to the candidates they recommend. This is not the same as writing a check to an intermediary or to a political action committee and then having the political action committee decide how to disburse the funds.

The McCain-Feingold bill bans bundling in all political action committees. My amendment would not affect bundling, and I believe this is a crucial difference in these two bills.

For example, there are two organizations which have helped women run for political office. One is EMILY's List, and one is WISH List. One is a Democratic organization and one is a Republican organization. Both of these groups collect smaller donations primarily from women. They bundle those funds from many sources to a single candidate.

In the 1994 election cycle, EMILY's List members supported 55 women candidates. They raised a total of about $8.2 million. The average donation to EMILY's List was less than $100.

WISH List, a much smaller and newer organization than its Democratic counterpart, supported 40 Republican women candidates and raised approximately $400,000. None of these funds were given directly to either of these groups and neither group used the funds to lobby on legislation before Congress. Both EMILY'S List and WISH List researched the records of women candidates and advised their members which candidates they recommended supporting. Based on that information, the members decided who to support and how much they wished to donate, and they donated directly to the candidates, sent their check to either WISH List or EMILY'S List who then put the checks together and sent them to the candidates.

I believe that has been helpful in electing women to both Houses of this Congress. Currently, there are nine women in the Senate. When I came to this body, there were only two elected women.

Groups like WISH List and EMILY'S List are an important factor in helping more women run for office. Frankly, I do not have a problem with any organization going out and endorsing candidates, writing to their members, and saying if you would like to contribute to these candidates, please go ahead and do so. I have no problem whether that group is the Christian Coalition, whether it is the National Rifle Association, whether it is EMILY'S List or WISH List. I think the encouragement of small contributions to candidates that support a cause that you believe in is important to the American political system.

My separation from what Senators MCCAIN and FEINGOLD have done is that this bill wipes out all PAC's, connected and unconnected. I would ban connected PAC's but permit unconnected PAC's to continue their bundling efforts.

The other difference I have would be in how you would voluntarily have the spending limits to create two different levels. If a wealthy candidate were to enter a race and say, I do not intend to adhere to the spending limits; I intend to spend $250,000 to $1 million of my own money, then your opponent's limit goes to $2,000. If the wealthy candidate says, I am going to spend more than $1 million, then the limit of the opponent goes to $5,000.

I strongly support the $50 disclosure requirement. I strongly support the incentives that are built into this bill which would provide free radio time, special mailing to those who do comply with the voluntary spending limits.

I believe this is an important bill. I am proud to vote for cloture. I hope that the Senators of this body would see some merit in either the two amendments I will offer as second-degree amendments or the substitute of the whole to do the two items that I mentioned.

I thank the Chair. I yield the floor.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Kentucky is recognized.

Mr. McCONNELL. Let me just say briefly in response to the speech of the Senator from California, which I listened to carefully, she also is a member of the Rules Committee and participated in the hearings. I do not remember whether she was there—she may have been—the day that Col. Billie Bobbitt, retired U.S. Air Force officer, testified before the committee in opposition to this bill. I want to take a minute to quote some of her observations. She is a member of EMILY'S List, which would effectively be put out of business by this legislation, as the Senator from California has, I believe, acknowledged. That might have been one of the amendments she would offer were she in a parliamentary position where that were permissible. But, in any event, Colonel Bobbitt, retired Air Force officer, said, ''I'm in one of the organizations,'' referring to EMILY'S List, ''35,000 active members from all 50 States, and along with voting, I haven't missed an election,'' she said, ''in 51 years. EMILY'S List is the primary means through which I participate,'' said Colonel Bobbitt, ''in the electoral process.''

She goes on in her testimony, ''In the decade since EMILY'S List began, more women than ever have been elected to Congress, and EMILY'S List is a big reason why. EMILY'S List has allowed women to compete and win.''

She went on to say, with regard to the bundling, in effect, that EMILY'S List does—she describes it. She says, ''This is what's called bundling, which I know Common Cause and some others have criticized, but to me it's just good old American democracy at work.'' So said Colonel Bobbitt.

She goes on to say, ''That's not bad for the system. That's good for the system. Thousands of small contributions are able to offset the big money coming from the rich and powerful. We are making the system more participatory and more competitive,'' said Colonel Bobbitt.

Then she concluded by saying, ''My membership in EMILY'S List is a way for me to be connected to the political life of the Nation and to my fellow citizens. It allows me to band together with others who share my views and work toward a common end. I do not pretend to be a constitutional scholar,'' she says, ''but like most Americans, I carry within me an almost innate knowledge of the first amendment rights of citizenship—freedom to practice religion, freedom to speak my mind, freedom to assemble with fellow citizens in support of a common goal. I believe without a doubt that any membership in EMILY'S List is secured by such rights, and I believe that organizations like EMILY'S List, which encourage political participation by average citizens, are in the best tradition of American democracy.''

I just wanted to quote what Colonel Bobbitt, an active member of EMILY'S List, had to say about the underlying legislation, which she obviously believes would greatly restrict her rights to participate in the political process.

Mr. President, I wanted to take a moment here to make some observations about the injunctive authority that I view in this bill as provided to the Federal Election Commission. As I read the underlying bill which we are debating, section 306, ''Authority to Seek an Injunction,'' basically, what this section does is give to the Government, the Government of the United States, the right to step in and, prior to the issuance of speech, restrain it. It gives the Government the authority to engage in prior restraint of political speech by stepping in and getting a temporary injunction. This is but one of a number of clearly unconstitutional measures granted to the Government by this bill.

In addition, obviously, if this bill were somehow to pass constitutional muster, which is extremely unlikely, the Federal Election Commission, which today has great difficulty in auditing the races of the candidates running for the one race in America at the Federal level where we have, arguably, spending limits—it takes 5, 6 years to audit those few races that they have to audit—it is just, I think, reasonable to ask the question: How big would the Federal Election Commission be if it had to regulate the speech of 535 additional races as well as engage in the injunctive relief powers apparently given to it by the bill, as well as whatever additional regulatory authority it might be able to assert over independent expenditures?

In short, I think it is reasonable to assume, Mr. President, that we would have an FEC the size of the Veterans Administration. If there is anything this Congress is about, it seems to this Senator it is not building more large Federal bureaucracies.

We have been trying to balance the budget, to downsize the Government, to restrain our appetite for not only spending but for regulation, and, clearly, this is a regulatory power grab of enormous proportions, I would say, Mr. President—of enormous proportions. It could well be that is one of the reasons an awful lot of the groups in this country this time, across the ideological spectrum, have decided to get off of the sidelines and into the game and stand up for their rights to participate in the political process.

This bill is not just about us, that is, the candidates for office; it is also about all the groups organized that, under the first amendment, have a constitutional right to participate in the political process.

Let me just go down some of the letters that I have received on this bill,

first from the Christian Coalition, a letter dated yesterday, June 24, 1996, in response to an effort to modify this bill, which was agreed to, and we do have a modified version in the Chamber today.

The Christian Coalition says it strongly urges a no vote on cloture.

Contrary to the letter sent out by Senators McCain, Feingold, and Thompson on June 19, the amended version of S. 1219 still contains the flawed provisions that seriously threaten voter guides. The voter guide problem has NOT been corrected.

According to the Christian Coalition. The letter goes on:

The amended S. 1219 continues to place the First Amendment right to educate the public on issues in serious jeopardy. It redefines ''express advocacy'' so that for the first time ever the Federal Elections Commission would regulate issue advocacy by citizen groups.

The Supreme Court has repeatedly protected voter education from Government regulation unless it expressly advocates the election or defeat of a clearly identified candidate.

The letter goes on:

This interpretation ensures that the First Amendment right of like-minded citizens to discuss issues is not infringed by federal campaign law. But under S. 1219, this free speech would be subjected to great uncertainty, and as it is likely to be interpreted by the FEC, possible illegality. S. 1219 could effectively cripple the Christian Coalition's voter education activities, including the distribution of voter guides.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CHRISTIAN COALITION,
Washington, DC, June 24, 1996.

Vote No on Cloture on the McCain-Feingold Campaign Finance Bill.

DEAR SENATOR: Tomorrow the Senate will vote on whether to invoke cloture on S. 1219, the McCain-Feingold campaign finance bill. Christian Coalition strongly urges you to vote NO on cloture. Contrary to the letter sent out by Senators McCain, Feingold, and Thompson on June 19, the amended version of S. 1219 still contains the flawed provisions that seriously threaten voter guides. The voter guide problem has NOT been corrected.

The amended S. 1219 continues to place the First Amendment right to educate the public on the issues in serious jeopardy. It redefines ''express advocacy'' so that for the first time ever the Federal Elections Commission (FEC) would regulate issue advocacy by citizens groups.

The Supreme Court has repeatedly protected voter education from government regulation unless it ''expressly advocates'' the election or defeat of a clearly identified candidate. This interpretation ensures that the First Amendment right of like-minded citizens to discuss issues is not infringed by federal campaign law. But under S. 1219, this free speech would be subjected to great uncertainty, and as it is likely to be interpreted by the FEC, possible illegality. S. 1219 could effectively cripple the Christian Coalition's voter education activities, including the distribution of voter guides.

Although the sponsors of this legislation have amended the bill to exempt the distribution of *elected officials*' voting records (vote ratings and congressional scorecards), the new provision still threatens the distribution of *candidates*' positions on the issues (voter guides).

This new definition of express advocacy is but just one of the bill's many egregious provisions. Under subsection (a) of Section 241, the expenditures made by a Christian Coalition chapter leader for voter education could be considered contributions to a candidate if that same chapter leader happened to merely retain the same lawyer or accountant as a candidate, even though the chapter leader did not cooperate or consult with the candidate at all.

Section 211 is so broadly written that it could prevent a Christian Coalition chapter leader from also holding a local party position even though the two activities are separate and not interrelated.

Section 306 would give the FEC the authority to seek injunctions if it believes ''there is a substantial likelihood that a violation . . . is about to occur.'' Such a prior restraint of free speech is unconstitutional. It is only justified in weighty cases such as national security concerns, but should never be permitted to prevent core political free speech. The free speech rights of citizen organizations should not be infringed by the FEC at the eleventh hour of an election.

The Christian Coalition does not have a political action committee. However, as a free speech issue, we believe citizens should be able to pool resources to form political action committees under reasonable restrictions. We therefore object to section 201.

On behalf of the members and supporters of the Christian Coalition, we strongly urge you to vote on the side of the First Amendment and free speech. Please vote NO on cloture. Thank you for your attention to our concerns.

Sincerely,

BRIAN LOPINA,
Director,
Governmental Affairs Office.

Mr. MCCONNELL. In addition to that, the National Right to Life Committee, in a letter dated June 22, says that it has ''* * * analyzed the new substitute and finds that, to an even greater degree than the original bill, it rides roughshod over the First Amendment.'' The National Right to Life Committee also opposes this bill.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL RIGHT TO
LIFE COMMITTEE, INC.,
Washington, DC, June 22, 1996.

Re In opposition to McCain-Feingold substitute (S. 1219) to regulate and restrict political speech.

Senator MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: On June 18, we sent you a letter expressing the strong opposition of the National Right to Life Committee (NRLC) to the McCain-Feingold ''campaign reform'' bill (S. 1219). Since then, the sponsors have produced a new substitute amendment, on which the Senate will conduct a cloture vote on Tuesday, June 25, at 2:15 p.m.

NRLC has analyzed the new substitute and finds that, to an even greater degree than the original bill, it rides roughshod over the First Amendment. Through multiple overt and covert devices, the substitute attempts to suppress advertisements, publications, and other forms of speech on federal public policy issues, including but not limited to speech that refers to candidates for federal office. Therefore, NRLC again urges you to vote No on the motion to invoke cloture on S. 1219, which will be scored as a key pro-life vote for the 104th Congress.

The substitute bans PACs and therefore bans independent expenditures—except for political parties and rich individuals. [Sec. 201] This ban would prevent citizens of ordinary financial means from effectively expressing their political viewpoints.

If the PAC ban is declared unconstitutional, the substitute contains ''backup'' provisions to suppress independent expenditures by requiring advance notice of intended expenditures—even though some of those expenditures will never actually occur [Sec. 242(3)]—and by rewarding candidates who are thought to be disadvantaged by independent expenditures [Sec. 101].

In addition, the substitute [Sec. 241] says that an independent expenditure can no longer be conducted at all by anyone who ''has played a significant role in advising or counseling the candidate's agent at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's desision to seek Federal office.'' [emphasis added] In other words, any person or group that remarked to a potential candidate, ''We'd like you to consider running for Congress,'' would thereby trigger a ''gag rule'' under which any subsequent independent expenditure on behalf of that candidate would be illegal. Moreover, this clause could be triggered by even one-sided communication from an interest group to an incumbent, discussing (for example) public opinion in a given state regarding a piece of pending legislation.

The substitute [Sec. 241(a)] seeks to broaden the definition of ''express advocacy'' far beyond the definition enunciated by the Supreme Court in Buckley v. Valeo (1976). The bill would enact the ''taken-as-whole' test that has been rejected by the federal courts on constitutional grounds. Under this expansive definition, the bill would restrict the distribution of issue-oriented material that does not, in fact, urge the election or defeat of any candidate.

In a June 19 ''Dear Colleague'' letter Senators McCain, Feingold, and Thompson said that they added a provision to exempt ''voting guides'' from the bill's restrictions, but the actual provision in the substitute is vastly narrower than what is described in the ''Dear Colleague'' letter. The purported ''exemption'' [see Sec. 241(a)] applies only to ''a communication that is limited to providing information about votes by elected officials on legislative matters.'' On its face, this ostensible ''exemption'' does not apply to information regarding the public policy positions of non-incumbents, or to dissemination of any information on candidates' positions obtained from press accounts, candidate questionnaires, speeches, interviews, or a host of other sources. Moreover, even the purported exemption for information on ''votes'' is effectively meaningless because of other provisions and definitions in the bill, such as the definition of what constitutes a ''contribution'' to a candidate (see below).

The substitute [Sec. 241(b)(3)] would restrict ads and other forms of speech that contain no reference whatever to an election or even to any candidate, by defining certain speech on legislative issues as a contribution to a like-minded candidate with whom there has been communication regarding those issues. For example, if NRLC communicated with a senator regarding the merits of a certain abortion-related bill, which the senator

later voted for, and if NRLC later ran advertisements in that senator's state discussing that bill, this could be regarded as a ''contribution'' to the incumbent (even if the senator is not mentioned in the ad), and therefore subject to all of the other restrictions and penalty clauses in the bill. The costs of non-partisan voter guides that contain information obtained from candidate questionnaires or other communications with an incumbent or a challenger could also be regarded as ''contributions'' under this provision.

The substitute [Sec. 306] explicitly authorizes the Federal Elections Commission, if it believes ''there is a substantial likelihood that a violation of this Act is occurring or is about to occur,'' to obtain a temporary restraining order or temporary injunction to prevent publication, distribution, or broadcast of material that the FEC believes to be outside the bounds of the types of political speech that would be permitted under the law. This authorization for prior restraint of speech violates the First Amendment.

The overall effect of the bill would be to greatly enhance the already formidable power of media elites and of very wealthy individuals to ''set the agenda'' for public political discourse—at the expense of the ability of ordinary citizens to make their voices heard in the political process.

Therefore, the National Right to Life Committee urges you to vote No on cloture on S. 1219. Because S. 1219's restrictions on independent expenditures and voter education activities would ''gag'' the pro-life movement from effectively raising right-to-life issues in the political realm, NRLC will ''score'' this vote as a key pro-life vote for the 104th Congress.

Thank you for your consideration of NRLC's concerns regarding this legislation.

Sincerely,

DAVID N. O'STEEN, Ph.D.,
Executive Director.
DOUGLAS JOHNSON,
Legislative Director.
CAROL LONG,
Director, NRL–PAC.

Mr. MCCONNELL. Interestingly enough, a group with which I have not frequently been allied, and not many Members of this side of the aisle have been allied, the National Education Association, sent a letter to me dated yesterday, June 24, in which the NEA stated it opposed this bill and called upon all Senators to vote against cloture. The NEA pointed out, in referring to the ban on political action committees, that ''The average contribution of NEA members who contribute to NEA–PAC is under $6.'' So, their question is, How in the world is that bad for the political process. So they, too, oppose this legislation and urge a vote against cloture.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL EDUCATION ASSOCIATION,
Washington, DC, June 24, 1996.

U.S. Senate,
Washington, DC.

DEAR SENATOR: The National Education Association (NEA) opposes S. 1219, the Senate Campaign Finance Reform Act of 1996, sponsored by Senators John McCain (R–AZ) and Russell Feingold (D–WI). This measure would hamper the ability of citizens to participate in the political process in a meaningful way and limit the ability of organizations to make their voices heard in an open, democratic process.

Political action committees have encouraged millions of Americans to become involved in the political system, many for the first time. Many Americans are able to make small political contributions that serve as entree into greater political participation. Individuals are more likely to work for a candidate or issue when they have contributed money, and they are more inclined to make a contribution when they know it will make a difference in the outcome.

Political action committees stimulate small, individual donations. The average contribution of NEA members who contribute to NEA–PAC is under $6. These small contributions from middle-income citizens help counterbalance the ability of wealthy individuals to influence policymakers. Eliminating political action committees would not reduce the importance of money in politics. It would reduce the importance of working people in politics.

Political action committees also play an important role in communicating with members of organizations about issues that affect them. NEA would resist any effort to constrain the ability of the Association—or any other organization—to communicate with members and candidates about issues affecting children, public education, and education employees.

NEA strongly supports campaign finance reform that encourages participation and requires full disclosure of all sources of political financing. Moreover, we support partial public financing of election campaigns as a means of leveling the playing field for challengers and incumbents. S. 1219 would weaken efforts to increase voter participation, limit the involvement of low- and middle-income citizens in the political process, and discourage efforts to educate and engage the electorate. We urge you to oppose cloture on S. 1219, and should the Senate vote on the measure, to oppose it and its substitute.

Sincerely,

MARY ELIZABETH TEASLEY,
Director of Government Relations.

Mr. MCCONNELL. The National Rifle Association, in a letter dated yesterday, said:

We have examined the draft text of that possible substitute [the bill that is actually before us today] and our opposition . . . is not only unabated—it is, if anything, stronger than before.

So the National Rifle Association also urges a vote against cloture because they believe it adversely affects their ability to participate in the political process.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL RIFLE ASSOCIATION
OF AMERICA,
Fairfax, VA, June 24, 1996.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: We understand that an amendment in the nature of a substitute may be offered during this week's debate on S. 1219, the Senate campaign finance bill. As you know, we have repeatedly expressed our opposition to S. 1219, as we believe it unjustifiably and unconstitutionally restricts the First Amendment right of organizations to communicate with their members and the general public in the political process.

We have examined the draft text of that possible substitute amendment and our opposition to S. 1219 is not only unabated—it is, if anything, stronger than before. The ban on activities of political action committees remains in the substitute, and would have a devastating effect on the ability of ordinary citizens such as our members to act jointly in support of candidates.

Additionally, the new proposed reporting requirements for independent expenditures, and the provisions intended to dilute the effect of such expenditures, would have a chilling impact on the effectiveness of such communications. Coupled with the continuing effort to broadly redefine ''express advocacy,'' Sections 241 and 242 represent one of the broadest attacks on free speech rights seen in years, affecting not only electoral but other legislative communications. Giving the Federal Election Commission a power to engage in prior restraint makes the attack even more serious.

We appreciate the support for the right to free speech which you've shown in your opposition to S. 1219, and we urge you to continue your work on this very important issue. If there is anything we can do to be of assistance to you, please don't hesitate to call.

Sincerely,

TANYA K. METAKSA,
Executive Director.

Mr. MCCONNELL. Also, obviously the National Association of Business PAC's, NAB–PAC, which would essentially be put out of business and lose their ability to participate in the political process, opposes the bill.

The American Conservative Union and the Conservative Victory Fund oppose it as well. I will not read from those letters, but I ask unanimous consent the letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE AMERICAN
CONSERVATIVE UNION,
Alexandria, VA, June 25, 1996.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of the one million members and supporters of the American Conservative Union, I urge you to oppose S. 1219, the McCain-Feingold campaign finance reform act.

As a party to the seminal Buckley v. Valeo decision, ACU has had a long-standing interest in our nation's campaign finance system. Over the years, we have worked with many Members of Congress on both sides of the aisle to try to reform the system in a manner consistent with constitutional guarantees of free speech—even as we have opposed efforts to change the system in a manner which abridges those freedoms.

McCain-Feingold does just that. Its fundamental reliance on spending limits—whether ''voluntary'' or otherwise—is merely the worst of its many wrong-headed provisions. The problem with our current system is not that too much money is raised and spent; as countless studies have shown, we spend as a nation far more to advertise products such as soft drinks and potato chips in a given year than we do on all campaign spending combined. Do you really want to vote for spending limits and in effect tell your constituents that as far as you're concerned, their decision over which soft drink

to purchase is more important than which leaders to choose?

Rather, the problem in our current system of campaign financing is that too much time is spent collecting the amounts of money needed to compete effectively in a competitive marketplace. Because of the contribution limits enacted in the Federal Election Campaign Act, too many candidates spend too much time chasing too few dollars—which is what gives special interest groups a disproportionate influence over legislators. If what you are really seeking is a way to reduce the influence of the special interests, simply lift the contribution limits.

But McCain-Feingold's reliance on spending limits is not its only fault. Other wrongheaded provisions include taxpayer subsidization of both print and broadcast communications, and the bill's outright abolition of political action committees. Public subsidies amount to partial taxpayer financing of politicians—something overwhelmingly opposed by the American people. Nor should PACs be abolished; to do so would be an unconstitutional infringement on the rights of free association and free speech.

McCain-Feingold is a bad bill. Kill it and start over.

Yours sincerely,

DAVID A. KEENE,
Chairman.

CONSERVATIVE VICTORY FUND,
Washington, DC, April 2, 1996.

House of Representatives,
Washington, DC.

DEAR CONGRESSMAN: I want to bring to your attention a bill that would bring irreparable damage to the political process. Congresswoman Linda Smith has introduced HR 2566 which bans contributions from political action committees to individuals running for Congress. I'm deeply concerned about this.

In 1976, the Supreme Court ruled in *Buckley v. Valeo* that campaign finance restrictions burdened First Amendment rights. The only purpose recognized by the Supreme Court to justify restrictions on PAC contributions is the prevention of real or apparent corruption.

Most of the arguments used for additional limits on political contributions from political action committees do not stand up under scrutiny. Originally, the goal of campaign finance reform was to reduce the influence of money, to open up the political system, and to lower the cost of campaigns. Since the 1974 amendments to the Federal Election Campaign Act, which were done in the name of ''campaign finance reform'', spending has risen sharply and incumbents have increased both their reelection rate and the rate at which they outspend their challengers.

As you know when you first ran for Congress, money is of much greater value to open-seat candidates or challengers than to incumbents. Studies show that added incumbent spending is likely to have less effect on vote totals than the challenger's added spending. Limits on political contributions hamper challengers from getting their voice heard while incumbents have significant advantages in name recognition. Campaign finance laws lock into place the advantages of incumbency and disproportionately harm challengers.

We oppose HR 2566 and any other such bills. The First Amendment is based on the belief that political speech is too important to be regulated by the government. The Conservative Victory Fund has helped you and hundreds of other conservatives since its creation in 1969. HR 2566 would eliminate the Conservative Victory Fund.

Sincerely,

RONALD W. PEARSON,
Executive Director.

Mr. MCCONNELL. So there are a number of groups who, in the past, have largely not been heard from during these debates who have decided to take a position, to get interested, and to express their views. This is, of course, something we greatly welcome since—the point I would like to make—obviously this bill not only affects candidates for office, it affects everybody's ability to participate in the political system. These groups do not like our effort to push them out of the process. They do not feel that their involvement in politics is a harmful thing. They think it is protected by the first amendment, and I think they are right.

Also, just in closing, I see the Senator from Utah is ready to take a few moments or more, if he would like. One of my biggest adversaries on this issue, over the last decade, has been my hometown newspaper, the Louisville Courier-Journal, which is the largest newspaper in our State. I was amazed to pick up the paper this morning and read an editorial in which they even think this is a bad bill. They even think this is a bad bill. This is the most liberal newspaper in Kentucky. I was astonished. Obviously, it made my day.

I would like to read a couple of comments. They are predicting the cloture will not be invoked. They say, ''This outcome would be more regrettable if the bill were better.'' They go on to say:

[Most] . . . of the rest of the package would be a step back from real reform, while making the election finance regulatory effort more complex and of less service to the public.

Further, they say:

The abolition of those endlessly maligned PAC's would make special interest money harder to trace while denying small givers a chance to participate. A limit on out-of-state contributions sounds good, but it could cut two ways. Indeed, it would probably be more damaging to candidates who challenge the local powers-that-be than one who thrives on special interest support. Anyway, both provisions are surely unconstitutional.

They are right about that.

As for a scheme to lure candidates to limit spending by offering them free TV time contributed by the networks, it's simply wrong to foist the cost of cleaner government on a handful of businesses—and their advertisers, stockholders and viewers. If there's a cost to election reform, it should be borne by all taxpayers.

It is a curious ally but I am proud to have them on board.

Mr. President, I ask unanimous consent that other letters of opposition in addition to those I referred to a few moments ago, as well as the editorial of today in the Louisville Courier-Journal, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REFORM'S TIRED REFRAIN

As the U.S. Senate convenes today for yet another vote on election finance ''reform,'' the setting is all too familiar.

The measure is backed by liberal and conservative members of Congress—including Republicans who, in response to public disgust with incumbent Democrats, promised to change the money system. Good government and citizens groups complain—legitimately—that the national legislature is awash in vast sums of money given by favor seekers.

The likely result? That's expected to be a rerun, too. Barring unexpected strength among the reformers, a filibuster organized by Mitch McConnell will halt Senate action. In any event, the House probably won't find time to act this year.

This outcome would be more regrettable if the bill were better. Sadly, it has only one good provision—an end to the ''soft money'' scam that allows corporations and labor unions to give political parties millions of dollars, purportedly for vague ''party-building'' activities. If this reform alone survives, Congress could claim some progress.

But much of the rest of the package would be a step back from real reform, while making the election finance regulatory effort more complex and of less service to the public.

The abolition of those endlessly maligned PACs would make special interest money harder to trace while denying small givers a chance to participate. A limit on out-of-state contributions sounds good, but it could cut two ways. Indeed, it would probably be more damaging to a candidate who challenges the local powers-that-be than to one who thrives on special interest support. Anyway, both provisions are surely unconstitutional.

As for a scheme to lure candidates to limit spending by offering them free TV time contributed by the networks, it's simply wrong to foist the cost of cleaner government on a handful of businesses—and viewers. If there's a cost to election reform, it should be borne by all taxpayers.

It may be, indeed, that Congress is incapable of devising workable change. And that may matter less and less.

The good news is that Kentucky and other states are experimenting with new approaches to paying for campaigns. To the extent that states are also developing solutions to welfare and other national problems—a positive trend in our view—a national political establishment wallowing in dollars showered on it by Philip Morris, RJR Nabisco and others becomes increasingly irrelevant.

NATIONAL RIFLE ASSOCIATION
OF AMERICA,
Fairfax, VA, June 24, 1996.

DEAR SENATOR: We understand that an amendment in the nature of a substitute may be offered during this week's debate on S. 1219, the Senate campaign finance bill. As you know, we have repeatedly expressed our opposition to S. 1219, as we believe it unjustifiably and unconstitutionally restricts the First Amendment right of organizations to communicate with their members and the general public in the political process.

We have examined the draft text of that possible substitute amendment and our opposition to S. 1219 is not only unabated—it is, if anything, stronger than before. The ban on activities of political action committees remains in the substitute, and would have a devastating effect on the ability of ordinary citizens such as our members to act jointly in support of candidates.

Additionally, the new proposed reporting requirements for independent expenditures, and the provisions intended to dilute the effect of such expenditures, would have a chilling impact on the effectiveness of such communications. Coupled with the continuing effort to broadly redefine ''express advocacy,'' Sections 241 and 242 represent one of the broadest attacks on free speech rights

seen in years, affecting not only electoral but other legislative communications. Giving the Federal Election Commission a power to engage in prior restraint makes the attack even more serious.

We urge you to oppose S. 1219's attack on the right of free political speech. If there is anything we can do to be of assistance to you, please don't hesitate to call.

Sincerely,

TANYA K. METAKSA,
Executive Director.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, June 24, 1996.

MEMBERS OF THE U.S. SENATE: The Senate will soon be asked to consider S. 1219, the ''Senate Campaign Finance Reform Act of 1995.'' The United States Chamber of Commerce Federation of 215,000 businesses, 3,000 state and local chambers of commerce, 1,200 trade and professional associations, and 76 American Chambers of Commerce abroad urges your opposition to this legislation, which would restrict the participation by Political Action Committees (PACs) and individuals in the political process.

The U.S. Chamber of Commerce has long promoted individual freedom and broad-scale participation by citizens in the election of our public officeholders. In this regard, we oppose efforts to eliminate or restrict the involvement of PACs in our political process. We believe that PACs are a critical tool by which individuals voluntarily participate in support of their collective belief.

In addition, there are other proposals contained in the bill that would greatly inhibit long-standing protected freedoms. These attempts to further limit the ability of individuals or collective political participation should be defeated as an infringement on the basic principle of free speech. Further, a public mandate on the private sector to subsidize the election of public officials without regard to support for a candidate also must be defeated.

We believe that an indispensable element of our constitutional form of government is the continued power of the people to control, through the elective process, those who represent them in the legislative and executive branches of government. Any attempt to reform the system through eliminating PACs or further restricting contribution levels has the consequence of unreasonably restricting the rights of American citizens. Rather, we support a system that relies on accountability through public disclosure, voluntary participation without government mandates, and confidence in the electorate to make sound decisions through the free exchange of ideas and information.

Therefore, we urge your opposition to S. 1219, as well as your opposition to invoking cloture on such legislation, which seeks to restrict the participation of individuals or PACS in the political process.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL RIFLE ASSOCIATION OF AMERICA,
Fairfax, VA, June 19, 1996.

DEAR SENATOR: It is our understanding that a cloture vote has been scheduled for June 25, 1996 on S. 1219, the Senate Campaign Finance Reform Act. We believe this will be the most critical vote that you will cast this year in protecting the constitutional rights of your constituents. Speaking for the more than three million members of the National Rifle Association (NRA), we strongly urge you to vote against bringing this measure, or this issue, before the Senate in any form. S. 1219 is a misguided attempt to limit participation in the political process, and represents a direct challenge to the right of free speech which we all should cherish and strive to protect.

Those who support S. 1219 have suggested that it will enlarge or enhance participation in the political process. We believe those who promote this view are either misinformed or unaware of the consequences of this legislation. In fact, S. 1219 will not level the political playing field, but will rather increase opporunities for political manipulation by those who have access to national media outlets, at the expense of those who do not.

The main focus of the NRA is in protecting the right to keep and bear arms. However, we believe that our system of government depends on preserving all of our Constitutional protections. Associations like the NRA facilitate participation by concerned citizens who otherwise would not have the resources to speak out on a national level. By removing their ability to offer their views in independent forums by combining their individual resources you would, for all intents and purposes, eliminate their First Amendment rights.

As we have noted in previous correspondence (letters dated 01/25/96 and 05/7/96), in the *Buckley v. Valeo* decision of 1976, the Supreme Court stated that ''* * * legislative restriction on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment.'' S. 1219 contains the same kind of legislative restrictions, and we believe therefore that it is clearly unconstitutional.

Again, I urge you to reject S. 1219, and all other ill-conceived attempts at limiting free speech and participation in the political process.

Sincerely,

TANYA K. METAKSA,
Executive Director.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
Washington, DC, June 18, 1996.

DEAR SENATOR: We understand that the Senate is likely to vote on or about June 25 on whether to invoke cloture on the McCain-Feingold bill (S. 1219), which would make sweeping changes in federal election laws.

The National Right to Life Committee (NRLC) is strongly opposed to S. 1219. In banning PACs, the bill also bans independent expenditures—except by wealthy individuals. This provision would flagrantly violate the First Amendment right of individual citizens who share a common viewpoint on an important public policy issue, such as abortion, to pool their modest financial resources in order to participate effectively in the democratic process. The average donation to NRL–PAC is $31.

The bill would also place severe new limitations even on issue-oriented voter education materials that do not urge the election or defeat of any candidate. This, too, violates the First Amendment. The overall effect of S. 1219 would be to greatly enhance the already formidable power of media elites and of very wealthy individuals to ''set the agenda'' for public political discourse—at the expense of the ability of ordinary citizens to make their voices heard in the political process.

Therefore, the National Right to Life Committee urges you to vote No on cloture on S. 1219. Because S. 1219's restrictions on independent expenditures and voter education activities would ''gag'' the pro-life movement from effectively raising right-to-life issues in the political realm, NRLC will ''score'' this vote as a key pro-life vote for the 104th Congress.

A vote in opposition to S. 1219 is consistent with the position taken by the U.S. Supreme Court in its 1976 Buckley v. Valeo decision: ''In the free society ordained by our Constitution, it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.''

Moreover, the overwhelming majority of Americans oppose the concept embodied in S. 1219. The Wirthlin Worldwide firm conducted a nationwide poll on May 28–30, which included this question:

''Do you believe that it should be legal for individuals and groups to form political action committees to express their opinions about elements and candidates?''

Yes, should be legal: 83%.

No, should not be legal: 13%.

Thank you for your consideration of NRLC's concerns regarding this legislation.

Sincerely,

DOUGLAS JOHNSON,
Legislative Director.
CAROL LONG,
Director, NRL–PAC.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
Washington, DC, June 7, 1996.

DEAR MEMBER OF CONGRESS: The House Oversight Committee will soon mark up some form of ''campaign finance reform'' legislation. The committee will consider, among other things, proposals to either (1) ban PACs and thereby also ban independent expenditures, or (2) not ban PACs, but place new restrictions on independent expenditures.

National Right to Life Committee (NRLC) is strongly opposed to any legislation that would further restrict independent expenditures, whether by banning PACs or in any other fashion. Such proposals would infringe on the First Amendment rights of individual citizens, sharing a common viewpoint on an important public policy issue, to pool their modest financial resources in order to participate effectively in the democratic process.

As you review various ''campaign reform'' proposals during the weeks ahead, please keep in mind the words of the Supreme Court in its 1976 Buckley v. Valeo decision:

''In the free society ordained by our Constitution, it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.''

The Wirthlin Group conducted a nationwide poll on May 28–30, which included this question:

''Do you believe that it should be legal for individuals and groups to form political action committees to express their opinions about elections and candidates?''

Yes, should be legal, 83%.

No, should not be legal, 13%.

Thank you for your consideration of NRLC's concerns regarding this legislation.

Sincerely,

DOUGLAS JOHNSON,
Legislative Director.
CAROL LONG,
Director, NRL–PAC.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
April 30, 1996.

DEAR SENATOR: You are being pressured by so-called ''public interest'' groups to pass campaign finance reform measures under the guise of ''cleaning up the system.'' More specifically, you are being asked to support a floor vote on S. 1219, the McCain-Feingold-Wellstone bill.

We urge you to oppose S. 1219. Attorneys that span the ideological spectrum agree that S. 1219 would destroy free speech and grievously injure both the right to association and the right to petition government.

It is a myth that the American public is clamoring for campaign finance reform. In a recent poll conducted by the Tarrance Group, only one person, out of 1000, volunteered campaign finance reform as the biggest problem facing the country. When the poll respondents were given a list of 10 problems and asked to rank them, campaign finance reform came in last, with only 1% selecting that topic.

Under S. 1219, an individual would be able to make independent expenditures, but because of the ban on political action committees, a group of individuals would be forbidden to organize, pool their resources, and coordinate their activities. This would leave the political process open to very wealthy individuals and the media, but would prohibit the vast majority of citizens from effectively making their voices heard.

S. 1219 defines ''express advocacy'' so broadly as to sweep in ''issue advocacy.'' Thus, citizens' groups would, in effect, be prohibited from publishing voter guides or giving candidates' voting records. Several federal courts have already struck down attempts by the Federal Election Commission to do the same thing.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but also for ordinary citizens. We urge you to take any steps necessary, including opposing cloture, to prevent S. 1219 or any similar measure that infringes upon the First Amendment rights of citizens from being approved by the Senate.

We also oppose the appointment of any unelected commission that has the authority to issue a final report on campaign finance reform that would not be subject to the regular amendment process on the Senate floor.

CHRISTIAN COALITION.

NATIONAL RIGHT TO
LIFE COMMITTEE, INC.,
Washington, DC, November 8, 1995.

Senator MITCH MCCONNELL,
Senate Office Building, Washington, DC.

DEAR SENATOR MCCONNELL: Campaign finance ''reform'' that destroys the freedom of speech is not reform.

Current measures under consideration in the Senate would largely prevent citizen involvement in the political process. We realize there is a lot of pressure from the press to ''reform'' the election process. However, limiting free speech for citizens, while it may please some elements in the press because it greatly increases their own power, is neither politically wise nor constitutional.

We have the three major objections to S. 1219, the ''Senate Campaign Finance Reform Act of 1995'' as sponsored by Senators McCain and Feingold, and therefore will vigorously oppose this measure.

1. S. 1219 WOULD ALMOST ELIMINATE INVOLVEMENT IN THE POLITICAL PROCESS FOR ORDINARY CITIZENS WHO ARE NOT INDEPENDENTLY WEALTHY

S. 1219 would permit only individuals, or political committees organized by candidates and political parties, to solicit contributions or make expenditures ''for the purpose of influencing an election for Federal office.''

Many political action committees (PAC), such as the National Right to Life PAC, exist because their members want to work together to elect candidates who share their views and beliefs. Under the current system, citizens are free to coordinate activities through PACs in order to discuss issues, express their views on positions taken by candidates, and urge voters to support or oppose certain candidates. This dialogue is very important to the political process and very important to the American system.

Under the Act, an individual can make independent expenditures, but a group of individuals cannot organize and coordinate their activities. This opens the political process to wealthy individuals, but prohibits the vast majority of citizens from pooling resources to make their voices heard.

If citizen groups and their political action committees are eliminated, the only entities left that are freely able to discuss candidates and the issues, except the candidates themselves, are a few wealthy individuals and the news media. That is not the intention of the First Amendment.

Another problem for you to consider is that many in the media have a bias against pro-life and pro-family candidates. If the media is allowed free speech and citizens groups are not, that will be a real disadvantage for pro-life and pro-family candidates.

2. THE NEW DEFINITION OF ''EXPRESS ADVOCACY'' IS UNCONSTITUTIONAL AND REPRESSES THE FREE SPEECH OF CITIZENS

Section 251 of S. 1219 attempts to ''clarify'' Independent Expenditures, However, it redefines ''express advocacy'' to now include protected ''issue advocacy.''. This extremely broad new definition of express advocacy would sweep in protected issue advocacy, such as voter guides which state the positions candidates have taken on issues or give candidates' voting records.

The new definition goes far beyond what the United States Supreme Court said was permissible to regulate as electioneering in the case of Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the Supreme Court held that, in order to protect issue advocacy (which is protected by the First Amendment), government may only regulate election activity where there are explicit words advocating the election or defeat of a clearly identified candidate.

This new definition would expand the umbrella of ''express advocacy'' so broadly that citizen groups other than PACs would also be effectively prohibited from informing the public about candidates' positions on issues as well as voting records. This curtailment of citizens' freedom of speech would not affect the major media whose political power would be vastly enhanced, since one balancing force currently in the public forum would be eliminated.

The Supreme Court would, again likely find this new definition of ''express advocacy'' unconstitutional, and voters would find it exceedingly repressive.

3. S. 1219 AUTHORIZES UNCONSTITUTIONAL PRIOR RESTRAINT

Section 306 of the Act authorizes an injunction where there is a ''substantial likelihood that a violation . . . is about to occur.'' The FEC would be authorized to seek injunctions against expenditures which, in the FEC's expansive view, could influence an election. Such a preemptive action against the freedom of speech is unconstitutional except in the case of national security or similarly weighty situations. Prior restraint should never be allowed in connection with core political speech. There simply is no governmental interest of sufficient magnitude to justify the government stopping persons from speaking.

This country's open system of representative democracy is the envy of the world. If you try to ''fix'' it by limiting people's voices, then you head towards totalitarianism. Whatever its flaws, democracy is the best system the world has seen to date.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but also for ordinary citizens. The only way ordinary citizens can have any meaningful opportunity to exercise their right of free political speech in modern America is if they are allowed to pool their funds in PACs. For the record, the average donation from National Right to Life members to its PAC is $31.

The status quo on speech by membership organizations and independent expenditures by political action committees works. Disclosure laws governing PACs already provide detailed information on where the money came from and how it was spent. The current process allows citizens to be involved in their government. That it how it should be.

We are enclosing a copy of the legal analysis of S. 1219 by James Bopp, Jr., General Counsel for NRLC. National Right to Life urges you to protect the constitutional rights of your constituents and oppose S. 1219.

Respectfully,

WANDA FRANZ, Ph.D.,
President.
DAVID N. O'STEEN, Ph.D.,
Executive Director.
CAROL LONG,
PAC Director.

Mr. MCCONNELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 75 minutes.

Mr. MCCONNELL. Mr. President, I yield to the Senator from Utah, 10 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I spoke at some length yesterday in a philosophical fashion, going back to the Founding Fathers and the Federalist Papers, hoping to turn the debate into that kind of an analysis of our basic freedoms and our political approach. Today I want to get very down and dirty, as they say; very practical. It has been my observation throughout this entire controversy, and it goes back to the last Congress as well as this one, that the efforts at campaign finance reform really constitute an incumbent protection activity. The Senator from Arizona, my friend, Senator MCCAIN, said that if the challengers were voting here they would all vote for this bill because he showed the chart that showed most of the PAC money went to incumbents.

I have been a challenger. The memory is still fresh in my mind, even though I am now an incumbent. And I can assure all who do not know anything about the political process, that an incumbent comes into a race with incredible advantages. Let me give an example. I did not run against an incumbent Senator but I ran against an incumbent Congressman. These are the advantages he brought to the race.

He had a staff, paid for by the taxpayers, that was available to research every issue, provide him with a paper on every issue, and in the course of press releases give him the press support that he required.

He held a press conference late in the campaign in which he attacked me for a wide variety of things. The press person who scheduled that press conference, who wrote the press release,

and who handled all press inquiries relating to it was paid by the taxpayer because he was on the Congressman's staff. I had to have people there to protect my interests. They were all paid for out of campaign funds because I had no congressional staff. I am not saying that he broke the law. I am not saying that he did anything improper. I am just outlining this is the way it is.

He had name recognition going back to 8 years of service in the House of Representatives. I thought I had some name recognition because my father had served in the Senate. I figured everybody would remember the name ''BENNETT'' favorably in connection with the Senate. Boy, did I find out differently. In the first poll that was taken, I was at 3 percent, with a 4-percent margin of error. I could have been minus 1. How do I counteract that 8 years of name recognition that he has built up? I had to raise the money. How did I pay for the people who were there to counteract the people that he had on his congressionally supported staff? I had to raise the money.

Is it a fair fight when you say the incumbent is at level *x* and the challenger must also be at level *x*, when the incumbent has all of these advantages that are worth money that the challenger has to raise money in order to produce? When you say, let us get a fair fight and let us do it by saying that the challenger is unable to raise money to take care of the things that the incumbent does not have to raise money for, you are automatically creating a circumstance in favor of the incumbent.

