I yield the floor.

Mr. SANTORUM addressed the Chair.

Mr. LEVIN. Will the Senator from Pennsylvania yield for a unanimous-consent request?

Mr. SANTORUM. Certainly.

Mr. LEVIN. Mr. President, I ask unanimous consent that following the statement of the Senator from Pennsylvania, I be recognized to proceed in morning business for up to 20 minutes.

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

Mr. LEVIN. I thank my friend from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

THE DEPORTATION OF IMMIGRANTS

Mr. SANTORUM. Mr. President, let me first address the issue the Senator from Massachusetts was referring to with respect to deportation of immigrants in this country. I am a very strong supporter of the Mack amendment. I believe people are entitled to due process and the right to be heard. Promises were made by many administrations and Congresses. These people were welcomed into this country as a result of the political strife that was going on in various countries in Latin America. I think it would be a true injustice for us to have changed the rules in midstream for many, literally thousands of people who are awaiting deportation hearings right now, to deport them in lieu of that hearing.

So I stand with Senator MACK and Senator GRAHAM from Florida, Senator KENNEDY, and Senator ABRAHAM from Michigan in support of the Mack legislation.

CAMPAIGN FINANCE REFORM

Mr. SANTORUM. The subject matter on which I want to spend the majority of my time speaking on is the issue of campaign finance reform. As Members have gotten up to discuss the issue, I think one might be led to the impression that those of us who oppose McCain-Feingold are not for any changes in campaign finance rules and that we don't see that there are some problems there. I want to make it very clear that, as a Senator who is on the Rules Committee, which is the committee that has the jurisdiction on this subject matter—we have been bypassed by these floor maneuvers but we do have jurisdiction and have looked into this subject quite extensively—that I don't know of anybody on the Rules Committee on either side who does not believe the current campaign finance system has some problems with it and there are things that we can do to fix it.

We disagree on how to do that. Let me just, if I can, draw the differences between how one side wants to do it and the other side; sort of the big picture, not really talking so much about specifics but a general philosophy. Then I will get into more specifics.

The general philosophy of those of us who oppose the McCain-Feingold approach is that we believe that we can fix the campaign finance system in this country by making it purely voluntary, so that no one is going to be forced to contribute to an election. That is something that you would think is as fundamental as any right that we have in this country, that you should not be forced by your employer, by your union, by your association, or by your family to contribute to anyone the resources that you have worked hard to earn. So, one general tenet is that contributing to campaigns must be completely voluntary. I think that is a tenet you would suspect would be universally shared. It is not universally shared. People in support of McCain-Feingold, by and large—there are some exceptions, but few—do not support the concept that campaign contributions should be voluntary. That is one difference.

Second, that we achieve a better campaign system, a better campaign and a better campaign financing system, by increasing participation, by having more voices in the political discourse, not fewer. Those of us who oppose McCain-Feingold strongly hold to that reading of the first amendment that ensures, guarantees, one of the highest guarantees in the Constitution, the right of speech, political speech, and political discourse.

In this country today, political speech does not mean—it means this, what I am doing. But it does not only mean standing up on the street corner and sounding off on what you believe in. These days, if you are standing on the street corner sounding off on what you believe in, basically you are labeled some sort of freak. We believe the first amendment covers organized political speech, that is, people who ban together, who want to speak on a particular issue and marshal whatever resources they have, whether it is resources in manpower to distribute fliers that they print at a half a cent apiece, or to buy a radio ad on a local radio station or to, in fact, hold public meetings and public debates. Whatever medium they want to use, I think is appropriate to be protected by the Congress and by the first amendment.

On the other side, you have people who want to limit that activity. They want to limit people's ability to speak in the political arena because they find certain kinds of speech offensive, like people who advertise in opposition to a Member of Congress or a Senator saying that they voted in such a bad way and don't vote for them, and they do it within 60 days of the election; that is bad; somehow people getting together and expressing their opinion in a public forum is a bad thing that has to be prohibited by the Congress.