Some political observers have said to me, ''Why are you opposed to this now that you are an incumbent? We can understand that you were opposed to campaign reform while you were a challenger because as a challenger you were at a disadvantage in the face of campaign reform. But now that you are an incumbent, and particularly now that your party has a majority of the incumbents, why isn't your party in favor of an incumbent protection act that will put all of these disadvantages on the backs of the challenger?''

Well, I go back to my statement yesterday. I have philosophical challenges with these attempts to do that which I consider would produce damage to our basic philosophical underpinnings in this country. I did not quote the Federalist Papers just to prove that I had read them. I went through that process to demonstrate that I have a philosophical objection to what it is we are trying to do here, even though, should this bill pass, I would be benefited as an incumbent. I am convinced, if this bill were to pass, that I would be benefited as an incumbent, that I would be in a circumstance where it would be impossible for anybody to challenge me. But I am willing to run the risk of having them challenge me because that is the American pattern and that is what is in the Constitution that all of us have sworn to uphold and defend here in this body.

So, Mr. President, I am not going to vote for cloture. I am not going to vote to support a bill that is an incumbent protection act. I am going to say we will all stand exposed to the challenge of challengers who have the energy and the message necessary to raise the money to challenge us and not hide behind limits that say that we can use the advantages of our offices and our challengers cannot. I believe it is as simple as that. I believe that honest fairness says we will oppose this bill, and, therefore, we oppose cloture on the bill. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FEINGOLD. How much time do the proponents have remaining?

The PRESIDING OFFICER. The proponents have 67 minutes 15 seconds.

Mr. FEINGOLD. I yield 10 minutes to the distinguished Senator from Florida, who has been one of the original supporters of this legislation and has helped us all through the difficult process of trying to get it up for a vote. I thank him very much.

Mr. WELLSTONE. Will the Senator yield me 5 seconds?

Mr. GRAHAM. I yield the Senator 5 seconds.

Mr. WELLSTONE. I thank the Senator.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that David Hlavac, who is interning with me, be allowed to be on the floor throughout the duration of this bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I first will extend my commendation to Senators FEINGOLD and MCCAIN and the others who have worked so hard to craft what is truly a bipartisan proposal to deal with one of the serious cancers in our American democratic system, and that is the way in which we manage and finance campaigns for the Congress. This bill is another example that, if we are going to do the public's will, it must be done in a bipartisan spirit.

Mr. President, we have spent a lot of this year and last year talking about the creative energy of the States, the desire to return greater responsibility to the States for many of our most basic domestic programs. We have acknowledged that the States, given that responsibility, given their flexibility to respond to the specific circumstances that they face, would unleash a new wave of innovation to bring us creative solutions to some of our most vexatious problems.

Mr. President, I say that we can take some encouragement as to the legitimacy of that position by looking at what States have done in the area of campaign finance reform. States were faced with basically the same problem that we are dealing with this morning—the problem of campaign money run amok and the need to change campaign financing mechanisms in order to restore public confidence.

The experience of my State of Florida, I believe, is instructive in this regard. In 1991, the State legislature overhauled Florida's campaign finance system. It instituted a $500 cap on individual contributions. Prior to that it had been as much as $3,000. It provided for public financing of campaigns. It instituted overall caps on statewide races. It provided incentives to abide by the cap.

What has happened in the relatively brief period that Florida has had these campaign finance reforms? In 1990, there was an incumbent Governor running for reelection. That incumbent Governor spent $10,670,000. Four years later, there was a different incumbent Governor running for reelection. In that campaign he spent $7,480,000. I note that the incumbent in 1990, who spent almost a third more, lost. The incumbent in 1994, under the new standards, was reelected. Common Cause of Florida attributes the decrease in campaign spending directly to Florida's enactment of campaign finance reforms.

Mr. President, the States can control the terms and conditions of elections for State officials. It is our responsibility to do likewise for the Congress. I applaud the effort that is before us today. It is a genuine, thoughtful response to a serious national problem. I do not pretend that it is perfect. We have already heard on the floor several persons who, like myself, will vote to invoke cloture and support this bill, but who also are prepared to support modifications that we think would perfect it.

For instance, I do not believe that political action committees are a poisonous political evil that should be banned. But, Mr. President, if accepting some restraints on political action committees is necessary to achieve the bipartisan consensus for the passage of this sorely needed legislation, I am prepared to vote to do so.

Mr. President, there are many infirmities in our current system which have already been identified. Remedies have been prescribed. I wish to focus on one of those infirmities. That is, that the enormous amount of money in political campaigns has fundamentally changed the nature and purpose of congressional campaigns.

What should be the purpose of a political campaign? In my opinion, it should include at least two dual relationships. First, there should be a duality of relationship in terms of education. Yes, the candidate is trying to educate the public as to who he or she is, what he or she stands for, what would be the objective of service in public office, what they would try to accomplish. But there is an equally important side of the education duality, and that is that the citizens are influencing the candidate. A campaign should be a learning experience. The campaign should better prepare the candidate to serve in public office by

the experiences, the exposure, that the campaign will provide.

There is a second duality, and that is the development of a democratic contract. The citizens should have some reasonable expectation that if they vote for a particular candidate, the policies that candidate has advocated will, in fact, form the basis of the candidate's efforts once in office, and the public official should have the right to expect that in office he would have the support of the public, the mandate of the public to achieve those policies upon which his or her campaign was predicated. These dualities, a duality of education and a duality of the forming of a democratic contract, these are essential elements of our system of representative democracy.

However, Mr. President, the excess of money in campaigns has changed the nature and the purpose of the campaign. It has, in fact, allowed candidates to hide from the voters rather than to use the campaign to learn from and more effectively communicate with the public. Candidates now move from the television studio to record 30-second sound bites, often of a highly negative character, to the telephone to solicit campaign contributions to pay for those 30-second sound bites. There is little time left to interact on a personal level with the voter.

By providing for spending limits, this bill would direct voters from the television studio back to the street to look for ways other than money to appeal to voters, by interacting with them, discussing issues, debating of the candidates, so that voters can make an accurate assessment of who they wish to represent.

I personally, Mr. President, would like to see a requirement that one who participates in the public assistance to a campaign, whether Presidential candidates participating for direct-cash infusion or congressional candidates who, under this legislation, would benefit by preference in perks like postal and broadcast rates, that they would commit themselves to participate in a stipulated number of public appearances with their opponents. I believe that is the truest way in which the public can form an opinion as to the qualities and capabilities of the persons who seek to represent others.

Mr. President, providing for a voluntary system of spending limits, while simultaneously requiring candidates to raise at least 60 percent of campaign funds from their home State, are positive steps toward bringing candidates and voters together. Passage of this bill would be a positive step toward realizing the goal of our political process, allowing the voter to truly understand, truly assess the candidate's view, and thus to make an informed judgment, while simultaneously helping to prevent politicians from becoming insulated and mitigate voters' disaffection.

Mr. President, by passing this bill today, we can restore a meaningful dialog between the voter and the candidate. By doing so, we can all share in giving this country a great victory, and restoring the public's faith in the political process. I urge this bill's passage.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FEINGOLD. Mr. President, I yield up to 5 minutes to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I intend to vote for cloture today. I do not do so believing this is a perfect bill. There are some provisions in this measure I do not support. I do not support the complete abolition of PAC's, for example. But I believe we ought to be debating campaign finance reform. Therefore, I will vote for cloture to get a campaign finance reform bill on the floor of the Senate so we can offer amendments and see if we can perfect the bill in a way that will represent the public interest.

In my judgment, the financing of political campaigns is spinning out of control—more and more dollars in each campaign, more and more wealthy candidates financing their own campaigns. Campaigns in America have not so much become a competition of ideas—this is what campaigns ought to be—but a 30-second ad war. Not so much by candidates, but by the creators of the 30-second little ''bomb bursts'' that are put on television to try and destroy other reputations. These hired guns hardly serve the public interest, yet campaigns really have become a competition of 30-second ads.

When I last ran for the U.S. Senate, I was much better known than my opponent, so I made a novel proposal, which he did not accept, unfortunately. I wish he would have. I said: I am better known than you, but if we can agree to certain things, I think in many respects it will even things up. Let neither of us do any advertising at all. Neither of us will do any radio or television ads, no 30-second ads, no ads of any kind. You and I will put our money together, and we will buy an hour of prime time television each week for the 8 weeks prior to the election, and each week we will show up without handlers, without research notes, at a television studio with no monitor, and for an hour in prime time, statewide on North Dakota television, you and I will discuss the future. We will discuss whatever you want to discuss, whatever I want to discuss, such as why we are seeking a seat in the U.S. Senate, what kind of future we see for this country, what kind of policies we think will make this a better country.

I thought, frankly, 8 hours of prime time television, statewide, with both of us addressing each other and addressing why we were running for the U.S. Senate, might have been the most novel campaign in the country. My opponent chose not to accept that. Instead, we saw a barrage of 30-second ads. I do not think it provided any illumination for the North Dakota voters in that campaign. I think it would have been a better campaign had we had 8 hours prime time, statewide television, without handlers, to talk about what we thought was important for the future of this country. We did not have that kind of campaign.

So, the question for the Senate now is, what kind of campaign finance reform would be useful in this country? There are wide disagreements about how this ought to be addressed. For instance, I saved this article, the headline of which quotes my friend Speaker GINGRICH as saying, ''Gingrich calls for more, not less, campaign cash.'' Speaker GINGRICH gave a speech downtown, and he fundamentally disagrees with me that there is too much money in politics. He says there is not enough money in politics; there ought to be more money in politics.

I think that if we can find a way—and this bill provides one mechanism—to limit campaign spending and require full disclosure on all contributions, at that point you will start ratcheting down the cost of political campaigns in this country, and I think you will do this country a public service.

Last weekend when I was at Monticello, the home of Thomas Jefferson, I was reminded again of the work and words of this great American in the early days of this country. It seems to me Tom Jefferson would view what goes on in political campaigns in America today as a perversion of democracy. Today's campaigns are not, as I said earlier, a competition of ideas about how to make this a better country. They are much more a 30-second ad war that does not serve the public interest.

I intend to vote for cloture. I hope we will obtain cloture and have this important piece of legislation on the floor, open for amendments. I yield the floor.

Mr. FEINGOLD. Mr. President, I yield up to 15 minutes to Senator THOMPSON of Tennessee, who has been one of the main authors of this bill and has been key to making this a bipartisan reform effort. I thank him for his good work on this bill.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. THOMPSON. I thank the Senator. I thank the majority leader for bringing this matter to the floor at this time. I thank my distinguished colleagues, Senator MCCAIN and Senator FEINGOLD, for their leadership on this bill. I am proud to be one of the original cosponsors of this particular legislation.

Mr. President, after having listened to over a day of debate on this issue, I think the question now could be simply put. Are we satisfied with our current system of financing Federal campaigns in this country? Do we think it is a good system? If we are not satisfied, are we willing to at least take the first step—perhaps not a perfect step—toward doing something about it?

I approach this from the standpoint of one who was recently a challenger and who is now an incumbent running for reelection in 2 years, having gotten the unexpired term of the Vice President for a 2-year term. I am now running as an incumbent for a full term. So I have seen it from both sides.

I also approach it from the standpoint of one who made a commitment to the people of Tennessee that I will try to change the system that we have now working in Washington and that I was dissatisfied with the process by which our legislation is enacted. But I think it is fundamentally the business of the U.S. Congress to address how we elect our public officials, how long they stay, and what their motivations are when they get here. So I am delighted to be a part of this effort.

The system now—let us take a look at the system that we have now. I believe I can be objective in describing it. Elections certainly cost more and more and more. We see Senate campaigns now that cost $10, $20, and $30 million. The combined expenditures in one Senate campaign were over $40 million. We have a system where more and more time is taken by Members of Congress, at a time when technology and all the demands of modern campaigning require campaigns to cost more and more. More and more, we, the Members of, supposedly, the world's greatest deliberative body, wind up having no time to deliberate anymore because of the fractured nature of our lives. For someone to run in a State such as mine, I have calculated that now it would be about $15,000 a week that I would have to raise, year in and year out, to run the kind of campaigns that would be traditionally raised in a State such as mine.

Mr. President, that is not why I came to the U.S. Senate. We have a system now where more and more of the perception is that contributions are tied to legislation. Perhaps that was not a problem when the amounts were smaller. But now we see larger and larger contributions, usually soft money contributions, with regard to larger and larger issues, millions of dollars being spent, billions of dollars being decided by massive pieces of legislation in the U.S. Congress.

We have a system where it is no longer ideological. The money does not flow to ideas. The money flows to power. Whoever is the incumbent party likes the system. Whoever is not the incumbent party plans on being the incumbent party. Democrats have killed this legislation for years, and now that the Republicans are in power, we are trying to return the favor. We have a system whereby, in individual cases, people are drawing closer and closer relationships with individual pieces of legislation and massive amounts of money that are being spent by the people affected by the legislation.

We constantly see news stories, day in and day out. There is a strong perception among the American people that any system that costs so much money and any system that requires us to go to such great lengths to get that money cannot be on the level. We see, day in and day out, editorials across the country. Common Cause has compiled 261 editorials from 161 newspapers and publications. What they say is not a pretty picture. It is not that I necessarily agree with the analysis made of these articles, but this is the perception among editorial writers across the country—liberal papers and conservative papers. The most conservative paper in my home State, in Tennessee, the Chattanooga Free Press, a Republican paper, has one of the editorials contained in this compilation. What they say, I think, is what is perceived by the American people. They say that neither party wants to end the abuses. One of the editorials says, ''In Congress, Money Still Talks.'' Another says, ''New Year's Sale on Votes.'' Another says, ''Money Brings Votes.'' Another says, ''Congressmen Admit Being Bought by Contributions.'' Another says, ''Republican Reform; GOP Already Bought Off.''

Mr. President, that hurts. The Chattanooga Free Press in Tennessee says in its article—it entitles it, ''The Campaign Money Evil.'' Another article says, ''Getting What it Paid For,'' talking about American industry. Another says, ''Feeding Frenzy on the Hill,'' talking about us and our fundraising activities. Another says, ''Buying the Presidency.'' While we are not dealing with a Presidential campaign, if I heard it correctly on the Brinkley show, now, apparently, for $50,000 you can sleep in the Lincoln bed at the White House. Another says, ''NRA Buys Recent House Votes.'' You can say that——

Mr. MCCAIN. Will the Senator yield?

Mr. THOMPSON. Yes.

Mr. MCCAIN. That is $130,000. It is not as cheap as $50,000.

Mr. THOMPSON. Well, that certainly seems more reasonable. Another says, ''Big Money Talks.'' Another says, ''Taste of Money Corrupts Politics.'' This is from Texas. Another says, ''The Great 'Unsecret' of Politics.'' That is the relationship between contributions and votes. Another says, ''Legal Bribery Still Controls Congress.'' I do not believe that, but a lot of people believe that, and we have to ask ourselves why. Another says, ''Campaigns up for Sale.''

Mr. President, how much more of this can we stand as an institution? How can we go before the American people with the tough choices that we are going to have to be leading on, convincing the people, with no credibility? Ten percent of the people in this country have a great deal of confidence in Congress. Twelve percent have a great deal of confidence in the executive branch. Eighty percent of the people, at least, favor major change here. We always want to be responsive to the American people, until it comes to something that affects us and our livelihoods—whether it is term limits, campaign finance reform, or some other issue that affects us directly as politicians. Then we come up with all kinds of excuses why it will not work.

We have a system where soft money, of course, has completely made a sham of the reforms that were put in place in earlier years. We all know that. It is a bipartisan problem. Soft money now is up 100 percent—a 100-percent increase—with hundreds of thousands in contributions, in many cases that we see. So there has been a 100-percent increase since the last election cycle.

Now, that is the system, Mr. President. I do not think it is a very good one. I submit that it is not a good system. Some opponents of reform say there is not enough money in politics. It is not a question of too much; it is not enough; that $700 million spent in 1994 is not enough. They say that more money is spent on soap detergent advertisement, or whatever kinds of advertisement, than on political campaigning. I hope that that analogy will fall on its face without serious analysis, but a lot of people use that. No. 1, we are not in the soap-selling business. No. 2, if Procter & Gamble were advertising in a way that undermined the credibility of the company, they would not be doing it. No. 3, these businesses have only one goal, and that is profit. I would like to think that we have an additional goal in the U.S. Congress.

Other opponents say that it restricts freedom and the ability to participate. This is, of course, a voluntary system, No. 1. And No. 2, we are not talking about mom and pop sitting around the kitchen table deciding how to distribute their $100 or $250 to a Presidential campaign or a senatorial campaign. They can still do that any way they want to do it.

With regard to the PAC issue, which I will discuss in a moment, it simply means that if this legislation were passed, instead of sending it to a political action committee, they would have to make a decision themselves as to which candidate they wanted to send it to. There is no restriction of freedom here on anyone except those in Washington who receive all those minicontributions from various people and make the political decision as to how to use that money. Their freedom will be restricted somewhat. There is no limit whatsoever in this legislation on anybody's ability to participate in the process. People need to understand that.

The current limitation we have is $1,000 on individual contributions. That is a limitation. That is the same limitation that we have here; no new limitation.

Many people say that certainly we want reform. Everybody knows we need reform. ''It is a lousy system but not this reform. I would support it, if this particular feature was in, or out,'' or whatnot. I think that it is tempting to

want to have it both ways; to be for reform but never be for a reform measure. Some people say it is an incumbent protection business, like my friend Senator BENNETT. I take a different view from that. I think that under the system now he is certainly correct. Incumbents have substantial advantage. What this legislation would do is, let us say, at least place some limitation on the major incumbent advantage; and that is the ability to raise unlimited amounts of money. The incumbents are still going to have the advantages that they always had. But at least you are saying to that incumbent if he voluntarily chooses to participate that there will be some cap on the amount of money that you spend. You are an incumbent now. The money is going to come to you not because people believe in you in many, many cases any more but simply because you are an incumbent, and you have the power and authority at that point. They say, ''Well, it restricts people from coming in and spending enough money to overcome the incumbent.'' How often does that happen in the real world? When it happens, it is somebody who is an extremely wealthy individual. And it happens then sometimes.

So you wind up with professional politicians on the one hand who are able to raise large sums of money because they are incumbents, and wealthy individuals on the other. That is what our system is becoming—those two classes of people and nobody else.

This legislation would level the playing field and let more people of average means participate. This bill is voluntary. Under it campaigns will cost less. I think that is the crucial feature. A lot of us who support this legislation have different ideas about that. To me the PAC situation is not a crucial feature.

Opponents are certainly correct when they point out that the PAC's were a reform measure in and of themselves in 1974 in the aftermath of Watergate. We thought that would substantially reform the process, and now PAC's are an anathema to a lot of people.

The fact of the matter is—and both sides should understand and know this—that people, whether they be businesses or labor unions or whoever, individuals can still send money in. They can still contribute. They can still get together and decide that they want to individually send contributions in.

In my campaign I ran against an individual that did not accept PAC money. He got all of the same kind of money that he wanted. It is a little more cumbersome. But we are not eliminating special interest money if we eliminate PAC's.

So to me that is more of a symbolic measure than it is anything else. The real crucial measure is limiting the overall amounts of money—that $500 million that was spent in congressional races in the last election time. It will take less time. It will allow my colleagues to spend the time on the things that they were elected to do.

I believe it would level the playing field; 90 percent of all incumbents—in this revolution that was supposedly having all this turnover of all of those who want to be reelected—90 percent are reelected. For those of my friends who always look and see who supports a piece of legislation before they decide whether they are for it or against it, and all of them who decry the trial lawyers and the AFL–CIO and the, well you finally found something that you all agree on because they are all in agreement with the opponents of this legislation that this is a bad piece of legislation. So maybe they will lay off those groups for a little while in the future.

Mr. President, this is not a division any longer of business versus labor or of Democrats versus Republicans. It is a division of people who want to change the system and those who genuinely do not believe that we ought to have it. I would like to think that this is reform time. I would think that this would do more to assist in our attempt to balance the budget than anything else because much of the pressure that this process has within, in it is pressure to spend money. It would be a genuine reform measure.

The lobbying and gift reform measures were something long overdue. We needed to do it. But we are in a situation now where you cannot buy me a $50 meal or a $51 meal but you can go out and get together a few hundred thousand dollars for me for my campaign. So that does not make a whole lot of sense.

I do not think that we ought to get in a situation where we are for reform until it affects us individually and our livelihood when we are affecting everybody else's livelihood on a daily basis. I think it should not be viewed with suspicion among my Republican colleagues. I think too often that we are trying to figure out how this is going to benefit them, or us. The fact of the matter is we do not know. There is no way to figure it. There is no way to tell. It depends on swings. Sometimes we are going to be in. Sometimes we are going to be out. Sometimes a new scheme might hurt us. Sometimes it might help us. But the bottom line is that we should not be afraid of fundamental reform that the American people want, that we all know that we need, and we should get back to winning not on the basis of who can raise the most money but on the basis of the competition of ideas.

That is what we pride ourselves in. That is why we think we were successful last time. That is why we think we will be successful again. Let us get back to that concept.

It is for those reasons that I support this legislation and urge my colleagues to do so.

Thank you, Mr. President. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, a couple of observations, and then I am going to yield 10 minutes to the distinguished Senator from Washington.

I have listened with interest over the years to the debate in this debate about the suggestions of the money chase and dividing up the amount of money one might raise in a campaign by every week of service. My good friend from Tennessee, for example, suggested that he would have to raise $15,000 a week throughout his entire term to be competitive in Tennessee.

I think it is important to remind everyone of the statistics which are irrefutable. Eighty percent of the money raised in a Senate reelection cycle was raised in the last 2 years. Senators are not out raising money every week through a 6-year term. In fact, in the last cycle 80 percent of the money raised by Senators was raised in the last 2 years.

So I am unaware of anybody here in the Senate that is working on fundraising week in and week out through the course of the 6-year term.

Second, let me just say again that I always find it somewhat amusing the extent to which the revelation that little is spent on campaigns relative to consumer items like yogurt tends to exercise the proponents of this bill almost to distraction. But, of course, it is absolutely appropriate when it is said too much is spent on campaigns. You would have to ask the question: Compared to what? Compared to what? For that observation to mean anything it has to be compared to something.

In 1994, in House and Senate races, about $3.74 per eligible voter was spent. We spent about on politics in the last cycle what consumers spent on bubble gum. Roughly $600 million was spent on bubble gum. In 1996, Americans will spend $174 billion on commercial advertising.

So it is appropriate when dealing with the basic premise underlying this measure that too much is being spent to ask the question about the premise: How much is too much? My view is that $3.74 per voter is pretty hard to argue is too much to spend communicating with the electorate.

Mr. President, my good friend from Washington has been quite patient, in the Chamber for some time now, and I will be glad to yield to him 10 minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I believe it important in discussing an issue of this significance to begin once more with fundamental principles. The most fundamental principle affected by this debate is found in the first amendment to the Constitution of the United States which in relevant part reads, ''Congress,'' that is to say us, ''shall make no law abridging the freedom of speech.''

Mr. President, I turn to page 31 in this bill in section 201 and I read, ''No

person other than an individual or a political committee may make a contribution to a candidate.''

''No person other than an individual or a political committee may make a contribution to a candidate.'' In other words, any voluntary association is entirely denied the right to participate in the most effective possible way in a political campaign by making any contribution to a candidate at all.

Here we live in the third century of a Nation, the particular genius of which has been the accomplishment of myriad purposes by voluntary associations, and we are seriously considering a bill that says no voluntary association can make a contribution to a candidate for the Senate.

Our opponents can read us 1,000 opinions of law professors to the effect that that does not violate the first amendment, but a third grader would understand that it does. It is a clear abridgment of the right of free speech. Moreover, that brief comment reflects the entire nature of this bill. Everything in it is designed to restrict political participation, to abridge the effective right of free speech in the political arena. But it does not restrict everyone's right of free speech in every fashion. No, it discriminates among methods of political speech. It imposes severe restrictions upon candidates who, while they may elect to stay out of the system, nonetheless are severely penalized by advantages given to their opponents if they repudiate this outrageous system. It not only prevents these voluntary associations from making any contribution but even an individual is likely to be prohibited from making a contribution to a candidate when that candidate has reached the rather modest maximum permitted under this law to gain certain other advantages.

It, of all things, severely restricts as a great evil political parties. For some reason or another, it is based on the proposition that both the Republican and Democratic Parties are highly undesirable organizations that must be severely restricted in their fundraising and prevented in many cases from providing support to their own candidates.

Now, while candidates have their rights abridged, organized groups have their rights abridged, individuals have their rights abridged, and political parties have their rights abridged, whose free speech rights are not abridged by this bill? Well, first, television networks and stations and their reporters and their editorial writers can continue to say as much as they want to say and to be as biased as they wish to be with respect to any election campaign, and not only are no restrictions placed on their ability to engage in those activities but the candidates who are their victims, whom they oppose, are not granted any ability to raise money to counteract what they may consider to be biased editorials or biased news stories. Newspapers fall into exactly the same category, whether in the reports of their political writers or the editorial support that they provide for candidates—no limitations there but severe limitations on the ability to respond to those newspapers.

And one other important element. All organizations, all groups that are willing to engage in the subterfuge that they are not endorsing candidates or promoting elections by simply reporting through 30-second commercials on their interpretation of the way in which candidates who hold office have voted, and so all of the commercials, the tens of millions of dollars of commercials we have seen in the last 6 months paid for by labor unions attacking Members of the House of Representatives for their votes on Medicare reform and the balanced budget, none of those are restricted in any way by the proposals in this bill. All that is restricted is the ability of a candidate attacked by these millions of dollars effectively to respond to those attacks.

Now, I do not know how much value there is in plumbing the motivations of the authors of the bill. Perhaps they feel that form of political participation ought not to be restricted in any fashion. Perhaps they feel that even though they cannot stand a political action committee giving money to a candidate's campaign, that same group ought to be permitted without limitation and without restriction to buy advertisements attacking candidates or incumbents on their lifestyle or their record, that that somehow or another is good policy. I think, however, the reason there is no limitation on this form of free speech is that they know perfectly well, the sponsors know perfectly well that such restrictions would be found to be unconstitutional. And so they only restrict free speech where they think they can get away with it, even though they make a situation that at the present time is unfair far more unfair than is the status quo.

Mr. President, acknowledge, those who oppose this bill, that the people of the United States by special interest groups that would be benefited by having their opponents removed from the equation and newspaper and television editorialists who would be benefited by having their views less effectively counteracted, have created a situation where a majority of the people of the United States do not like the present system and want reform. This bill is entitled ''Reform,'' and we are, therefore, supposed to pass it. But we went through this experience more than 20 years ago when the present law was passed. Every argument that has been made here for 2 days was made then. That present system was terrible. We had to have limitations. We had to create things called political action committees in which people could engage in political action. We would restore confidence in the system.

Well, Mr. President, not a single one of the desires or the goals or the promises of those proponents has been accomplished at this point, and so what are we asked to do now? Back off and start over with a very simple proposition that just says everyone disclose where his or her money comes from and trust the intelligence of the people to sift through the arguments that they get? No. We are told if 1,000 restrictions were not enough, let us try 2,000 restrictions and see if it does not work better. That is the theory of this bill.

We hear a great deal about how terribly prejudicial in favor of incumbents the present system is. But, then, why do we wipe out the one organization that will always support a challenger in a race, the challenger's political party?

The Republican Party will support the challenger to a Democrat, the Democratic Party will support the challenger to a Republican, if they think that challenge is remotely viable. So this bill is not about incumbents and nonincumbents. If it were, it would encourage contributions to political parties. It would lift the restrictions on the amount of support that political parties can provide for its candidates. But, instead, it treats parties, if anything, as a greater evil than candidates themselves.

No, this is not campaign reform. This is a huge bureaucracy, the design of which is to abridge the freedom of speech of candidates for the U.S. Senate, exactly what the first amendment tells Congress it may not do.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I thank my distinguished colleague from Washington for an absolutely brilliant discourse on the impact of this bill on the political process. As usual, he is right on the mark, and I thank him for his important contribution to this debate.

My friend and colleague from New Hampshire has been on the floor for some time. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 51 minutes remaining.

Mr. MCCONNELL. I yield 5 minutes to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. I thank the Senator from Kentucky. I also congratulate the Senator from Washington for his very thoughtful and concise discussion relative to this bill. I wanted to focus on a narrower issue which really plays out some of the points raised by the Senator from Washington.

I heard a prior Senator's statement, ''This is a bill that levels the playing field.'' I only perceive this as leveling if you perceive the north slope of some mountain in the Himalayas, Mount Everest, for example, to be level. The fact is, this is not a leveling bill. The fact is, this bill, because it fails to address the independent expenditure issue, is a bill which, were this a teeter-totter, would have one side directly up in the

air and the other side directly on the ground.

We have to realize that under this bill one of the core elements of what I consider to be inappropriate activity in the political area, but which others would consider to be good politics, as they are supported by it, is not addressed at all. It was in March, for example, that the AFL–CIO held a rather unique convention here in Washington, where they voted, as an institution, to levy a special assessment on their membership, which assessment was meant to raise approximately $25 million of a $35 million goal dedicated to defeating Republicans. There was no other purpose. It was openly stated. They were going to spend $35 million for the purpose of defeating Republicans. So they had this special assessment of $25 million which went out against all their union membership.

Someone took a poll of the union membership, and it turns out the union membership, at least 58 percent of the union membership, did not realize they were going to have to pay this mandatory fee; 62 percent of the union membership opposed this mandatory fee; 78 percent of the union membership did not know they had the right to get the fee back; 84 percent would support making union leaders here in Washington, the big bosses, disclose exactly what their money is spent for; and only 4 percent thought that engaging in political elections was the most important responsibility of major unions.

So, what we have here is an instance where the AFL-CIO is going to go out, and they have the right to do this, and raise $25 to $35 million and spend it against people who they, the union bosses here in Washington, do not agree with. It happens that the rank and file membership, to a large degree, do agree with the agenda of the Republicans here in Washington. In fact, 87 percent of the union membership supports welfare reform and 82 percent of union membership supports the balanced budget amendment and 78 percent happens to support tax reductions and the $500-per-child tax credit, all of which happen to be Republican initiatives, all of which are opposed by President Clinton, all of which have been opposed by Democratic Members. But, once again, the big bosses here in the unions in Washington have decided to assess, essentially, a tax against the union membership, and that tax, raising $25 to $35 million, is going to be used to attack Republicans who happen to support philosophies which are supported by a majority of the union membership.

Yet, this bill remains silent on this rather significant gap in the campaign election laws. If you were in the process of addressing campaign election laws, I think by the very fact it remains silent, you must ask: Why? Why would such a colossal amount of money that is going to be poured into the political system be ignored by a bill like this?

Well, folks, I think it is called politics. I think it is called political influence. I think it is because the majority of the sponsors of this bill happen to be mostly related in their political philosophy to the bosses of the unions here in Washington. As a result, there is no desire to address something which might affront that group of political forces in this country, who are significant. They have always been significant in this country. They have a major role to play, and always should have a major role to play. But there is unquestionably a significant issue of credibility raised by the failure to address this issue. In fact, it is such a significant issue of credibility that I think it brings down the whole bill, because it draws the whole bill into question, as to its integrity, as to its purpose—not integrity, wrong word—as to its purpose, as to its legitimacy.

It could be corrected rather easily, actually. You could simply put language in which would say union members shall have the affirmative right, which shall have to be confirmed or which shall have to be—let me restate that. Union members will have to approve how their dues will be spent when it comes to political actions and political activity.

The PRESIDING OFFICER. The 5 minutes of the Senator has expired.

Several Senators addressed the Chair.

Mr. MCCONNELL. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator has 2 additional minutes.

Mr. GREGG. I have an amendment which proposes that: the Union Members Protection Act. It essentially says that before union members' dues can be spent in the manner in which these $25 million to $35 million are going to be spent, the union member will have the right to affirmatively approve that or disapprove it. In the case of disapproving it, the money will not be spent. That will bring into the process at least the ability of the union members to avoid this tax if they decide to avoid this tax; in the process, to direct the funds in a manner which they feel is appropriate to their own political position, not to those of a few bosses here in Washington.

That type of correction is not in this bill. Not only is it not in this bill, but were that amendment to be brought forward, this bill would be filibustered by the supporters of the bill, I suspect. Certainly, if there was a chance it was going to be passed, it would be filibustered by the proponents of this bill. Why? Political interests.

So the credibility of this proposal, I think, is highly suspect, not only substantively on the grounds of constitutionality that was raised by Senator GORTON, but on the grounds of the politics of the bill, because when you leave this large a gap in the issue of how you are going to reform campaign financing, you basically are saying your intention is not to reform campaign financing; your intention is to tilt the playing field once again in favor of one political group which happens to have a significant amount of influence amongst the sponsors. Mr. President, I yield back the remainder of my time.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Very briefly, before I turn it over to the Senator from Massachusetts. I, too, listened to the constitutional analysis by the Senator from Washington and the strong agreement by the Senator from Kentucky. The one suggested that any third grader would know that the PAC ban, with a backup provision, is unconstitutional. I am sorry, but I will say one thing about that. The Senator from Kentucky and the Senator from Washington voted for precisely that proposal 3 years ago under the Pressler amendment. So, apparently, at that time they did not understand, apparently, what any third grader would understand, which is that this in fact is constitutional, because it provides that, if the PAC ban is found unconstitutional, there is a backup provision. So that entire analysis disregards their own voting record and their own past position, which is that that is constitutional.

Mr. President, I yield up to 10 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, thank you. I thank the Senator from Wisconsin.

Mr. President, I was really fascinated to listen to our colleague from New Hampshire. I really never knew, but now I guess the Senate has learned something new, that the Senator from Tennessee, Senator THOMPSON, and the Senator from Arizona, Senator MCCAIN, are the tools of the union bosses. That is a rather remarkable concept. I am sure the Senator from Arizona will struggle, as will the Senator from Tennessee, for years to get out from under that moniker.

I think that both that and the argument of the Senator from Washington just underscore what is really going on here today in the U.S. Senate. Every argument that can conceivably be laid out on the table in pretense on the merits is really just an effort to avoid what this vote today is really about. This vote today is about whether or not the U.S. Senate is willing to stay here and work to produce campaign finance reform or whether it is happier with the status quo. That is the vote. It is very simple.

Eighteen months ago we could have started doing campaign finance reform. I think it was 12 months ago there was a famous handshake between NEWT GINGRICH and the President suggesting there would be a commission to deal with campaign finance reform. But not only did Congress not follow through on the commission, as neither the

President nor the Speaker did, but at the last moment here we are on day one of consideration of this bill and we have to have a cloture vote. That tells the whole story.

This is not a serious effort to legislate. This is not a serious effort to take an amendment from the Senator from New Hampshire and deal with this problem of constitutionality or of union bosses. After all, they only have 53 votes last time I counted. It seems to me that if it is truly an issue of the unions, that 53 Republicans are very quickly going to be summoned to the floor to vote against whatever union advantage is being built into this bill.

So let us cut the charade here. This is not a serious effort to legislate. This is, once again, the Senate's moment of tokenism to pretend or at least expose—because Senator FEINGOLD and Senator MCCAIN insisted on it—that there are a majority of Senators here who are unwilling to deal with the issue of campaign finance reform.

There is not even a serious discussion going on of an alternative. There is no alternative that has been proposed. There is no serious set of alternatives that have been put forward to try to say, ''Well, if we don't want to do it your way, here's a better way of doing it.'' There is no better way on the table.

The Senate has been forced to bring one vehicle to the floor today, one effort, one pathetic gasp to try to suggest that we are prepared to deal with what the majority of Americans want us to deal with, which is the putrid stench of the influence of money in Washington that is taking away democracy from the people of the country. Everybody knows it. Every poll in the Nation just screams it at us.

Ninety-two percent of registered voters believe that special interest contributions affect the votes of the Members of Congress. Eighty-eight percent believe that people who make large contributions get special favors from politicians. The evidence of public discontent just could not be more compelling. It is now spoken in the way in which Americans are just walking away from the system. Only 37 percent turned out to vote in the last election. They are walking with their feet away from what they perceive as an unwillingness of the Congress to deal with this.

The vote today, Mr. President, is very simple. Do you want to deal with campaign finance reform or do you want to play the game again and be content and pretend that there is some great constitutional issue?

I listened to the Senator from Washington raise the first amendment. My God, three-quarters of the people today talking about the first amendment and no curbs on free speech are the first people to come down here and vote against the Supreme Court's decision with respect to the protection of free speech and the flag. So they choose it when it suits their purposes, and then they go protect it when it also suits their purposes. Selective constitutionalism.

Any third-grader does understand that if there is a voluntary system, purely voluntary, by which people participate in limits, there is no restraint on free speech. Anybody who wants to go out and spend their millions of dollars and avoid accountability within the rest of the system can do so under this bill. There is no limit.

If perchance there were to be some problem with the PAC's and constitutionality, because of the freedom of association, the House of Representatives, in their bill, has an alternative. It is perfectly legitimate for us to send this bill to a conference committee, work in the conference committee, come up with a reasonable alternative and come back here. It is really inconceivable that the Republican Party, which is the majority of the U.S. Senate with 53 votes, is going to be disadvantaging itself in any amendment on the floor of the U.S. Senate, because they can summon all 53 votes to beat back any amendment that does not draw away some measure of those who are reasonable on their side.

So this is not an effort to legislate. This is an effort to procrastinate once again. It is a vote on whether you desire to have campaign finance reform or whether you are content to suggest that there are problems with this bill sufficient that we cannot even deal with it on the floor or work through the legislative process.

I have some problems with this bill. I do not like every component of it. I personally would like to see more free time available. I think there are a number of other options that we could work on. But I am content to live with what the majority of the U.S. Senate thinks is appropriate. I am content to have whatever advantage to our side or their side be put to the test of the legislative process. That is what we are supposed to do. Instead, once again, the special interests are going to win here today. Probably most likely this issue will not be able to be seriously considered this year yet again.

I have worked on this since the day I came here with Senator BRADLEY, Senator BIDEN, Senator Mitchell, and Senator Boren. We have passed it in certain years here. But the game has been played with the House so it comes back at the last minute. Each side can blame the other for not really being serious about it or for filibustering it to death.

In the end, Mr. President, the American people lose again, because everyone knows that the budget deficit is partly driven by the interests that succeed in preventing any tough choices from being made. Everyone knows what the money chase and the money game in Washington is all about. We would all be better off if we were to reduce that. I hope that colleagues today will come together in an effort to try to say, let us at least legislate through the week and see if we could engage in a serious effort to try to deal with one of the most pressing problems facing America's fledgling democracy.

Mr. President, I yield back whatever time I may have to the manager of the bill.

Mr. MCCONNELL. Mr. President how much time do I have remaining?

The PRESIDING OFFICER (Mr. GREGG). The Senator has 43 minutes remaining.

Mr. MCCONNELL. I yield to the distinguished chairman of the Rules Committee—and we have listened to a great many hearings this spring on this matter—I yield 10 minutes.

Mr. WARNER. Mr. President, I thank the floor managers, both floor managers, and indeed my colleague from Kentucky. As a senior member of the Rules Committee he sat side by side with me throughout what I am sure will be reviewed as a very prodigious, fair, and balanced series of hearings, which I will cover, given that the Rules Committee has jurisdiction over this particular bill and like bills.

This morning, however, Mr. President, I make it very clear that while I support many areas of campaign finance reform, and I shall address those areas, this particular bill that is before the Senate is not one, in my judgment, which will solve any of the problems. Therefore, I shall be voting against it in accordance with the procedural votes.

I will start my comments by quoting from Thomas Jefferson. Virginians are very proud of our heritage of freedom which is reflected by Mr. Jefferson, who said: ''To preserve the freedom of the human mind * * * and freedom of the press, every spirit should be ready to devote itself to martyrdom; for as long as we may think as we will, and speak as we think the condition of man will proceed in improvement.''

Jefferson's thoughts on the first amendment reflect my own personal concern that our constitutional right to speak out as individuals and as groups receive the utmost protection as we labor as a legislative body to make badly needed reforms to our campaign finance system.

The pending bill would amend our campaign finance laws applicable to elections to Congress. This bill, S. 1219, was referred to the Committee on Rules and Administration some time ago. In addition to S. 1219, 14 other bills that would amend our campaign finance laws have also been referred to the committee. These bills address myriad issues and offer a variety of potential solutions to the concerns many of us have.

I am well aware that the calls for campaign finance reform have been heard for many years. I am well aware, also, of the many proposals this body has considered over the past sessions. I am also well aware these efforts were ultimately unsuccessful because they did not reflect the consensus of the American people. It is easy to label

something campaign finance reform and immediately find support from those across this Nation, like myself, who have a level of frustration with the current framework of laws. Ultimately, however, each of those bills must stand on its own merits. I will not merely vote for something called reform without being convinced that the proposals are constitutional and beneficial to our political process.

Our committee gave careful consideration to a wide variety of issues. First, our committee heard from Senators MCCAIN of Arizona, FEINGOLD of Wisconsin, THOMPSON of Tennessee, WELLSTONE of Minnesota, FEINSTEIN of California, and BRADLEY of New Jersey. Members of the House of Representatives also appeared before our committee.

We then heard testimony from some of the foremost experts across our Nation on campaign finance reform, including Prof. Larry Sabato and Prof. Lillian BeVier from the University of Virginia; Norman Ornstein from the American Enterprise Institute; Thomas Mann from the Brookings Institution; Bradley Smith from the Cato Institute; David Mason of the Heritage Foundation; Prof. Herbert Alexander from the University of Southern California; Dr. Candice Nelson of American University; Prof. Michael Malbin from the Rockefeller Institute of Government; Ann McBride of Common Cause; and Joan Claybrook with Public Citizen.

We also heard from a number of citizens who participated in campaigns by contributing to political action committees—PAC's—or by making donations to be bundled. We heard these voters' worries that their voices would be greatly diminished if their ability to participate in PAC's and bundling were completely denied. In addition to these witnesses, we also asked the Chairmen of the Republican and Democratic National Committees, Mr. Haley Barbour and Mr. Donald Fowler to testify before our committee. Each party official testified to the need to strengthen—I repeat, strengthen—not weaken the political parties and enhance their links to their State counterparts.

Because several of the bills before the committee mandated some form of free or reduced-fee television time and reduced postage rates, as S. 1219 does, we also heard from representatives of the broadcast industry and parties affected by the health of the postal service. They advised us of the impact on these proposals, pro and con, on their operations.

Further, because of my personal belief that we should not pass legislation that has a high degree of likelihood of being struck down by the Federal court system as unconstitutional, we asked a number of legal experts and scholars to address the constitutionality of some of the various proposals before the committee, particularly the proposal to ban PAC's. Among those commenting on the issues were Joel Gora of Brooklyn Law School on behalf of the American Civil Liberties Union, Robert O'Neil of the Thomas Jefferson Center for the Protection of Free Expression, Archibald Cox of Harvard Law School, and Frederick Schauer with the Kennedy School at Harvard.

To date, the committee has held six extensive hearings on campaign finance reform—the most extensive, I repeat, the most extensive hearings on this subject of campaign finance reform, held here in the Senate since 1991. A number of conclusions were reached, although not formally, by the individual Members. I shall speak for myself.

First and foremost is the overwhelming consensus that the PAC ban contained in S. 1219 is unconstitutional. There is little doubt on this, with near unanimous agreement from the legal experts. Mr. President, we should not pass legislation in the name of reform, knowing that the Federal courts will strike down the bill. There is always the urge to try and create something to throw out there and go back and tell our constituents, ''Well, we handled it—we handled campaign finance reform,'' but I personally cannot do that with clarity of conscience, knowing that there is a high likelihood that the Federal court system will strike it down.

A second point: in addition to the PAC ban, there are other serious constitutional concerns in S. 1219. One main problem lies in the extremely broad definitions of ''independent expenditures'' and educational advertising which would serve to greatly restrict information about the candidates. According to the Free Speech Coalition which represents groups from far left to far right, ''This extremely broad definition of 'expressed advocacy' would sweep in protected issue advocacy such as voter guides.''

Perhaps even more startling, S. 1219 allows the Federal Election Commission to obtain prior restraining orders against groups it suspects might violate the new, broader restrictions on presently-independent political activities. Let me emphasize this point. Federal bureaucrats would have the power to stop—I repeat, stop—somebody from exercising their first amendment rights before they say or publish anything. One commentator called this result ''a grotesque legislative assault on bedrock American freedoms * * *''

The PAC and bundling bans, combined with the breadth of S. 1219's coverage and restrictions on independent expenditures violate a maxim clearly articulated by our Supreme Court in Buckley versus Valeo when the Court stated ''The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first amendment.''

Make no mistake about it, S. 1219 would severely restrict the speech of many of our citizens, resulting in a terrific enhancement of others. This we cannot condone. Again, to quote Mr. Jefferson:

> There are rights which it is useless to surrender to the government, and which governments have yet always been found to invade. [Among] these are the rights of thinking, and publishing our thoughts by speaking or writing.

He made this observation in 1789, but despite the transformation of our country and the changes in our Government, it is as true today as it was in 1789.

A third observation is that, while reduced fee or free TV coverage and postage might serve to reduce the cost of campaigns, requirements such as these are not really free—they simply shift the costs from candidates to postal users, broadcast stations, and other television advertisers. To the extent candidates for political office are granted even more reduced fee postage rates than they already have, the postal user—virtually every American citizen and business—will bear the cost, for the Postal Service must make up the lost revenue from these users.

And, in addition to the lost revenues the TV broadcasters will face, there are extremely severe management problems associated with S. 1219's mandate for TV stations to provide coverage of political candidates. Not the least of these would be trying to offer television time to candidates in large population centers such as New York City where dozens of contested elections will take place in New York, New Jersey, and Connecticut—you might have more than 50 candidates each entitled to prime time TV coverage. And this doesn't even consider party primaries which might feature many candidates per election.

And, as I have noted in our hearings, how will local politicians react if they see candidates for Federal elections being offered extremely cheap ads and mailings. If we start down this road, how will we say no to the local sheriff or other State and local politicians who run for office? In sum, these reduced fee proposals—which are better described as cost shifting provisions—are not well thought out. More thorough analysis and understanding of the impact they will have on the postal and broadcast industries and the American people is necessary.

In addition, several of the provisions of S. 1219 could result in less information being available to voters. Spending caps obviously might cause cutbacks in campaign activity, whether advertising, traveling, or get-out-the vote activities. Bringing more independent expenditures under spending caps also could reduce the amount of information that is available. This concern has been voiced by others. David Frum of the Weekly Standard stated:

> [P]olitical reformers imagine that by capping campaign spending America could somehow purify its politics, replacing vulgar and deceptive radio spots with lofty Lincoln-Douglas-style debates and serious-minded

presentations of positions in 30-minute unpaid public service announcements on television. The far likely effect of campaign expenditure caps, though, would be to invite cheating and to deprive less attentive voters even of what little information they now get to guide their vote.

This discussion of present reform proposals would of course be incomplete without mentioning the fact that the Federal Election Commission would need a veritable army of investigators and auditors to keep up with their new mandates. We know that the FEC has had difficulty winding up audits of Presidential campaigns in a timely process, and I hesitate to think about the prospect of the FEC trying to keep up with hundreds of congressional candidates every 2 years.

While these hearings result in the conclusion that S. 1219 will not produce the type of reform that is needed, they also have revealed many potential reforms which might be quite beneficial to our political process without trampling on the first amendment. The many experts who testified at these hearings provided us with a multitude of proposals that should be examined more thoroughly.

I was particularly impressed by some of the suggestions made by Prof. Larry Sabato of the University of Virginia, who has been at the forefront of campaign finance reform and is a well-renowned speaker and author on the subject. I ask unanimous consent that a statement submitted by Professor Sabato be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. WARNER. Professor Sabato's main focus lies in broadening and strengthening our disclosure laws, so that all types of significant political involvement are available for public inspection. The American people are the best judge of improper or excessive influence, and it may be time to require greater access to information about those who give to candidates for Federal office and those who spend more to influence campaigns. Of course, we would need to weigh the need for and degree of privacy that should be afforded to individual donors, but this is clearly a subject that should be addressed in any campaign finance reform.

I have been impressed with other suggestions which have been raised in our hearings, such as: limiting the amount of money a PAC can give to a candidate from funds raised out of State; raising the contribution limits for initial donations to challengers to facilitate their entry into the political campaign process; and permitting challengers to draw a salary from their contributions.

Then there is the sensible suggestion to index contribution limits for inflation—perhaps had this been done in the last reforms in the 1970's, candidates would have more time to debate the issues and meet the voters and need less time to raise money. This change would also reduce the growing tendency for rich candidates to use their money to buy credibility. As discussed by the eminent commentator, David Broder:

All the contribution limits are accomplishing today is to create an ever-greater advantage for self-financed millionaire candidates. . . If we really want to be ruled by a wealthy elite, fine; but it is a foolish populism that insists it despises the influence of wealth, and then resists liberalizing campaign contribution limits.

While I disagree with their proposals, I commend my colleagues for making a commitment to this difficult issue. I can understand their frustration in attempting to craft legislation which might meet constitutional muster and find legislative support. Their bill has served the useful purpose of generating an extensive set of hearings on campaign finance reform and the many ideas I have mentioned.

Yet, the hearings which the Rules Committee held will be for nought if we proceed on S. 1219 today, in its present form. We must learn from these hearings. The committee should be permitted to proceed with its hearings. The Rules Committee will hold authorization and oversight hearings this coming Wednesday, June 26 on the Federal Election Commission [FEC]. These hearings will include a discussion of some 18 recommendations that would update the campaign finance laws and streamline the administration of the campaign finance laws. In addition, we are studying the possibility of holding one more hearing on the Presidential election process and reform suggestions that might be beneficial. After that the full extent of the committee hearings will be made available to the entire Senate and to others for study and review, with the goal that this educating process will produce an effective and positive reform bill.

While I understand the frustration of some of my colleagues with this issue, I cannot shirk my duty with regard to this legislation—it contains unconstitutional and unwise provisions, and we should not pass this legislation into law.

EXHIBIT 1

TESTIMONY OF PROFESSOR LARRY J. SABATO[1]—HEARING OF THE SENATE COMMITTEE ON RULES AND ADMINISTRATION, MAY 8, 1996[1]

PHONY CURES VERSUS A WORKABLE SOLUTION: DEREGULATION PLUS

The campaign finance system's problems are vexing. Is it possible to fashion a solution to all of them simultaneously? Over the years, the reformers' panacea has been taxpayer financing of elections and limits on how much candidates can spend. Public financing is a seductively simple proposition: if there is no private money, presumably there will be none of the difficulties associated with private money. But in a country such as ours, which places great emphasis on the freedoms of speech and association, it is unrealistic to expect that the general citizenry or even many of the elite activists will come to support greater federal subsidization of our election system at the cost of their individual and group political involvements. Spending limits are also enticing. Are politicians raising and spending too much money? Let's pass a law against it! Yet such a statute may be difficult to enforce in an era when politicians and the public seek less regulation, not more—not to mention the serious, maybe fatal, problem of plugging all the money loopholes (the C(4)s; Supreme Court-sanctioned, unlimited ''independent expenditures'' by groups and individuals unconnected to a campaign, and so on). Once again, the biggest, the original, and the unpluggable loophole is the First Amendment.

Public financing and spending limits are both also objectionable on the basic merits: the right to organize and attempt to influence politics is a fundamental constitutional guarantee, derived from the same First Amendment protections that need to be forcefully protected. To place draconian limits on political speech is simply a bad idea. (The call for a ban on political action committees suffers from the same defect.)

Once again, even if candidates could be persuaded to comply voluntarily with a public financing and spending limits scheme, such a solution would fail to take into consideration the many ways that interest groups such as the Christian Coalition and labor unions can influence elections without making direct contributions to candidates. Even if we passed laws that appeared to be taking private money out, we would not really be doing so. This is a recipe for deception, and consequently—once the truth becomes apparent—for still greater cynicism.

In our opinion, there is another way, one that takes advantage of both current realities and the remarkable self-regulating tendencies of a free-market democracy, not to mention the spirit of the age. Consider the American stock markets. Most government oversight of them simply makes sure that publicly traded companies accurately disclose vital information about their finances. The philosophy here is that buyers, given the information they need, are intelligent enough to look out for themselves. There will be winners and losers, of course, both among companies and the consumers of their securities, but it is not the government's role to guarantee anyone's success (indeed, the idea is abhorrent). The notion that people are smart enough, and indeed have the duty, to think and choose for themselves, also underlies our basic democratic arrangement. There is no reason why the same principle cannot be successfully applied to a free market for campaign finance.[2] In this scenario, disclosure laws would be broadened and strengthened, and penalties for failure to disclose would be ratcheted up, while rules on other aspects—such as sources of funds and sizes of contributions—could be greatly loosened or even abandoned altogether.

Call it Deregulation Plus. Let a well-informed marketplace, rather than a committee of federal bureaucrats, be the judge of whether someone has accepted too much money from a particular interest group or spent too much to win an election. Reformers who object to money in politics would lose little under such a scheme, since the current system—itself a product of reform—has already utterly failed to inhibit special-interest influence. (Plus, the reformers' new plans will fail spectacularly, as we have already argued.) On the other hand, reform advocates might gain substantially by bringing all financial activity out into the open where the public can see for itself the truth about how our campaigns are conducted. If the facts are really as awful as reformers contend (and as close observers of the system,

Footnotes at the end of article.

much of what we see is appalling), then the public will be moved to demand change.

Moreover, a new disclosure regime might just prove to be the solution in itself. It is worth noting that the stock-buying public, by and large, is happy with the relatively liberal manner by which the Securities and Exchange Commission regulates stock markets. Companies and brokers (the candidates and consultants of the financial world) actually appreciate the SEC's efforts to enforce vigorously what regulations it does have, since such enforcement maintains public confidence in the system and encourages honest, ethical behavior, without unnecessarily impinging on the freedom of market players. Again, the key is to ensure the availability of the requisite information for people to make intelligent decisions.

Some political actors who would rather not be forced to operate in the open will undoubtedly assert that extensive new disclosure requirements violate the First Amendment. We see little foundation for this argument. As political regulatory schemes go, disclosure is by far the least burdensome and most constitutionally acceptable of any political regulatory proposal. The Supreme Court was explicit on this subject in its landmark 1976 Buckley v. Valeo ruling. The Court found the overweening aspects of the Federal Election Campaign Act (such as limits on spending) violated the Bill of Rights, but disclosure was judicially blessed. While disclosure ''has the potential for substantially infringing the exercise of First Amendment rights,'' the Court said, ''there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the free functioning of our national institutions is involved.''

The Court's rationale for disclosure remains exceptionally persuasive two decades after it was written:

First, disclosure provides the electorate with information ''as to where political campaign money comes from and how it is spent by the candidate'' in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And . . . full disclosure during an election campaign tends ''to prevent the corrupt use of money to affect elections.'' In enacting these requirements [the Congress] may have been mindful of Mr. Justice Brandeis' advice: ''Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.''[3]

A new disclosure-based regime, to be successful, would obviously require more stringent reporting rules. Most important, new reporting rules would require groups such as organized labor and the Christian Coalition to disclose the complete extent of their involvement in campaigns. Currently, such groups rely on a body of law that holds that under the First Amendment, broadly based ''nonpartisan'' membership organizations cannot be compelled to comply with campaign finance laws, nor can groups that do not explicitly advocate the election or defeat of a clearly identified candidate. However, expert observers of the current system, such as former Federal Election Commission chairman Trevor Potter, believe the Court has signaled that constitutional protection for such groups extends only to limits on how much they can raise or spend, not to whether they are required to disclose their activities.[4] The primary advantage of this step is that it would formally bring into the political sphere groups that clearly belong there. By requiring organizations such as the Christian Coalition and labor unions to disclose, their role in elections can be more fully and fairly debated.

Another possible objection to broadening the disclosure requirements would be the fear that the rules would drag a huge number of politically active but relatively inconsequential players into the federal regulatory framework. Clearly, no one wants the local church or the Rotary Club taken to court for publishing a newsletter advertisement that indirectly or directly supports candidates of their choice. To our mind, this is easily addressed by establishing a high reporting threshold—something between $25,000 and $50,000 in total election-related expenditures per election cycle. After all, the concern is not with the small organizations, but the big ones. The Christian Coalition, the term limits groups, and organized labor have all raised and spent millions of dollars annually and operated on a national scale. It is not hard to make a distinction between groups such as these and benign small-scale advocacy.

Another necessary broadening of disclosure would involve contributions made by individuals. While most political action committees already disclose ample data on their backers and financial activities, contributions to candidates from individuals are reported quite haphazardly. New rules could mandate that each individual contributor disclose his place of employment and profession, without exception. The FEC has already debated a number of effective but not overly oppressive means of accomplishing this goal (although to date it has adopted only modest changes). The simplest solution is to prohibit campaigns from accepting contributions that are not fully disclosed. Disclosure of campaign expenditures is also currently quite lax, with many campaign organizations failing to make a detailed statement describing the purpose of each expenditure. It would be no great task to require better reporting of these activities as well.

The big trade-off for tougher disclosure rules should be the loosening of restrictions on fundraising. Foremost would be liberalization of limits on fundraising by individual candidates. This is only fair and sensible in its own right: there is a glaring disconnection between the permanent and artificial limitations on sources of funds and ever-mounting campaign costs. One of the primary pressures on the system has been the declining value in real dollars of the maximum legal contribution by an individual to a federal candidate ($1,000 per election), which is now worth only about a third as much as when it went into effect in 1975. This increasing scarcity of funds, in addition to fueling the quest for loopholes, has led candidates (particularly incumbents) to do things they otherwise might not do in exchange for funding. Perversely, limits appear to have increased the indebtedness of lawmakers to special interests that can provide huge amounts of cash by mobilizing a large number of $500 to $1,000 donors. By increasing contribution limits, candidates would enjoy more freedom to pick and choose their contributors. Given the option, we hope more candidates would turn primarily to those contributors whose support is based on values and ideological beliefs, spurning the favor-seekers. By lifting disclosure and contribution levels at the same time, politicians' access to ''clean'' funds would rise while scrutiny of ''dirty'' funds would be increased. The idea is to concede that we cannot outlaw the acceptance of special-interest money, but the penalties for accepting it can be raised via the court of public opinion. So at the very least, the individual contribution limit should be restored to its original value, which would make it about $2,800 in today's dollars, with built-in indexing for future inflation. We would actually prefer a more generous limit of $5,000, which would put the individual contribution limit on a par with the current PAC limit of $5,000 per election.

For political parties, there seems little alternative to simply legitimizing what has already happened de facto: the abolition of all limits. When the chairman of a national political party bluntly admits that millions of dollars in ''soft money'' receipts mean that the committee will be able to spend millions of dollars in ''hard money,'' it is time for everyone to acknowledge reality. Moreover, such an outcome is not to be lamented. Political parties deserve more fundraising freedom, which would give these critical institutions a more substantial role in elections.

How would the new disclosure regime work? While the FEC has already moved to impose some tighter disclosure requirements, it lacks the resources as currently constituted to enforce the new rules across the board. However, the solution does not necessarily require a massive increase in funding. Under a disclosure regime, the agency could reduce efforts to police excessive contributions and other infractions, devoting itself primarily to providing information to the public. The commission's authority to audit campaigns randomly would have to be restored to ensure compliance, and sanctions for failure to disclose would have to be increased substantially. In addition, the commission should be given the power to seek emergency injunctions against spending by political actors who refuse to comply with disclosure requirements. And to move the FEC away from its frequent three-to-three partisan deadlock, the six political party commissioners (three Democrats and three Republicans) ought to be able to appoint a seventh ''tie-breaker'' commissioner. Presumably anyone agreeable to the other six would have a sterling reputation for independence and impartiality. Another remedy for predictable partisanship on the FEC would be a one-term limit of six years for each commissioner. Freed of the need to worry about pleasing party leaders in order to secure reappointment, FEC commissioners could vote their consciences more often and get tough with election scofflaws in both parties.

Finally, in exchange for the FEC relinquishing much of its police powers, Congress could suspend much of its power over the FEC by establishing an appropriate budgetary level for the agency that by law would be indexed to inflation and could not be reduced. Another way of guaranteeing adequate funding for a disclosure-enhanced FEC is to establish a new tax check-off on Form 1040 that would permit each citizen to channel a few dollars of her tax money directly to the FEC, bypassing a possible vengeful Congress's appropriations process entirely. The 1040 solicitation should carefully note that the citizen's tax burden would not be increased by by his designation of a ''tax gift'' to the FEC, and that the purpose of all monies collected is to inform the public about

the sources of contributions received by political candidates. It is impossible to forecast the precise reaction of taxpayers to such an opportunity, of course, but our bet is that many more individuals would check the box funding the Federal Election Commission than the box channeling cash to the presidential candidates and political parties. In today's money-glutted political system, the people's choice is likely to be reliable information about the interest groups and individuals investing in officeholders.

CONCLUDING COMMENTS

The purpose of these reforms is to make regulation of campaign financing more rational. Attempts to outlaw private campaign contributions or to tell political actors how much they can raise and spend are simply unworkable. Within broad limits, the political marketplace is best left to its own devices, and when those limits are exceeded, violators would be punished swiftly and effectively.

Regarding the pro-incumbent bias of contributors, there is unfortunately no obvious practical solution. It is impossible to predict how a deregulated system would affect the existing heavy bias toward incumbents by contributors, both PAC and individual. In truth, there may be no way to eliminate pro-incumbent financial bias.[5] However, it is possible that expanding private resources through deregulation will actually end up helping challengers more than incumbents. A substantial body of research shows that the amount an incumbent spends is less determinative of election outcomes than the amount a challenger spends.[6] Simply put, challengers do not need to match incumbent spending, but need merely to reach a ''floor'' of financial viability. Deregulations's greatest impact could actually be in helping challengers reach this floor. If fears about the effects a free market will have on competition prove warranted, however, a modest federal subsidy in the form of discounts on mail or broadcast time—so that every nonincumbent candidate could at least reach the floor—would seem reasonable and might be acceptable even to some conservatives as long as it could be tied to deregulation.

If Deregulation Plus proves too radical, perhaps it is time to revive the sensible scheme proposed in 1990 by the U.S. Senate's Campaign Finance Reform Panel, which attempted to bridge the gap between partisans on the basic issues by suggesting many ideas, including so-called flexible spending limits.[7] These are limits on overall campaign spending by each candidate, with exemptions for certain types of expenditures by political parties (such as organizational efforts), as well as small contributions from individuals who live in a candidate's own state. Since the Supreme Court has ruled that spending limits must be voluntary, incentives such as reduced postal rates and tax credits for the small individual donations mentioned above should be offered. The flexible limits scheme represents a reasonable compromise between the absolute spending limits with no exemptions favored by Democrats and the opposition to any kind of limits expressed by Republicans.

Flexible limits or Deregulation Plus ought to be supplemented by free broadcast time for political parties and candidates, as well as strengthened disclosure laws that cover every dollar raised and spent for political purposes.[8] Detailed free-time proposals have been made elsewhere but ignored by a Congress fearful of alienating a powerful lobby, the National Association of Broadcasters.[9] Yet no innovation would do more to reduce campaign costs or help challengers than this one. Fortunately, technological advances such as ''digital'' television—which will multiply available ''analog'' TV frequencies by a factor of about six once it is available in 1997—are creating new opportunities to implement an old idea. Federal Communications Commission chairman Reed E. Hundt has recently endorsed the provision of free time for candidates and parties once digital TV comes into being, noting that free time was ''not practically achievable in an analog age [but is] entirely feasible with the capacity and band width explosion of the digital era.''[10]

In this area and others in the field of campaign finance, it is time for new thinking and creative ideas to break the old partisan deadlocks that prevent reform of an unsatisfactory system.

FOOTNOTES

[1] This is an excerpt from the just published book, ''Dirty Little Secrets: The Persistence of Corruption in American Politics'' (New York: Times Books), by Larry J. Sabato and Glenn R. Simpson. All rights reserved.

[2] We are indebted to attorney Jan Baran of the law firm Wiley, Rein & Fielding for this analogy.

[3] *Buckley* v. *Valeo*, 424 U.S.1, at 66–7 (1976).

[4] Interview with Trevor Potter, July 12, 1995.

[5] Frank Sorauf, one of the most astute students of campaign finance, has raised the possibility that ''voluntary funding of campaigns for public office is intrinsically committed to the support of incumbents and likely winners.'' Frank J. Sorauf, ''Competition, Contributions, and Money in 1992,'' in James A. Thurber and Candice J. Nelson (eds.), ''Campaigns and Elections American Style'' (Boulder, Colo.: Westview Press, 1995), p. 81.

[6] For a cogent review of the literature, see Frank Sorauf, ''Inside Campaign Finance: Myths and Realities'' (New Haven, Conn.: Yale University Press, 1992), pp. 215–16. There is an increasing number of dissenters to this view. For instance, Christopher Kenny and Michael McBurnett argue that those who say that the level of incumbent spending has no effect neglect the interrelationship of challenger and incumbent spending in producing the outcome of the election. Incumbent spending is at least partially a function of challenger spending, that is, when challengers spend more, incumbents respond to the increased competition with greater outlays. When this interrelationship is taken into account, both challenger and incumbent spending levels affect the outcomes of the races; Kenny and McBurnett provide empirical evidence to show the effect is statistically significant. (See Kenny and McBurnett, ''An Individual Level Multiequation Model of Expenditure Effects in Contested House Elections.'' American Political Science Review 88 (September 1994): 699–707).

[7] See ''Campaign Finance Reform: A report to the Majority Leader, the Minority Leader, United States Senate, by the Campaign Reform Panel,'' March 6, 1990, p. 41. Coauthor Sabato was one of the panel's six members, appointed by then Senate Majority Leader George Mitchell (Democrat of Maine) and then Senate Minority Leader Robert Dole (Republican of Kansas).

[8] See Larry J. Sabato, Paying for Elections: The Campaign Finance Thicket (New York: Twentieth Century Fund-Priority Press, 1989), esp. pp. 25–42, 61–64. For example, disclosure laws do not currently cover contributions to foundations that presidential candidates sometimes form. These foundations often pay for pre-campaign travel, and openly promote their candidate-creator.

[9] The Campaign Finance Reform Panel mentioned above endorsed the free broadcast time proposal in ibid, pp. 25–42.

[10] Remarks delivered at the Nieman Foundation, Harvard University, May 5, 1995, p. 7. Hundt has proposed making these new frequencies available under two government-imposed restrictions (1) some broadcast time must be devoted to educational programming for children, and (2) free broadcast time must be given to political candidates and parties. See also Max Frankel, ''Airfill,'' New York Times Magazine, June 4, 1995, p. 26; and Mary McGrory, ''The Vaster Wasteland,'' Washington Post, June 4, 1995, p. C1.

Mr. MCCONNELL. Mr. President, I thank my good friend, the chairman of the Rules Committee for his excellent statement and say again how much I enjoyed sitting to his right listening to the testimony this spring. Thanks for a very important contribution to this matter.

Mr. WARNER. Mr. President, I appreciate the sentiment. I commend the Senator for his corporate knowledge. Indeed, he is the Oracle of Delphi in this matter.

Mr. MCCONNELL. I yield 5 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, it seems to me we really cannot debate campaign finance reform without debating the way in which political funds are not only given to candidates but also acquired from people.

Campaign contributions are usually donated voluntarily. You can get an invitation to a fundraiser or a direct mail solicitation, and you can decide whether to contribute to that candidate, cause, or party.

We all consider this one of the basics of American democracy. Individuals must support it by supporting the candidates they believe in. But there are people in our country for whom this very fundamental freedom of choice is not given—members of labor unions. I may be one of the few ever in the history of Congress to actually have earned his union card and worked in the construction industry for 10 years.

It is certainly no secret that unions collect dues from their members and that, in many cases, an individual has to join a union in order to be employed in a particular industry or with a particular company. So there is no effective choice about paying union dues for these people.

But to add insult to injury, these Americans, who are forced to pay union dues, must also suffer the fact that unions donate millions of dollars to candidates that any individual may not support.

The recent announcement by the AFL–CIO that this big labor—you would have to say now mega-labor—organization would donate $35 million to candidates this year may be welcomed by some—certainly all Democrats—but disappointing to any who may not agree with the choices.

Take President Clinton, for example. I daresay that there may be any number of union members out there who do not support President Clinton's reelection.

In my view, this violation of fundamental choice and freedom of speech is compounded by the fact that labor unions do not even disclose their soft money contributions, which amount to millions.

At this particular time, I would like to place in the RECORD a Congressional Research Service report for Congress entitled ''Political Spending by Organized Labor: Background and Current Issues.'' This report is astounding. They indicate that in Presidential elections, it is estimated that from $400 to $500 million in moneys go basically to the Democratic Party.

I ask unanimous consent that that report be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

POLITICAL SPENDING BY ORGANIZED LABOR: BACKGROUND AND CURRENT ISSUES

(By Joseph E. Cantor)

SUMMARY

Labor unions have traditionally played a strong role in American elections, assisting favored candidates through their direct and indirect financial support, as well as through manpower and organizational services. While direct financing of federal candidates by unions is prohibited under federal law, unions can and do establish political action committees (PACs) to raise voluntary contributions for donation to federal candidates. This PAC money is also known as ''hard money,'' because certain federal limits on contributions make it harder to raise. It is also fully disclosed under federal law. Other aspects of labor's political support take the form of ''soft money,'' which is not limited by federal law and is not as hard to raise. Soft money is generally considered to be a formidable factor in organized labor's political strength. This spending is largely unregulated, either because it is restricted to seeking to influence only its members and their families or because it does not advocate specific candidates' election or defeat. The soft money aspect of labor's political activity has aroused controversy because of fundraising methods and the relative dearth of disclosure.

ORIGIN OF DISTINCTION BETWEEN HARD AND SOFT MONEY

During World War II, the War Labor Disputes Act of 1943, known as the Smith-Connally Act, prohibited unions from making contributions in federal elections.[1] In 1947, the Taft-Hartley Act made this wartime measure permanent and expanded it to include primary elections and any expenditures in connection with federal campaigns.[2]

Organized labor responded to the 1943 prohibition on donating union treasury money be creating the first separate segregated fund (SSF), commonly known as a PAC. Through CIO–PAC, the Congress of Industrial Organization established the precedent of collecting voluntary contributions from its members, which could be dispensed to favored candidates. Other national and local unions followed suit: 17 national labor PACs gave $2.1 million to federal campaigns in 1956, and 37 such PACs spent $7.1 million in 1968.[3] This money, raised and spent according to federal regulation, came to be known as hard money.

The concept of soft money arose during the several decades before the Federal Election Campaign Act (FECA) of 1971 was enacted [P.L. 92–225]. During that period, unions used money from their treasuries—as opposed to PAC money—for political activities other than donations in federal elections. These included: (1) contributions to state and local candidates, where union donations were allowed; (2) such ''educational,'' ''non-partisan,'' activities as get-out-the-vote and registration drives and distribution of voting records; and (3) public service activities to promote their philosophy through union newspapers and radio shows.[4] It was generally understood at that time that spending on such activities might influence federal elections less directly or overtly than candidate contributions; hence, it was not subject to federal limits or disclosure rules. Thus, the term soft money has come to mean money that is raised and spent outside the purview of federal election law and that is not permitted in federal elections, but which might have at least an indirect impact on those elections.

The 1971 FECA incorporated the concept of union and corporate SSFs in federal law for the first time. This landmark legislation also distinguished between political activities that were and were not to be federally regulated and thus, without using the term, provided the legal basis for union (and corporate) soft money. The Act amended 18 U.S.C. 610 (which banned union, corporate, and national bank spending in federal elections) to give specific authority for these organizations to use their general treasury money for political activities. It thus exempted certain union and corporate activities from FECA definitions of ''contribution'' and ''expenditure,'' if the activities are aimed at restricted classes (for unions, members and their families, and, for corporations, stockholders and their families). The specified activities were communications (including partisan ones), nonpartisan registration and get-out-the-vote drives, and costs of establishing, administering, and soliciting contributions to an SSF. The 1976 FECA Amendments (P.L. 94–283) recodified this provision as 2 U.S.C. 441b, added executive and administrative personnel and their families to corporations' restricted class, and allowed membership organizations, cooperatives, and corporations without capital stock to set up SSFs.

The FECA thus created a legal framework for unions to set up PACs to raise and spend money directly in federal elections, subject to federal regulation (hard money), and to use its treasury money for specified activities aimed only at its restricted class and not subject to federal regulation (soft money).[5]

CURRENT REGULATIONS

Under recently amended regulations, unions (and corporations) were acknowledged to have great latitude in communications with their restricted classes. Under these regulations, unions are exempt from FECA definitions of ''contribution'' and ''expenditure'' for communications on any subject, registration and get-out-the-vote drives (not just ''nonpartisan'' efforts), and costs of setting up, administering, and fundraising for an SSF. Such efforts, however, may only be aimed at union members, executive or administrative personnel, and their families.[6]

New regulations, promulgated to implement the intent of various Supreme Court decisions,[7] also introduced the standard of express advocacy in deciding what types of communications are permitted by and to whom.

''Expressly advocating means any communication that . . . uses phrases . . . which in context can have no other meaning than to urge the election or defeat of one or more clearly identified candidate(s) . . . .''[8]

Communications containing express advocacy are permitted by unions if limited to the restricted class; correspondingly, communications without express advocacy may be made to the public, if done independently of any candidate.[9]

HARD MONEY ACTIVITY: UNION PACS

Given the rising costs of elections and the higher contribution limits for PACs than individuals in federal elections ($5,000 versus $1,000), PACs became a growing source of campaign funds in the past 20 years.[10] As the pioneers in the PAC field, labor PACs grew in both overall numbers and money contributed, although by both measures, they have been increasingly overshadowed by corporate and other types of PACs.

When the Federal Election Commission (FEC) first recorded PAC activity in January 1975, 201 of the 608 PACs (one-third) were labor PACs. As of January 1996, there were 334 labor PACs, only 8.3% of the total 4,016 PACs.[11]

Another common gauge of federal PAC activity is the money contributed to congressional candidates (relatively little is given to presidential candidates). In 1974, Labor PACs contributed $6.3 million to congressional candidates, half of the $12.5 million from all PACs;[12] in 1994, labor PACs gave $40.7 million, 23% of the $179.6 million from all PACs.[13]

While union PACs do not play as large a role among all PACs as they did 20 years ago, they have been able to remain competitive by giving larger donations than most PACs. While there are far fewer labor than corporate PACs, the average labor PAC contribution of federal candidates in 1994 was twice the average for a corporate PAC. Given labor's traditional ties with the Democratic Party, it is not surprising that labor PAC donations are largely directed the Democrats. In 1994, for example, 96% of labor PAC contributions went to Democrats, compared with 49% for corporate PACs, 60% for nonconnected (unsponsored) PACs, and 54% for the trade/membership/health category.[14] The relative political uniformity among labor PACs is viewed by some as another way in which labor maximizes its political power.

SOFT MONEY ACTIVITY: UNION TREASURIES

Although there are no complete, publicly available data on amounts of union treasury money spent. One press account expressed a widely held view:

''Labor's real importance to candidates, though, is not so much the PAC dollars unions contribute directly to campaigns as the expenditures they make from their treasuries to lobby among their members. In each election, labor spends millions of dollars in advocating its preferred candidates before the union rank and file, but how many millions is unknown, and estimates vary widely.''[15]

Forms of support

Two major types of activities are financed by union treasuries which promote labor's political philosophy: (1) the exempt activities aimed at their restricted class (as described); and (2) non-express advocacy communications aimed at the public (also referred to as issued advocacy or public education).

In the exempt activities category, unions have a ready infrastructure (phone banks, office space, etc.) and a ready pool of volunteers to make their internal communications and voter drives a significant force. While these efforts may only involve a restricted class and while corporations have the same rights as unions in all soft money activities, the Bureau of Labor Statistics (BLS) reports that labor's restricted class totaled 16.4 million people in 1995, plus families.[16]

In terms of public education and issue advocacy, unions engage in the same type of efforts as many other groups in the public arena. These often involve media ads to influence public opinion on policy issues. By avoiding overt appeals to elect or defeat specific candidates, these groups may promote their political and philosophical goals without triggering federal campaign finance regulation.

Source of funding and compulsory dues issue[17]

Union treasuries are financed in large part through dues paid by members. In addition, under some union security agreements, workers who do not join a union must pay a form of dues called agency fees. There are no available data on how many workers pay agency fees, but the BLS data indicate that some 2 million workers were represented by unions but who were not union members.

Footnotes at end of article.

Some portion of these workers pay agency fees as a condition of employment.

Due to the compulsory nature of agency fees, some workers have objected to the unions' political uses of their payments. Among several relevant rulings, the Supreme Court, in *Communication Workers of America* v. *Beck* [487 U.S. 735 (1988)], said that a union may not, over the objections of dues paying nonmember employees, spend funds collected from them on activities unrelated to collective bargaining. Hence, objecting employees could get a pro rata refund of their agency fees representing costs of non-collective bargaining activities.

While the court rulings have left no doubt that dissenting workers are entitled to such refunds if requested, issues have arisen as to the extent to which unions should notify such workers of these rights. On April 13, 1992, President Bush issued Executive Order 12800, requiring federal contractors to post notices to employees informing them of ''Beck'' rights; this was rescinded by President Clinton on February 1, 1993 (Executive Order 12836). Bills have been introduced in recent Congresses to either prohibit the use of ''compulsory union dues'' for political purposes or to require greater notification of all workers' (not just non-members') rights regarding the use of their dues or agency fees.

Dollar value of union soft money

The only soft money unions must disclose under the FECA are express advocacy communications with members, but only when they exceed $2,000 per candidate, per election, and excluding communications primarily devoted to other subjects.[18] In 1992, unions reported $4.7 million on such activities.[19]

While unions are required to file financial reports under the Labor Management Reporting and Disclosure Act of 1959 (P.L. 86–257), these reports are arranged by type of expenditure (e.g., salaries, administrative costs) rather than by functional category (e.g., contract negotiation and administration, political activities). Under President Bush, the Department on Labor proposed regulations to change reporting to require functional categories (October 30, 1992); in a proposed rulemaking notice on September 23, 1993, the Department, under President Clinton, rescinded the change to functional categories.[20]

Due to the limitations of public disclosure, one must look to estimates of the total value of labor soft money. Such estimates, which amount to educated guesses and may be influenced by the political orientation of the observer, range from the $20 million labor supporters claim is its value in presidential campaigns,[21] to the $400–$500 million critics estimate for total labor soft money in a presidential election year.[22]

[1] 57 Stat. 167. Earlier in the century, the Tilman Act of 1907 [34 Stat. 864] had banned contributions from corporations and national banks.

[2] The Labor Management Relations Act of 1947; 61 Stat. 159.

[3] Alexander, Herbert E. ''Financing the 1976 Election.'' Washington, Congressional Quarterly Press, 1979. p. 559.

[4] Alexander, Herbert E. ''Money in Politics.'' Washington, Public Affairs Press, 1972, 1972. p. 170; Heard, Alexander, ''The Costs of Democracy.'' Chapel Hill, University of North Carolina Press, 1960. p. 177–8.

[5] The 1976 FECA Amendments required disclosure of internal communications once they exceed $2,000, the only exempt activity subject to federal disclosure requirements.

[6] 11 C.F.R. §114.1(a)(2)(i)–(iii)

[7] Most notably, *FEC* v. *Massachusetts Citizens for Life, Inc.* [479 U.S. 238 (1986)].

[8] 11 C.F.R. §100.22

[9] 11 C.F.R. §114.3(a), (b), (c)(1) and 114.4(c)(1). (If public communications are coordinated with a candidate, they would constitute prohibited in-kind contributions, regardless of content.)

[10] 2 U.S.C. 441a(a)(1) and (2); to be eligible for the $5,000 limit, most PACs easily meet the criteria for ''multicandidate committees'' (i.e., they must be registered for at least 6 months, receive contributions from more than 50 persons, and donate to 5 or more federal candidates).

[11] U.S. Federal Election Commission. FEC Release Semi-Annual Federal PAC Count (press release): Jan. 23, 1996.

[12] Common Cause. Campaign Finance Monitoring Project. 1974 Congressional Campaign Finances. Vol. 5—Interest Groups and Political Parties. Washington, 1976. p. xii.

[13] U.S. Federal Election Commission. 1994 PAC Activity Shows Little Growth Over 1992 Level, Final FEC Report Finds (press release): Nov. 1995.

[14] Ibid.

[15] Brownstein, Ronald, and Maxwell Glen. Money in the Shadows. National Journal, v. 18, Mar. 15, 1986. p. 633.

[16] U.S. Department of Labor. Bureau of Labor Statistics. Employment and Earnings, v. 43. Jan. 1996. p. 210.

[17] For fuller discussions of these issues, see: U.S. Library of Congress. Congressional Research Service. ''Use of Compulsory Union Dues for Political and Other Ideological Purposes.'' CRS Report 94–565A, by Thomas M. Durbin and Margaret Mikyung Lee. Washington, 1994.; —. ''Labor Controversies: Suspension of Davis Bacon''; ''Open Shop Bidding Requirements''; and '''Beck' Rights.'' CRS Report 93–458E, by Gail McCallion, Vince Treacy, and William Whittaker. Washington, 1993.

[18] 11 C.F.R. §100.8(b)(4) and 104.6.

[19] U.S. Federal Election Commission. ''Communication Cost Index.'' July 7, 1993.

[20] U.S. Department of Labor. Labor Organization Annual Financial Reports. Federal Register, v. 58, no. 243, Dec. 21, 1996. p. 67595.

[21] Alston, Chuck. Republicans Seek to Reduce Labor's Clout at the Polls. Congressional Quarterly Weekly Reports, v. 48, Mar. 31, 1990. p. 963.

[22] Testimony of Reed Larsen (National Right To Work Committee) and Professor Leo Troy (Rutgers University). U.S. Congress. House of Representatives. House Oversight Committee. March 19, 1996.

Mr. HATCH. Mr. President, let me reiterate: in my view, this violation of fundamental choice and freedom of speech is compounded by the fact that labor unions do not even disclose their soft money contributions, which amounts to hundreds of millions of dollars. That $35 million which we have all been reading about in the newspapers is really nothing. It is almost a wash compared to what they really spend. The unions pull in somewhere, it is estimated, around $4 to $6 billion a year, and up to 85 percent of that money, according to some estimates, is used for political purposes on local, State and Federal levels.

The Supreme Court, in 1988, in Beck versus Communications Workers of America, declared that workers were entitled to know how much of their dues were being directed to political uses and to receive a refund for that portion of dues paid.

I think a brief description of the Beck case is useful. Harry Beck was a telephone company technician working for the Bell Telephone System. He was not a member of the Communications Workers of America, but was required to pay agency fees to the union under the labor contract it negotiated with American Telephone & Telegraph Co.

In June 1976, 20 employees, including Mr. Beck, initiated a suit challenging the CWA's use of their agency fees for purposes other than collective bargaining, contract administration, or grievance adjustment. Specifically, Mr. Beck and his coworkers alleged that the expenditure of their fees on activities such as organizing the employees of other employers, lobbying for legislation, and participating in political events violated the union's duty of fair representation and section 8(a)(3) of the National Labor Relations Act.

The Supreme Court agreed that Mr. Beck and other objecting employees had a right to a refund from the union for the portion of their fees being used for political and other noncollective bargaining or representational purposes. This decision was, of course, significant for its holding that unions in the private sector are not permitted, over the objections of employees such as Mr. Beck, to expand funds collected from them for political and other activities unrelated to collective bargaining. In that regard, the Beck decision was a logical and reasoned follow-on to prior Supreme Court cases regarding the rights of employees covered by the Railway Labor Act to object to that portion of their dues or fees expended for noncollective bargaining purposes. See *Machinists* v. *Street,* 367 U.S. 740 (1961) and *Ellis* v. *Railway Clerks,* 466 U.S. 435 (1984).

The Beck decision was significant in its affirmation (1) that the Federal courts properly exercised jurisdiction over such cases as a violation of the unions' duty of fair representation and, (2) that such union conduct was also prohibited under the National Labor Relations Act, enforcement of which is charged to the National Labor Relations Board.

The rest of the system really is this. Regardless of what the court ruled—and it took some 8 years before the NLRB even got around to issuing its first ruling on a Beck-related case in 1995—all of the burden is being placed on the employee instead of on the union. For an employee to be able to withdraw his or her dues and to require disclosure, the employee has to go to court, file a claim before the NLRB, and/or has to go through all kinds of procedural maneuvers, and basically has to resign from the union and lose all of that employee's democratic rights to vote for or against strikes, for or against contract ratification, et cetera. In the end, the employee is basically out of a lot of money, out of his power of representation, and out of his right to vote. Why? Simply because one employee, pitted against a powerful union, has sought a voice in how his or her union dues is being spent for political purposes.

I do not see how we can consider campaign finance reform without correcting this injustice.

Nothing should be a more fundamental American right than political expression. Those Americans whose union dues are diverted for political purposes—without disclosure and without an adequate rebate system—have been treated as second-class citizens.

The NLRB has not only failed to implement the Beck decision, but the executive order issued by President Bush was rescinded during President Clinton's first days in office. That is amazing to me. If we want true campaign finance reform, why would we not clarify

this injustice to individual workers all over America?

What is even more amazing to me is that my colleagues on the other side of the aisle have fought any attempt to deal with this issue. Several years ago, I oferred a simple and straightforward amendment to campaign finance reform that would merely have required that unions disclose to dues paying members how their dues money is being spent. It was defeated.

It is about time that we realize that mega-labor unions are among the biggest—they are the biggest—special interests in the electoral system, and that their political capital was not always given away freely.

Unless this issue can be addressed, I do not see how we can call this campaign finance reform. It is more a continuation of campaign finance coercion.

Employees have a right to know how much of their moneys are used for partisan political activities with which they disagree. That is what the Supreme Court said, and that ought to be enforced. This bill will do nothing about that.

Mr. President, I yield back whatever time I have.

Mr. MCCONNELL. Mr. President, I yield the Senator from Colorado 2 minutes.

Mr. BROWN. I will take 1 minute. I ask unanimous consent that the Brown amendments 4108, 4109, as offered to S. 1219, be withdrawn because they were improperly drafted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I want to indicate my highest praise and respect for the authors of the underlying bill. I think they come with good intentions and an honest bipartisan effort. I am concerned about the bill. I am concerned about the prospect of us dividing up broadcast time. It does seem to me that that is a taking of property without compensation, and I believe it is a major flaw in the plan before us.

I yield the floor.

Mr. FEINGOLD. Mr. President, I yield 30 seconds to the Senator from Arizona.

Mr. MCCAIN. Mr. President, not for the first time I have heard complaint about the power of unions and how this bill does not address that appropriately. It just came from the Senator in the chair. If do you not like it, come to the floor and propose an amendment and do something about it. There are 53 votes on this side. Do not refuse to move forward with the bill. If you do not like the bill—everybody comes down here and says, ''I am for campaign finance reform, but just not this one.'' If you are not for this one, come to the floor after we invoke cloture, and propose your amendments. We have 53 votes on this side, 47 on that side. If they share the view of the Senator from Utah, then you can amend it and take care of it. But do not expect the American people to accept this story about ''I am for campaign finance reform but not this one,'' and then not vote to cut off debate because it is a filibuster, and then we cannot move forward with the bill.

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, let me reiterate what the Senator said. It was not our idea to have a cloture vote up front so there could not be amendments. That was the idea of the other side. That is the only way we could get the bill up for a vote.

I yield 5 minutes to the distinguished Senator from New Jersey.

Mr. HATCH. Will the Senator yield for 10 seconds?

Mr. BRADLEY. Not out of my time.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. HATCH. If it is on our time?

Mr. BRADLEY. I would be prepared to yield on the manager's time.

Mr. MCCONNELL. Mr. President, I yield the time out of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let me say this up front. If cloture is invoked, that type of amendment would not be germane and would not be permitted. If cloture is not invoked, I intend to bring up the amendment.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I think it says a lot if the Senate is not able to move forward on this good piece of legislation. I think this inability to move forward says two things.

The first thing it says is that fundamental campaign finance reform will not begin in Washington. It will begin in the States. The opponents of this bill like the status quo. They do not want to change the status quo. They have not offered an alternative. They have only picked at the bill. They want to keep money and politics just as it is today because they know how to work the system.

The fact is the American people have a different view. I am astounded how much opposition to this bill is rooted in a kind of Washington understanding of this country. The people in this country look at elected Representatives and Senators and they think we are controlled. They think we are controlled by special interest money. Some think we are controlled by parties that blunt our independence. Some think we are controlled by our opposition that prevents us from saying what we really believe and only saying things that will advance us to the next level of office. Some even think we are controlled by pollsters who give us focus views and phrases and paragraphs, that we do not think for ourselves, saying things because we have convictions in our heart.

The fact is that the opponents of this provision do not get it. This year there will be referendums in California, Colorado, Alaska, Arkansas, and Maine, and all of those referendums will be sending one message: reduce the role of money in politics; cut back on the role of money in politics.

Those referendums will be followed in the years to come by other referendums, and maybe after another 2 or 3 years the people in this body who like the status quo will change. I hope they will, because I believe money and politics today distort democracy.

That leads to the second point. We need to confront the central issue. The central issue is Buckley versus Valeo. The only way to confront Buckley versus Valeo directly is with a constitutional amendment.

The distinguished Senator from South Carolina and I have offered such an amendment for a number of years that would say simply that the Congress and the States may limit what is spent in a campaign in total and what an individual may spend on his or her own campaign. Until we take that step, we are going to be constructing Rube Goldberg types of contraptions to try to get around the central issue, which is, money is not speech. Anybody who believes that money is speech, in my opinion—the Supreme Court said it was, and, therefore, it is the law of the land. That is why we need to amend the Constitution. But I do not believe that a rich man's wallet in free-speech terms is the equivalent of a poor man's soapbox. We have to confront that issue directly. Otherwise, we are going to be in these debates about antacid and bubble gum. Even that debate is a diversion from the central issue, which is changing the way we now do politics in Washington, but even that issue is based on a confusion.

Capitalism is different than democracy. The distinguished Senator from Kentucky said, ''Well, we have to compare antacids and bubble gum because''—compared to what? I would suggest you compare the amount of money in politics in 1980 versus the amount of money in politics today and the size of the contribution and the sources of the money.

Without question, money is distorting democracy. And, indeed, we have had other times in American history where there have been distortions in our democracy. We have changed it by recourse of the constitutional amendment.

Many people will remember earlier in this century when women did not have the right to vote. The absence of that voice in the polling booths distorted democracy. We passed a constitutional amendment giving women the right to vote in order to restore a broader participation.

I believe today money is playing the same role. The fact of the matter is that until we confront this issue, skepticism is going to be high. People say, ''Well, it is not the No. 1 issue on people's minds.'' That is true. The No. 1 issue on people's minds is, how do I put

bread on the table? How do I pay the utility bill? How do I send my kids to college? They are dealing with the economic transformation which we are in. That is the No. 1 issue. But when they say, ''Do any of the politicians have any relation to my dealing with these issues,'' people say no, because politicians are controlled by money. That is why this is a linchpin issue.

Mr. FEINGOLD. Mr. President, I thank the Senator from New Jersey.

Mr. President, I yield 3 minutes to the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator.

Mr. President, let us be very clear. I think we all get a sense of what is going to happen here in about 3 hours and 45 minutes, and that is cloture, instead of being invoked, is not going to be invoked.

Everyone ought to understand this. This is the vote. This will be your vote in this Congress on campaign finance reform. It is going to come down to this. It will get obscured so much because it is a procedural vote. But how you vote on this will be determined on how you are judged on the issue of campaign finance reform.

The idea that we ought to reject the effort to invoke cloture here because we want to make perfect the enemy of the good, I think is a great tragedy. I think it is so transparent that anyone watching this will see right through it—to come up and say, ''I don't like this aspect or that aspect,'' therefore denying the opportunity for cloture to be invoked. As I listened to our distinguished colleague from Utah suggest an amendment that might have something to do with whether or not organized labor would be able to participate with soft money, or that independent campaigns will not be allowable in a postcloture environment, it is ridiculous on its face.

So I want to commend our colleague from Arizona and our colleague from Wisconsin for bringing this up. I am proud to be a cosponsor of it. I have believed for years that we had to move directly and aggressively in this area of campaign finance reform.

Mr. President, in Connecticut, it is $16,000 a week. That is what you have to raise over a 6-year period every week, week in and week out, if you are going to be successful in taking on or waging an effective campaign.

We know today—quite candidly, all of us in this Chamber know—that the respective leaders of our campaign committees are out recruiting affluent candidates. Go out and buy a candidate who is well-heeled financially, and you have a pretty good candidate, someone who can write their own checks. Why seek those kind of candidates? Why? Because you understand that it is money. It is money that allows you to ante up and to get an entry fee into the contest.

There is a woman by the name of Linda Sullivan who a few weeks ago in Rhode Island—and I do not know much about it, what the issues are or what she stands for—said: ''I took my race out of Congress because Mr. and Mrs. Smith can no longer be candidates of the Congress of the United States on an average basis in their finances.''

So we all know her situation. Every single one of us knows that the debates around here are directly affected by it. Positions people take are directly affected by this issue.

This is not a sweeping piece of campaign finance reform legislation, but it is the first effort we are going to have to make a difference in this area. After years of talking about it we now have a chance to do something about it.

Mr. President, I am general chairman of the Democratic National Committee. I just want to say, while not everyone in my party agrees with this, that I happen to believe this is important. This is the one opportunity we are going to have to make a true difference on how we wage campaigns in this country.

I plead with our colleagues on both sides of the aisle. We have never had a bipartisan proposal here before. It has always been partisan. This is a chance to go on record. This is a vote on campaign finance reform.

Mr. President, I rise on the floor today for what I believe is a truly historic debate.

As America's elected leaders we play a critical role as guarantors and protectors of our Nation's democratic institutions.

And with this legislation today, we have a unique opportunity to fulfill that mandate as leaders—by beginning the long and arduous process of restoring the American people's faith in their Government and their democracy.

The McCain-Feingold bill will not change the American people's seemingly inherent cynicism toward their Government overnight.

That is an ongoing process—and one that should be of paramount concern to every Member of this body.

However, by reducing the role of money in our campaign system, this legislation takes a critically important first step toward cleaning up our political process.

In my view, there are few issues we in Congress consider that have as overwhelming and direct an impact on the functioning of our democracy than the laws governing how we run campaigns in this country. For many of us, campaigns are often the most direct means by which we, as elected representatives, communicate with our constituents.

But, today those lines of communications are frayed by a political process that rewards those with money and influence, rather than working families and Americans struggling to make ends meet.

Created as a Government of the people and for the people, our Government today seems to operate more for the well-connected few than the country as a whole.

That's why, more than any other time in our history, the American people's confidence in their Government and its elected leaders is abysmally low.

Poll after poll provides ample evidence that the American people believe special interests and lobbyists have a greater influence on our endeavors than the will of the voters.

I believe wholeheartedly that the vast majority of those who serve in the U.S. Congress are well-intended and responsive to the varied needs of their constituents.

However, I think I speak for many of my colleagues when I say it is becoming more and more difficult to make that argument to the American people.

Because, when the American people look to Washington they do not always see citizen-legislators who focus their full energies on tackling the problems impacting America's working families.

Instead, they see corporate lobbyists working hand-in-hand with lawmakers to turn back the clock on 25 years of environmental protection.

They see special interest lobbyists with unfettered access to committee rooms drafting legislation that fails to keep our workplaces safe and protect the food we eat.

When they look to Washington, they hear politicians in positions of great power and influence bemoaning the lack of money in our political process.

They see leaders who insist that the political process is starving even though $724 million was consumed on House and Senate campaigns in 1994 alone.

When they look to Washington they see unlimited access and influence given to the fewer than 1 percent of Americans who can, and do, give more than $200 a year to political campaigns.

And, when they look out on the campaign trail they see a political process dominated by candidates with deep pockets, instead of those with new ideas.

Whatever one may think of Steve Forbes' ideas on the flat tax or economic growth, it is doubtful that most Americans would know about them if he were not a multimillionaire.

Consider that in his run for the Republican Presidential nomination, Forbes spent $400,000 per delegate that he won in the Republican primaries. Our colleague Senator PHIL GRAMM, spent $20 million to win 10 delegates. For Bob Dole, his victory in the Iowa caucuses cost him about $35 a vote.

In fact, Presidential candidates spent more than $138 million by the end of January 1996—all before a single American voter had stepped into the voting booth to cast their ballot.

Is it any wonder the American people are cynical and disenchanted with their elected leaders?

But, the vast sums of money needed, for even unsuccessful runs for public office, are simply out of reach of the average American.

Eighty-five years ago, former President Theodore Roosevelt said ''the

Representative body shall represent all the people rather than any one class of the people * * * .''

But today, not only are we becoming more responsive to one class of citizens, but the reins of leadership are increasingly available to only a select few Americans.

Throughout my more than 21 years of public service, it has been my great privilege to serve the people of Connecticut in the U.S. Congress.

Every time I come to the floor of this body I am humbled by the great men and women who came before me: Daniel Webster, Henry Clay, Everett Dirksen, Lyndon Johnson, Richard Russell, and the list goes on.

But today in America, I genuinely fear that the next generation of Clays, Websters, Doles, and Byrds will be excluded from a process that favors the privileged few.

This is not just partisan rhetoric. There are real Americans who are being thwarted from seeking public office.

Just a few weeks ago, I read about Linda Sullivan, president of the Warwick City Council in Rhode Island.

Ms. Sullivan considered seeking the Democratic Party's nomination for the seat of Congressman JACK REED, who is running for the Senate.

But, she decided against it because she simply couldn't raise the $450,000 needed to seek the nomination.

And I want everyone to hear what she said, because it says a lot about our current campaign system.

Unfortunately, my campaign has come face to face with the financial reality that governs today's politics in America. Sadly, Mr. and Mrs. Smith cannot go to Washington anymore.

Now, I do not know Ms. Sullivan personally. I do not know anything about her ideas, her policy prescriptions or her capability as an effective legislator.

But, what I do know is that the exclusion of an entire segment of the population from the political process threatens to undermine the whole notion of participatory democracy in this country.

What is more, it fundamentally limits the choices of the American people to politicians who, more and more, are incapable of understanding the problems of working class Americans.

Aristotle once said that; ''Democracy arises out of the notion that those who are equal in any respect are equal in all respects.''

But, when it comes to political campaigns in this country and the access that working Americans have to their lawmakers, those words ring hollow.

Mind you there are no silver bullets for ending the American people's inherent cynicism or feeling of disempowerment toward their government.

But the legislation we are debating today is the foundation by which we must begin this process of change.

First of all, by limiting overall campaign spending, the McCain-Feingold bill would allow candidates to focus less time on raising money and more time on tackling the issues that truly affect the American people.

Now, I know some of my colleagues argue that this provision of the bill violates the 1976 ruling that political campaign spending is a form of political speech, and thus protected by the first amendment.

But, this legislation imposes only voluntary limits on campaign spending. No candidate would be mandated to accept them.

In fact, no provision in this legislation would prevent a candidate from spending as much money as they wanted to.

However, if they chose to abide by these voluntary limits, candidates could receive free television time, could purchase advertisements at lower rates, and could send out mail at cheaper rates.

Additionally, the bill would tackle the issue of millionaire candidates by exempting candidates from the bill's benefits if they spend more than $250,000 of their own money.

The McCain-Feingold bill is by no means perfect. In particular, we need to be sure that working people are not restricted from participating in the political process and that grass-roots and volunteer activities are not constrained.

However, it is an excellent place to start in reforming the means by which we fund political campaigns in this country.

Let me clear on one point: I am not a Johnny-come-lately to this debate. In 1985, I sponsored one of the first legislative proposals to reform campaign finance laws.

And as a Congressman, Senator, and now general chairman of the Democratic party I have flourished within the framework of the current system.

But, after 20 years of public service I am more convinced than ever that the current approach to funding political campaigns in this country is broken and desperately in need of reform.

Time after time, we have talked about reform—particularly when it is an election year—but in the end we have done nothing. We have appointed commissions, we have proposed legislation, we have ordered reports, analyses and studies, and yet in the end, it seems that it is just business as usual.

Well today, I call on all my colleagues to chart a new course, to put aside their partisan differences, to ignore how this bill affects our reelection chances and put first and foremost in our deliberations the good of the Nation.

Let us not forget that a Government that is viewed with suspicion and mistrust by its own people cannot sustain our Democratic institutions.

As Henry Clay, a former Member of this body once said:

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

Let us remember that: our democracy exists for the benefit of the people—and not their elected leaders.

As leaders, we must not shirk our responsibility to do all we can to restore that sense of trust to the American people. The McCain-Feingold bill begins that process and I believe that as a body we have a solemn responsibility to embrace this legislation.

Mr. FEINGOLD. Mr. President, I yield 30 seconds to the Senator from Arizona.

Mr. McCAIN. Mr. President, I ask unanimous consent that in the event that cloture is invoked, that two amendments be made in order and germane, one on the Beck decision and the other on allowing unlimited spending on campaigns.

The PRESIDING OFFICER. Is there objection?

Mr. McCONNELL. Mr. President, I have no objection.

Mr. McCAIN. Mr. President, I withdraw the unanimous consent request, but I want to make it clear that in the event that cloture is invoked, that the unanimous consent proposal made would make those amendments germane to this bill. But I withdraw the unanimous consent request.

The PRESIDING OFFICER. The request is withdrawn.

Mr. McCONNELL. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There are 24 minutes and 23 seconds.

Mr. McCONNELL. I yield to the distinguished Senator from Oklahoma 5 minutes.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the Senator for yielding. I do not think I will even take that much time. I know time is very precious right now. I have been listening to the debate, and I am the first one to say I am not on any of the committees that deal with this, so it is not that I have been entrenched in this issue. I agree with one thing the Senator from Connecticut said, and that is it is very transparent, the things that are going on around here.

The Senator from Utah was very specific and I think very articulate in the way that he addressed how this would affect labor unions. It is my understanding that even in the reporting aspects of soft money each local could give up to $10,000 without even reporting it. So let us assume that they report accurately and that someone who says that a local says it is contributing less than $10,000 is in fact correct. I am not ready to accept that. But let us assume that is right. If you have a hundred locals, you are talking about a million dollars. No one will ever know where it came from. This is money that is used very effectively in campaigns.

So as far as I am concerned, one of the big areas that should be regulated is left out of this thing, and that is labor unions. And then there is trial lawyers. I have to tell you that every time I run for office there are thousand-dollar checks coming from all

over, from trial lawyers from all over America because I am the one who has on his agenda a desire that I am going to fulfill to see to it we have real meaningful tort reform in this country, to make us competitive again. So we have the trial lawyers out there with the ability to send in, on their own contributions of $1,000 apiece, to maybe six different campaigns. Maybe there are 100 of them who are out there. All you have to do is look at an FEC report and you can see that they are doing it.

Let me make one comment about PAC's. Everyone assumes that political action committees are something evil. Political action committees allow small people to get involved, people who are of low incomes to get involved in the process, and there is not any other way they can get involved. I have been a commercial pilot for I guess 38 years. I have been active in aviation. I believe that aviation makes a great contribution to the technology of aerospace and many other things, and consequently I am supported by the Aircraft Owners and Pilots Association, AOPA, 340,000 members. Each one puts in about $5 and they do contribute to people who are supportive of the industry that they believe in.

The NRA, they have taken a lot of hits recently. Who are the NRA? When you sit up here, you are looking at millions of dollars in Washington, but if you were with me last weekend in Hugo, Cordell, Lone Grove, Sulphur, those are people who belong and they might give $5 a year because they honestly in their hearts believe in the second amendment rights to the Constitution. I do, too. They contribute. These are not big fat cats, wealthy people. So I think to categorize PAC's as being something that is evil in our society is wrong.

The third thing I do not like about this legislation that is coming up, and I will be opposing it, is the arrogance that is there. We have reduced postage for us—not for you, not for anybody else but for us. Now, what happens when you reduce our postage? It is all out of one fund. So other postage is going to end up going up. It is just sheer arrogance that we should be treated differently than everybody else.

We passed legislation, a very good bill through this Chamber at the very first of this Congress and that was the bill which made us live under the same laws as everybody else. All of a sudden people around here are looking, pointing fingers, saying, should we have done that? Here we are again, coming right on the heels of that, saying we are going to give us a benefit nobody else has.

The Senator from Massachusetts a minute ago stood up and said we ought to have more free time on TV. Who are those broadcasters out there? Are they all fat cats? I go around Oklahoma. We have small stations. They are going to give time, and if they do not give free time, they are going to have to give a reduced rate, 50 percent of the lowest rate. That is for us because we are in Congress. We are important people. We are supercitizens—not everybody else, just us.

The arrogance in the way we are approaching that, saying we are entitled to things other people are not entitled to I find to be very offensive.

Mr. President, I conclude by saying I agree with the Senator from Connecticut. This is transparent. The two biggest offenders, the ones who contribute the most to campaigns—and I would categorize them as organized labor and trial lawyers—are not going to be inhibited in any way by this bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MCCONNELL. I thank my good friend from Oklahoma for his important contribution to this debate.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 19 minutes.

Mr. MCCONNELL. I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I thank the Senator from Kentucky for his diligent and dedicated efforts to this debate for a long, long period of time—probably longer than he wishes.

I know it has been said many times but I think everybody should see a caution flag go up when the Republican National Committee, the National Taxpayers Union, the National Right to Life Committee, the National Rifle Association, the American Civil liberties Union, the Christian Coalition, Direct Marketing Assocation, National Association of Broadcasters, National Assocation of Business PAC's, National Education Association, the complete political spectrum, all are opposed to this legislation. Why? Because it is an infringement on the first amendment of the Constitution of the United States. It is that simple.

Just moments ago I was at a hearing where a former Presidential candidate, Gov. Lamar Alexander, said it best. He said these efforts to regulate and restrict have left labor with full constitutional rights of the first amendment, political parties with full constitutional rights of the first amendment, the entire media of the United States with the full rights of the first amendment, and only one category is being denied their rights under the first amendment, and who is that? It is the candidates, the candidate for President, the candidate for Senate, the candidate for Congress. The only class for which we restrict first amendment rights, the people who will ultimately represent America are the single class we carve out to deny first amendment rights.

Mr. President, this kind of legislation envisions a very narrow sanitized environment, almost like a prize fight with two contestants inside a defined ring, and there are rules that define how that combat will be conducted. But in the case of American politics, vast resources affect the outcome of the election. Take my State. The largest newspaper in the State is the Atlanta Constitution. It has a circulation of a half a million, on Sunday 750,000, and they can say anything they choose and meddle in every political race, and with everybody's acknowledgment, and even theirs, with a very biased and fixed agenda.

So in seeking office a candidate who might not agree with that agenda is not simply dealing with his or her opponent; they are dealing with the extraneous factors—the media itself, the State's largest daily newspaper. Why is it that this corporation, the Atlanta Constitution—it is a corporation, I might add—is not restricted under campaign finance? Why are their first amendment rights protected but Ace Hardware's are not? They can say anything they choose. They can put an editorial in their editorial page every day for a month. They can comment, as they do, on the fortunes of a political campaign every day. To buy an ad in that paper might cost, one page, $14,000, or a half a page $7,000. So think of the enormous resources that are being invested in meddling or commenting, however you want to put it, on the outcome and fortunes of a political race.

We take the candidate and draw narrow parameters around that candidate in terms of how he or she can communicate.

Frankly, I think it is the candidate that should be the freest to express him or herself, to talk about and interpret his or her beliefs. The idea of restraining that candidate's capacity only enlarges the forces of those who do not ultimately represent the people—the journalists, the media. Would it not be far better to let the person who is going to represent the American people, the person who is going to represent the people from the good State of Georgia, to be on equal footing with all these other resources? The answer to that question is yes.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. COVERDELL. I ask for 1 additional minute.

Mr. MCCONNELL. I yield my colleague 1 minute.

Mr. COVERDELL. I think the Governor of Tennessee said it best. The first amendment is protective for the labor movement, for the media, for special interest groups, and one class in American politics has been carved out for denial of first amendment rights: the candidates. That is not appropriate.

I yield the floor.

Mr. MCCONNELL. Mr. President, I say to my friend from Georgia, special thanks for a superb presentation.

I just want to make one additional comment to follow on. The proponents of this kind of legislation have said

over the years they wanted to level the playing field. I would say to my friend from Georgia, he and I compete in the political arena in the South. In order to level the playing field in my State, not only would you have to get a number of the newspapers sold to different kinds of owners, you would also have to change the voter registration and history of the State in order to create a remotely level playing field upon which a person with the disability that the Senator from Georgia and I share, that disability of being registered Republicans, so we could compete on a truly level playing field.

In fact, even the attempt to create a level playing field is constitutionally impermissible. Buckley verus Valeo addressed that particular issue. So I thank my friend from Georgia for a remarkable contribution to this debate.

Mr. COVERDELL. I thank the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Wisconsin has 15 minutes.

Mr. FEINGOLD. I yield 1 minute to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, it has been my honor to work with Senator FEINGOLD and Senator MCCAIN from the very beginning, and Senator THOMPSON. I spoke yesterday, so I will be very brief, less than a minute.

The way in which big money has come to dominate politics, I believe, is the ethical issue of our time. Too few people have way too much power and say, and the vast majority of the people in our country are not well represented.

The standard of a representative democracy is that each person should count as one and no more than one. That standard is violated every day by the way in which big money dominates politics in our country today. I say to my colleagues, I have worked on gift ban. I have worked on lobby disclosure. This is the reform vote of the 104th Congress. We are just asking for an opportunity to have the debate, move the bill forward, and make it better.

Mr. President, to go to a commission—I say to my colleagues, do not look for cover, because a commission to study the problem is not a step forward, it is a great leap backward.

Ms. MOSELEY-BRAUN. Mr. President, I rise today in support of the McCain-Feingold–Thompson bill, S. 1219. Although this bill is not the ideal resolution of this complicated issue, it is clear that the time has come to reform the campaign finance architecture.

Campaign finance reform is needed to restore the American people's faith in the electoral process. Americans are frustrated; many believe that the current system cuts them off from their Government. A recent League of Women Voters study found that one of the top three reasons people don't vote is the belief that their vote will not make a difference. We saw the result of this cynicism in 1994 when just 38 percent of all registered voters headed to the polls.

Voters, and not money, should determine election results. The money chase has gotten out of control, and voters know that big money stifles the kind of competitive elections that are essential to our democracy. The effort to raise the money needed to run for election ends up making it more difficult to make needed reforms in a whole range of areas. This system must be reformed.

The effort needed to raise the average of $4.3 million per Senate race in the last election decreases the time Senators need to meet their obligations to all of their constituents. Furthermore, when voters see that the average amount contributed by PAC's to House and Senate candidates is up from $12.5 million in 1974 to $178.8 million in 1994—a 400-percent rise even after factoring in inflation over that period—there is a perception that lawmakers are too reliant on special interests to make public policy that serves the national interest. More and more voters believe that Members of Congress only listen to these special interest contributors, while failing to listen to the very constituents who put them into office.

That is part of the reason why there is overwhelming public support for reform. And make no mistake, there is a real public consensus that reform is needed—now. Ordinary Americans want—and deserve—Government that is responsive to their needs and problems. The way to do that is through spending limits. Spending limits will make our system more open and more competitive. Spending limits can help focus elections more on the issues, instead of on advertising.

Unfortunately, however, for all of its strengths, S. 1219 does not cure all the flaws of our current campaign finance system. The legislation has gaps, and in some areas, it has made mistakes, mistakes that deserve the Senate's attention before this bill becomes law.

When the Senate considered campaign finance reform in the 103d Congress, I quoted a column by David Broder. He made the point that many of the reforms that resonate strongly with the public ''have a common characteristic: they would all increase the power of the economic and social elite that most vociferously advocates them. And they might well reduce the influence of the mass of voters in whose name they are being urged.''

I think that we need to take Mr. Broder's warning to heart. We must be sure that we don't have a process that only further empowers political elites that are already empowered. We want campaign finance reform that allows candidates more time to talk to voters. Voters want to know that the system works for ordinary Americans and not just those few who can devote substantial time and money to politics. They deserve better than the present system.

The inordinate effort required to raise massive amounts of money within the strictures of contribution limits make fundraising a continuous and time consuming condition of elections.

It is also worth keeping in mind that campaign finance reform cannot work for every American unless it also works for every candidate, including minority candidates and women. Minority and women candidates currently have less access to the large sums needed to run for office today than other candidates. That financial inequity is one of the primary reasons both women and minorities have long been under-represented in both the Senate and House. The spending limits in S. 1219 are very important in addressing their concerns, but reform will only be truly successful if it increases opportunities for candidates from all walks of life and our society. Campaign finance reform will be counted as a failure if the numbers of women and minorities in Congress goes down, rather than up, under a new system.

S. 1219 attempts to level the playing field for all competing candidates. It establishes a voluntary system by which candidates who agree to limit their overall spending receive certain benefits, including 30 minutes of free broadcast time, television and radio time at 50 percent off of the lowest unit rate, and reduced postage rates.

If a complying candidate's noncomplying opponent has raised or spent 10 percent more than the State spending limits, then the complying candidate can spend 20 percent more than the spending limit and still be in compliance with the bill. If a noncomplying candidate raises or spends 50 percent more than the spending limits, the complying candidate's limits increase 50 percent without penalty.

Furthermore, complying candidates cannot spend more than the lesser of 10 percent of their spending limit, or $250,000, from their personal funds. When a candidate declares their intention to spend more than $250,000 of personal funds, the $1,000 contribution limit for individuals is raised to $2,000 for complying candidates, and the noncomplying candidate does not qualify for any of the bill's benefits.

These steps represent real progress, but the problems here are very serious, and need much more attention. Those who are independently wealthy have unequal access to the political system, and if reform is to work, we have to do something about that.

Self-financing candidates are a rapidly growing phenomenon in our current political system. In 1994, one candidate for the Senate spent a record setting $27 million, almost all of which was his own money. And over the last year, a Presidential candidate spent $30 million of his own money for the primary elections alone. Without workable spending limits that apply to every candidate, those who can break the limits by dipping into their own deep pockets will end up dominating

our politics, even more than is the case now. Talented, but less wealthy candidates will have it tougher than ever. The trend toward a Congress comprised disproportionately of millionaires does a disservice to representative democracy. Such trends are a very troubling aspect of the loss of confidence in our system. This bill does not resolve that fundamental flaw.

Imposing spending limits on millionaire candidates is very difficult, given the Supreme Court's decision in the case of Buckley versus Valeo, which used a first amendment justification to invalidate a congressional attempt to impose limits on the amount a candidate can contribute to his or her own campaign. However, there are things that Congress should consider that might be able to bring self-funding candidates into a campaign spending limits regime, or at least provide enough disincentives so that these candidates will no longer profit politically by using their own resources to finance their campaign cash flow.

The relevant provision of the 1971 Campaign Act that was invalidated in Buckley provided that a Presidential candidate could spend no more than $50,000 out of personal resources. It is at least possible that with a much more generous, though not unlimited, opportunity for candidates to spend their own money, the infringement of individual freedom is less severe, and perhaps not substantial as stated by the Court in Buckley. After all, it is one thing to tell a candidate that he or she can't spend more than $50,000 of personal money; it is quite another to say he or she can't spend more than $1 million—and that the rest must be raised from small contributors in order to demonstrate broad political support.

If candidates were required to seek and demonstrate support from a broad range of individuals—an important component of the democratic process—the Supreme Court might see the first amendment issue somewhat differently. An appropriate analogy would be the laws that require candidates to obtain a certain number of signatures as a requirement for access to the ballot. In other words, the reason for this limit would not be to equalize resources, but to ensure that the amounts candidates spend have some relation to breadth of support. This proposal may be at least arguably consistent with Buckley, since the Court in that case recognized that the Government has ''important interests in limiting places on the ballot to those candidates who demonstrate substantial popular support.''

In fact, it is that statement by the Court which demonstrates the flaw in the Buckley versus Valeo decision. In the not too distant past, a candidate had to have the endorsement of a political party, or have his or her own strong, grass roots organization in order to have the large number of people it takes to gather sufficient petitions to be put on the ballot. Now, however, it is actually possible to hire people to collect petition signatures, so petitioning does not necessarily demonstrate broad support the way it used to. In fact, a wealthy candidate, under the current state of the law, doesn't have to have any broad support at all to gain access to the ballot, only enough money to hire enough petition collectors. If the important government interest the Buckley Court acknowledged is to be protected, therefore, some limits on the use of money by wealthy candidates is required. The use of money by wealthy candidates has to be brought into the bill's reforms.

Bringing self-funded candidates completely under the bill's reform umbrella is a necessary step, but another area of the bill also needs another look—the treatment of groups such as EMILY's List and WISH List. EMILY's List and WISH List have helped bring women into politics. EMILY's List and the efforts of the women's fundraising organizations is one of the main reasons there are now 33 Democratic and 16 Republican women in the House, 8 women Senators instead of just 1, and 2 Democratic women governors.

EMILY's List has energized women; it has given more women a way to participate in our political system—women who have never participated before. As the New York Times noted, ''alone among fund-raising organizations, EMILY's List doles out millions of dollars and then seeks nothing back from its beneficiaries. Its only mission is to get women elected to Congress and the State houses.'' I think that kind of activity should be encouraged, and not limited.

EMILY's List has helped open up our system; it has showed more women that the system can work for them. I think that EMILY's List is American democracy in its purest form. EMILY's List should be applauded and encouraged, and not terminated.

I want to conclude, Mr. President, by returning to where I began. I think that it is long past time for Congress to reform the campaign financing system. This bill goes a long way toward making some real changes to our current system. It is far from perfect, but it is a work in progress. The bill's flaws can be corrected as we move forward through the remainder of the legislative process. I am therefore voting today to take the next step, to invoke cloture, because the bill cannot be corrected if it is not considered by the Senate. And if we fail to invoke cloture, this bill will fail. I do not want to see that happen, and neither do the American people. They expect us to act on real campaign finance reform this year. I will cast my vote to meet that expectation; I hope all of my colleagues will do likewise and that this Senate will meet its duty to the American people to change campaign finance.

Mr. BIDEN. Mr. President, here we go again, Mr. President. Another chapter in the never ending effort to reform the way we finance political campaigns.

I feel like I am driving a race car around a track and no matter how long and how far I drive, the checkered flag just never seems to come down. We never seem to reach the finish line. We are never able to finish what we start.

And, now, today, the question before us is whether we will even be allowed to start—whether we will even be allowed to debate the issue of campaign finance reform.

I have been on this track for almost 24 years now. One of the first things I did as a new Senator back in 1973 was to testify before the Senate Rules Committee on the need for campaign finance reform—on the need for spending limits and public funding of congressional campaigns; on the need for equal competition based on ideas, not money, between challengers and incumbents. Let me tell you, I did not make many friends.

But, I believed then—and I believe as strongly today—that campaign finance reform is the single most significant thing Congress could do.

The American people have come to believe the system has failed. The American people have lost faith in their leaders and in their Government. The American people feel alienated and distant from the very people who represent them.

There are several reasons for this. But, the biggest—and probably what all others boil down to—is the way we fund our elections: the influence of money; the influence of special interests; the influence of everyone, it seems, except the average middle-class American.

A middle-class American does not make a $1,000 contribution. A middle-class American does not hire a lobbyist to wander the Halls of the Capitol and make $5,000 campaign contributions. A middle-class American does not ask a Congressman to hand out campaign contributions on the floor of the House of Representatives.

No. A middle-class American walks into the voting booth on election day, if he or she has not been turned off by that time, and engages in the most important exercise in a democracy. He or she casts a ballot for a person to represent them.

But, when it is all said and done, many middle-class Americans feel that they are not being represented. They have become apathetic, cynical, and distrustful. And, I'm afraid this is not a whim or a passing feeling. It may be wrong in reality—it may be right—but it should not be taken lightly by those of us in Congress. There is a major crisis of confidence in the American electorate, and it puts at risk everything else we attempt to do. That is why I believe campaign finance reform is the crucial issue of our time.

So, Mr. President, our mission is clear. We must restore integrity and confidence in the political process.

And, to do that, we must have comprehensive campaign finance reform.

Unfortunately, today, we are not even voting on a campaign finance reform bill. This is a vote on whether we will be allowed to vote on the bill. And, you wonder why the American people are so sick of this system.

The special interests have circled the wagons. They are on the warpath to kill campaign finance reform.

So, I implore my colleagues: stand today with the American people. Let us take up this bill—the first bipartisan campaign finance reform bill in nearly a generation. Let us debate the issue. And, let us decide the issue on the merits, not on inside-the-beltway maneuvering.

The American people demand no less.

Mrs. MURRAY. Mr. President, this past February, over 4 months ago, I took the Senate floor to announce my cosponsorship of S. 1219. As I spoke about how unique this bill is—one of the only truly bipartisan attempts to reform campaign laws in two decades—I could not help thinking to myself, ''here we go again.''

I have only been a Senator for a little over 3 years. In Senate terms, that is not very long. But I have been here long enough to see campaign finance reform come up, and be killed. In the 103d Congress, shortly after the 1992 elections, I proudly cosponsored campaign reform legislation. I was eager to answer the voters' hopes for cleaner, more thoughtful politics.

I watched colleagues come to the floor, proclaim the need for reforms, and declare their support for good legislation. The Senate passed that bill, S. 3, and sent it to the House. A short time later, I saw it killed amidst partisan bickering, despite the mad scramble of Senators wanting to be seen as leading the charge for reforms.

In the end, nothing was accomplished, and here we are today living under the same campaign system that has created so much cynicism and mistrust among the voters.

So when I endorsed S. 1219, I thought ''here we go again'' because I was embarking on my second attempt to reform campaign laws. But this time, instead of thinking we could simply pass a bill and send it to the White House, I knew we had our work cut out for us.

Now it is June, and the 104th Congress will adjourn in a few months. While we are only now taking up campaign reform, I am still encouraged. For the first time in a long time, the Senate is considering a truly bipartisan bill. It has not been drafted by one party or another to give themselves a leg up.

It has been drafted by a Republican and a Democrat, JOHN MCCAIN and RUSS FEINGOLD, because they know that until the two parties come together and focus on common sense reforms we can all agree on, nothing will get done. It is supported by thoughtful new Senators like FRED THOMPSON of Tennessee and CAROL MOSELEY-BRAUN of Illinois who, like me, were elected to make changes in the political system.

We have a very narrow window of opportunity today. It is narrow because we have only a few months left in this Congress, and we have a lot of work to do. It is an opportunity because it is a bipartisan bill, free of taint, and maybe—just maybe—capable of restoring some faith to the people. In light of this, it is critical that we move quickly.

I urge my colleagues to stop, look, and listen. Listen to people at the coffee shops. Talk to friends, to family members. Walk through a neighborhood. A basic, fundamental lack of faith in Government lays at the root of peoples' concerns about the future. Until something dramatic happens to address public confidence in the political system, we can expect the gap between the people and their Government to widen.

There is nothing I can think of that would be worse for this country; for alienation breeds apathy, and apathy erodes accountability. America is the greatest democracy the world has ever known, and it was built on the principle of accountability: government of the people, by the people, for the people. We simply must restore peoples' faith in their Government.

At the core of the problem is money in politics. Right now the system is designed to favor the rich, at the expense of the middle class. It benefits the incumbents, at the expense of challengers. And most of all, it fuels the special interest, inside-the-beltway machine at the expense of the average person back home.

The average person feels like they can no longer make a difference in this system. Earlier this year, my campaign received a $15 donation from a woman in Washington State. She included a note to me that said, ''Senator MURRAY, please make sure my $15 has as much impact as people who give thousands.''

She knows what she is up against, but she is still willing to make the effort. Unfortunately, people like her are fewer and farther between, and less willing than ever to try to make a difference.

We see her problem when people like Ross Perot or Steve Forbes are able to use personal wealth to buy their way into the national spotlight. Ninety-nine percent of the people in America could never even imagine making that kind of splash in politics. Should we rely only on the benevolence of a few wealthy individuals to ensure strong democracy in this country? I don't think that is what the Founding Fathers had in mind.

The political consultants will say negative ads work, because they, quote, ''move the numbers.'' They will say we need to raise millions of dollars because that is what it takes to get a message out.

But that ignores the reality in Main Street America every day. The very campaigns they say we need to run to win are bleeding the life out of our political system. Every time we go through an election with expensive, negative campaigns, we pay a severe price in voter participation and citizen apathy.

Add up election, after election, after election in the modern political era, and elected officials are facing a huge bill for accountability they may not be able to pay. I fear that once lost, citizens may never re-engage in their democratic system.

During this debate, I have heard Senators take issue with certain provisions in S. 1219. I have heard colleagues question the constitutionality of spending limits. I have heard them make the case that this bill takes the wrong approach. I have heard them argue for reform, but not this way.

Mr. President, these arguments miss the point entirely. The upcoming vote is not about whether you agree with every provision of S. 1219. It is about whether this Senate is willing to step up and pass campaign reform legislation this year.

I myself am not completely satisfied with S. 1219. The McCain-Feingold bill is very broad, and does something about nearly every aspect of the system: It restricts political action committee contributions; it imposes voluntary spending limits; it provides discounted access to broadcast media for advertising; it provides reduced rates for postage; it prohibits taxpayer-financed mass mailings on behalf of incumbents during an election year; it discourages negative advertising; it tightens restrictions on independent expenditures; and it reforms the process of soft money contributions made through political parties.

Mr. President, these are very strong, positive steps, especially the ones addressing independent expenditures. Over the past few years, through the so-called Gingrich Revolution, we have seen an explosion of campaign spending by special interest groups, many from Washington, DC, attempting to swing elections in their own favor. These expenditures are ideologically driven, often highly partisan, and serve only to manipulate voters in the most sinister way. They corrupt our elections. They are not disclosed, so we do not know who makes them, and they violate the spirit of every disclosure requirement in law today.

If enacted as a package, all the steps I just mentioned would make our system of electing Federal officials more open, competitive, and fair. I feel strongly that we must take such steps to re-invigorate peoples' interest in the electoral process, and in turn to restore their confidence in the system.

There are some provisions in S. 1219 that could be problematic, however. For example, the bill would require 60 percent of a candidates' donors to reside within his or her State. This might work fine for someone from New

York or California. However, it could put small-state candidates at a real disadvantage, particularly if their opponent is independently wealthy.

I also question the ban on PAC's. Under the right regulations, I believe PAC's have a legitimate role in the process, for two reasons. First, PAC's are fully disclosed, and subject to strict contribution limits. That means we have a very detailed paper trail from donor to candidate for everyone to see. Second, they give a voice to individual citizens like women and workers and teachers who, if not organized as a group, might not be able to make a difference in the process.

A serious question about PAC's remains, however: do they unfairly benefit incumbents at the expense of challengers? This is a legitimate question, and one I think we should focus on closely in this debate.

Finally, I am deeply concerned about how this bill would effect organized fundraising by third party groups that do not even lobby Congress. Groups like EMILY's List and WISH List support pro-choice women candidates of both parties, though they do not actually lobby Congress on legislation.

They give people of modest means like me an opportunity to compete on the electoral playing field. For too long, this field has been dominated only by wealthy, well financed candidates, establishment candidates, or incumbents. In my 1992 campaign I was out-spent nearly three-to-one. Without the support of groups like this, I would not have even been able to make the race.

By banning these groups, S. 1219 would send a signal to people everywhere: do not even think about playing this game unless you can afford the price of admission.

However, as I said a moment ago, this vote is not about every little detail. Let us remember something: this whole debate—arguments for and against—comes against the backdrop of a campaign finance system that has not been reformed since Watergate, over 20 years ago. Public faith in government today has sunk below what it was in 1974. So in spite of my personal concerns, I will vote to invoke cloture on the McCain-Feingold bill. And after cloture is invoked, I will support amendments that address the issues I have raised.

Right now, we need to move forward. People in this country want to feel ownership over their elections; they want to feel like they, as individuals, have a role to play and can make a positive difference. Right now, for better or worse, not many people feel that way, and the trend is going the wrong direction. Real campaign reform will be the strongest, easiest step this Senate could take to begin restoring peoples' faith in the process.

Set aside the legalistic, technical arguments for a moment. Get out from behind all the procedural maneuvering. Put aside partisan leanings. We have an opportunity right now, today, to show the voters something. We can put pressure on the other body to act on similar legislation. We can actually move reform efforts forward in a credible way, and get something done this year.

A citizen from New Hampshire, Frank McConnell, made a good case just the other day. He came to Washington to push this bill, and he said if Congress wanted to, if it really wanted to, it could do the work and have a bill to the President's desk in a couple weeks.

We know the President would sign it, because he said so in his State of the Union Address earlier this year. Frank McConnell was right: if we want to, we can just do it. Here we are again. We are considering campaign reform legislation. There is not much time left. I thank the two sponsors of this bill, Senator MCCAIN and Senator FEINGOLD, and I urge my colleagues to step up and support the motion to invoke cloture.

Mr. BINGAMAN. Mr. President, I rise today to speak briefly on S. 1219, the Campaign Finance Reform Act and to discuss two amendments I intend to offer to the bill if the Senate invokes cloture on the bill tomorrow.

As a cosponsor of S. 1219, I am pleased to join with my friend and colleague from Arizona, Senator MCCAIN, and my friend and colleague from Wisconsin, Senator FEINGOLD, in supporting this legislation. I want to commend Senators MCCAIN and FEINGOLD for their efforts in bringing this measure to the Senate for its consideration. They have been tireless champions of the need to reform our campaign finance system and I am encouraged by the way they have worked together to develop a bipartisan approach to a problem that has escaped solution for so many years.

As my colleagues know, 2 years ago I completed an expensive and negative campaign. The only positive thing that I brought from that experience was the time I was able to spend listening to the concerns of New Mexicans and traveling around the State.

Unquestionably, one of the most significant recollections I have of the campaign is the enormous amount of money that I was forced to raise and spend to defend against a wealthy opponent who attacked early and continued with a negative campaign until the votes were counted.

That is one of the reasons why I support S. 1219 and why I have supported every serious attempt to fix our campaign finance system. Clearly, Mr. President, the system is broke and anyone who thinks otherwise simply has not looked at the facts. More and more of our time is spent raising money, special interest groups have too much influence at the expense of the individual American, and, most important, the American people have lost confidence in their elected officials because they no longer believe that we have time to listen to them. Instead they believe that only the wealthy can serve in Congress and that we are engaged in an endless pursuit of special interest money. While this is not true in all cases, I am very concerned that if we do not reform the current system soon, the fears of average Americans will become real.

Mr. President, we need to change the system and I believe that the bill offered by Senators MCCAIN and FEINGOLD offers us a chance to regain the confidence of those who sent us here.

If cloture is invoked tomorrow, I intend to offer two amendments to this legislation. These amendments are contained in legislation I offered earlier this year with my friends and colleagues Senator PELL and Senator CAMPBELL, S. 1723.

The first amendment requires that if a qualified candidate for Federal office references his or her opponent in a TV advertisement they must do so themselves if they want to take advantage of the lowest unit-rate charge provided to candidates for Federal office under the Communications Act of 1934. If the candidate voluntarily chooses not to make the reference herself, or himself, the candidate would not be eligible for the lowest unit rate for the remainder of the 45-day period preceding the date of a primary or primary runoff election or during the 60 days preceding the date of a general or special election. The candidate would, of course, continue to have access to the broadcast station and would be able to air whatever advertisement they wish, but they would not be eligible for the special benefit that Congress has provided under the Communications Act.

The second amendment requires that broadcasters who allow an individual or group to air advertisements in support of, or in opposition to, a particular candidate for Federal office, allow the candidate in the case where a candidate is attacked, the same amount of time on the broadcast station during the same period of the day.

Mr. President, these are not new concepts. In the 99th Congress, Senator Danforth offered a bill to require a broadcast station that allowed a candidate to present an advertisement that referred to her opponent without presenting the ad herself, to provide free rebuttal time to the other candidate. Since then, other variations of what has become known as talking heads legislation have been incorporated in overall campaign finance reform bills and introduced as free standing bills.

In a little over a month, both national parties will be holding their conventions. After that the race will be on, not only for the White House but also for 435 House seats and 33 Senate seats and untold number of State and local elections. I can say in all honesty that I do not envy my colleagues here in the Senate, whether they are Republican or Democrat, because I now that they will soon be subjected to the same

type of negative attacks ads that I had to face in my last election. Many of these ads will contain misrepresentations, distortions, and outright untruths. A voice will appear on the television but it will not be the candidate's. Perhaps an image will appear but it will not be the candidate's either. Instead, the candidate will be hiding behind the message and that message will undoubtedly be negative.

Mr. President, I am told that public opinion polls show that politicians are held in only slightly higher esteem than lawyers and journalists. While that may be true, I know that my colleagues, regardless of their political affiliation, are honorable men and women who care about their respective States and our Nation. They are also courageous. It is not easy putting your reputation and privacy on the line to run for public office at any level. Unfortunately, the negative perception persists. I believe that one of the reasons for that is the trend in today's campaigns to attack, attack, and attack, to go negative early and stay negative until the votes are counted. As Senator Danforth noted, legislation requiring the candidate himself to present ads that reference his opponent would serve the purpose, ''to open up speech, open up the ability to respond, the ability to defend oneself. In the case of a candidate making a negative attack, we try to improve the sense of responsibility and accountability by making it clear that the candidate who makes the attack should appear with his own face, with his own voice.''

I believe that the amendment I am discussing today, just like the legislation by Senators MCCAIN and FEINGOLD, will begin the process of restoring the confidence of the American people in public service as an honorable endeavor and in the election process as one where ideas and platforms, not the candidate's personalities, are debated.

Mr. President, I would again like to commend my colleagues Senators MCCAIN and FEINGOLD for their commitment to bringing this legislation to the floor of the Senate and I hope that we will all vote tomorrow to allow debate and votes on amendments and the underlying legislation. The American people deserve nothing less.

Mr. FRIST. Mr. President, I rise to discuss the important issue of campaign finance reform. I applaud the efforts of my colleagues on both sides of the aisle for bringing this issue to the forefront of our public policy debate.

The sole objective of any serious campaign finance reform must be to open up the political process—to make it easier for more Americans to get involved, to have more competitive races, to increase the free exchange of ideas and debate, and to make our elections more reflective of the will of the people.

To that end, I strongly support the following steps and believe they are a sound foundation for campaign finance reform:

First, we should insist on full disclosure of all campaign spending, by candidates, parties and nonparties alike. Currently, many special interest groups have a huge impact on elections yet are not required to and don't disclose anything about their political spending. Full and fair disclosure will let the voters weigh the relative influence of all who participate in the process.

Second, we should place PAC's and individuals on an even footing by increasing the individual contribution limit to $5,000 and indexing it for inflation. This will reduce both the influence of PAC's and the amount of time elected officials must spend fundraising;

Third, we should ban the use of franked mass mailings by incumbents in the calendar year of an election—although I would ban them completely; and

Fourth, we should require candidates to raise a stated percentage, for example 60 percent, of their individual contributions from people residing within their home States.

The first amendment is the starting point for any discussion of campaign finance reform. It ensures that, among other things, citizens can participate in politics through publicly disclosed contributions to the campaigns of their own choosing. It also permits citizens to spend their own hard-earned dollars, independent of any candidate, to influence elections via letters to the editors of their local papers, pamphlets, and even television, radio, and newspaper advertisements. This is a precious right to Americans. It sets us apart from many other countries.

Many, however, believe that we spend too much money on this first amendment right. Yet, given the importance of such speech, it is surprising to find that in the 1994 House and Senate races, said to be among the most expensive ever, we spent roughly $3.74 per eligible voter. According to columnist George Will, this is about half as much as Americans spend annually on yogurt.

Simply put, Mr. President, the amount of money spent in campaigns should not be the focus of our debate—that is not the problem. Let a well-informed public, not a Federal bureaucrat, decide whether a candidate has spent too much in a campaign or has accepted too much from a particular source. I believe there are significant negative consequences to current efforts to reduce campaign spending. First, significant restrictions on the amount of money that can be spent by a candidate will reduce the amount of information available to voters. Less information means a less-informed electorate. That is the opposite of what we want to accomplish. More importantly, spending limits on candidates will merely increase the influence and power of special interests because they are not subject to spending limits and aren't required to disclose their election financing efforts.

Second, limits on campaign spending would overwhelmingly benefit incumbents. Congressional spending limits are subject to manipulation that sets the spending threshold just below the amount that the challenger must spend to have a legitimate shot at defeating the incumbent. In testimony before the Senate Committee on Rules and Administration, Capital University law professor, Bradley A. Smith, said that in the 1994 Senate elections, the successful challengers spent more than would be allowed under the legislation currently being debated by this body, S. 1219. Thus, the spending limits proposed in S. 1219 would have worked to the incumbent's advantage in each case. Overall, every 1994 Senate challenger who spent less than the ceiling set in S. 1219 lost; every incumbent who spent less than that ceiling won.

Finally, spending limits reduce the ability of campaigns to speak directly to the voters, without the filter of the media. The news media does play a critical role in the election process, but further increasing their control over the flow of political information is not positive reform.

Similarly, a limitation on contributions, like spending limits, is inherently biased in favor of incumbents. Incumbents with high name recognition and existing voter data bases are able to raise necessary campaign dollars, in small amounts, with far more ease than no-name challengers. Therefore, challengers must look to a small number of large contributors to launch a campaign. This initial seed capital is essential for challengers to get their name and message out to the voters. The limits on contributions imposed by the 1974 amendments to the FECA have limited the ability of challengers to raise seed capital.

I believe that further restrictions on contributions will force candidates to spend more time fundraising and less time meeting voters and discussing the issues. Contribution limits are a significant cause of the drain that fundraising has become on a candidate's time. Instead, I favor placing PAC's and individuals on an even footing. The existing $1,000 limit placed on individuals should be raised to $5,000—the same level as PAC's—and indexed for inflation. The $1,000 contribution limit established by FECA in 1974, had it kept pace with inflation, would be worth approximately $3,000 today. Raising the individual contribution limit will help level the playing field between challengers and incumbents. It will put individuals on an even par with PAC's, reduce the time candidates need to spend raising campaign funds, and reduce the emphasis on a candidate's personal wealth.

Yesterday and today, I've heard the arguments concerning other aspects of the current legislation before us, namely provisions that mandate free air time and greatly reduced postage rates to candidates. I am opposed to those provisions, however good intentioned

they are, because they would place a greater burden for funding Federal campaigns on the backs of American taxpayers.

Proposals to force American businesses to give away their products free of charge are misplaced and run counter to a free-market society. Accordingly, I oppose attempts to mandate that private broadcasters be forced to give free air time to candidates. Similarly, allowing deep discounts in postal rates is merely a subsidy paid for by the general taxpayers. These are not sound reforms.

As I mentioned earlier, strong campaign finance reform should also mandate the complete and full disclosure of all funds that unions and other special interest groups spend for political activity. This is a critical point. We cannot outlaw special interest money, but the potential penalties for accepting it can be raised via the court of public opinion.

We are all aware of the current multimillion dollar effort by organized labor to spend upward of $35 million to try and buy back control of the House for the Democrats. They are getting the money for this massive, partisan campaign through compulsory union dues, even though 40 percent of their membership voted for Republicans in 1994.

No union member should be forced to make compulsory campaign contributions to support any candidate or issue unless they freely choose to do so. That is the foundation for our constitutional form of government and the first amendment freedoms we enjoy as citizens. To be forced, as a condition of employment to do otherwise, is wrong.

As unfair as this is to union members, it is even more poisonous to our political process. There is no disclosure or reporting of the sources or the expenditures paying for these activities. Under current law, the unions are not required to file and do not file any disclosure to report these political expenditures. This should be changed.

In closing, I would like to quote a section of the 1976 decision by the Supreme Court in the Buckley versus Valeo decision:

> In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

Our system is not perfect, and we do need meaningful campaign finance reform. But, placing artificial limits on spending sends the opposite message of what we should be saying. We should not drive spending control away from candidates and parties and to special interests. We should not enact reforms that will result in less information to the public. We should open up the system to allow for maximum dissemination of information and maximum exchange of ideas and debate. I intend to work toward this type of campaign finance reform, and I urge my colleagues to do likewise.

Mr. BAUCUS. Mr. President, I rise in support of the important campaign finance reform legislation that is before us today.

I support this legislation because I believe it represents the right kind of change. While not a perfect solution, it will help put our political process back where it belongs: with the people. And it will take power away from the wealthy special interests that all too often call the shots in our political system.

Yet, ironically, by failing to act; by failing to pass this legislation; we will also be opening the door to change—the wrong kind of change. Our political system will continue to drift in the dangerous direction of special interest.

Over the years since 1971, when Congress last enacted campaign finance reform, special interest groups supporting both political parties have found creative new ways, some of questionable legality, to get around the intent of our campaign finance laws. Things like soft money, independent expenditures, and political action committees all came about as a consequence of very well-intended attempts at campaign finance reform.

NEED FOR REFORM

This is an arcane subject, but it hits home. One of the benefits to walking across Montana, in addition to the beautiful scenery, is that I hear what real people in Montana think. Average folks who do not get paid to fly to Washington and tell elected officials what they think. Folks who work hard, play by the rules, and are still struggling to get by.

People are becoming more and more cynical about government. Over and over, people tell me they think that Congress cares more about fat cat special interests in Washington than the concerns of middle class families like theirs, or that Congress is corrupt.

EFFECT ON THE MIDDLE CLASS

Middle-class families are working longer and harder for less. They have seen jobs go overseas. Health care expenses rise. The possibility of a college education for their kids diminished. Their hope for a secure retirement evaporate. Today, many believe that to make the American dream a reality, you have to be born rich or win the lottery. Part of restoring that dream is restoring confidence that the political system works on their behalf, not just on behalf of wealthy special interests.

I believe that this Congress has taken some small but important steps in that direction:

First, we passed a tough, fair gift ban to ensure that special interests are not out wining and dining Members of Congress and executive branch officials. Helping to reassure folks that individuals in Government, whether you agree with their policies or not, are acting in what they sincerely believe is the country's best interest. I am proud to say that my office has taken this one step further—and instituted a tougher than required gift ban—months before the Congress voted.

Second, we passed a comprehensive lobbying disclosure bill—eliminating the cloak of secrecy which lobbyists once operated under, by requiring greater disclosure of lobbying activities by both the individuals conducting and contracting the lobbying.

Now it is time for us to take the real step to win-back the public trust—it is time for us to pass a tough, fair, and comprehensive campaign finance reform bill. That bill must accomplish three things. First, it must be strong enough to encourage the majority if not all candidates for Federal office to participate. Second, it must contain the spiraling cost of campaign spending in this country. Finally, and most importantly, it must control the increasing amounts of undisclosed and unreported soft-money that is polluting our electoral system.

REFORM MUST REDUCE COSTS OF CAMPAIGNS

Under the current campaign system, the average cost of running for a Senate seat in this country is $4 million. In 1994, nearly $35 million was spent between two general election candidates in California. And nearly $27 million was spent in the Virginia Senate race.

There are some in Congress, I believe House Speaker NEWT GINGRICH is one, who say we do not spend enough on campaigns in this country.

When a candidate is faced with the daunting task of raising $12,000 a week—every week—for 6 years to meet the cost of an average campaign, qualified people will be driven away from the process. If we allow ideas to take a back seat to a candidate's ability to raise money—surely our democracy is in danger.

Let me be clear—my first choice would simply be to control campaign costs by enacting campaign spending limits. However, the Supreme Court, in Buckley versus Valeo, made what I believe was a critical mistake—they equated money with free speech—preventing Congress from setting reasonable State-by-State spending limits that everyone would have to abide by.

I have voted several times to overturn the Buckley decision and allow Congress to set limits that everyone would have to obey.

WHAT'S RIGHT WITH THE BILL

While I must admit this bill is not perfect, compromise never is, it will do several crucial things to reign in campaign spending. First is, that it is the first bipartisan approach to campaign finance reform in more than a decade.

Second, the bill establishes a system that does not rely on taxpayers dollars to work effectively.

The bill encourages campaigns to accept a voluntary spending limit in exchange for free and reduced cost access to television advertising, and postal rates.

Last, the bill bans both PAC contributions, and indirect soft-money campaign spending, while at the same

time increasing disclosure and accountability in political advertising.

Every election year, in addition to the millions of dollars in disclosed contributions, there are the hundreds of millions in unreported, undisclosed contributions spent by independent expenditure campaigns and issue advocacy funded by soft-money contributions to national political parties.

Where out-of-State special interest groups can spend any amount of money they choose, none of which is disclosed, all in the name of educating voters—when, in fact, their only purpose is to influence the outcome of an election. More times than not the seesawing 30-second sound bites do more to confuse than to educate.

This lack of accountability is dangerous to our democracy. These independent expenditure campaigns can say whatever they wish for or against a candidate, and there is little that candidate can do—short of spending an equal or greater amount of money to refute what are often gross distortions and character assasinations.

However, as I said earlier, the bill is not perfect. As currently written, it fails to address critical issues in campaign reform.

WHAT'S WRONG WITH THIS BILL

I am concerned that this bill forces an unfunded mandate on television broadcasters by requiring them to donate up to 30 minutes of free prime time advertising air time to each candidate who abides with the limits in the bill. While I believe this free and reduced cost air time is critical to encouraging campaigns to accept spending limits, I don't believe that broadcasters should be forced to bear the entire burden.

I'm pleased that the sponsors have included language to provide broadcasters with an exemption in the case of economic hardship, however, it is my belief that we should do more.

Last, but perhaps most importantly, this bill does not contain the strong enough enforcement provisions that are critical to ensure that individuals who promise to abide by the spending limits don't dump large sums of money into the campaign weeks or even days before the election.

Since 1985 I have fought to limit the spiraling cost of Federal elections in this country by cosponsoring five different campaign finance reform proposals, as well as supporting efforts to amend the Constitution to allow the Congress to set reasonable spending limits.

I remain committed to this cause and will do everything in my power to ensure that the Congress passes meaningful campaign finance reform, this year.

Mr. DOMENICI. Mr. President, those who follow campaign finance reform are well aware of my thoughts on this issue. I have long advocated four very straightforward and specific changes in reforms in campaign finance law:

First, a flat-out prohibition on House and Senate candidates raising money outside their home State;

Second, the abolition of PAC's as we know them;

Third, the creation of a strong disincentive to super-wealthy candidates throwing masses of family money into a campaign;

Fourth, the elimination of ''soft-money:'' contributions to political parties for activities such as voter registration drives and political advertising which indirectly—but intentionally—help one particular candidate;

I am pleased to see that this year's legislation includes campaign finance reform ideas I initiated many years ago, specifically, a limitation on the amount of personal or family funds a wealthy candidate may contribute to his or her own race; and a limitation on the acceptance of out-of-State contributions.

Unfortunately, this year's legislation also includes deeply problematic provisions. These provisions, so called voluntary restrictions on spending, are based on the premise that spending caps are the solution to the problems with our campaign system.

The taxpayers will end up helping finance these campaigns because by accepting spending caps under this bill, candidates would receive steep discounts from the Federal Government in postal rates, as well as from television and radio broadcasters for advertising time. In addition, once candidates exceed voluntary spending limits, the Federal Election Commission [FEC] would raise the contribution limits for the opponents of these candidates.

These spending caps threaten first amendment free speech rights. Moreover, these voluntary spending limits create burdensome new regulatory responsibilities and powers for the FEC. If enacted, the legislation before us today will create a quagmire of regulations making Federal campaigns even more dependent upon professional campaign strategists and lawyers, and less dependent upon, and more distant from, our constituents.

For these reasons, while I firmly believe that we need campaign finance reform, I cannot support today's proposed legislation in its current form.

Mr. SMITH. Mr. President, I rise in opposition to S. 1219, the Senate Campaign Finance Reform Act of 1996.

There are several major campaign finance proposals that are now being considered by the Congress. I am pleased to offer my views on each of them.

The most far-reaching campaign finance reform proposals involve the taxpayer financing of congressional campaigns. I do not favor that approach. I do not think that liberal Democratic taxpayers should be forced to finance my political campaigns any more than conservative Republican taxpayers should be forced to finance the campaigns of liberal Democratic politicians.

Other campaign finance proposals have sought to place limits on how much money campaigns can spend. Such proposals raise serious constitutional questions. In the case of Buckley versus Valeo, the U.S. Supreme Court held that it is unconstitutional for Congress to limit the ability of individual candidates to spend their own money to finance their own political campaigns. How is it fair, then, for Congress to limit the ability of candidates who are not wealthy to raise campaign money? If wealthy candidates can spend all of the money that they want while candidates of modest means cannot, then we will soon have a Congress made up almost exclusively of wealthy individuals.

Still another approach is that which is embodied by S. 1219. Under the McCain-Feingold bill, voluntary campaign spending limits would be adopted and candidates who complied with those limits would be provided with free and-or sharply reduced rates of advertising by the news media. I do not favor this approach because I do not think that Congress should compel private entities to offer their services at below-market rates. Therefore, I simply cannot support this bill.

The McCain-Feingold bill, as well as others, also proposes the elimination of political action committees [PAC's]. I have voted for this reform in the past.

I believe that the best way to reform our system of campaign finance is to find ways in which to encourage more participation by small donors. I am proud to say that in my political campaigns over the years, I have been supported by many thousands of small contributors.

I also strongly support the current system under which congressional campaigns must disclose the sources and amounts of financial contributions from all entities—large and small. I believe that the public has a right to this information.

I believe that a responsible and meaningful package of campaign finance reform legislation can and should be developed and passed by the Congress. I support that effort.

Mr. ABRAHAM. Mr. President, I rise today to express my concerns regarding S. 1219, the Campaign Finance Reform Act of 1996, and to explain my vote against the cloture petition.

Let me begin by stating that I support campaign finance reform. However, the reform we need is not to be found in S. 1219. In my view, the biggest problem with the way our political campaigns are financed is that it gives rise to the perception that special interest donations are dominating the political agenda. Indeed, many Americans believe that special interest money is the source of great corruption in our political campaign system.

While we should try to address this problem statutorily, I feel it is unnecessary to wait for legislation before those of us concerned act. To that end, when I ran for the Senate in Michigan in 1994, I personally imposed my own limits on the amounts I would accept

from both out-of-State sources and political action committees, and they were as strong or stronger than those in S. 1219. I lived up to that pledge and still won my seat.

Now I recognize that not everyone will disarm unilaterally, so I do believe we must seek to achieve a similar outcome legislatively. Unfortunately, S. 1219 is overly broad and, if anything, likely to tilt the field even further in the direction of special interest influence.

In my view the central question we must address in reforming campaign financing is ''whose voice shall be heard during the campaign?'' The proposals set forth in S. 1219 would have the ironic effect of limiting the speech of the candidate while expanding the speech of the special interest groups. The proposed legislation would encourage candidates to abide by certain expenditure limits, thereby restricting their ability to communicate with the voters. Conversely, the legislation does little to curb the ability of special interest groups to spend their money independently of any restrictions. This allows interest groups to define the central issues of the campaign. It forces candidates to follow the lead of these interest groups, preventing the voters from hearing directly from the candidates and judging for themselves which candidate has the proper positions and the proper priorities.

I believe that the solution begins with limiting the amount of out-of-State/district contributions and PAC donations as I did in my own campaign. By limiting out-of-State/district contributions we can address the perception that House and Senate Members are not primarily focused on the priorities of their own constituents. Similarly, by placing a limit on the amount of PAC contributions a candidate may receive, we can address the concern that public officials are unduly influenced by special interest groups.

Mr. President, I am also concerned about provisions in S. 1219 which shift resources from the private sector to the candidates. These provisions, in effect, allow candidates to do as they please with other people's involuntarily extracted money. The idea that taxpayers, through special postage rates, should subsidize complying campaigns, seems to me wrong. And, just as the taxpayers should not be obligated to finance someone else's political speech I feel it inappropriate to extract such subsidies from the owners of broadcast entities.

Mr. President, I believe that campaign finance reform should focus on limiting PAC and out-of-State/district money. I have codified these limits in my own campaign finance reform bill which I believe has the effect of permitting candidates to speak freely while curbing the influence of special interest and out-of-State moneys. In contrast, S. 1219 permits the increased influence of special interest money while curbing candidates' ability to communicate with the voters. For these reasons, I have voted against cloture and look forward to advancing my own legislation in the future.

Mr. MCCONNELL. Mr. President, I have just been handed two very timely additions to this debate: an editorial in today's Wall Street Journal entitled ''Muzzling Campaign Speech'' and a letter dated today from the American Civil Liberties Union noting in some detail their many objections to the McCain-Feingold bill.

I would note for the benefit of those who persist in mischaracterizing the proposed spending limits as ''voluntary'' that the first point in the ACLU letter is the emphatic assertion that they, in fact, are not. The bill would severely handicap a noncomplying candidate relative to a complying candidate so there really would be no choice other than to comply. At this point, I ask unanimous consent that the ACLU letter and the Wall Street Journal article be printed in the RECORD. For the benefit of colleagues who have not yet read the editorial I would note that the closing sentence captures the essence of the bill before us today: ''The Senate should vote down the McCain-Feingold bill before it does to American democracy what Clinton-Care would have done to medicine.''

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 25, 1996]

MUZZLING CAMPAIGN SPEECH

Some 20 years after Congress first restricted campaign speech, the Senate will vote today on a campaign finance proposal that suggests the way to correct the problems those misguided ''reforms'' have created is with more restrictions. We don't think so.

To the government goo-goos, led by Common Cause, money is the root of all evil in politics and should be pulled out regardless of the cost or the Constitution. They have convinced GPO Senator John McCain and Democrat Russ Feingold to propose a bill that would pass out subsidies for low-cost mail and television advertising to candidates who abide by ''voluntary'' spending limits. This is public financing under another guise. Subsidizing the mailing of more campaign literature alone could cost $100 million, money the Postal Service would have to recover by raising rates for other customers.

Having created a permanent entitlement to cut-rate campaign ads, the goo-goos would then ban contributions from political action committees. Advocacy organizations from Emily's List on the left to the Christian Coalition on the right would see their activities scrutinized by the Federal Election Commission, which lately has seen one after another of its edicts struck down by the courts.

In 1976 the Supreme Court ruled in *Buckley* v. *Valeo* that political contributions and spending are the equivalent of political speech. Giving the FEC more control over politics will limit speech. The McCain-Feingold bill would cede authority to the FEC over any ''expression of support for or opposition to a specific candidate'' and permit it to block such expression with an injunction if the agency believes there is a ''substantial likelihood that a violation . . . is about to occur.'' The prospect of this enhanced federal power had driven groups as disparate as the American Civil Liberties Union and the American Nurses' Association to oppose the bill.

The desire to police politics better by making the federal government a meaner watchdog with a longer leash is based on flawed premises. The first is that the influence of money in politics is excessive and out of control. In fact, House and Senate races, which unlike Presidential races don't rely partly on public financing, saw about $700 million spent on them in 1994. As George Will has pointed out, that's about half of what Americans spend on yogurt every year.

What is excessive in politics is not the money spent, but the amount of political power that government in our time has to direct economic outcomes and regulate behavior. Given that Congress can either put whole industries at risk or hand them a subsidized bonanza, what's surprising is that more money isn't spent trying to influence the people running for Congress. The reformers, especially inside the Beltway, give the clear impression that the government is so indisputably virtuous in its every mandate that private parties should bow before it, rather than spend money to defend themselves, an effort almost always seen by the Beltway as the work of non-virtuous ''special interests.''

The second mistaken premise behind campaign reform is that the country is clamoring for it. We're told, for instance, that 1992 Perot voters will have the heads of elected officials on a platter if they don't crack down on campaign cash. But there is little evidence of that. A Tarrance Group survey in April found that just one voter out of a thousand identifies campaign reform as the country's most pressing problem. Voters are justifiably skeptical of political reforms proposed by incumbent politicians.

This is not to say that nothing can be done. We are attracted by the realistic ideas of Larry Sabato and Glenn Simpson in their new book ''Dirty Little Secrets.'' They conclude that individual limits on campaign contributions, which haven't been indexed for inflation in 22 years, should be raised and a regime of full disclosure on all political spending should be created. That will let the voters both hear from candidates other than incumbents and let them weigh the relative influence of everyone participating in the process.

The current effort at campaign finance reform has a lot in common with the failed Clinton health-care plan, which sought to ''fix'' the problems created by government involvement in health care by having the government micromanage the entire health care sector. The Senate should vote down the McCain-Feingold bill before it does to American democracy what ClintonCare would have done to medicine.

AMERICAN CIVIL LIBERTIES UNION,
New York, NY, June 25, 1996.

Dear Senator:

The American Civil Liberties Union had the privilege of testifying before the Senate Rules Committee on February 1, 1996 and at that time we elucidated our objections to the ''reform'' proposals set forth in the Feingold-McCain bill, S. 1219. Throughout the current Senate debate, our opposition has been repeatedly referenced. Rather than reiterate all of our objections in detail in this letter, I encourage you to read the testimony prepared on our behalf by Professor Joel Gora, of the Brooklyn Law School.

Congress is endeavoring to reform current campaign finance laws and regulations in an effort to reduce the perceived adverse impact of monetary contributions on federal elections. The call for reform is also punctuated

by cries of corruption. If there is corruption then Congress does have the obligation to correct systemic problems, and to ensure that the Federal Election Commission is exercising fair and consistent enforcement of the existing laws. But influence is not synonymous with corruption, and labeling certain monetary contributions as such perpetuates notions of corruption that have not been, in our view, adequately borne out by the hearings before the Senate Rules Committee.

While rooting out corruption is a worthwhile objective, S. 1219 goes much further than merely attempting to eliminate perceived corruption. Current proposals before the Senate dramatically change the rules concerning financing of federal campaigns in ways that do greater harm to civic participation in the federal electoral process than good. Most importantly S. 1219 directly violates First Amendment guarantees of freedom of speech and freedom of association.

Some of our specific objections to the Feingold-McCain (S. 1219) and similar proposals include:

The bill's ''voluntary'' expenditure limits are coercive and violate First Amendment principles. The bill requires the receipt of public subsidies to be conditioned by a surrendering of the constitutional right to unlimited campaign expenditures. The bill grants postage and broadcasting discounts only those candidates that ''volunteer'' for spending limits. The bill raises an individual's contribution limit from $1,000 to $2,000 for those candidates that agree to spending limitations and therefore fiscally punishes those candidates who wish to maintain their constitutional right of unlimited spending.

The bill's ban of Political Action Committees are a violation of freedom of association and is therefore unconstitutional. Such a provision would result in a restriction in protected speech for any group the Federal Election Committee deemed a ''political committee.'' All relevant constitutional precedent, including Buckley v. Valeo 424 U.S. 1, 57 (1976) and FEC v. National Conservative Political Action Committee 470 U.S. 480 (1985), clearly suggest that the Supreme Court would overturn such a ban.

The limitation on out-of-state contributions is constitutionally suspect and is disturbingly insular. In-state limitations potentially deny underfinanced, lesser-known insurgent candidates of the kind of out-of-state support they may need. As long as citizens in the affected district are the ones who select the candidate, how the candidate is financed is a less compelling concern. After all, Congress is our national legislature, and although its representatives are elected from separate districts and states, the issues it debates and votes on are of concern to citizens from all over the nation.

The bill's disclosure requirements and regulations on ''soft money'' do not take into consideration the constitutional divide between candidate-focused expenditures and contributions, which are subject to some regulation, and all other non-partisan, political and issue-oriented speech, which are not. This restriction does not live up to the ''most compelling government interest'' standard in regards to electoral advocacy as required by the Supreme Court in Buckley v. Valeo, 424 U.S. at 14–15, 78–80. This restriction also does not satisfy the minimum scrutiny of a ''compelling'' state interest in the regulation of political parties as required by the Supreme Court in Tashjian v. Republican Party, 479 U.S. 208 (1986).

The bill's new provisions governing the right to make independent expenditures unconstitutionally invades the absolutely protected area of issue advocacy. By broadening the definition of ''express advocacy'' the bill would encompass the kind of essential issue advocacy which Buckley has held to be completely immune from government regulation and control.

The bill so broadly defines ''coordination'' that virtually an individual who has had any interaction with a candidate or any campaign officials, in person or otherwise, is barred from making an independent expenditure. A disaffected campaign worker or volunteer for example, who leaves the campaign because he or she thinks a candidate has acted improperly, is barred from making independent expenditures against the candidate, for, ironically, they will be deemed a contribution.

The bill gives unacceptable new powers of political censorship to the Federal Election Commission. The FEC would be permitted to go to court and seek an injunction on the allegation of a ''substantial likelihood that a violation . . . is about to occur.'' This is fraught with First Amendment peril because individuals and groups will face ''gag orders'' until a determination of wrongdoing is made.

This bill serves the purpose of unfairly protecting incumbency by further limiting the overall amount of speech allowed during a campaign. A limitation in the quantity of speech makes the incumbent's name recognition and ability to create free press and media attention all the more valuable.

This bill unfairly hinders access to the political process of independent and third party candidates by limiting access to public financing and avenues for receiving private donations.

Constitutionally acceptable campaign finance reform proposals could include the following elements:

Uncoerced public financing that include the following provisions: Floors or foundations upon which candidates can build their campaigns, not ceilings to limit them, the availability of public financing to all legally qualified candidates who have demonstrated an objective measure of support, the availability of matching funds without unconstitutional conditions attached, institution of the frank to all legally qualified federal candidates.

Raise individual contribution limits. This will serve to decrease reliance on PAC sources of support.

Modest tax credits of up to $500 for private political contributions.

Public access and timely disclosure of large contributions. This is the most appropriate way to deal with problems of undue influence on elected officials.

Thank you for your consideration of our views.

Sincerely,

LAURA W. MURPHY,
Director.

Mr. FAIRCLOTH. Mr. President, first and most importantly, I strongly support reform of our campaign finance system. Regrettably, there are several broad problems with McCain-Feingold bill.

First, I have serious concerns that this bill does more to limit the rights under the First Amendment, than it does to reform our campaign finance laws. It bans political action committee contributions—but it does nothing to empower the individual by raising individual campaign contribution limits.

Second, as we have come to learn, it is impossible to plug all of the money loopholes in politics. This legislation bans outside expenditures by political action committees and other interest groups, yet it does nothing to limit the use of labor union dues for political purposes.

Finally, there are unintended consequences of well-intentioned reform. After all, the present system we are attempting to change is a product of earlier ''reforms'' from the post Watergate years.

Mr. President, specifically, I have concerns that spending limits function as an incumbent protection act. Further, the spending limits aid those without a primary. Look at the recent Presidential election. Senator Dole spent the maximum to get the GOP nomination—and is now virtually out of money with respect to the spending limits.

If we really want to change our system, we should have enacted term limits. Members of Congress should be more concerned with the next generation than the next election but the constant pressure of re-election affects votes and contributions.

Mr. President, any reform system should be tilted more in favor of public disclosure of campaign contributions. The Federal Election Commission's main mission should be to publicize campaign finance information to the people.

Finally, contributions limits from individuals should be adjusted to keep pace with inflation. The declining value in real dollars of the maximum contribution from an individual to a Federal candidate is now worth only about a third as much as when it went into affect in 1975. This change would lessen reliance on political action committee contributions and shorten the time candidates must spend asking for money.

Remember, State candidates in North Carolina can accept $4,000 contributions per election while Federal candidates can only receive $1,000. Adjusting the contribution limits for individuals coupled with greater disclosure would be a significant improvement.

For this reason, Mr. President, I cannot support the McCain-Feingold bill in its present fashion. We share the goal of reforming the campaign finance system but there is a difference in the details. My suggestion for reform includes term limits, greater public disclosure of contributions, and increasing the limits on contributions from individuals to lessen reliance on political action committees.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, to make concluding remarks, and later Senator MCCAIN will make other concluding remarks, let me again clarify the point about constitutionality. The Senator from Virginia said clarity of conscience prevents him from working for this bill because of the PAC ban. But the fact is the Senator from Kentucky and the Senator from Virginia and the Senator from Washington all voted for the Pressler amendment 3 years ago that does exactly what our

bill does. It bans PAC's, but if the courts say PAC's cannot be banned, it has a voluntary limit on PAC's. The reason they voted for it then, the reason it is OK now, is because it is constitutional, and this is a red herring.

The real issue here is what this vote is going to be. This is the vote on campaign finance reform. I admire the candor of the Senator from Kentucky, who simply says he wants to kill campaign finance reform this session. He is not up here proposing an alternative. He admits that is his goal. That is the vote.

This is the first bipartisan bill in 10 years. Who will benefit from this bill? Many people will benefit. Incumbents will benefit from having more time to work on the issues, to not have their fractured attention, as the Senator from West Virginia indicated. Challengers will be the main beneficiaries. Just look at the real statistics. Incumbents blow challengers out of the water with the money. Does anyone out there believe this bill would actually help incumbents? I can tell you as a former challenger, this bill would have made a tremendous difference and would have made the process more fair.

We would also benefit in this country from the inclusion of all the people who never choose to run. You heard the Senator from West Virginia say he never would have run for office if it would have involved this amount of money. I bet the former majority leader, Senator Dole, would not have run either. So there will be winners under this bill and especially people back home.

But there will be losers under this bill. The losers are the people who got together on April 30, all the lobbyists and all the PAC's in this town that have been cited by the other side. They all got together to kill this bill. They said it would prevent their free speech. But the fact is, they are the Washington gatekeepers. They are the people you have to go up to when you are running for office and say, ''Will you give us the money?''

I used to go back and say to a banker in Wisconsin or a labor member in Wisconsin, ''Can you provide us with some help?'' Do you know what they would say? ''We have to check in with Washington. Washington has to say yes.'' This bill will drive people back to their own home States and take away the power from the gatekeepers.

How does it work? I mentioned it before. Here is one example. Here is a letter about how it works, and I will omit the name of the Representative.

> During this year's congressional debate on dairy policy, Representative [Blank] has led the charge for dairy farmers and cooperatives by supporting the federation's efforts to maintain the milk marketing order program and expand program markets abroad. To honor his leadership the federation is hosting a fundraising breakfast for [Blank] on Wednesday, December 6, 1995. To show your appreciation to [Blank], please show up at Le Mistral Restaurant at 8 a.m. for an enjoyable breakfast with your dairy colleagues. PAC's throughout industry are asked to contribute $1,000.

That is how it is done in this town. That is what the gatekeepers want to keep, and that is what we have to crack down on and eliminate.

To make my final remarks, let me say this thing has just gotten worse year after year. I want to finish by reading a few quotations from people who have been troubled about this over time. Woodrow Wilson:

> The Government of the United States is a foster child of the special interests. It is not allowed to have a will of its own.

President Eisenhower:

> Many believe politics in our country is already a game exclusively for the affluent. This is not strictly true; yet the fact that we may be approaching that state of affairs is a sad reflection on our elective system.

From Barry Goldwater:

> It is not ''We, the people,'' but political action committees and moneyed interests who are setting the Nation's political agenda and are influencing the position of candidates on the important issues of the day.

From Jack Kemp, explaining why he would not run for President in 1996:

> There are a lot of grotesqueries in politics, not the least of which is the fundraising side. . .. I don't seem to be talking about the things that the fundraising people want me to talk about.

Finally, from Robert F. Kennedy, who said:

> The mounting cost of elections is rapidly becoming intolerable for a democratic society, where the right to vote—and to be a candidate—is the ultimate political protection. For we are in danger of creating a situation in which our candidates must be chosen only from among the rich, the famous, or those willing to be beholden to others who will pay the bills.

Mr. President, what Robert Kennedy said over 30 years ago is even worse than he could have imagined today. What he feared has come to pass, and our bill would begin the process of returning campaigns and elections, and yes, our Government, back to the people at home.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes.

Mr. McCONNELL. Mr. President, I do not think there is any issue which we deal with that more clearly sums up the differences of the two parties toward American participation in politics than the issue of campaign finance reform.

Make no mistake about it, Mr. President, this is a partisan issue. The Republican National Committee opposes the bill. The Democratic National Committee supports the bill. So there is nothing particularly bipartisan about the bill. There are a few Republicans who support it and a few Democrats who oppose it, but the heart of the matter is, this is a very partisan matter as currently presented to the Senate.

Why is it partisan? It is partisan, Mr. President, because Republicans for the most part, accompanied by some interesting allies, from the ACLU to the National Education Association, believe there is nothing inappropriate about American citizens participating in the political process. We think that ought to be applauded, not condemned. We are not offended by those exercising their rights to petition the Congress, those exercising their right to engage in free speech. We do not think that is bad for America, Mr. President. We think it is good for America.

Whether our opponents on the other side of the aisle like it or not, the Supreme Court has been very clear that the speech of political candidates cannot be restricted. Thank God for Buckley versus Valeo, one of the great decisions in the history of the Supreme Court.

The speech of candidates should not be restricted. That is an extremely important principle, Mr. President. After all, if we make the candidates shut up and if we make the people who want to support them shut up, who controls the discourse, the debate? Why, someone else. Where will this transfer of power go? One place it will go, obviously, is to the newspapers, most of whom love this legislation because they realize it will enhance their power as the campaigns' power to communicate is diminished. So they think this is a terrific idea.

Many of the large membership interest groups are not particularly worried about this legislation because they know you cannot constitutionally restrict their ability to communicate with their own members, what we call nonparty soft money, or in any real way restrict their ability to communicate with the public, what we call independent expenditures, both of which, or the latter of which is certainly protected by the Buckley case.

So what this is all about, Mr. President, is who gets to speak and how much—who gets to speak and how much—and whether or not private citizens can continue to band together and support candidates of their choice.

It is said that too much is spent, which means to say there is too much speech in the American political system. My view is that it is not inappropriate to ask, when you say too much is being spent—compared to what? In the last cycle we spent about as much on political speech as we did on bubble gum. Put another way, $3.74 per voter in the last cycle. I would argue, Mr. President, that is not too much political speech—not too much political speech.

Then they say, the public is clamoring for this reform. A comprehensive poll by the Tarrance polling group back in April of 1996 asked that question in a variety of different ways. Suffice it to say, one person out of the 1,000 interviewed thought this was an important issue confronting the country. There is no clamoring for this. The

interest in this all depends on how you ask the question. If you ask the question: Do you think it is a good idea to restrict my right to participate in the political process? Obviously, people are not in favor of that.

There has been some debate about whether this is constitutional. Let me say maybe the other side has been able to scrape up a few people with a law degree calling this constitutional, but the heavies in this field do not think it is. The American Civil Liberties Union—sometimes we love them; sometimes we hate them, but, boy, do they know a lot about the first amendment and have had a lot of success over the years in this country. They believe this matter is clearly and unambiguously unconstitutional.

Assuming it could get past the constitutional problems, Mr. President, pushing all these people out of the process and putting a speech limit on the campaigns, how would those speech limits be enforced? By, of course, the Federal Election Commission, which would soon be the size of the Veterans Administration trying to restrict the free speech of not only 535 additional political races, but also of a bunch of outsiders who might inadvertently band together and try to speak. So the FEC is given injunctive relief, so it can go into court and shut people up who are engaging in speech that the Government does not want to be expressed.

That is what this bill is about—building a massive Federal bureaucracy to restrict the speech of candidates and of groups in this country. This is one of the worst ideas we have debated around here since the last time a proposal like this was up on the Senate floor.

The Court said very clearly, if you want to try to entice campaigns into shutting up, and the Government wants to say it is not good for candidates to speak more than a certain amount—we see that in the Presidential system and the nightmare that has become. As Senator GORTON pointed out yesterday, there is only one person in America who is told to shut up at that point, and that is one of two candidates who is running for President, Bob Dole. That is what we ought to be reforming, the Presidential system.

But the Court said, if you want to entice people into shutting up, not speaking too much, you can offer them some kind of subsidy, a Federal subsidy. So the Presidential system says to the candidates running for President: You can only raise $1,000 per person. So, when looking at that difficult task of trying to put together a nationwide campaign at $1,000 a person, every candidate virtually, except Ross Perot and John Connally, has said, ''OK. I'll shut up. You bought me off. There is no way I can possibly raise enough money to run at $1,000 a person.'' Then they get the Federal subsidy.

In this bill, in order to allow the sponsors to claim that there is no taxpayer money in it, they shift the subsidy to a couple of private industries. They say, we are going to call on the broadcasting industry to reduce the prices for political ads by 50 percent. What will happen? Why, of course, they will pass on the cost of that to all the other people advertising. So those taxpayers are going to have to pay more for their product because of the Government-mandated program.

There is a second industry that is affected by this as well, Mr. President. That is the people who use the mails. There is a postal subsidy in here. The Postmaster General wrote me yesterday saying he opposed this. Of course, the Direct Marketing Association opposes this. Of course, the National Association of Broadcasters opposes this. They are not particularly interested in having to reach into the coffers of their businesses to pay for political views with which they might disagree.

So getting back to the direct mail subsidy, the rates of everybody else who uses the Postal Service are going to be increased so a subsidy can be provided by those taxpayers to support the expression of views with which they may disagree.

So, Mr. President, spending limits are not free. There is no way to concoct, under the Buckley case, any effort to shut people up that does not have some cost. You can shift it around and kind of claim it is not part of the Treasury. You can assess a business maybe. But they are not free.

So what is wrong with this bill? Just about everything you can think of. It is based on the fallacious assumption that too much is being spent. It is based on the notion that the public is clamoring for it. Neither of those propositions is true. It assumes there is some way to level the political playing ground for everyone, which is impossible to achieve. It is unconstitutional, clearly and obviously. It would create a gargantuan Federal Election Commission with the mission to shut people up all across America. It would call upon two industries, the broadcast industry and the direct mail postal users, to pay for the price of all of this big Government.

For all of these reasons, obviously, Mr. President, this bill should be defeated. The way to defeat this bill is to vote ''no'' on cloture.

Mr. President, I have a variety of magazine articles that have come out against this bill, including Weekly Standard, the Wall Street Journal, Rollcall, the National Review, and the Baltimore Sun, and I ask unanimous consent that the editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Nov. 16, 1995]

THE MAN WHO RUINED POLITICS

So Colin Powell is not running for President. Neither is Jack Kemp, Bill Bradley, Dick Cheney, Sam Nunn or William Bennett. Voters are left with the likely choice between two rather tired war horses, Bill Clinton and Bob Dole. No other Democrat is challenging an obviously vulnerable incumbent, and Republican contenders such as Phil Gramm, Pat Buchanan and Lamar Alexander hover in single digits. In this second rank we now also have millionaire publisher Steve Forbes, who started from nowhere to grab the first rung on the ladder. And of course, billionaire Ross Perot still haunts the scene.

If you don't like the remaining field, blame Fred Wertheimer and Common Cause, the organization he until recently ran and still animates, are the principal architects of the cockamamie financial gauntlet we inflict on our potential leaders. Common Cause is point-lobby for the goo-goos, that is, the earnest folks always trying to jigger the rules to ensure good government. One of their conceits is that money is the root of all political evil, so they seek salvation in the Sisyphean task of eliminating its influence. The chief result of this is a rule outlawing individual political contributions of more than $1,000, and a bureaucracy called the Federal Election Commission to count angels on pinheads in deciding, for example, what counts as a contribution.

A serious Presidential campaign is likely to cost $20 million. This means a potential Presidential has to start by persuading 20,000 different people to pony up a grand. Take an arbitrary but probably generous hit rate of 5%, and he (or she) has to pass the tin cup 400,000 times. Admittedly these numbers oversimplify, but they give you the idea. Mr. Wertheimer's brainstorm means fund-raising is so consuming that candidates have no time for anything else. Even more important, it is a process virtually designed to drain a potential President of any residue of self-respect.

This may not be the only thing General Powell means when he says running requires a fire he does not yet feel, but it is certainly a big one. His adviser Richard Armitage explicitly said, ''Colin Powell going out and asking people for money and then spending all that money wasn't attractive.'' Mr. Kemp was similarly explicit in not wanting to undertake the fund-raising exercise, and it no doubt inhibited Mr. Cheney as well. On the Democratic side, finding 20,000 donors to challenge an incumbent is an even more daunting challenge; Senator Bradley and Senator Nunn decided to quit rather than fight.

It is no accident that the dropouts are precisely the types the goo-goo crowd would like to keep in politics, which is to say, those motivated by principle instead of sheer ambition. In 1988, to take an earlier example, the exploratory field included Don Rumsfield, who had been a Congressman, White House Chief of Staff, Defense Secretary and a spectacularly successful corporate chief executive. But he threw in the towel rather than run up possibly unpayable debts—''as a matter of principle, I will not run on a deficit.''

The doleful effect of such limitations were entirely predictable; indeed, they were predicted right here. As early as 1976, when the Supreme Court partly upheld the 1974 Federal Election Campaign Act, we wrote that the law ''will probably act like the Frankenstein's monster it truly is. It will be awfully hard to kill, and the more you wound it, the more havoc it will create.'' In the face of hard experience, of course, the goo-goos prescribe more of the same, to the point where ''campaign finance reform'' has become the Holy Grail.

To be fair, the Wertheimer coven hasn't had its way entirely. The logic of the goo-goo impulse is public financing of political campaigns, an idea mostly hooted down by the same taxpayers who eagerly embrace term limits—though in Presidential campaigns public finance serves as the carrot

getting candidates to accept the FEC nitpicking. And the Supreme Court, while backing away from the obvious conclusion that limiting political expenditures is *prima facie* an infringement of free speech, couldn't bring itself to say someone can't spend his own money on his own campaign.

Thus the millionaire's loophole. Mr. Perot was able to use his billions to confuse the last Presidential elections, going in, out and back in at will. So long as he doesn't accept public money, he can spend as he likes.

Mr. Forbes is an even more interesting case, since he was chairman of Empower America, the political roost of both Mr. Kemp and Mr. Bennett. Who would have guessed a year ago, the latter asks, that the Empower America candidate would be Steve Forbes. On the issues Mr. Forbes is perhaps an even better candidate than his colleagues—backing term limits where Mr. Kemp opposes them, for example—and without his message his money wouldn't do much good. Still, to have a better chance at ultimately winning, it would have been logical for him to bankroll one of his better-known colleagues. But that's against the law, thanks to Mr. Wertheimer, so Mr. Forbes has to hit the stump himself.

With widespread disaffection with the current field, and especially in the wake of the Powell withdrawal, the lunacy of the current rules is coming to be recognized. The emperor has no clothes, think tank scholars are starting to say—notably Bradley A. Smith of the Cato Institute, whose views were published here Oct. 6. Following Mr. Smith, Newt Gingrich said last weekend we don't spend too much on political campaigns but too little. This heresy was applauded this week by columnist David Broder, which may herald a breakthrough in goo-goo sentiment itself.

Formidable special interests, of course, remain opposed to change in the current rules. Notably political incumbents who want campaigns kept as quiet as possible and have learned to milk other special interests who want access. So rather than having some maverick millionaire funding his pet candidate on reasons that might relate to ideas and issues, we have all parties funded by Dwayne Andreas and his sisters and his cousins and his aunts, better to protect ethanol subsidies. Finally, of course, we have Mr. Perot and his United We Stand hell-bent for further restrictions on campaign finance, better to protect the political process for billionaires like himself.

Not so, thankfully, Mr. Forbes, who sees campaign spending limits as an incumbent protection device. He recently told an Iowa audience, ''If Congress abolished the franking privilege, then I'd be impressed.'' Lift the caps on giving and spending, but make sure everything is disclosed, he says. ''That's real reform.''

[From the Wall Street Journal, Feb. 2, 1996]

RUINING POLITICS—II

Not long ago these columns described how the crazy campaign-finance reforms dreamed up by the likes of Fred Wertheimer and Common Cause have been ruining politics. Oregon voters just got another such lesson in their special Senate election this week.

Democrats are understandably pleased with their narrow (less than 1% margin) victory, but so too are the Sierra Club, the League of Conservation Voters (LCV), the Teamsters, the gay and lesbian lobby, the public-employee unions, NARAL (the abortion rights outfit), the National Council of Senior Citizens and the AFL–CIO. All of these liberal groups weighed in with what campaign finance laws call ''independent expenditures'' on behalf of Democrat Ron Wyden. Call this the Common Cause loophole.

In the world of campaign reformers, money is the root of all evil. So they spend their time denouncing candidates who raise it for bending to ''special interests.'' Yet what the reformers won't advertise is that there's nothing much they can do about the special interests who decide to spend money on their own.

As they did to great effect in Oregon. The AFL says it devoted 35 full-time professionals and sent out 350,000 pieces of partisan mail for the cause. The Sierra Club and LCV spent $200,000 on 30,000 postcards, 100,000 telephone calls and very tough TV and radio spots accusing Republican Gordon Smith of ''voting against . . . groundwater protection, clean air, pesticide limits, recycling.''

The topper was a Teamster radio spot, run on seven stations in five cities, that in effect accused Mr. Smith of being an accomplice to murder because a 14-year-old boy died in an accident at one of his companies. ''Gordon Smith owns companies where workers get hurt and killed. He has repeatedly violated the law. Those are the facts.''

In fact, the young worker had died after a fall in a grain elevator while being supervised by his father, who still works for Mr. Smith and doesn't blame him. An analysis of the ad in the liberal Oregonian newspaper essentially concluded that the whole thing was false. (By the way, the ad was the work of consultant Henry Sheinkopf, who is part of Bill Clinton's re-election team this year and likes to say he believes in the politics of ''terror.'' We trust Mr. Clinton will soon give him his post-Oklahoma City ''civility'' speech to read.)

Even Mr. Wyden felt compelled to criticize the rhetoric of the ad, but since it wasn't run by his campaign, he couldn't be blamed for it, even as it cut up his opponent. That's the beauty of these ''independent expenditures'': They work for a candidate without showing his fingerprints. Mr. Wyden even took the high road earlier this month and announced that both candidates should stop negative campaigning, while his allies kept dumping garbage on Mr. Smith through the mail and on the airwaves!

Now, we understand that Republicans do this, too. The NRA doesn't play beanbag. And as a millionaire businessman, Mr. Smith was able to spend enough of his own money to answer this stuff in his campaign. But candidates who aren't millionaires have to find money somewhere else, which means from people and interests that have money. Yet if Mr. Wertheimer and Common Cause get their way, nonrich candidates would find their ability to raise that money drastically limited. The special interests would still be able to sling their junk, while a candidate would lack the cash to respond.

Something very much like this probably cost Republicans the governorship last year in Kentucky, where the AFL spent lavishly for the Democrat but the Republican was hemmed in by spending limits. And, of course, operations such as the AFL or the teachers unions have an unlimited supply of money from forced union dues, while other liberal special-interest groups get taxpayer subsidies that Republican Senators like Vermont's Jim Jeffords are refusing to kill. (Question: What does Mr. Jeffords have against electing other Republicans?) If Congress tried to restrict such ''independent'' spending in some new reform, the Supreme Court would probably (and rightly) strike it down as a violation of the First Amendment.

The bigger point here is that John McCain, Fred Thompson, Linda Smith and other Republicans who've joined up with Common Cause need to rethink their allegiances. They're lending credibility to an exercise that is sure to backfire on their party, if not on them, and probably on our democracy. How ironic it would be if, in the name of controlling special interests, our sanctimonious reformers merely made them more powerful.

Mr. MCCONNELL. I ask unanimous consent to have printed in the RECORD testimony on the constitutionality of the broadcast provisions in the bill prepared for the National Association of Broadcasters.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSTITUTIONAL INFIRMITIES OF PENDING POLITICAL BROADCASTING LEGISLATION

(Prepared for National Association of Broadcasters by P. Cameron DeVore, Gregory J. Kopta, Robert W. Lofton, of Davis Wright Tremaine)

SUMMARY

Pending Congressional campaign finance reform legislation would substantially expand federal political candidates' ''reasonable access'' to broadcast time, raising fundamental issues under both the First and Fifth Amendments to the United States Constitution. Several bills would require broadcasters to provide free and/or heavily discounted time to political candidates as an incentive for candidates to voluntarily comply with campaign spending limits. The goal of this legislation apparently is to reduce the cost of federal election campaigns for House and Senate seats and thereby enhance the integrity of the electoral process.

By requiring broadcasters to finance political candidates, the pending legislation would compel broadcasters to engage in protected speech. Such a requirement could only be justified by compelling necessity, and then only if precisely tailored to the government's interest. Mandating that broadcasters, rather than candidates, pay to communicate partisan political messages would not advance the government's interest in enhancing the integrity of the electoral process. In addition, the government could advance that interest more effectively through numerous alternatives that do not involve encroachments on First Amendment freedoms.

Broadcasters historically have been subject to more restrictions than have other media on their constitutionally protected editorial discretion, but the traditional rationale of spectrum scarcity no longer justified singling out broadcasters for reduced First Amendment protection, particularly in light of the multiplicity of other outlets for diverse viewpoints. The pending legislation nevertheless could not survive even the ''intermediate scrutiny'' requirements of narrow tailoring to a substantial government purpose. Compelling broadcasters to finance political campaigns would bear no relationship to broadcasters' public interest duties, and would upset the delicate balance between their journalistic freedoms and their obligations as licensees of the public airwaves. By singling out broadcasting from other media and usurping broadcast facilities and time, the proposed legislation also denies broadcasters equal protection of the law and takes their property without just compensation, in violation of the Fifth Amendment.

For all of these reasons, it is our view that those aspects of the pending legislation that require broadcasters to provide free or subsidized time for political candidates' speech would likely be held unconstitutional by the courts.

Mr. MCCONNELL. Mr. President, I ask unanimous consent to have printed

in the RECORD a constitutional analysis conducted for the National Right to Life Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BOPP, COLESON & BOSTROM,
ATTORNEYS AT LAW,
Terre Haute, IN, November 7, 1995.

Re: Senate Campaign Finance Reform Act of 1995.

DAVID O'STEEN, Ph.D.,
National Right to Life Committee,
Washington, DC.

DEAR DR. O'STEEN: You have asked me, as General Counsel for the National Right to Life Committee (''NRLC''), to evaluate the proposed Senate Campaign Finance Reform Act of 1995 (''The Act''). We have done so.

Based on our evaluation, we recommend that NRLC oppose the Act because of the effects it would have on NRLC activities. These are set forth below.

SECTION 201

Section 201 would abolish connected political action committees (''PACs''). The Act prohibits membership corporations, such as National Right to Life, from having a connected PAC. This would abolish National Right to Life PAC. This would severely affect the ability of NRLC to influence federal elections because NRLC would not have a connected PAC.

Section 201 also permits only individuals or political committees organized by candidates and political parties to solicit contributions or make expenditures ''for the purpose of influencing an election for Federal office.'' This appears to do two things.

First, it appears to prohibit independent PACs, so that persons associated with NRLC couldn't create an independent PAC to do express advocacy for or against candidates.

Second, it also appears to bar nonprofit, nonstock, ideological organizations—which under *FEC* v. *Massachusetts Citizens for Life,* 479 U.S. 238 (1986), could do independent expenditures—from making such independent expenditures on behalf of or in opposition to candidates.

SECTION 251

Assuming that under the Act independent expenditures can be done by someone other than an individual,[1] so that NRLC still could have a PAC capable of making contributions and expenditures to influence an election, there remains a problem. The problem is with the definition of independent expenditure in the Act.

The Act defines ''independent expenditure'' as an expenditure containing ''express advocacy'' made without the participation of a candidate. ''Express advocacy'' is defined extremely broadly:

''18(A) The term ''express advocacy'' means when a communication is taken as a whole and with limited reference to external events, an expression of support for or opposition to a specific candidate, to a specific group of candidates, or to candidates of a particular party.

''(B) The term ''expression of support for or opposition to'' includes a suggestion to take action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking action.''

This extremely broad definition of ''express advocacy'' would sweep in protected issue advocacy which NRLC does, such as voter guides. For example, criticizing a candidate for his or her proabortion stand near an election time would fall within the express advocacy definition because it would constitute ''an expression of . . . opposition to a specific candidate.'' This phrase goes far beyond what the United States Supreme Court said was permissible to regulate as electioneering in the case of *Buckley* v. *Valeo,* 424 U.S. 1 (1976). In *Buckley,* the Supreme Court held that in order to protect issue advocacy (which is protected by the First Amendment), government may only regulate election activity where there are explicit words advocating the election or defeat of a clearly identified candidate.

In sum, these provisions of the Act would prevent NRLC from engaging in constitutionally-protected issue advocacy.

SECTION 306

Section 306 of the Act authorizes an injunction where there is a ''substantial likelihood that a violation . . . is . . . about to occur.'' Thus, the FEC would be authorized to seek injunctions against expenditures which, in the FEC's expansive view, could influence an election. Such a preemptive action against speech is an unconstitutional prior restraint and is unconstitutional except in the case of national security or similarly weighty situations. Prior restraint should never be allowed in connection with core political speech. There simply is no governmental interest of sufficient magnitude to justify the government stopping persons from speaking. Because prior restraints of speech are so repugnant to the Constitution, the usual remedy is to impose penalties after the speech is done, if a violation of law occurred in connection with the speech.

Therefore, under the Act, the Federal Election Commission would be authorized to pursue injunctions against the political speech of persons or organizations suspected of violating the Act. This means that NRLC would be subject to a prior restraint of its speech, even issue advocacy, on the eve of an important election. Given its history of expansive readings of its powers to regulate constitutionally-protected speech, the Federal Election Commission should never be handed the weapon of prior restraint.

As stated at the beginning, there are severe problems with the Act. The Act would profoundly alter NRLC's ability to affect federal elections. Therefore, we recommend that National Right to Life Committee oppose the Act.

Sincerely,

JAMES BOPP, Jr.
RICHARD E. COLESON.

[1] There is a way this could happen. Apparently due to concerns about the constitutionality of what Section 201 of the bill does (§324 of the FECA), the Act creates a fall-back position for times when those provisions might not be in effect, i.e., might be enjoined for unconstitutionality. This fall-back provision is that during the time when the ban on connected and independent PACs might be enjoined from enforcement the total that a candidate can receive from a ''multicandidate'' PAC is ''20 percent of the aggregate Federal election spending limits applicable to the candidate for the election cycle.'' Thus, the fallback is that if connected and independent PACs cannot be abolished altogether, then the total contributions from such PACs would be capped. Under this provision, the ability of NRL PAC to contribute to federal candidates would be severely affected.

Mr. MCCONNELL. In addition, I have individual columnists like George Will and David Broder who have expressed opposition to various parts of this measure, and I ask unanimous consent that those columns be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Newsweek, Apr. 15, 1996]

CIVIC SPEECH GETS RATIONED

(By George F. Will)

Surveying the constitutional and political damage done by two decades of campaign finance ''reforms,'' friends of the First Amendment feel like the man (in a Peter De Vries novel) who said ''In the beginning the earth was without form and void. Why didn't they leave well enough alone?'' Reformers should repent by repealing their handiwork and vowing to sin no more. Instead, they are proposing additional constrictions of freedom that would further impoverish the nation's civic discourse.

The additions would be the Forbes-Perot Codicils, abridging the right of a rich person to use his or her money to seek elective office. This will be called ''closing a loophole.'' To reformers, a ''loophole'' is any silence of the law that allows a sphere of political expression that is not yet under strict government regulation.

Jack Kemp, Bill Bennett, Dan Quayle, Dick Cheney and Carroll Campbell are among the Republicans who were deterred from seeking this year's presidential nomination in part by the onerousness of collecting the requisite funding in increments no larger than $1,000. You may or may not regret the thinness of the Republican field this year, but does anyone believe it is right for government regulations to restrict important political choices?

There are restrictions on the amounts individuals can give to candidates and on the amounts that candidates who accept public funding can spend. Limits on individuals' giving force candidates who are less wealthy than Forbes or Perot to accept public funding. Such restrictions are justified as necessary to prevent corruption and promote political equality. But Prof. Bradley A. Smith of Capital University Law School in Columbus, Ohio, demolishes such justifications in an article in The Yale Law Journal, beginning with some illuminating history.

In early U.S. politics the electorate was small, most candidates came from upper-class factions and the candidates themselves paid directly what little campaign spending there was, which went for pamphlets, and for food and whisky for rallies. This changed with Martin Van Buren's organization of a mass campaign for Andrew Jackson in 1828. Democratization—widespread pamphleteering and newspaper advertisements for the increasingly literate masses—cost money. Most of the money came from government employees, until civil service reform displaced patronage.

Government actions—Civil War contracts, then land and cash grants to railroads, and protectionism—did much to create corporations with an intense interest in the composition of the government. Then government created regulations to tame corporate power, further prompting corporate participation in politics. Smith says that in 1888 about 40 percent of Republican national campaign funds came from Pennsylvania businesses, and by 1904 corporate contributions were 73 percent of Teddy Roosevelt's funds. Democrats relied less on corporate wealth than on the largesse of a small number of sympathetic tycoons: in 1904 two of them provided three quarters of the party's presidential campaign funds. By 1928 both parties' national committees received about 69 percent of their contributions in amounts of at least $1,000 (about $9,000 in today's dollars).

Only a few campaigns have raised substantial sums from broad bases of small donors. These campaigns have usually been ideological insurgencies, such as Barry Goldwater's in 1964 ($5.8 million from 410,000 contributors), George McGovern's in 1972 ($15 million from contributions averaging about $20) and Oliver North's 1994 race for a U.S. Senate seat from Virginia (small contributors accounted for almost all of the $20 million that enabled North to outspend his principal opponent 4 to 1 in a losing effort).

The aggressive regulation of political giving and spending began in 1974, in the aftermath of Watergate. Congress, itching to ''do something'' about political comportment, put limits on giving to candidates, and on spending by candidates—even of their personal wealth. Furthermore, limits were placed on total campaign spending, and even on political spending by groups unaffiliated with any candidate or campaign. In 1976 the Supreme Court struck down the limits on unaffiliated groups, on candidates' spending of personal wealth and on mandatory campaign spending ceilings. The Court said these amounted to government stipulation of the permissible amount of political expression and therefore violated the First Amendment.

But in a crucial inconsistency, the Court upheld the limits on the size of contributions. Such limits constitute deliberate suppression by government of total campaign spending. And such suppression constitutes government rationing of political communication, which is what most political spending finances. Furthermore, in presidential campaigns, limits on the size of contributions make fund raising more difficult, which coerces candidates (at least those less flush than Forbes or Perot) into accepting public funding. Acceptance commits candidates to limits on how much can be spent in particular states during the nominating process, and on the sums that can be spent in the pre- and post-convention periods.

Now, leave aside for a moment the question of whether the ''reformers'' responsible for all these restrictions remember the rule that Congress shall make no law abridging the freedom of speech. But why, in an era in which the United States has virtually eliminated restrictions on pornography, is government multiplying restrictions on political expression? (Here is a thought rich in possibilities: Would pornographic political expression be unregulatable?)

When reformers say money is ''distorting'' the political process, it is unclear, as Smith says, what norm they have in mind. When reformers say ''too much'' money is spent on politics, Smith replies that the annual sum is half as much as Americans spend on yogurt. The amount spent by all federal and state candidates and parties in a two-year election cycle is approximately equal to the annual sum of a private sector's two largest advertising budgets (those of Procter & Gamble and Philip Morris). If the choice of political leaders is more important than the choice of detergents and cigarettes, it is reasonable to conclude that far too little is spent on politics.

The $700 million spent in the two-year election cycle that culminated in the November 1994 elections (the sum includes all spending by general-election candidates, and indirect party-building expenditures by both parties, and all indirect political spending by groups such as the AFL–CIO and the NRA) amounted to approximately $1.75 per year per eligible voter, or a two-year sum of $3.50—about what it costs to rent a movie. In that two-year cycle, total spending on all elections—local, state and federal—was less than $10 per eligible voter, divided among many candidates. And because of the limits on the size of contributions, much of the money was not spent on the dissemination of political discourse but on the tedious mechanics of raising money in small amounts. Furthermore, the artificial scarcity of money produced by limits on political giving and spending has strengthened the incentive for the kind of spending that delivers maximum bang for the buck—harsh negative advertising.

Does a money advantage invariably translate into political potency? Try telling that to Forbes, who spent $440 per vote in finishing fourth in the Iowa caucuses. True, the candidate who spends most usually wins. But as Smith notes, correlation does not establish causation. Money often follows rather than produces popularity: many donors give to probable winners. Do campaign contributions purchase post-election influence? Smith says most students of legislative voting patterns agree that three variables are more important than campaign contributions in determining legislators' behavior—party affiliation, ideology, and constituent views. ''Where contributions and voting patterns intersect, they do so largely because donors contribute to those candidates who are believed to favor their positions, not the other way around.''

Smith argues that limits on campaign giving and spending serve to entrench the status quo. As regards limits on giving, incumbents are apt to have large lists of past contributors, whereas challengers often could best obtain financial competitiveness quickly by raising large sums from a few dedicated supporters. If today's limits had been in place in 1968, Eugene McCarthy could not have mounted his anti-war insurgency, which depended heavily on a few six-figure contributions. As regards spending limits, the lower they are the better they are for incumbents: incumbents are already well known and can use their public offices to seize public attention with ''free media''—news coverage.

The rage to restrict political giving and spending reflects, in part, the animus of liberals against money and commerce. There are, after all, other sources of political influence besides money, sources that liberals do not want to restrict and regulate in the interests of ''equality.'' Some candidates are especially articulate or energetic or physically attractive. Why legislate just to restrict the advantage of those who can make or raise money? Smith notes that one reason media elites are apt to favor restricting the flow of political money, and hence the flow of political communication by candidates, is that such restrictions increase the relative influence of the unrestricted political communication of the media elites.

To justify reforms that amount to government rationing of political speech, reformers resort to a utilitarian rationale for freedom of speech: freedom of speech is good when it serves good ends. This rationale is defensible; indeed, it has a distinguished pedigree. But it has recently been repudiated in many of the Supreme Court's libertarian construings of the First Amendment. Those decisions, taking an expansive view of the First Amendment in the interest of individual self-expression, have made, for example, almost all restrictions on pornography constitutionally problematic. And such libertarian decisions generally have been defended by liberals—who are most of the advocates of restrictions on campaign giving and spending.

But liberals of another stripe also advocate campaign restrictions. They are ''political equality liberals'' rather than ''self-expression liberals.'' They favor sacrificing some freedom of speech in order to promote equal political opportunity, as they understand that. Such liberal egalitarians support speech codes on campuses in the name of equality of status or self-esteem for all groups, or to bring up to equality groups designated as victims of America's injustices. Liberal egalitarians support restrictions on pornography because, they say, pornography deprives women of civic equality by degrading them. And liberal egalitarians support restrictions on political expression in order to achieve equal rations of political communication for all candidates.

Prof. Martin Shapiro of the University of California's Law School at Berkeley writes that ''almost the entire first amendment literature produced by liberal academics in the past twenty years has been a literature of regulations, not freedom—a literature that balances away speech rights . . . Its basic strategy is to treat freedom of speech not as an end in itself, but an instrumental value.'' And Bradley Smith says that ''after twenty years of balancing speech rights away, liberal scholarship is in danger of losing the ability to see the First Amendment as anything but a libertarian barrier to equality that may, and indeed ought, to be balanced away or avoided with little thought.

Fortunately, more and more people are having second thoughts—in some cases, first thoughts—about the damage done to the political process, and the First Amendment, by the utilitarian or ''instrumentalist'' understanding of freedom of speech. Campaign ''reforms'' have become a blend of cynicism and paternalism—attempts to rig the rules for partisan advantage or the advantage of incumbents' or to protect the public from what the political class considers too much political communication. Any additional ''reforms,'' other than repeal of the existing ones, will make matters worse.

[From the Washington Post, Nov. 14, 1995]

GINGRICH'S HERESY

(By David S. Broder)

Speaker Newt Gingrich (R-Ga.) knew he was headed into a test of wills with the president that might force a shutdown in the government and boost his already high negative ratings. The last thing he needed was another fight—especially one in which his position would guarantee denunciation from all respectable quarters.

Nonetheless, when Gingrich testified the other day at a congressional hearing on campaign finance, he deliberately committed heresy. He argued that too little money—not too much—is going into campaigns.

The editorial pages and columnists issued the predictable squawks. The speaker also took fire from the rear: The freshman Republicans who have been his shock troops were in shock. They wanted to hear him say, as everyone from Common Cause to Ross Perot regularly intones, that American politics is ''awash'' in special-interest money.

That is the operative premise of all the favorite ''reforms'': abolition of PACs (political-action committees); allowing only people from the home state or home district to contribute to a candidate; getting rid of ''soft-money'' corporate contributions, which pay for political party facilities and grass-roots operations.

All of this Gingrich challenged in his testimony on Nov. 2. The total amount spend on House and Senate races in 1994 was $724 million—a record sum and shocking to many. But the cost of 435 House races and 33 Senate campaigns was, he pointed out, roughly double what the makers of the three leading antacids budgeted for advertising last year. This is a scandal?

Ah, but it said, the candidates and officeholders were forced to spend an inordinate amount of time dialing for dollars, going hat in hand to prospective contributors. True enough, but the main reason is that contribution limits have not been adjusted for inflation in 21 years. In 1974 the limit on individual contributions was set at $1,000. That is worth $325 today. If you really want politicians spending less time fund-raising, Gingrich suggested, lift that limit to $5,000 and index it for inflation.

If this were not heretical enough, the speaker had one other idea. Instead of thinking of campaign finance as a separate problem, screaming for solution, think about a way to pay for the cost of politics that would

actually serve the interests of voters and of governing.

Do that, he said, and you may find that the best remedy is not to legislate limits on contributions or spending but to enable greater activity by the political parties—Republicans, Democrats and any third force that may emerge to challenge them.

The biggest problem in our campaign finance system, he said, is the gross disparity between what House incumbents can raise and what most challengers can muster. The PACs are a big part of this problem for they use their contributions to ensure access to legislators handling their issues. The PAC system, as Gingrich said, ''has become an arm of the Washington lobbyists'' and needs to be reduced in significance.

But limiting PAC contributions is likely to be an empty gesture. Increasingly, organized interest groups are mounting independent expenditure campaigns, boosting their friends and targeting their enemies, which they can do without limit.

Since we cannot effectively stifle these special-interest voices, Gingrich said, let us submerge them in appeals from the parties. Increase substantially the limits on what people can give to political parties, he said. And allow those parties to contribute far more than they do now to help challengers offset the many advantages incumbents enjoy—not only greater leverage on the PACs but all the staff, office and communications facilities that are provided at taxpayers' expense.

Barring such changes, Gingrich rightly said, we are almost certain to see a continuation of the trend to millionaire candidates. Because the wealthy are allowed (by Supreme Court decision) to spend whatever they wish on their own campaigns, the Senate has become a millionaires' club and the House is moving in the same direction.

All of this was a challenge to conventional wisdom. But Gingrich is not, in fact, alone. In the same week that he testified, the libertarian Cato Institute and the liberal Committee for the Study of the American Electorate published essays arguing that the supply of political money should be increased, not decreased. As Curtis Gans, the author of the latter study, pointed out, ''The overwhelming body of scholarly research . . . indicates that low spending limits will undermine political competition by enhancing the existing advantages of incumbency.''

Gingrich has been accused of foot-dragging on the handshake agreement he struck with President Clinton last June to form a bipartisan commission on campaign finance.* * *

[From the Washington Post, Jan. 17, 1996]

A SENATE OF MILLIONAIRES

(By David S. Broder)

Want a perfectly safe bet on the November election results? Bet that there will be even more millionaires in the U.S. Senate.

What once was called ''The World's Most Exclusive Club'' increasingly requires personal wealth as a condition for membership. The combination of rising campaign costs and foolishly frozen limits on individual contributions has increased the advantage of self-financed candidates. The 1996 candidate lists are full of them.

In Georgia, for example, all three Republicans seeking nomination to the vacancy created by the retirement of Democratic Sen. Sam Nunn are men of substantial means. In Minnesota, former Republican senator Rudy Boschwitz, a wealthy retired businessman, is trying to reclaim the seat he lost to populist professor Paul Wellstone six years ago. And in a half-dozen other states, Republicans either have or are trying to recruit challengers who can afford to pay their own way.

What is more striking is the extent to which the Democrats—the self-styled party of the people—have begun to rely on affluence as the criterion for picking their Senate candidates.

In Colorado, New Hampshire, South Carolina and Virginia, the favored candidates for the Democratic nomination are all men of independent means, and in many cases, without wealth would not be considered to have Senate credentials. In Illinois, North Carolina, Oklahoma and Oregon, men of similar backgrounds are given a chance of winning nomination because of their bankrolls. It is not a new pattern. Among the Democratic senators seeking reelection this year is John D. (Jay) Rockefeller IV of West Virginia, who spent more than $10 million of his own money to be elected in 1984.

Retiring Sen. Bill Bradley (D-N.J.), a banker's son who earned big money as a New York Knicks basketball star, writes about the advantage wealth confers on a politician in his newly published memoir, ''Time Present, Time Past.'' Bradley recounts how he decided he could afford to give or lend a quarter-million dollars to his first Senate campaign in 1978—about one-fifth of his budget. ''It assured me that I could compete even if I didn't raise as much as I had hoped,'' he says. ''With the existence of that self-generated cushion, I was able to raise more. When potential contributors see a campaign with money, they assume it's well-run, and they are more likely to make contributions. Everyone likes to be with a winner, whether in basketball or politics.''

Bradley points out that he was a piker compared with many of his colleagues. ''Four years later in New Jersey, Frank Lautenberg, a wealthy computer executive with no elective experience, would spend over $3.5 million of his own money to win a U.S. Senate seat. . . . In Wisconsin in 1988, Herb Kohl promised to spend primarily his own money in his Senate campaign; $7.5 million later, he won.''

Financial disclosure statements show that at least 28 of the 100 sitting senators have a net worth of $1 million or more—many of them much more. Michael Huffington, a Texas oil man, spent $28 million of his own money in trying for a California Senate seat in 1994—but still lost. The price is going up.

Wealth is not a determinant of votes in the Senate. There are liberals like Rockefeller and Ted Kennedy along with conservatives. But wealth confers an unfair advantage in the campaigns for the Senate, and makes it much harder than it should be for people of talent, but no wealth, to compete.

The main reason for this disadvantage is the unrealistically low limit on individual contributions. The law, as Bradley notes, provides that ''whereas a candidate could contribute as much of his own money as he chose, he could accept individual contributions of only $2,000 from others—$1,000 of it for the primary and $1,000 for the general election.''

The contribution limits were set 22 years ago and never have been adjusted; inflation has eroded their value by two-thirds since then. Raising contribution limits is far down the list of proposals of most campaign finance reformers; many want to freeze them or reduce them.

But all the contribution limits are accomplishing today is to create an ever-greater advantage for self-financed millionaire candidates. Steve Forbes's rivals in the Republican presidential race are complaining that his wealth is tilting the odds in the contest, where he is the only one who is paying his own way and therefore spending as much as he wants. But the Senate picture is not very different.

If we really want to be ruled by a wealthy elite, fine; but it is a foolish populism that insists it despises the influence of wealth, and then resists liberalizing campaign contribution limits.

Rich men understand that. It's too bad the reformers can't figure it out.

[From the Washington Post, Jan. 31, 1996]

''FRONTLINE'S'' EXERCISE IN EXAGGERATION

(By David S. Broder)

As if the cynicism about politics were not deep enough already, PBS's ''Frontline'' last night presented a documentary called ''So YOU Want to Buy a President?'' whose thesis seems to be that campaigns are a charade, policy debates are a deceit and only money talks.

The narrow point, made by Sen. Arlen Specter (R–Pa.), an early dropout from the 1996 presidential race, about millionaire publisher Malcolm S. (Steve) Forbes Jr., is that ''somebody is trying to buy the White House, and apparently it is for sale.''

The broader indictment, made by correspondent/narrator Robert Krulwich, is that Washington is gripped by a ''barter culture'' in which politicians are for sale and public policy is purchased by campaign contributions.

The program rested heavily on a newly published paperback, ''The Buying of the President.'' Author Charles Lewis, the head of the modestly titled Center for Public Integrity, was a principal witness, and Kevin Phillips, the conservative populist author who wrote the book's introduction, was also a major figure in the documentary.

It dramatized the view asserted by Lewis in the conclusion of his book: ''Simply stated, the wealthiest interests bankroll and, in effect, help to preselect the specific major candidates months and months before a single vote is cast anywhere. . . . We the people have become a mere afterthought of those we put in office, a prop in our own play.''

Viewers say a number of corporate executives—no labor leaders, no religious leaders, no activists of any kind, for some reason—who have raised and contributed money for presidents and presidential candidates and thereafter been given access at dinners, private meetings or overseas trade missions.

It is implied—but never shown—that policies changed because of these connections. As Krulwich said in the transcript of a media interview distributed, along with an advance tape, with the publicity kit for the broadcast, ''We don't really know whether these are bad guys or good guys. . . . I'm not really sure we've been able to prove, in too many cases, that a dollar spend bought a particular favor. All we've been able to show is that over and over again, people who do give a lot of money to politicians get a chance to talk to those politicians face to face, at parties, on planes, on missions, in private lunches, and you and I don't.''

If that is the substance of the charge, the innuendo is much heavier. At one point, Krulwich asked Lewis, in his most disingenuous manner, ''Do you come out convinced that elections are in huge part favors for sale, or in tiny part?''

And Lewis replied that while ''there are a lot of wealthy people that do want to express broad philosophical issues,'' the ''vested interests that have very narrow agendas that they want pursued see these candidates as their handmaidens or their puppets. The presidential campaign is not a horse race or a beauty contest. It's a giant auction.''

That is an oversimplified distortion that can do nothing but further alienate a cynical electorate. Of course, money is an important ingredient in our elections and its use deserves scrutiny. But ideas are important too, and grass-roots activism even more so. The Democratic Leadership Council's Al From

and the Heritage Foundation's Robert Rector have had more influence in the last decade than any fund-raisers or contributors, because candidates have turned to them for policy advice.

John Rother of the American Association of Retired Persons and Ralph Reed of the Christian Coalition work for organizations that are nominally nonpartisan and make no campaign contributions at all. But their membership votes—so they have power.

The American political system is much more complex—and more open to influence by any who choose to engage in it—than the proponents of the ''auction'' theory of democracy understand, or choose to admit.

By exaggerating the influence of money, they send a clear message to citizens that the game is rigged, so there's no point in playing. That is deceitful, and it's dangerously wrong to feed that cynicism.

Especially when they have nothing to suggest when it comes to changing the rules for the money game.

At one point, Phillips said that the post-Watergate reforms succeeded only in having ''forced them [the contributors and politicians] to be more devious.'' That is untrue. Those reforms, which mandated the disclosure of all the financial connections on which the program was based, also created publicity which, even Krulwich and Co. admitted, foiled the ''plots'' of some contributors.

And Krulwich, for his part, suggested very helpfully that ''every high-profile politician agrees that some things have got to change. Change the limits. Change the rules. Change the primaries. Change the ads. Change enforcement. You gotta change something.''

How about changing the kind of journalism that tells people that politicians are bought-and-paid-for puppets and you're a sucker if you think there's a damn thing you can do to make your voice heard?

Mr. MCCONNELL. Mr. President, over the years working on this issue I have written several pieces which I ask unanimous consent to have printed—one in the Washington Post and one in the USA Today—in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 21, 1996]

JUST WHAT IS A SPECIAL INTEREST?

(By Mitch McConnell)

President Clinton, in his State of the Union address, beseeched Congress to enact campaign finance reform to reduce ''special interest'' influence. Campaign finance reforms that the president favors would constrict fundamental democratic freedoms to participate in the political process. In other words: speech would be limited and some citizens' freedom to participate in elections beyond voting would be ''reformed'' out of existence based on their alleged status as ''special interests.'' But if ''special interest'' is not defined, how are we to know just whose influence should be curbed?

Judging from the fervent bipartisan (and third party) scorn heaped on ''special interests,'' the casual observer would logically assume that this scourge of democracy was readily identifiable. The Congressional Record, newspaper editorials and campaign speeches are replete with diatribes against the ''special interests.'' A recent search of newspapers on the Nexis database found more than 60,000 articles and editorials containing the phrase ''special interest.''

''Special interest'' is the most pejorative phrase in the American political lexicon since ''communist-pinko.'' Judging from the reformers' scathing rhetoric, rooting out these special interests is a job for a new Senate Committee on Un-American Activities.

In fact, the special interest tag depends on the viewer's vantage point rather than on any objective criteria. So-called good government groups would have people believe that the antonym is ''public'' interest—as defined by them. These groups usually construe good government to mean big government and therefore deem big government to be in the public interest. By this logic, opposition to any government regulation or tax virtually guarantees a special interest charge.

Capitalism should not be a dirty word in a free society, but having observed the enmity directed toward its practitioners in many quarters, one could reasonably wonder. Some nonprofit so-called ''good government'' groups readily pin the special interest label on profit-seeking enterprises. Yet behind corporate balance sheets are employees, families, shareholders and communities of which they are part.

Does the special interest connotation extend to employees and their families? To the legions of Americans whose retirement funds and investments are keyed to the stock market? By such extrapolation does the ''special interest'' smear cut a wide swath.

What happens when a purported public interest organization is funded by a group that is universally regarded as a ''special interest,'' such as the plaintiffs' lawyers? Are we to conclude that the special interest in this instance is subsumed in the nobler public interest? Or is the public interest group simply laundering the special interest influence money and acting as a front organization? Or is it merely coincidence when their interests converge on, say, lawsuit reform?

Most people would probably conclude that a special interest is contrary to the majority interest. Should special interest be defined as being not immediately relevant to more than 49.9 percent of American citizens? Must its membership comprise a majority of the country to be legitimate? If so, such a qualification should be carefully pondered, as ''special interests'' could be equated with any narrow or minority interest, thus automatically tarnishing what could be a very worthy cause.

Being a senator from Kentucky, I regularly go to bat for Kentucky industries (and their employees, suppliers and subcontractors) threatened by onerous regulations and taxation. These industries may, in the minds of some people, epitomize ''special interest.'' To me, they and the Kentuckians whose livelihoods depend on them are constituents, and my assistance to them is in the public's interest.

Is a Pacific Northwest lumber company automatically a special interest? The company's employees? How about the Washington-based environmentalists who would sacrifice jobs and disrupt human lives for the sake of an owl? Are owls special interests?

The truth is that the special interest label is a political weapon utilized, often reflexively and perhaps thoughtlessly, by people throughout the ideological spectrum. It can be found in statements I have made in the past. Using it is a hard habit to break. Nevertheless, in the interest of more honest and civil public discourse, the invocation of the ''special interest'' mantra to propel a reform agenda or wound an opponent is a habit that should be broken.

All Americans have a constitutional right to petition the government and participate in the political process, however unpopular the cause or narrow its appeal may be. Americans do not forfeit those rights because they have been tagged with the special interest label.

The campaign finance reform debate, in particular, is advanced on the premise that special interest influence is pervasive, corrosive, and must be abated at all costs. But the cost of the alleged reforms in terms of constitutional freedom for all Americans is high. And the special interest premise is deeply flawed. So the next time you hear someone hail campaign finance reform as the answer, ask them what is the question. And when they say special interest influence is the problem, ask them: What is a special interest?

[From USA Today, June 11, 1996]

DISASTER FOR TAXPAYERS, CANDIDATES

[By Mitch McConnell]

The most talked-about campaign-finance schemes are unconstitutional, undemocratic, bureaucratic boondoggles. Further, their sponsors think taxpayers should foot the bill. And for good measure, these ''reform'' schemes also would greatly increase the power of the media.

Perhaps that is simply a fortunate happenstance for the liberal newspapers pushing them. In any event, the media clearly have a ''special interest'' in campaign finance ''reforms'' which would increase their power by limiting the speech of every other participant in the political process.

Because political campaigns exist to communicate with voters, the U.S. Supreme Court ruled two decades ago that campaign spending must be accorded First Amendment protection. Ergo, campaign spending limits are unconstitutional speech limits.

The simple fact is that communication with America's nearly 200 million eligible voters is expensive. For instance, one full-page color campaign ad in a Friday edition of USA TODAY would cost $104,400. Television and mail are also essential means of communicating with voters.

These are expensive venues, but they are the only way to reach all the voters in large, modern electorates. Limiting campaign spending would limit political discourse by candidates, thereby enhancing the power of the media. That is bad public policy.

For all the whining, the fact is that congressional campaign spending (less than $4 per eligible voter in 1994) is paltry relative to what Americans spend on consumer items like bubble gum and yogurt.

What we should do is adjust the individual contribution limit for inflation.

The contribution limits candidates must abide by in 1996 were set over two decades ago (when a new Ford Mustang cost $2,700). These inflation-eroded limits benefit the well-off (rich candidates who can fund entire campaigns out of their own pockets) and the well-known (principally incumbents) who have a large base from which to draw contributions.

Enhanced public disclosure of all campaign-related spending is also a worthy reform that would enable voters to make informed decisions on Election Day.

By comparison, the so-called ''good government'' groups' campaign-finance schemes would be disasters. Delay is preferable to the enactment of such constitutional monstrosities.

Mr. MCCONNELL. Mr. President, some information about the cost to the Postal Service, estimated by this postal rate subsidy, and I ask unanimous consent that be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. POSTAL SERVICE,
Washington, DC, June 24, 1996.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: I am writing to voice my concerns about campaign finance reform legislation, S. 1219, which would place an unfair financial burden on the Postal Service and its ratepayers.

Let me first say that the Postal Service takes no position on the general merits of campaign finance reform. This issue appropriately rests with the Congress. However, S. 1219, as well as several other campaign finance reform bills in the House and Senate, provide for reduced postage rates for eligible candidates. These bills do not contain a funding mechanism through which the Postal Service would be reimbursed for the difference between regular rate postage and the reduced rate used by the candidates. In essence, the legislation creates an unfunded mandate, and the costs would have to be absorbed by our customers, the postal ratepayers. Testimony at campaign finance reform hearings estimated the reduced postage costs for S. 1219 to be $50 million per election. Estimates for other campaign finance bills with reduced postage provisions range from $50 to $150 million per election.

I would also like to point out that it is very unlikely that the Postal Service and its customers would be made whole even if a funding mechanism were included in campaign finance reform legislation. After years of underfunding our annual appropriation for Congressionally mandated reduced rate mailings, Congress enacted the 1993 Revenue Forgone Reform Act. In eliminating future funding for reduced rate mailings, this law mandates that the Postal Service receive a series of 42 annual appropriations of $29 million as partial reimbursement for past funding shortfalls. Even this ''partial'' relief is now threatened as our House Treasury, Postal Service, and General Government Appropriations Subcommittee proposed that this appropriation be reduced by over $5 million during their markup of our FY '97 appropriations bill.

I recognize the importance of the campaign finance reform issue in Congress this year, and it is with reluctance that I express these concerns to you. Nonetheless, S. 1219, as well as others, would offer political candidates reduced postage costs at the expense of the Postal Service and its customers. I urge you and your colleagues to identify alternate provisions that would not require postal ratepayers to bear the burden of campaign finance reform.

Best regards,

MARVIN RUNYON.

DIRECT MARKETING ASSOCIATION, INC.,
Washington, DC, June 19, 1996.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: It now appears that S. 1219, campaign finance legislation sponsored by Senators McCain and Feingold, is scheduled for debate next week.

We strongly urge you to cast a *no* vote on the cloture motion that will be offered during the debate.

As I have written to you before, DMA is opposed to S.1219, largely because of the provisions for low cost mailings for Senatorial candidates, without compensation to the Postal Service for lost revenues.

We estimate that, should the House pass similar legislation, these provisions could cost the Postal Service as much as $350 million dollars over a two-year election cycle. Every penny of this will ultimately come out of the pocket of the businesses and consumers who use the mails.

The Postal Service finds itself in an increasingly competitive environment. In order to survive, the Postal Service must be able to price its products competitively. It cannot do this if costs are arbitrarily added to its rate base. Legislation such as this endangers the financial base of the Postal Service and the service it can provide to American businesses and consumers.

Again, we urge you to vote *no* on the cloture motion.

Sincerely,

RICHARD BARTON.

NATIONAL ASSOCIATION OF BROADCASTERS,
Washington, DC., June 24, 1996.

Hon. MITCH MCCONNELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: First, I would like to thank you for the leadership role you have taken in opposing S. 1219, the campaign finance reform legislation introduced by Senators John McCain and Russ Feingold.

As originally introduced, this legislation would require broadcasters to offer qualified Senate candidates an additional 50% discount off the discounted television advertising rates candidates currently receive. The legislation further requires broadcasters give candidates free advertising time. We believe these provisions are unconstitutional and impose significant financial burdens on local broadcasters and we must oppose the legislation.

We understand Senators McCain and Feingold have introduced a substitute to S. 1219. At your request we have reviewed the broadcast provisions of the substitute. We have done so and have determined that for the most part the broadcast provisions are the same as those in S. 1219. There is, however, new language in the broadcast section which causes us great concern.

The new provision would give to the U.S. Court of Federal Claims exclusive jurisdiction over challenges to the constitutionality of the broadcast rate and free time provisions. Further, by its terms it precludes any injunctive relief, providing only for money damages. It is unclear whether this is an attempt to somehow deny us the opportunity to bring a First Amendment claim against these provisions. No other section of the bill appears to have the same requirement and we do not understand why the broadcast provisions are given a different avenue for judicial review.

We must oppose the substitute to S. 1219, and we continue to support your efforts in opposing this legislation. If I can be of further assistance, please do not hesitate to phone.

Sincerely,

EDWARD O. FRITTS,
President.

Mr. MCCONNELL. Mr. President, calling the McCain-Feingold voluntary does not make it so, its proponents protestations to the contrary. Anyone who dared not to comply with its voluntary limits would have to: pay twice as much as their opponent for TV ads and more for postage; with half the contribution limit; and forgo 30 minutes of free time.

All this and their complying opponent's spending limit would be increased up to 100 percent to counteract any excessive spending. Moreover, the complying candidate could spend unlimited amounts to counteract—dollar-for-dollar—independent expenditures.

So I say again, technically, mugging victims had options, too. That does not mean that handing over their wallets to muggers were voluntary acts. And I should stress here that the essential point in regard to the voluntariness of the candidate spending limits is not—as the Senator from Wisconsin stated yesterday—that candidates who did not comply with spending limits would be giving up benefits they do not currently enjoy such as the 50 percent discount and the free TV time. What makes the provision unconstitutional is the severe handicapping candidates would experience if they did not comply with the limits.

This is a crucial distinction from the presidential system. Steve Forbes did not have to pay twice as much for TV ads as the complying presidential candidates. He did not forego free time and Bob Dole's spending limit did not increase when independent expenditures were made against him. And his spending limit did not increase when Forbes spent over the limit. Had the presidential system had the inducements of the McCain-Feingold bill, Steve Forbes might very well have elected not to get into the race, at all.

It simply would not make sense for a candidate not to comply with the McCain-Feingold bill unless he or she were so extraordinarily wealthy they could spend many times the spending limit for their own wallet. So you could have two extreme types of campaigns under McCain-Feingold—very low spending ones complying with the limits and extremely expensive campaigns. What would disappear is the middle ground—not as cheap as the McCain-Feingold model but not at the extreme high-end, either.

If you looked long and hard enough and had common cause and public citizen helping, even a tiny needle in a giant haystack could be found. And so it is that at long last—after a decade of debate on this scheme—some people with law degrees have been located to say the McCain-Feingold/common cause spending limit structure is constitutional. How expert they are remains to be seen and their submittals on the subject will certainly be scrutinized.

In any event objective liberals and conservatives can agree that the American Civil Liberties Union is the repository of expertise on first amendment issues. The ACLU led, and triumphed, in the fight against mandatory spending limits 20 years ago in the Buckley versus Valeo case. And the ACLU will be in front again—along side me—should anything resembling the McCain-Feingold bill ever become law. The ACLU is singularly focused on constitutional freedom and has probably aggravated just about everybody at sometime with unpopular stands. But they have a remarkable record of success in this area.

At this point I will read excerpts from the ACLU's testimony—given by professor and Buckley versus Valeo attorney Joel M. Gora—before the Senate Rules Committee on February 1 of this year.

The provision for ''voluntary'' spending limits in Senate campaigns violates the free

speech principles of *Buckley* v. *Valeo.* The outright ban and severe fall back limitations on PACs violate freedom of speech and association, as do the limitations on ''bundling.'' The unprecedented controls on raising and spending ''soft money'' by political parties and even non-partisan groups intrude upon First Amendment rights in a manner well beyond any compelling governmental interest. The revised provisions governing the right to make independent expenditures both improperly obstruct that core area of electoral speech and impermissibly invade the absolutely protected area of issue advocacy. The reduced recordkeeping threshold for contributions and disbursements, from $200 down to $50, invades associational privacy. And the new powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin ''a violation of this Act'' pose an ominous and sweeping threat of prior restraint and political censorship.

S. 1219 suffers from many of the same flaws as the original statute at issue in *Buckley* v. *Valeo.* There the ACLU contended that the Federal Election Campaign Act of 1974 was bad constitutional law because it cut to the heart of the First Amendment's protections of political freedom. It limited the ability of groups and individuals to get their message across to the voters. The very essence of the First Amendment is the right of the people to speak, to discuss, to publish, to join together with others on issues of political and public concern. This constitutional protection of the right of the people to join together to form groups and organizations and societies and associations and unions and corporations to articulate and advocate their interests is the genius of American democracy. And this is particularly vital in connection with political election campaigns when issues, arguments, candidates and causes swirl together in the public arena. Yet, the 1974 Act imposed sweeping and Draconian restraints on the ability of citizens and groups, candidates and committees, parties and partisans to use their resources, to make political contributions and expenditures, to support and embody their freedom of speech and association.

The ACLU also insisted the Act was poorly crafted ''political restructuring'' rather than real ''political reform'' because it exacerbates the inequality of political opportunity, enhances dependence upon money and moneyed interests in politics and magnifies the power of incumbency as the single most significant factor in politics. Limits on giving and spending make it harder for those subject to the restraints to raise funds and easier for those outside the restraints to bring their resources to bear on politics. Limiting individual contributions to $1,000 per candidate, while allowing PACs, made legitimate by the ''reforms,'' to contributes $5,000 per candidate, would make it harder to raise money from individuals and make candidates more dependent on PACs. And PACs, often representing entrenched interests, would be more likely, though far from inevitably, to prefer incumbents to challengers as beneficiaries of their largesse. The Act would stifle not expand political opportunity. What you had, we warned, was an unconstitutional law, enacted by Congress, approved by the President, enforced by an agency, the Federal Election Commission, beholden to each, and designed to restrain the speech and association of those who would criticize or challenge or oppose the elected establishment. Talk about the powers of incumbency. That's why we called the Act an ''Incumbents Protection Act.''

In *Buckley* v. *Valeo,* the Supreme Court held that any government regulation of political funding—of giving and spending, of contributions and expenditures—is regulation of political speech and subject to the strictest constitutional scrutiny. The Act's limitations on political expenditures—by committees, campaigns and candidates, no matter how wealthy—flatly violated the First Amendment. Nothing can justify the government telling the people how much they could spend to promote their candidacies or causes. Not in this country. Nothing. ''In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.'' *Buckley v. Valeo,* 424 U.S. 1,57 (1976).

Nor could the Congress try to help ''equalize'' political speech and the ability to influence the outcome of elections by imposing restraints on some speakers: ''. . . the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.'' *Buckley v. Valeo,* 424 U.S. at 48–49.

Unfortunately, the decision in *Buckley* upheld the Act's contribution limits of $1,000 for individuals and $5,000 for political committees. The Court did this because of its stated concern that unlimited gifts to candidates was a recipe for corruption, a ruling that ensured the two decades of frustration and unfairness that have ensured. With no limits on overall campaign spending or on wealthy candidates, and with independent campaign committees, issues groups and the press free to use their resources to comment on candidates and causes without limit; but with less well-funded candidates hampered in their ability to raise money from family, friends and supporters, the stage was set to make two factors dominant: the advantages of incumbency and the dependency on PACs.

The advantages of incumbency meant that public resources such as franking privileges, government funded newsletters and free television coverage (C-Span) made it easier for Members of Congress to communicate with the voters, while challengers have to spend restricted amounts of money in order to achieve the same visibility.

The dependency on PACs resulted from severe limitations on the amounts of money that individuals can contribute directly to candidates, coupled with the markedly increased cost of campaigning, which made PAC contributions a very important source of campaign funding. And the individual contribution limit was kept at $1,000, which, adjusted for inflation, is probably worth about $400 in real dollars today.

That is why for twenty years candidates have had to look more to PACs order to raise funds and incumbents, in particular, have had an easier ability to do so.

And for twenty years, the ACLU has suggested the way to solve these various disparities and dilemmas is to expand political participation, by providing public financing or support for all legally qualified candidates, without conditions and restrictions, not to restrict contributions and expenditures which enable groups and individuals to communicate their message to the voters.

Unfortunately, in all of its critical aspects, S. 1219, The Senate Campaign Finance Reform Act of 1995 fails to facilitate broader political participation and it also unconstitutionally abridges political expression.

Mr. President, the proponents of this bill are very mistaken if they believe the spending limits are constitutional. The ACLU differs:

Title I of the bill, providing ''spending limits and benefits'' for Senate election campaigns, is an attempt to coerce what the law cannot command: limitations on overall campaign expenditures and on the use of personal funds for a candidate's own campaign. It is a backdoor effort to impose campaign spending limits—which inevitably benefit incumbents—in violation of the essential free speech principles of *Buckley* v. *Valeo* and the doctrine of unconstitutional conditions. And it should be observed that what triggers benefits for some candidates and burdens for others is not that a candidate approaches or exceeds relevant spending limits, but simply refuses to agree to be bound by them.

The ACLU believes that the receipt of public subsidies or benefits can never be conditioned on surrendering constitutional rights. To do so would be to penalize the exercise of those rights. See *Perry* v. *Sindermann,* 408 U.S. 593, 597 (1972); *FCC* v. *League of Women Voters,* 468 U.S. 364 (1984). Since candidates have an unqualified right to spend as much as they can to get their message to the voters, and to spend as much of their own funds as they can, and to raise funds from supporters all over the country, they cannot be made to surrender those rights in order to receive public benefits.

In *Buckley* the Court suggested that Congress could establish a system whereby candidates would choose freely between full public funding with expenditure limits and private spending without limits, ''as long as the candidate remains free to engage in unlimited private funding and spending instead of limited public funding.'' *Republican National Committee* v. *Federal Election Commission,* 487 F. Supp. 280, 284 (S.D.N.Y.), *aff'd mem.,* 445 U.S. 955 (1980). See *Buckley* at 57, n. 65. Contrary to its supporters' claims, S. 1219 does not establish such a regime of voluntary campaign spending limits. Rather, the bill denies significant benefits to and imposes burdens on those candidates who refuse to agree to limit their campaign expenditures, while conferring a series of advantages upon those candidates who agree to the limits.

First, by banning PAC contributions entirely, the bill makes it more difficult for candidates to raise and spend money at all, which will make them more susceptible to accepting the expenditure and other limitations. Candidates who refuse to accept spending limits have to work harder to raise funds because the limits on contributions to their opponents are raised automatically from $1,000 to $2,000. And then such disfavored candidates have to pay full rates for broadcasting and postage. Finally, the expenditure ceilings of their opponents are raised by 20% to make it easier to counter the messages of ''non-complying'' candidates.

In short, this scheme does everything possible to help the candidate who agrees to spending limits to overwhelm the candidate who does not. That is not a level playing field.

Indeed, in *Buckley* the Court upheld public funding of Presidential campaigns because its purpose was ''not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.'' 424 U.S. at 92–93. S. 1219 fails this test, for its purposes and effect are to limit speech, not enhance it. Recent cases have invalidated other schemes for making candidates ''voluntarily'' agree to expenditure and other restraints by penalizing those who do not, see *Shrink Missouri Government PAC* v. *Maupin,*—F.3d—, 64 Law Week 2409 (8th Cir. 1995) (restricting funding sources of those who refuse to agree to abide by expenditure limits violates the First Amendment) (''We are hard-pressed to discern how the interests of good government could possibly be served

by campaign expenditure laws that necessarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage.'' *Id.* at—);

Moreover, even if the Act did create a level playing field, the incumbent starts the game 10 points ahead because of greater fund-raising ability, name recognition, access to the news media and other benefits of incumbency. All things being equal, the incumbent starts out ahead. Any law which imposes financial penalties and disincentives on speech because of the interaction between the status of the speaker and the content of the speech is constitutionally suspect. See *Simon & Schuster, Inc.* v. *Members of the New York State Crime Victims Board,* 502 U.S. 105 (1991) (law improperly escrowed profits from writings about a criminal's crime); *United States* v. *National Treasury Employee's Union,* 516 U.S.—(1995) (invalidating overbroad honorarium ban on moonlighting speeches and articles by federal employees). Schemes of public benefits for political action which are structured in such a fashion that the government seems to be showing favoritism to certain categories of candidates and penalizing others also have been held to be a form of unconstitutional political discrimination, violative of both free speech and equality principles. See *Greenberg* v. *Bolger,* 497 F. Supp. 756, 774–78 (E.D.N.Y. 1980) (preferential mailing rates for major parties struck down as violative of the First Amendment); *Rhode Island Chapter of the National Women's Political Caucus* v. *Rhode Island State Lottery Comm'n,* 609 F. Supp. 1403, 1414 (D.R.I. 1985) (allowing major parties but not other groups to conduct fundraising lottery events violated the First Amendment); *McKenna* v. *Reilly,* 419 F. Supp. 1179, 1188 (D.R.I. 1976) (state parties' allocation of tax check off funds to endorsed candidates and exclusion of funds to unendorsed candidates violated First Amendment).

Finally, some of the strings attached to the benefits offered would impose unprecedented controls on political speech by dictating the format of campaign speech. The requirement that free air time cannot be used for campaign commercials of less than 30 seconds is an impermissible interference with the content of political speech. See *McIntyre* v. *Ohio Election Commission,* 115 S. Ct. 1511, 1518 (1995). The only conceivable purpose for this restriction is that Congress thinks 10 second spot commercials are politically objectionable. That is the kind of content-based judgment that Congress cannot make, even when it is conferring a benefit; nor can Congress compel the structure of speech in that fashion. See *McIntyre, supra; Wooley* v. *Maynard,* 430 U.S. 705 (1977); *Riley* v. *National Federation of the Blind,* 487 U.S. 781, 797 (1988).

The *McIntyre* and *Riley* decisions also call into question the provisions of the Bill (Section 302, Campaign Advertising) that mandate certain specific identifications and disclosures in the text of print, display or broadcast political advertisements. In *McIntyre* the Court reaffirmed the historic right of political anonymity and invalidated a requirement that leaflets on referenda issues state the name of the person responsible for the publications. And in *Riley,* the Court struck down a compulsory disclosure statement on charitable solicitation literature, finding a violation of the settled principle that the First Amendment encompasses ''the decision of both what to say and what *not* to say.'' 487 U.S. at 797.

2. *The complete ban on, as well as the ''fallback'' restrictions of, Political Action Committees are invalid under clear Supreme Court precedent.*

Subtitle A of Title II, the Draconian provision which proudly proclaims that it enacts ''Elimination of Political Action Committees from Federal Election Activities'' and which bans PAC political activity, is flatly unconstitutional. In outlawing all political expenditures and contributions ''made for the purpose of influencing an election for Federal office''—except those made by political parties and their candidates,—Section 201 of the bill cuts to the heart of the First Amendment's protection of freedom of political speech and association. It gives a permanent political monopoly to political parties and political candidates, and would silence all those groups that want to support or oppose those parties and candidates.

''PACs'' of course have become a political dirty word. We tend to think of the real estate PACs or the Trial Lawyers' PAC or the insurance and medical PACs or the tobacco-related PACs. But the ACLU's first encounter with a ''PAC'' was when we had to defend a handful of old-time dissenters whom the government claimed were an illegal ''political committee.'' The small group had run a two-page advertisement in The New York Times, urging the impeachment of President (and re-election candidate) Richard Nixon for bombing Cambodia and praising those few hardy Members of Congress who had voted against the bombing. In the summer of 1972, before the ink was dry on the brand new Campaign Act of 1971, the Justice Department used that ''campaign reform'' law to haul the little group into court, label them a ''political committee'' and threaten them with injunctions and fines unless they complied with the law—all for publicly speaking their minds on a key political issue of the day. The Court of Appeals quickly held that the group was an *ad hoc* issue organization, not a covered ''political committee.'' But we got an early wake-up call on what ''campaign reform'' really meant.

Of course, ''real'' PACs, i.e., those that give or spend money to or on behalf of federal candidates, come in all sizes and shapes. They can be purely ideological or primarily self-interested, or both simultaneously. And they span the political spectrum. Labor PACs were organized first, in the 1940's, usually to provide funds, resources and personnel to assist political candidates, usually Democrats. Corporate PACs came on line in the early 1970's, usually on the Republican side. And both corporate and labor PACs were legitimized and liberated by the ''reforms'' of the FECA, which allowed those and all other PACs to contribute five times as much money to federal candidates as individuals could. All this turned the Federal Election Campaign Act into the PAC Magna Carta Act.

We think all that PAC activity is simply a reflection of the myriad groups and associations that make up so much of our political life. And so many of them are an effective way for individuals to maximize their political voice by giving to the PAC of their choice. While many PAC contributors and supporters probably do fit the stereotype of the glad-handing, Washington-based influence peddler, millions of PAC supporters contribute less than $50 and expect nothing from the candidates in return. Indeed, for millions of Americans, writing a check to the candidate, committee or cause of their choice is a fundamental political act, second in importance and meaning only to voting.

Proposals to restrict, restrain or even repeal PACs would suppress the great variety of political activity those PACs embody. Most of those proposals are doomed to defeat as unconstitutional. All of them are doomed to defeat as futile.

BANNING PAC CONTRIBUTIONS

There is not a word in *Buckley v. Valeo* or any of the other relevant cases on regulation of PACs which suggests that the Court would uphold a total ban on PAC contributions to federal candidates. Political contributions are fundamentally protected by the First Amendment, as embodiments of both speech and association. PACs do amplify the political voices of their contributors and supporters across the entire spectrum of American politics, and the Court is not likely to let you still all those voices.

Moreover, banning PAC contributions is futile as a reform. All the PAC money that cannot be contributed directly to candidates will go instead into an upsurge of independent expenditure campaigns for favored or against disfavored candidates.

BANNING PAC EXPENDITURES

The Supreme Court made it clear that independent PAC expenditures are at the core of the First Amendment and totally off limits to restrictions. *Federal Election Commission v. National Conservative Political Action Committee,* 470 U.S. 480 (1985). It may be a little less tidy to run an independent campaign, than to write a check to your favored candidate, but PACs will adapt. They're good at that. And little will have been gained-except making it harder for candidates to raise money since you will have deprived them of a major source of resources, without providing any alternatives. Candidates of moderate means will be particularly vulnerable to campaigns by personally wealthy opponents.

REDUCING PAC CONTRIBUTIONS

The ''fallback'' provision, which goes into effect when the flat ban is ruled unconstitutional, as it surely will be, would lower PAC contributions from $5,000 to $1,000 per candidate per election. This might be a closer constitutional question. But the Court threw out a $250 limit on contributions to a referendum campaign committee. *See Committee Against Rent Control v. Berkeley,* 454 U.S. 290 (1981). Indeed, just recently the Eighth Circuit likewise invalidated a $300 contribution limitation for donations to statewide candidates. *Carver v. Nixon,* — F.2d — ,64 Law Week 2407 (8th Cir. 1995). And *Meyer v. Grant,* 486 U.S. 414 (1988) held that people had a right to spend money to hire others to gather election petition signatures, strongly reaffirming the right of a person to use his or her resources to enlist others to advance their causes. In any event, this provision is fatally overbroad because it treats all PACs alike, even those made up only of small contributors.

Finally, apart from the First Amendment issues, what purpose is served by reducing the ability of candidates to raise money without providing alternatives?

Mr. President, earlier I mentioned Col. Billie Bobbit (USAF), the EMILY's List member who is quiet certain the first amendment protects her right to participate in elections via bundling. Colonel Bobbitt's instincts are right on the mark as the ACLU testimony observes:

BUNDLING

The same objections pertain to the ban on ''bundling'' of individual PAC contributions. This fallback proposal would abridge freedom of association which the Supreme Court has recognized as a ''basic constitutional freedom.'' *Kusper v. pontikes,* 414 U.S. 51, 57 (1973). And the Court has pointedly observed that ''the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.'' *Citizens Against Rent Control v. Berkeley,* 454 U.S. 290, 294 (1981). The practice of bundling reflects broad issue support to a candidate, indicating that continued support is dependent on

continued adherence to the views represented by the group. The proposed bill would severely restrict ideological groups like Emily's List, which have made a critical contribution to expanding political opportunity and opening up political doors to candidates and groups so long excluded.

RECEIVING PAC CONTRIBUTIONS

The fallback provision would also prohibit any PAC from making a contribution which raises a candidate's PAC receipts above 20% of the campaign expenditure ceilings applicable to that election. But this restraint also seems overbroad. The corruption concern becomes very attenuated in this setting, and the rationale for the overall 20% limit seems weak against First Amendment standards. Once the limit is reached, candidates and PACs, in effect, would be banned totally from political interaction with one another, which would seem as constitutionally vulnerable as a total ban and have the effect of a limitation on campaign expenditures. And what of new groups that wanted to support a candidate after the candidate's PAC quota had been reached, especially if the campaign turns on an issue—abortion for example—of great moment to that group?

Finally, all of this begins to resemble yet another backdoor effort to limit overall campaign *expenditures*, in violation of *Buckley's* core principles.

LIMITING OUT-OF-STATE POLITICAL CONTRIBUTIONS

Somehow, I have always found particularly troublesome those proposals to limit the amount of out-of-district or out-of-state contributions to candidates. Section 241 does not seem to operate as a direct ban on out-of-State contributions. Rather it provides that a candidate must receive not less than 60% of their overall contributions from in-state individuals in order to remain in compliance with the spending limits and receive the statutory benefits. Obviously, this is a backdoor effort to limit PAC contributions to candidates, since so many PAC contributors come from States different from the candidates their PACs contribute to, as do the PACs themselves. It also seems to be an effort to insulate incumbents from well-funded challenges supported from another State.

Any potential justification for this ban seems highly unlikely to pass constitutional muster. Analogizing this restriction to a voter's residency requirement falls short after *McIntyre* v. *Ohio Board of Elections*,—US—(1995) which held that restrictions on political speech about candidates or referenda cannot be upheld on the grounds that they are merely ballot or electoral regulations, because, in reality, they are free speech limitations. Indeed, a federal court in Oregon recently so held in overturning a requirement that state and local candidates had to raise all their campaign funds from individuals who resided within their election districts. *Vannatta* v. *Keisling*,—F. Supp.—(D. Ore. 1995).

Moreover, in-state limitations could deprive particular kinds of underfinanced, insurgent candidates of the kind of out-of-state support they need. Just as much of the civil rights movement was funded by contributors and supporters from other parts of the nation, so, too, are many new and struggling candidates supported by interests beyond their home states. This proposal would severely harm such candidacies. Perhaps, that is its purpose.

Finally, Congress is our national legislature, and although its representatives come and are elected from separate districts and states, the issues you deal with are, by definition, national issues that transcend district and state lines and may be of concern to citizens all over the nation. When such issues become central in certain campaigns, people and groups from all over the country should be entitled to have their views and voices heard on those issues. Any other approach takes a disturbingly insular and isolated view of political accountability and the obligations of a Member of Congress.

3. *The new controls on ''soft money'' contributions and expenditures are unprecedented and unjustified restraints on political parties.*

The new sweeping controls on ''soft-money'' contributions to and disbursements by political parties and other organizations, federal, state or local, would expand the reaches of the FECA into unprecedented new areas and far beyond any compelling interest would require.

For the first time, any amounts expended or disbursed by a political party in an election year ''for any activity which might affect the outcome of a Federal election, including but not limited to any voter registration and get-out-the-vote activity, any generic campaign activity and any communication that identifies a Federal candidate. . .'' would be subject to regulation. *See* Section 212. The full panoply of FECA compliance and control would be brought to bear on the enormous amount of political party activity which heretofore has been exempt from controls because it was not directly and explicitly focused on specific federal candidates. And even beyond that, ''soft money'' spending by persons other than political parties is also for the first time subject to comprehensive regulation, with reporting, disclosure and notification requirements mandated as well as a required certification of whether the disbursement ''is in support of, or in opposition to, one or more candidates or any political party.''

The reach of these new proposals is breathtaking. Starting with *Buckley v. Valeo*, the Court has recognized a fundamental constitutional distinction between candidate-focused expenditures and contributions, which can be subject to certain specific regulation, and all other non-partisan, political and issue-oriented speech, advocacy and association. *See Buckley v. Valeo*, 424 U.S. at 14–15, 78–80, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238, 249 (1986). The reason for this First Amendment Continental Divide is to insure that the permissible regulation of candidate-focused political campaign funding remains confined to that area, and does not expand to encompass all the funding of all political issues and groups. These regulations of funding which is not candidate-focused transgresses this boundary and requires, at the very least, the demonstration of the most compelling governmental interests, necessarily and narrowly achieved by the sweeping new controls.

Moreover, any regulation of political parties is a regulation of a quintessential First Amendment instrumentality and likewise requires compelling justification, at a minimum. See *Tashjian v. Republican Party*, 479 U.S. 208 (1986); *Eu v. San Francisco Democratic Party*, 489 U.S. 214 (1989). Political parties play a vital role in galvanizing the political life of the nation. Indeed, many political scientists have expressed mounting concern that one consequence of the current regime of candidate-focused political funding and activity is unfortunately to undermine the role of parties, special interest groups or ad hoc coalitions as instruments for political activity and vitality. For that reason, an expanded amount of party spending on voter registration, party identification, get-out-the-vote drives, and partisan-based issue discussion (''The Republicans want to cut Medicare and Medicaid. Don't let them do it.'' or, ''The Democrats support a welfare state. Say no to government dependents.'') should be a welcome development, rather than the target for new and overbearing regulatory restrictions. It is also a constitutionally-derived right: ''. . . Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution . . . In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.'' *Buckley v. Valeo*, 424 U.S. at 14–15.

Finally, to some extent the motivations for the new restraints on party activity may reflect a concern about the source of the ''soft money'' funding, namely, from corporations and large individual donors. In that regard, it should be observed that *Buckley* upheld the $1,000 limit on individual contributions to candidates in part because there would be so many other ways in which people and organizations could bring their financial resources to bear on politics. See 424 U.S. at 28–29, 44–45. The bill would block avenues of advocacy that the *Buckley* Court assumed would remain open.

These issues are presently before the Supreme Court in an important case in which certiorari was granted in early January. See *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, O.T. 1995, No. 95–489, *reviewing*, 59 F.3d 1015 (10th Cir. 1995). At the very least, any action on this section of the bill should await the Court's resolution of the Colorado case. For your information, the ACLU plans to file an amicus curiae brief in support of the Colorado Republican Federal Campaign Committee.

4. *The new provisions governing the right to make independent expenditures improperly intrude upon that core area of electoral speech and impermissibly invade the absolutely protected area of issue advocacy.*

Two basic truths have emerged with crystal clarity after twenty years of campaign finance regulations. First, independent electoral advocacy by citizen groups lies at the very core of the meaning and purpose of the First Amendment. Second, issue advocacy by citizen group lies totally outside the permissible area of government regulation.

In *Buckley* the Court upheld the speech and association rights of individuals to engage in independent campaign expenditures expressly advocating the election or defeat of political candidates. In *Federal Election Commission* v. *National Conservative Political Action Committee*, 470 U.S. 480 (1985), the Court assured the same rights to political action committees. And in *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 470 U.S. 238 (1986) the same right of express electoral advocacy was extended to certain kinds of non-profit advocacy groups despite their corporate form, although a later case held that other corporate entities could be restricted in this regard. See *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990).

S. 1219 abridges these rights in two ways. First, Section 201 of the bill completely bans independent expenditures by PACs, which is flatly unconstitutional, as noted above. On the ''fallback'' assumption of such likely invalidation, Section 251 redefines independent expenditures so narrowly and ''coordinated'' expenditures so broadly that the area of freedom of speech and association is drastically reduced and abridged in the process.

Under current law, an independent expenditures is one made without the knowledge or permission of a candidate, his or her agent or campaign committee. See 2 U.S.C. section 431(17) (''The term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without

cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.''). Coordinated expenditures are treated like and limited like contributions to a candidate.

The proposed bill, however, so broadly defines coordination that virtually any person who has had any interaction with a candidate or any campaign official, in person or otherwise, is barred from making an independent expenditure. For example, under Section 251, any expenditure is deemed coordinated, and not independent, if the person making it ''has advised or counseled'' the candidate or his agents on any matter relating to the campaign or election. If you use the same political consultant or firm as the candidate you are likewise deemed coordinated.

These restrictions embody a new and impermissible version of ''guilt by association,'' and a new kind of ''gag rule'' by association. See *De Jonge* v. *Oregon,* 299 U.S. 353 (1937) (A speaker cannot be punished for organizing a meeting and appearing on the same public platform where radicals were also speaking). Indeed, it could have some perverse effects. A disaffected campaign worker or volunteer, who leaves a campaign because he or she thinks a candidate has acted improperly, is barred from making independent expenditures against that candidate, for, ironically, they will be deemed a contribution.

The other way in which the provision governing independent expenditures is fatally flawed is in its expanded definition of ''express advocacy,'' which is defined as a communication that ''taken as a whole and with limited reference to external events'' communicates ''an expression of support for or opposition to'' a specific candidate or groups of candidates. ''Expression of support'' includes ''a suggestion to take action with respect to an election,'' including ''to refrain from taking action.'' ''Throw the rascals out'' has just become express advocacy.

This broadened definition of ''express advocacy'' would sweep in the kind of essential issue advocacy which *Buckley* and cases predating *Buckley* by a generation, see *Thomas v. Collins,* 323 U.S. 516 (1945), have held to be immune from government regulation and control. It seems to be targeted exactly against the kind of voting record ''box score'' discussion that emanates from the hundreds and thousands of issue organizations that enrich our public and political life. In *Buckley,* the Court adopted a bright line test of express advocacy (words that in express terms advocate the election of defeat of a candidate) in order to immunize issue advocacy form regulation: ''So long as persons or groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views.'' *Id.* at 45. Indeed, the 1975 Act contained a similar provision regulating issue groups and their ''box score'' activities, and that section was unanimously held unconstitutional by the *en banc* Court of Appeals, without any further appeal by the government. See *Buckley v. Valeo,* 519 F.2d 817, 832 (D.C. Cir. 1975). The expanded definition of ''express advocacy'' is similarly flawed.

5. *The bill gives unacceptable new powers of prior restraint and political censorship to the Federal Election Commission.*

With all of these problems with the bill, particularly those that pertain to issue advocacy and independent expenditures, giving the Federal Election Commission sweeping new powers to go to court to seek an injunction on the allegation of a ''substantial likelihood that a violation . . . is about to occur'' is fraught with First Amendment peril.

As indicated earlier in this testimony, the very first suit brought under the brand spanking new campaign reforms in 1972 was against a small group of dissenters who sponsored an ad in *The New York Times* criticizing the President and praising a handful of his Congressional critics. Reminiscent of some of the language in the bill before you, the government's claim was that the advertisement was an electioneering message because it was ''in derogation of'' candidate Nixon and ''in support of'' the praised Members who were also up for re-election. While the courts quickly and sharply rebuffed those efforts to use political campaign laws to control issue advocacy, see *United States v. National Committee for Impeachment,* 469 F.2d 1135 (2d Cir. 1972); *American Civil Liberties Union v. Jennings,* 366 F. Supp. 1041 (D.D.C. 1973), the Commission's record of sensitivity to First Amendment values in the area of issue advocacy was once described as ''abysmal.'' See *National Committee for Impeachment, supra,* 469 F.2d at 1141–42 (Kaufman, C.J. concurring). And ever since then, non-partisan, issue-oriented groups like the ACLU, the National Organization for Women, the Chamber of Commerce, Right-to-Life Committees and many others, have had to defend themselves against charges that their public advocacy rendered them subject to all of the FECA's restrictions, regulations and controls. And the problem persists. See *Federal Election Commission v. Survival Education Fund,* 65 F.3d 285 (2d Cir. 1995) (holding, 2 to 1, that 1984 fund-raising mailings critical of President Reagan's foreign policies constituted a solicitation of a contribution subject to FECA requirements).

The kind of ''chilling effect'' that such enforcement authority generates in the core area of protected speech makes the strongest case against giving the Commission additional powers to tamper with First Amendment rights.

The PRESIDING OFFICER. The Senator has 16 seconds remaining.

Mr. McCONNELL. Mr. President, I thank my staffers, Tamara Somerville and Lani Gerst for their good work on this most important issue. Tam and I have been through these battles a few times, including staying up all night, a couple years ago. She has been a great help. I have enjoyed working with her on this and thank her for her service to the Nation.

The PRESIDING OFFICER. The Senator from Wisconsin has 9 minutes.

Mr. FEINGOLD. Mr. President, I thank Andy Kutler, Susan Martinez, and Larry Murphy.

I ask unanimous consent that a letter from President Clinton, a longtime supporter of campaign finance reform, urging the Senate to pass this legislation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, June 24, 1996.

Hon. THOMAS A. DASCHLE,
Democratic Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: Just over a year ago, I shook hands with Speaker Gingrich and publicly affirmed my commitment to reforming the nation's campaign finance laws. Now I call on Congress to send me legislation that will address the American public's desire for real change in our political process, and in so doing renew our democracy and strengthen our country. I support the legislation now being considered. In particular, I approve of several reforms such as placing limits on spending, curbing PAC and lobbyist influence, discounting the cost of broadcast time, and reforming the soft money system.

Organized interests have too much power in the halls of government. Oftentimes, representatives from such interest groups operate without accountability and are granted special privileges that ordinary Americans don't even know exist. In addition, elections that represent an opportunity in which ordinary voters should have the loudest voice have become so expensive that these voices are sometimes drowned out by big money.

Let us capitalize on the progress made in the last three years. In 1993, we repealed the tax loophole that allowed lobbyists to deduct the cost of their activities. In 1994, I signed a law that applies to Congress the same laws if imposes on the general public. Last year, Congress answered my call to stop taking gifts, meals, and trips from lobbyists, and I signed the Lobbying Disclosure Act into law. We now have an opportunity to finish the job by addressing campaign finance reform.

As we work to reform campaign finance, we must do everything in our power to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to return them to the hands of those who deserve them—ordinary Americans. Real reform is now achievable. I urge the Senate to pass this legislation and give the American people something we can all be proud of.

Sincerely,

BILL CLINTON.

BROADCAST PROVISIONS

Mr. FEINGOLD. Mr. President, it has been suggested that the broadcast provisions in this bill may adversely affect the broadcast industry and I would like to respond to that point.

First, with respect to the free time provision, it is important to understand that this is really a limited free time benefit. It is limited to 30 minutes of free time. Second, the free time is only available to general election candidates—not primary election candidates. And third, of the general election candidates, it is only available to those general election candidates who agree to limit their spending.

We have also carefully crafted this provision to have as minimal effect on the broadcasters as possible. First, no one candidate can request more than 15 minutes of their free time from any one broadcast station. Second, use of the free time must occur in intervals between 30 seconds and 5 minutes. This will ensure that the requirement to provide free time will not interfere with the normal programming of the broadcast station.

And finally, the bill clearly states any broadcast station that can demonstrate that providing such free time will cause the station significant economic hardship is exempt from the free time requirement.

So clearly, the free time provision is not going to have a significantly burdensome effect on the broadcasters.

With respect to the 50-percent discount, it should be noted that this provision is really the linchpin of the legislation. Without public financing, there must be some alternative incentive to encourage candidates to voluntarily limit their campaign spending. Such an incentive had to have an effect similar to that of public funding in the Presidential system—that is, to lower campaign costs so the candidate can spend less time on the phone raising money and more time running a statewide grassroots campaign.

As we all know, the great proportion of a Senate candidate's campaign budget is devoted to broadcast advertising. And therefore, the most sensible solution for lowering campaign costs is to cut the costs of running television advertisements.

Keep in mind, Mr. President, current law already recognizes a public trustee standard with respect to broadcasters. Under current law, broadcasters must provide all Federal candidates with the lowest price they charge to commercial advertisers for similarly run advertisements.

That is current law. All we are doing is providing an additional discount to that special price.

This is entirely consistent with the Supreme Court's 1969 ruling in Red Lion Broadcasting Company versus Federal Communications Commission decision. In the Red Lion decision, the Court upheld the congressional determination made in 1934 that the airwaves belong to the American people, and this decision has subsequently been used to require the broadcasters to provide services such as lowest unit rate and equal time to qualifying Federal candidates.

To suggest that the provisions embodied in the McCain-Feingold bill are somehow a violation of the broadcasters first amendment rights is a proposition that has already been tossed out by the courts.

Let me quote from the legal analysis of this issue prepared by Law Professor Fred Schauer of Harvard University. Professor Schauer writes,

> As long as Red Lion remains the law, Congress may within limits consider broadcast time to belong to the public, and to be subject to allocation in the public interest. In this respect, therefore, price restrictions on advertising, and direct grants of broadcast time, will not violate the First Amendment as it is presently interpreted.

So it is clear that what we are requiring in this campaign finance reform bill is not only sound public policy, but completely within the confines of first amendment principles.

So now we come to the question of how this provision will affect the financial viability of the broadcast industry. Mr. President, when we talk about what sort of costs the broadcasters are going to incur as a result of this legislation, there are several important factors to keep in mind.

First, with respect to the free time provision, we are only talking about general election candidates who agree to voluntarily limit their spending. In any given State, where only two Senate elections occur every 6 years, this will have a nominal impact on broadcasters. Even if all general election candidates do agree to comply with the bill and receive the benefits, that means that all of the broadcasters in a particular State will only have to provide 2 hours of free time over a 6-year period.

It may interest my colleagues to know that the Congressional Research Service has analyzed the broadcast provisions of the McCain-Feingold proposal, and prepared a cost-estimate of how much these provisions might cost the broadcast industry.

I ask unanimous consent that the text of this report be placed in the RECORD at the conclusion of my remarks.

According to CRS, assuming all general election candidates were eligible for and used the free time benefit, this provision would cost the broadcast industry a maximum, a maximum Mr. President, of about $6 million per Senate election.

Figures provided by the National Association of Broadcasters [NAB] show that total political television advertising revenues in 1994 for the broadcast industry were $355 million. That is just political advertising revenues.

Total television advertising revenues in 1994 were $24.7 billion.

That means that the free time provision in the McCain-Feingold proposal, scored at a maximum of $6 million by CRS, would cost the broadcasters about 1.6 percent of their annual political advertising revenues, and less than three-hundredths of 1 percent (.025 percent) of their total annual advertising revenues. And of course, this would only occur in a brief period of time every 2 years.

And what about the 50-percent discount provision, that has been purported to be potentially catastrophic for the broadcast industry. According to CRS, the total cost of the 50-percent discount provision in the primary and general election would be $48 million, again, assuming all candidates were eligible for the discount.

So the most this provision would cost the broadcast industry according to CRS's independent analysis is less than $50 million.

Again, how does this compare as a percentage of the industry's revenues, both political and commercial?

Using the NAB's numbers on political advertising revenues and all other advertising revenues, this $48 million provision in S. 1219 would cost broadcasters, at most, about 13 percent of their political advertising revenues, and less than half of 1 percent (.19 percent) of their total advertising revenues. And again, this would only be every 2 years.

Mr. President, we are talking about less than one-half of 1 percent of the industry's revenues. And that is a maximum, it is likely to be much less than this.

And as you can see from this chart, the broadcast provisions in the McCain-Feingold proposal would cost the broadcast industry less than two-tenths of 1 percent of their total advertising revenues in 1994. And again, these nominal costs would only have to be incurred twice every 6 years.

So I think it is clear, Mr. President, that not only does the broadcast industry have a legal obligation to contribute to the political process, such a contribution would have a minimal effect on their overall revenues. The benefit to the public of cleaning up our congressional elections, in contrast, would be enormous.

Mr. President, it has been suggested that the bipartisan proposal put forth by myself and the Senators from Arizona and Tennessee would somehow further entrench incumbents and make it more difficult for challengers to run for office.

Mr. President, this is yet another argument put forth by the defenders of the status quo that does not pass the straight face test.

First of all, let us remember what sort of campaign finance system we currently have and how it affects challengers and incumbents. I don't think that anyone can dispute that the current campaign finance system confers significant benefits on incumbent Senators that provides incumbents an overwhelming advantage over challengers.

Incumbents start out with more name recognition. Incumbents are permitted to send out free mass mailings to the voters of their States, which often are little more than thinly disguised campaign newsletters.

And most importantly, as virtually every legitimate study has shown, the campaign cash overwhelmingly flows to incumbents. Whether it is PAC money, soft money, bundled money—you name it. The campaign money always flows to incumbents.

To suggest that spending limits will somehow make it more difficult for challengers to run for office is to suggest that challengers have access to the kind of money that incumbents have access to.

That assertion is just factually false.

Challengers cannot raise millions of dollars as incumbents can. The few challengers that are able to mount credible campaigns are those few challengers that are millionaires, and that is why more and more Senate campaigns are turning into races between an incumbent and a millionaire.

As this first chart demonstrates, money does matter. In 1990, 1992, and 1994, the Senate average winning candidate not only outspent the loser in that particular race, but far outdistanced them.

In fact, in most cases, the winning candidate doubled—doubled—Mr. President, what the losing candidate spent. That means that for every television

spot the losing candidate was able to run, the winning candidate was able to run two television spots—in some cases, three or four or five times as many spots.

Now the fact that money is clearly the most determining factor in influencing the outcome of Senate elections is troubling by itself. It is a harsh indictment of the current limitless-spending campaign spending that the junior Senator from Kentucky is defending.

But if we know that the candidate who spends the most money is likely to be the winning Senate candidate, the next logical question is, who's getting the money?

As you can see, Mr. President, incumbents are getting the money. Not only are they getting the money, they are blowing challengers out of the water.

That is the current campaign finance system—a system in which the candidate who spends the most money is the likely winner, and a system in which the money flows overwhelmingly to incumbents. The current system is rigged to protect incumbents, and our proposal, for the first time ever, will provide challengers who do not have access to millions and millions of dollars to run a fair and competitive campaign.

We have spending limits in the Presidential system, Mr. President. Have they protected incumbents? They didn't protect President Ford. They didn't protect President Carter. And they didn't protect President Bush. The Presidential system, thanks to voluntary spending limits, has produced fair and competitive elections for 20 years now. The congressional system, with unlimited campaign spending, has produced the opposite.

The evidence is clear, Mr. President and I am hopeful my colleagues will see through the phony and absurd argument that spending limits hurt challengers.

THE CONSTITUTIONAL ARGUMENT

Mr. President, I have listened to the arguments of the Senator from Kentucky, the Senator from Washington, and others, with respect to the constitutionality of this campaign reform proposal.

I share his concern that we should not pass legislation that would be a clear violation of the first amendment.

I stand behind no one when it comes to defending the first amendment and the principles it stands for. That is why I will not support a constitutional amendment that would allow us to impose mandatory spending limits. At one time, I did vote for a sense of the Senate resolution regarding such an amendment but I have come to believe that we should respect the Supreme Court's rulings on this issue, and that these rulings have provided enough guidance and direction that we can write a constitutional proposal that would be upheld by the Supreme Court.

I have to say that what the Senator from Kentucky is suggesting, that the voluntary spending limits might be found by the courts to be unconstitutional, is unfounded. Mr. President, this argument is a giant red herring meant to divert attention away from the real issues.

Let us be very clear about what the Supreme Court held in the Buckley versus Valeo decision in 1976. The Court said two very important things in the Buckley decision;

First, the Court made a distinction between mandatory limitations on expenditures by candidates, and mandatory limitations on contributions to candidates. The Court said that we cannot place mandatory spending limits on all candidates, because that would infringe on the first amendment rights of those candidates who may wish not to abide by the spending limits.

Second, the Court upheld mandatory limitations on campaign contributions, declaring that such contributions could have, or appear to have, a corrupting influence on the recipient of those contributions, and contributions could therefore be limited.

Now, I have heard the Senator from Kentucky say on many occasions that the Supreme Court has said that money equals political speech and that since we cannot limit political speech, we cannot limit the flow of money. As the Senator from Kentucky just asserted, money, in his view, equals speech and we can't limit it.

However, Mr. President, the Supreme Court did not, in fact, say that money is speech and cannot be limited, and saying it over and over again doesn't make it any more true.

The Court did say that money is a form of speech, and can only be limited by the Government in certain circumstances. And as I said, one of those circumstances is in the form of limits on campaign contributions. If the Supreme Court had held that money equals absolute speech, then they would not have upheld limitations on campaign contributions.

Besides contribution limits, the Supreme Court has said that there are other ways we can constitutionally limit the flow of campaign money, including campaign expenditures.

As the Court said in the Buckley decision:

> Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.

In short, the Presidential system is a completely voluntary system that offers incentives in the form of public financing to candidates who agree to limit their spending. That, the Court said, was perfectly constitutional.

And that sort of voluntary system, specifically upheld by the Supreme Court in the Buckley decision, is what the McCain-Feingold-Thompson legislation is modeled after. We provide a voluntary system of spending limits and benefits. No one is forced to participate, no one is coerced into participating, and there are no penalties, not a single one, for candidates who choose not to voluntarily comply.

Just like the Presidential system that has been specifically upheld by the Supreme Court.

The assertion that the Senator from Kentucky is making, that voluntary spending limits tied to the offering of cost-saving benefits is unconstitutional, is a challenge that has been specifically rejected by the courts. Let me repeat that Mr. President. The argument that the Senator from Kentucky is making, that voluntary spending limits tied to benefits is unconstitutional, has specifically been rejected by the Federal courts.

The case was Republican National Committee versus Federal Election Commission, and in that case a three-judge Federal panel specifically upheld the constitutionality of voluntary spending limits and rejected the argument put forth by the Senator from Kentucky. That decision was summarily affirmed by the U.S. Supreme Court.

It is true that unlike the Presidential system, the McCain-Feingold-Thompson proposal does not have public financing. It would have been my preference to have public financing, but I agreed to forgo public financing as a part of this compromise proposal.

Instead, we offer broadcast and postage discounts that will substantially reduce the costs of running for a Senate seat. And the outlandish suggestion has been made by a few—very few indeed—that this distinction, between public financing and advertising discounts, is what makes our legislation unconstitutional.

Mr. President, that is an absurd proposition. The only way such a voluntary system could possibly be unconstitutional is if the system were not truly voluntary, or in other words, if candidates were essentially coerced into participating. How do you coerce a candidate into participating? By making the benefits so incredibly valuable and by imposing tough penalties against those who choose not to comply, so that there really is not choice for a candidate to participate or not.

And this is where the Senator from Ketucky's—Senator MCCONNELL—argument completely falls apart. The court ruled in the Buckley case that public financing was not coercive. So for our bill to be unconstitutional, the benefits would have to be even more valuable than direct public financing.

Mr. President, the benefits in our bill are very valuable. The 50-percent broadcast discount alone will cut a candidate's advertising costs in half. But these benefits do not even come close to the value of direct public financing.

Suppose you are a Federal candidate running a $1 million campaign. And

suppose you had a choice of two benefits; you could either have a 50-percent discount on your broadcast advertising, or you could have a check for $1 million. Which benefit are you going to take?

The question is obvious, Mr. President. Every candidate in America faced with such a choice would clearly favor the public financing. Public financing is a far more valuable benefit, and for the Senator from Kentucky to suggest otherwise flies in the face of the reality of our campaign system.

I find it interesting that during the course of the many hearings that have been held in the Senate Rules Committee, much testimony was heard from several constitutional experts. However, only one of those experts, Law professor Fred Schauer of Harvard University, made it clear that he had no position on the policy aspects of the McCain-Feingold bill. Every other expert called by the committee—on both sides of the issue—made clear that in addition to their legal views, they also has a bias as to either being in favor or opposition to the reform bill.

And how did Professor Schauer respond to the Senator from Kentucky's claim that the voluntary structure of spending limits in our bill was unconstitutional? After pointing out that the arguments asserted by the Senator from Kentucky were the same arguments rejected in the RNC decision, a decision that was summarily affirmed by the Supreme Court, Professor Schauer said:

> If we stick to the question * * * and separate the constitutional questions from the policy question * * * voting against the bill on the assumption that it is clearly inconsistent with existing Supreme Court and federal court precedent is not an accurate characterization of the precedent.

Mr. President, the Schauer testimony is just a move in a chorus of objective analyses from constitutional experts around the country who have held that the voluntary spending limits in the McCain-Feingold-Thompson bill does pass constitutional muster. Without asking for anyone's view on the policy implications of our proposal, we asked several authorities in the legal and academic community for their opinions about the constitutionality of this proposal.

We asked the nonpartisan American Law Division of the Congressional Research Service to prepare a constitutional analysis of our proposal. The analysis, prepared by Paige Whitaker, a well-respected attorney with CRS who has prepared a number of reports for Congress on this issue and who has been called to testify before Congress on campaign reform, states very clearly that the voluntary system created in our bill of offering incentives in exchange for compliance with spending limitations is wholly consistent with the Court's ruling in Buckley versus Valeo.

In addition to CRS, my office contacted some of the most well-known and respected first amendment authorities in the country.

These authorities include Professor Daniel Hays Lowenstein of the UCLA Law School, Professor Cass Sunstein of the University of Chicago Law School, Professor Fred Schauer of Harvard University, Professor Jamin Raskin of the Washington College of Law at American University and Professor Marlene Arnold Nicholson of the DePaul University College of Law.

These experts, among the most widely respected first amendment and constitutional scholars in the country, all agree that the voluntary structure of spending limits tied to broadcast and postage discounts is fully consistent with the Constitution.

Now, Mr. President, some have also suggested that the provision in our proposal to prohibit Political Action Committee contributions to Federal candidates may not pass constitutional muster. I, for one, am skeptical that you can constitutionally prohibit a group of individuals from banding together, pooling their resources and contributing to a Federal candidate any more than you can prohibit any single individual from contributing to a Federal candidate.

However, we must remember that the Supreme Court has taken a favorable position with respect to the Government limiting campaign contributions, and indeed, the Supreme Court has upheld the constitutionality of absolute prohibits on specific entities making campaign contributions, such as labor unions and corporations.

Nonetheless, our proposal contemplates such a legal challenge, and contains specific fall-back provisions if the Supreme Court ruled a PAC contribution ban unconstitutional. These fall-back provisions would reduce allowable PAC contributions from $5,000 to $1,000, and stipulate that no candidate could receive more than 20 percent of the applicable spending limits in aggregate PAC contributions.

Where did this fall-back proposal come from, Mr. President? It is the exact same proposal, word for word, that was contained in the Pressler-Durenberger amendment offered to S. 3, the campaign finance reform bill considered in the 103d Congress.

That amendment, which not only banned PAC contributions, also banned all PAC expenditures in a Federal election including independent expenditures, included these very fall-back limitations on PAC contributions if the Supreme Court ruled such a ban unconstitutional. The Pressler-Durenberger amendment passed the U.S. Senate by a vote of 86 to 11.

Yes, 86 to 11, Mr. President. I voted for it. Most of the Members of this body, including the Senator from Kentucky, voted for it.

Our provisions dealing with PAC contributions are actually far more permissive than the provisions contained in the Pressler-Durenberger amendment which 86 Senators voted for.

I should also say, Mr. President, that a proposal to not only ban PAC contributions, but also to prohibit PAC's from engaging in independent expenditures as the Pressler-Durenberger amendment did, can actually be found in another reform bill—a bill introduced by the junior Senator from Kentucky. I am somewhat surprised that the junior Senator from Kentucky, who has condemned such a proposal as unconstitutional and a blatant violation of the first amendment, would include such a provision in the reform bill he wrote.

So, Mr. President, just a couple of years ago, 86 Senators went on record in favor of a PAC ban coupled with fall-back limitations in case of an unfavorable Supreme Court ruling. The provision in our proposal is actually far less restrictive than that included in the Pressler-Durenberger amendment, as we only limit PAC contributions, not their independent expenditures. If 86 Senators, including the Senator from Kentucky, believed a complete PAC prohibition to be constitutional enough that they could vote for it, I see no reason why the same number, or even more Senators now could not support a far less restrictive regulation.

In closing, Mr. President, I want to assure my colleagues that I believe, and the Senator from Arizona believes, that the key provisions of this legislation would be upheld by the courts. Moreover, nonpartisan experts from around the country, including the Congressional Research Service, who do not have a prejudice one way or the other on this proposal, have told us that these provisions are constitutional.

I ask unanimous consent that a statement designating that the broadcast provisions in the bill would have only a relatively nominal impact in the broadcast industry be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, February 8, 1996.

To: Honorable Russell Feingold, Attention: Andy Kutler.

From: Joseph E. Cantor, specialist in American National Government, Government Division.

Subject: Estimated value of free and discounted TV time under S. 1219—the Senate Campaign Finance Reform Act of 1995.

This memorandum provides information relevant to estimating the dollar value of the free and discounted TV air time that would be offered to Senate candidates under S. 1219, the Senate Campaign Finance Reform Act of 1995.

S. 1219, introduced by Senator McCain and you, establishes a system of voluntary expenditure limits for Senate candidates, in exchange for three cost-reduction benefits: (1) 30 minutes of free TV time; (2) additional TV time at 50 percent of the lowest unit rate (LUR); and (3) a reduced postal rate for two mailings per eligible voter. This memorandum focuses on estimating the value of the first two benefits, dealing with TV time.

As I have explained to you, and as has been reinforced in my conversations with all my sources, both these tasks are highly speculative, and the resulting estimates I have derived are subject to challenge on any number of grounds. I have used different methodology and sources for each of the two tasks, relying in both cases on a combination of actual cost figures, published estimates, and educated guesses and assumptions by appropriate authorities. While these assumptions can legitimately be challenged, I believe this effort to represent a reasonable, logical attempt at a rough approximation of the dollar value of the proposed benefits. Appropriate caveats and sources are noted herein.

BENEFIT NO. 1: FREE TV TIME

PROPOSAL

The bill would provide 30 minutes of free television air time to participating candidates, to be used: (1) in the general election period (i.e., once the candidate has qualified for the general election ballot); (2) on Mondays-Fridays, between 6 PM and 10 PM (unless the candidate elects otherwise); (3) in segments of between 30 seconds and 5 minutes; and (4) on stations within the State or an adjacent State, but with no more than 15 minutes on any one station.

METHODOLOGY

Our goal was to make a reasonable determination of the dollar value of 30 minutes of television advertising time which Senate candidates would use during a general election period.

At the outset, one is faced with the fact that there are enormous variations in costs of TV time. First of all, there are 211 media markets in the U.S., with substantial differences in costs among them. Second, the broadcast market is a commodity market, subject to the laws of supply and demand. Hence, there are wide variations in costs within a single market or broadcast station, even for comparable periods of time on comparable TV shows. Furthermore, there are no sources on the exact cost of TV ads, because of the extremely complex system for buying and setting rates for TV time. Finally, our task was compounded by the uncertainties involved in a political campaign setting, with the number of candidates eligible for the benefit unknown and with the way in which candidates might use the benefit (within the parameters outlined in your legislation) unknowable.

In undertaking this project, I was fortunate in obtaining assistance from two Washington-area media buyers who are substantially involved in campaign work.[1] Despite their cautionary notes about the nature of this task (as outlined above), they understood the value of devising an intellectually defensible estimate and provided essential guidance in the process.

Our effort first focused on devising an average cost of a TV spot, based on the following assumptions: the 30 minutes would be used by the Senate candidate in the form of 60 spots of 30 seconds each; the candidate would seek to place all free spots in prime time (your bill covers the early news (6 PM—7 PM) and prime access (7 PM—8 PM) periods, as well as most of the prime time (8 PM—11 PM) period; and the candidate would place the ads on as many of the most popular (i.e., highly rated) shows as possible.

According to the Media Market Guide[2] for the fourth quarter of 1995 (which covers the months relevant to a general election), the national average cost per rating point for a 30-second spot in prime time (aimed at an audience of all adults over the age of 18) was $25,403.[3] As this represents the cost for a commercial advertiser, we subtracted 15 percent to reflect the rate most stations charge to political advertisers (this political rate, not required by law, should not be confused with the lowest unit rate which Federal law requires broadcasters to offer candidates). We arrived at a national political rate per point of $21,593. I then calculated a national average cost per rating point, by dividing $21,593 by 211 (the number of U.S. media markets), yielding an average political cost per point of $102.

In order to get a cost figure for an actual 30-second spot, one must multiply the cost per point by the number of points which a particular program (or TV show) commands. We chose five popular TV shows in Monday through Friday prime time, and then averaged their national rating point numbers. The shows (and their national rating points) were: NYPD Blue, ABC (15.90); 20/20, ABC (17.10); Law and Order, NBC (12.80); Frasier, NBC (14.70); and Chicago Hope, CBS (14.90).[4] The average national rating points of these shows came to 15.1. Hence, the average 30-second spot on a popular prime time show is 15.1 multiplied by $102, or $1,540.

If 60 of these 30-second spots are used, the benefit equals $92,400 per candidate, on average. Obviously, a New York area candidate's benefit would be much higher, while a Montana candidate's benefit would be much lower.

ESTIMATED TOTAL

To derive a national figure, we made a simple calculation, based on the assumption of 66 major party general election candidates, with no qualifying minor party candidates. Of course, it is a considerable assumption that all major party nominees would participate in this system, just as it is that no minor party candidates would qualify. But as your bill calls for an hour of free time per State, having minor parties qualify would not change the total. Hence, multiplying $92,400 by 66 candidates yields a national total of $6,098,400, rounded to $6 million.[5]

BENEFIT NO. 2: DISCOUNTED TV TIME

PROPOSAL

Your bill also provides participating Senate candidates the benefit of buying additional broadcast time at 50 percent of the lowest unit rate. This benefit would be available during the last 60 days of the general election (when the LUR requirement is in effect) and the last 30 days of the primary election (the LUR is now available to candidates in the 45 days before a primary, but your bill would change that to 30 days).

METHODOLOGY

Whereas the first benefit involves a specified amount of time in specific time periods, this provision would affect an indeterminate amount of broadcast purchases. Also, rather than involving a new form of candidate activity (i.e., a free service), this second benefit involves one candidates already use, but with a prospectively lower cost. Hence, whereas the first exercise was more theoretical, the second can be based more on what we know about current behavior among Senate candidates.[6]

Specifically, by estimating the current level of campaign air time, one can make a reasonable assessment of the dollar value of the reduced cost benefit to candidates. This exercise involves deriving a percentage estimate of the share of overall campaign expenditures that can be attributed to TV time buys during the periods affected by your bill, and then extrapolating this percentage onto campaign expenditure data.

There is no official source for data on broadcast expenditures in Federal elections. While campaign expenditures are required to be disclosed with the Federal Election Commission (FEC), payments to broadcast stations usually are not itemized and are often included among other payments to media consultants; nor do the reports group expenditures by category for easier retrieval of desired information. Furthermore, the Federal Communications Commission does not systematically compile data of this nature from the broadcast stations. Until very recently, observers were forced to rely on anecdotes, surveys, or estimates of the amount of campaign money that was directed specifically to broadcast time purchases.

Following the 1990 congressional elections, two reporters for The Los Angeles Times undertook a massive, systematic study of congressional campaign expenditures in that election—based on candidates' disclosure filings—and arranged the data into categories.[7] Comparable studies were done following the 1992 and 1994 elections, by Dwight Morris (one of the original authors) and Murielle Gamache. Because of their exhaustive efforts and professional skill, these studies are widely accepted by campaign finance experts as containing the most reliable, authoritative data on campaign expenditures by type of service. Consequently, my estimates are based heavily on the data in the most recent published study: Handbook of Campaign Spending: Money in the 1992 Congressional Races, By Dwight Morris and Murielle E. Gamache (Washington, Congressional Quarterly, Inc., 1994. 592 p.). (The 1994 edition will be published later in 1996.)

The summary tables, copies of which are attached, reveal that in 1992, major party Senate candidates who ran in the general election spend $86.8 million on ''electronic media advertising.'' This category was defined on page xiv of Handbook of Campaign Spending as including: All payments to consultants, separate purchases of broadcast time, and production costs associated with the development of radio and television advertising.

Because the data unavoidably include production costs and consultant fees (which are irrelevant to the benefits in S. 1219 concerning air time), it is necessary to estimate the percentage solely for air time. The authors report that most media consultants add a 15-percent charge to media buys for their services (which include producing the ads). Hence, I would subtract this 15 percent, or $13.0 million, and assume the remaining 85 percent of the ''electronic media advertising'' total went for air time purchases. This leaves $73.8 million for air time costs.

Several other factors must be taken into account in making the data in this study applicable to our purposes. First, the electronic media figure includes radio advertising; our interest is solely in television. In a telephone discussion on February 1 with Dwight Morris, one of the authors, we agreed that it would be reasonable to assume that 95 percent of the total went for television. Hence, subtracting another 5 percent, or $3.7 million, leaves $70.1 million for TV air time cost.

Second, the data include spending by the candidates in the primary as well as the general election period, as FEC data unavoidably does. The benefits in S. 1219 would apply to both periods, but only for the last 30 days in the primary and the last 60 days in the general election. In our phone discussion, Dwight Morris and I agreed that it would be reasonable to assume that 90 percent of the media expenditures occurred in the general election period. Taking 10 percent of $70.1 million yields $7.0 million for primary TV air time spending and $63.1 million for TV air time in the general election.

The final estimation involved the extent to which the air time in the primary is bought in the last 30 days and the air time in the

[1] Footnotes appear at end of letter.

general election is bought in the last 60 days. Morris and I agreed (as did some of the media buyers I worked with in the first estimate) that at least 95 percent of the air time would be used in those periods. Hence, subtracting an additional 5 percent in each case leaves an estimated $6.7 million for TV air time in the last 30 days of a primary and $59.6 million for TV air time in the last 60 days of a general election.

GENERAL ELECTION BENEFIT

Step 1. Starting with $86.8 million total for electronic media advertising, I subtracted the estimates of $13.0 million for consultant fees, $3.7 million for radio time, $7.0 million for primary spending, and $3.5 million for time purchased before the final 60 days of the general election. The resulting $59.6 million (for TV air time in the final 60 days of the general election) represents approximately 69 percent of the ''electronic media advertising'' figure and 27 percent of the $219.1 million in total Senate candidate expenditures in the Morris/Gamache study.

Step 2. Although the comparable 1994 data are not yet available, it may be instructive to apply the 27 percent figure cited above to the total expenditures reported to the FEC by 1994 Senate candidates. The FEC reported that $270.7 million was spent by major party Senate general election candidates in the 1993–1994 election cycle.[8] Because the Morris/Gamache study included data for the six-year period leading up to and including 1992, I added the $12.6 million 1994 Senate candidates spent from 1989 to 1992 (which I calculated from the same press release). Hence, I arrived at a total of $283.3 million spent by major party Senate general election candidates in the entire six-year period. Assuming the same 27 percent of total spending went for TV air time in the last 60 days of the general election, I got an estimated 1994 figure of $76.5 million.

Step. 3. The 1992 estimated cost of TV air time of $59.6 million and the 1994 estimate of $76.5 million can be averaged (in case one of the years was an anomaly in the context of overall spending trends), to yield $68.1 million, rounded to $68 million for convenience. While this is just an estimate, subject to all the caveats inherent therein, I would be fairly comfortable using this as the basis for any further estimates you may wish to make, specifically that the value of the broadcast discount would be 50 percent of this, or roughly $34 million.

PRIMARY ELECTION BENEFIT

The process for estimating the benefit in the primary period is complicated by the fact that our primary data source not only does not distinguish between primary and general spending, but it leaves out candidates who lost the nomination contest. Hence, I added a fourth and fifth step to the process: (1) use the Morris/Gamache 1992 data on cost breakdowns, apportioning amounts to specific functions; (2) apply the same percentage to 1994 FEC data; (3) average the 1992 and 1994 figures; (4) examine 1992 and 1994 FEC data on primary losers, apply an appropriate percentage, and average the two dollar figures; and (5) add the average from step 4 to the figure in step 3.

Step 1. To apportion the share of primary election candidates expenditures that were spent on TV air time in the last 30 days of the primary, I started with the $86.8 million total for electronic media advertising in the Morris/Gamache study. I subtracted the estimates of: $13.0 million for consultant fees, $3.7 million for radio time, $63.1 million for general election spending, and $.35 million in time purchased before the final 30 days of the primary election. This left an estimate of $6.7 million as being spent by 1992 major party Senate candidates for TV air time in the final 30 days of the primary election. This figure represents approximately 8 percent of the figure listed for electronic media advertising and 3 percent of the $219.1 million in total Senate candidate expenditures in the Morris/Gamache study.

Step 2. I next applied the 3 percent figure cited above to the total expenditures reported to the FEC by 1994 Senate candidates. Again, I started with the $270.7 million spent by major party Senate general election candidates in the 1993–94 election cycle, and then added the $12.6 million these candidates spent from 1989 to 1992. Applying the 3 percent figure from 1992 to the resulting total of $283.3 million, I got a 1994 figure of $8.5 million for the cost of TV air time in the last 30 days of the primary election.

Step 3. I averaged the 1992 estimated TV cost of $6.7 million and the 1994 estimate of $8.5 million, to yield $7.6 million, rounded to $8 million for convenience. This represents estimated spending on TV air time during the last 30 days of the primary by candidates who went on to compete in the general election.

Step 4. Major party Senate candidates who were defeated in primary elections spent a total of $75.9 million in 1992[9] and $45.9 million in 1994.[10] Because all of this money was spent on the primary election, we adjusted only for consultant fees, radio time, and time purchased before the final 30 days. I assumed the same total percentage of money went for TV time by the primary losers as by all candidates in this six year study. Starting with the $86.8 million total for electronic media advertising, I subtracted the estimates of: $13.0 million for consultant fees, $3.7 million for radio time, and $.35 million for time purchased before the final 30 days of the primary. This left $69.8 million, which is approximately 32 percent of the $219.1 million in total expenditures reported in the Morris/Gamache study.

Applying this 32 percent to the $75.9 million spent by 1992 primary losers yields $24.3 million; applying the same percentage to the $45.9 million spent by 1994 primary losers yielded $14.7 million. Averaging the 1992 and 1994 figures gave us $19.5 million, rounded to $20 million; this represents an estimate of TV air time purchases in the last 30 days of the primary election by Senate primary losers.

Step 5. Finally, I added the $8 million from step 3 for party nominees to the $20 million for primary losers, yielding an estimated total of $28 million as being spent on TV air time by Senate candidates in the final 30 days of the primary.[11] Reducing this by half left us with $14 million, as the estimated value of the 50 percent LUR reduction to Senate primary candidates.

ESTIMATED PRIMARY AND GENERAL TOTAL

Using the methodology in this memorandum, I estimate the value of the 50 percent broadcast rate reduction to be worth $34 million to Senate candidates in the general election and $14 million in the primary—a total of $48 million.

I trust that this memorandum and the accompanying material meet your needs in this matter. Please feel free to contact me 7–7876 if I can be of further assistance.

FOOTNOTES

[1] Carole Mundy, of Fenn-King-Murphy-Putnam Communications, Inc. in Washington, D.C., assisted in developing the methodology and obtaining source material. Gail Neylan, of Neylan & Roy—an independent media buying service, provided guidance in corroborating and finetuning the approach developed with Ms. Mundy.

[2] Media Market Guide, 4th Quarter 1995 (October-December). NY, Bethlehem Publishing, Inc. 1995.

[3] Those cost per (rating) point is the standard unit used by advertisers and media buyers in evaluating relative costs of delivering one percent of the audience share in different markets.

[4] Ratings based on: A.C. Nielsen Company, Network Programs by DMA, November 1995.

[5] A more thorough effort might involve looking at each State's media dynamics, given the variations in media market configurations. A candidate in New Jersey, for example, has to buy time in both the New York and Philadelphia markets, while more than 90 percent of California voters are reached by seven markets, all within that State's boundaries. These types of calculations, while yielding perhaps a more accurate estimate, involved undue time investment and raised significant, complex additional questions.

[6] One caveat, of course, is that this approach is based on current candidate behavior, not taking into account prospective increased TV air time purchases because of the lower cost. While this could well occur, this tendency would be clearly circumscribed by the overall campaign spending limits to which participating candidates must agree.

[7] Fritz, Sara, and Dwight Morris. Handbook of Campaign Spending: Money in the 1990 Congressional Races. Washington, Congressional Quarterly, Inc., 1992. 567 p.

[8] U.S. Federal Election Commission. 1994 Congressional Fundraising Sets New Record (press release): November 1995.

[9] U.S. Federal Election Commission. 1991–92 Congressional Spending Soars to $680 Million (press release): January 1994.

[10] U.S. Federal Election Commission. 1994 Congressional Fundraising Sets New Record (press release): November 1995.

[11] It may seem counterintuitive that primary losers would spend twice as much on TV as primary winners, and this may point up a flaw in our estimation process. But it is often the case that well-funded primary candidates (often wealthy individuals) spend large sums of money in losing attempts at nomination, while in perhaps the majority of cases, Senate party nominees (especially incumbents) have little or no real opposition in the primary.

Mr. FEINGOLD. I yield the remainder of my time to my friend and a leader today in the future on campaign finance reform, the Senator from Arizona.

Mr. MCCAIN. I yield 30 seconds to the Senator from California.

Mrs. BOXER. Mr. President, I thank my friend for yielding. I thank him for his leadership, as well as that of Senator FEINGOLD. Let me say, as one of the two Senators from California, we need to raise at least $20 million—that is obscene—to win a Senate seat. That means a candidate running for Senate for California must raise $10,000 a day, 7 days a week, for each day of the 6-year term. This is unconscionable. I will support cloture. I will support campaign finance reform.

I intend to vote for campaign finance reform and for this measure cutting off debate so we can have the opportunity to discuss this crucial issue. We must pass campaign finance reform this year.

I feel we must limit the influence of special economic interests so that the public has no fear that Senators are representing those interests instead of the people of their State and the Nation.

As a Senator from the largest State in the Union, I am particularly aware of the need for reform. Candidates for the U.S. Senate in California must raise at least $20 million. This means that a candidate running for the Senate must raise at least $10,000 a day, 7 days a week, for each day of a 6-year term. This is obscene.

For me it is more important to meet with constituents here and in the

State, write legislation, and participate in debates like this one, let alone read as much as I can.

There are several important aspects of campaign finance reform.

First, to establish limits on campaign spending. The root of our problems with the current system is that campaigns spend too much. To me limits are one of the most important elements of reform.

Second, we must end the practice of using soft money to evade contribution limits. Soft money originally was intended to be used for party building activities, but in many cases, it has turned into a negative campaign apparatus.

There are many approaches to campaign finance reform. I favor the Feinstein bill because it recognizes the rights of organizations of every political persuasion to participate in the political process by gathering small donations to candidates.

I speak from the heart when I say that we must pass campaign finance reform this year and begin to restore the faith and confidence of the American people.

Mr. MCCAIN. Mr. President, the Senate is about to determine whether bipartisan campaign finance reform will be an accomplishment of this Congress or not. As I noted yesterday, the Members of the 104th Congress can point with pride, well-earned pride, to the substantial institutional reforms that were passed by this Congress. But the reform which the public believes to be most necessary and most urgent—campaign finance reform—is not yet among the accomplishments of this reform-minded Congress.

Today, the Senate has an opportunity to begin remedying that deficiency, and take a giant step toward becoming one of the most important reform Congresses in American history. Invoking cloture cannot guarantee this legislation will be enacted into law, but we will be well on the way, Mr. President. Momentum toward final passage may well prove irresistible in the wake of a successful cloture vote.

But should we fall short of that goal today, it will not mean a permanent end to this effort. Mr. President, we will have campaign finance reform; if not this year, then next; if not the 104th Congress, then the 105th. We will have campaign finance reform because the people demand it. The people have perceived in the manner in which we finance our reelection a profound inequity between incumbent and challenger; an inequity which serves to distance Members of Congress from the will of the people; to further estrange us from our employers, and indebt us to an array of monied interests. The people's will cannot be forever denied no matter how well inoculated we are by the financial advantages we claim as incumbents. The people will have this reform, if not by our work, then by the work of our replacements.

Some may see in that statement a contradiction. If current campaign financing laws so greatly advantage incumbents then we should prove immune to public pressure for reform. We are indeed greatly advantaged by the current system, Mr. President, but no one, no matter how abundant his or her campaign coffers, can forever disregard a demand for reform that is supported by three-quarters or more of the American public. No one.

Not all campaigns are waged in such clear opposition to the public will. In most elections, candidates generally avoid giving great offense to the voters. It is in most elections that incumbents are undeniably, unmistakably, and overwhelmingly advantaged over challengers.

Opponents of this measure, who are my friends, argue eloquently that we who propose this reform are the enemies of the first amendment; that we are engaged in that most un-American of activities—the attempted abridgement of every American's right to free speech. I believe we have effectively refuted that serious charge, in part because we have had an ample body of opinion by constitutional scholars to rely on. For the record, let me state the obvious: I did not seek public office so that I might violate the Constitution. In my life, I have taken no oath more seriously than my oath to defend the Constitution. I hope my colleagues will accept that I am their equal in my love of our Constitution.

Mr. President, we proponents of campaign finance reform do not seek to curtail the free speech of incumbents. We seek to give voice—a greater voice—to challengers than is usually the case under the present system of campaign financing. These are voluntary spending limits we have proposed. Yes, there are incentives in this bill to encourage candidates to abide by these limits, and disincentives to discourage candidates from exceeding them. But if a candidate feels that circumstances necessitate campaign expenditures in excess of these voluntary limits, he or she is free to make those expenditures.

Their opponent, however, should not be unfairly disadvantaged by the other candidate's refusal of spending limits. So, we have included provisions in our legislation to help a candidate who abides by the limits keep pace with the campaign of the candidate who rejects the limits.

Implicit in the arguments of this bill's opponents is the definition of free speech as more speech. They argue that if an incumbent does not spend more money on advertising than the challenger, either because of voluntary limits or because the challenger is allowed more discounted advertising and postage rates, then somehow the incumbent's free speech has been curtailed. In reality, Mr. President, our legislation does not abridge the incumbent's right to free speech; it advances the free speech of challengers. It refutes the notion that for speech to be free, one candidate must have more of it than another.

Again, these are voluntary spending limits. They are voluntary and they are fair.

Mr. President, the opponents of campaign finance reform are as passionate in their opposition as we are in our support. I do not doubt the sincerity of their conviction that too little money is spent on campaigns today. I disagree, of course, but I cannot challenge their earnestness nor resent the passion with which they advance their argument. On a few occasions, I have been known to invest my arguments with a little heated rhetoric, and it would be unfair of me to begrudge the genuine ardor our opponents hold for their cause, as unsound as that cause might be.

I commend them for their willingness to extensively and openly debate this legislation, so that the public may judge from our arguments who has carried the day. The cloture vote will indicate legislative failure or success today. But it will not necessarily indicate whose argument has prevailed. Nor, as I noted at the beginning of my remarks, will this vote, should we fail to reach cloture, signal an end to this campaign for reform. We will be back next year. We will ultimately prevail.

Before I conclude, Mr. President, I want to again commend the Republicans and Democrats who sponsored and helped to craft this first genuinely bipartisan campaign finance reform bill. They have all distinguished themselves in this debate, and in this crusade to keep faith with the people's just demands for reform. First among these friends is my partner, the Senator from Wisconsin, RUSS FEIGNOLD. The Senator is a man of honor, and his sense of honor prevails over his sense of politics. That is a virtue, Mr. President, a sometimes inexpedient virtue, but a virtue nonetheless, and one which I greatly admire.

Mr. President, the Senator from Wisconsin and I came to the Senate to argue with one another. We came to the Senate with different ideas about the proper size and role of Government in this country.

We came here to serve our constituents by serving those ideas, and we want to spend our time here in open, fair, and honest debate over whose ideas are the most sound. We did not come here to spend the majority of our time raising vast funds to ensure our reelection. Nor did we come here to incur obligations to a few narrowly defined segments of this country. All Americans deserve fair representation by their Congress.

Mr. President, despite our philosophical and political differences, Senator FEINGOLD and I have made a common cause in our pursuit of genuine campaign finance reform. To do so, we both knew that we would have to relinquish all partisan advantages that had undermined previous legislative attempts at reform. We were determined to be fair, Mr. President, and on no occasion—no occasion—did Senator FEINGOLD, or

any of the cosponsors, attempt to seed into this legislation an advantage for one party or the other. We were fair, we were committed to genuine reform, and we were and are determined.

I have found the experience liberating, and I commend it to all of my colleagues. I urge all of my colleagues to join us in this necessary endeavor, to accept the public will and restore the public's respect for the institutions that are derived from their consent. Vote for cloture. Vote for reform.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 1 o'clock having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 1:02 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

CAMPAIGN FINANCE REFORM

The Senate continued with the consideration of the bill.

Mr. DASCHLE. Mr. President, the McCain-Feingold campaign finance reform bill is not a perfect bill. But it is a good bill. More important, it provides a good start on what ought to be one of our top priorities: loosening the grip of big-money special interests on politics.

I will vote for cloture not because I think this bill cannot be improved—it can—but because we must change the way campaigns are financed, and this is, for now, the only means we have to make that change.

There are those who say they oppose cloture because they want to be able to amend this bill and improve it. But let no one in this Chamber be fooled: a vote against cloture is a vote to kill campaign finance reform. We know that because the leading opponent of this bill has told us he intends to filibuster this bill and kill it if we give him the chance.

To block reform with calls for debate is more than cynical. It is dangerous.

A while back, the Kettering Institute conducted a survey of Americans' attitudes about the influence of money on politics. The survey found a widespread belief that ''campaign contributions determine more than voting, so why bother?'' It described ''a political system that is perceived of as so autonomous that the public is no longer able to control or direct it.''

''People talk about government,'' the study said, ''as if it has been taken over by alien beings.''

We will never restore faith in government if people believe the political system is rigged against them, if they believe it serves the wealthy, the powerful, and the politically connected at their expense.

The McCain-Feingold proposal, as I have said, is not perfect. For instance, I believe we should encourage participation in our political process by individuals who get together not because they have some narrow economic interest in a particular bill but because they have a broad interest in the direction of government. That is exactly the kind of grassroots participation that groups like EMILY'S List and, yes, WISH List, encourage. Yet this bill would ban such participation. In my opinion, that is a serious flaw.

But this bill does fix some of what is most broken about the current campaign finance system. It sets reasonable spending limits. It makes political campaigns more competitive for challengers. And it sets reasonable limits on the influence of PAC's.

This is not an attempt by one party to rewrite the rules to its own advantage. This is a bipartisan effort that will be good for both our parties, and for our Nation. I want to thank Senators MCCAIN and FEINGOLD for their leadership in getting us to this point against what must have seemed at times very long odds.

I will vote for cloture because I believe it is wrong if another Congress comes and goes and does nothing about campaign finance reform.

Talk may be cheap. But when endless talk is used to block action on campaign finance reform, it becomes terribly expensive because special interests are able to undermine efforts to solve the problems that matter most to America's families.

A while back, the Speaker of the House said, and I quote—''One of the big myths in modern politics is that campaigns are too expensive. The political process is not overfunded; it is underfunded.''

Mr. President, the American people do not agree. A poll conducted earlier this year by a Republican and a Democratic pollster asked people whether they agreed that ''those who make large campaign contributions get special favors from politicians.'' Sixty-eight percent said yes, they agreed, and they said they were deeply troubled by it.

So the need for campaign finance reform will not go away, even if, for some reason, campaign finance reform is not enacted in this Congress. Ultimately, we must change the rules. We must lessen the influence of money on politics. I urge my colleagues to join me in beginning that change by voting now to bring this reasonable, modest proposal forward for a vote.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, I ask unanimous consent that I may use leader time for a very brief statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, just very briefly, I want to commend the Senate for the quality of the debate on this campaign finance reform issue. I have been able to listen to several of the speeches that have been given. I think on both sides of the issue and on both sides of the aisle, it has been an outstanding debate.

I commend specifically Senator MCCAIN, Senator FEINGOLD, Senator THOMPSON, and others who have sponsored this legislation, and for the quality of their cooperation and debate.

I also commend the courage, once again, of the outstanding leader of the opposition to this campaign finance reform, Senator MCCONNELL. He has done a magnificent job. I think we should recognize that.

I think this is an important issue which we will address, I am sure, again in the future. But I think it is too important to address right at this point in the heat of the national election debate.

I do not think we have the solutions here. So I urge that cloture not be invoked.

I hope the Senate will not invoke cloture on the McCain-Feingold substitute amendment to S. 1219.

We all agree that campaign finance reform is an important issue. But it's become too important to deal with it during the heat of a national election.

It is already too late in the calendar year to make this bill's provisions apply to the elections of 1996. So we are not going to lose anything by waiting until early next year to get this job done.

When we do it, we have to do it right—the first time. We should not make the same mistake the Senate made back in 1974, when it hastily cobbled together a campaign reform bill that later came apart at the seams before the Supreme Court.

Since the Court's decision in Buckley versus Valeo in 1974, the Congress has been on notice that, when it comes to imposing rules and restrictions on the financing of political campaigns, we must be scrupulously careful of the first amendment.

In short, our good intentions must pass constitutional muster. My personal judgment is that this bill does not do so.

I recognize that others may disagree, but when it comes to the free speech protections of the first amendment, I prefer to err on the side of caution, rather than zeal.

I need not go into all the details already covered by other speakers, but I note that one of the key provisions in this legislation—concerning political action committees—has a fallback provision, in case the original provision is overturned by the Supreme Court as a violation of the first amendment.

What that means to me is that we know at least some parts of this bill are on shaky ground. I think we should craft campaign finance reforms that are rock solid.

Two of our colleagues from the Republican side of the aisle have played crucial roles with regard to this legislation. Both have acted out of conscience and principle, and have come to opposite conclusions.