I don't believe that. I don't like it when someone does it to me, and it's been done to me and it will be done to me unless we pass one of these bills that says you can't. By the way, even if we did do that, I believe the Supreme Court would strike it down in a heartbeat. But I believe it will be done again.

I don't have a problem with it, even though it happens to me, because I think people have a right if they don't like what I am doing to speak up about it, even if I think the attack is unfair, because I trust the American public. I know a lot of people around here on a pretty regular basis don't trust the American public, but I trust the American public and the voters of America to sort of figure out all of those things on their own with the help of all the other information that they are going to get from networks like C–SPAN2, as we are on today, and other independent sources, that that ad, as nasty as it is, as horrible as it is, is not going to change somebody's opinion overnight. People are smart enough to take all that information, realize it is an ad, discount it to the degree they usually do and filter it into the mix, as we do with all speech.

But the other side believes that it is dangerous speech. I believe that there is nothing inherently dangerous about speech; there is something inherently dangerous about limiting speech, because once we start to limit speech, then that takes freedom away from the masses, from the people and gives that freedom and control to a bunch of people in Washington, DC, who think they know what is best for you.

You probably hear many Senators talk in those terms when it comes to a variety of other subjects in Washington, DC. I suggest that this attempt to take power away and freedom away from people and centralize it in Washington is consistent with what the other side of the aisle generally wants to do when it comes to every decision in your life. As a result, we have the huge Government that we have in Washington, DC. We have grown and grown and grown because we have taken more and more freedom away from people, whether it is in the form of freedom to use the money that you have earned by higher and higher taxes, or whether it is freedom in the form of regulation on regulation on every aspect of business and your life.

We have taken that responsibility, we have taken your freedom and have centralized that decisionmaking in Washington, DC. This is another attempt to do that. This has the salutary effect, from those who believe in big government, of stifling your criticism of big government. This is a win-win. This allows them to continue to grow government without you being able to speak out against it. So they can stifle you at the same time they continue what they want to do in the first place. I think that is very, very, very dangerous to the future of this country.

Columnist George Will called the filibuster—I don't know whether that is what it is or not, but let's use that

term—that the filibuster of the McCain-Feingold finance reform is the most important filibuster in the history of America. I don't know if I agree with that, but I would say it is certainly one of the most important because it goes to the heart of our democracy, it goes to the heart of the political discourse in this country and how free are we going to allow this country to be at its most fundamental core, its democratic core. How free are we going to allow you to be, the average citizen in America?

There are those who say, ''Well, you are just too free right now and you have too much power right now. We need to take some of that back for your own good. For your own good we're going to take some power away from you so you don't go out and do things that are going to hurt you.''

My, my, and believe it or not, you have the national news media just along for the ride. They think this is great. And why not? Because if we limit your speech, the speech of those who are speaking everyday on the network news and in the newspapers and on the radios becomes that much louder, because the din of your speech has quieted down, and so their speech becomes much more important to the whole debate. You have the media very much for squelching other input, so they become much more powerful and much more important in the political discourse.

I suggest that if Congress were proposing a law to limit the amount of speech that newspapers and radios and television reporters can speak, there would be an absolute hue and cry of ''freedom of the press''; ''How dare you restrict''; ''It is the most essential element of our democracy.'' ''The first amendment''— ''Oh, I'm sorry, just this part of the first amendment,'' because when it comes to the other part of the first amendment, they are all for shutting you up. They want to shut you up, but they don't want to be even in the least infringed upon. That is the hypocrisy that is going on in the national media today.

Let's get down to the bottom line here. What do those of us who would like to see campaign finance reform see as a solution to some of the problems?

No. 1, I suggest we make sure the system is voluntary; that there should not be a system where any individual in America is forced to contribute against their will. That is not the law of the land today. There are tens of thousands, probably hundreds of thousands, maybe millions, of workers in this country who are forced to contribute money to campaigns in which they do not believe. That should be an embarrassment to every single Member of the Senate and should be an outrage to every member of our society. When it comes to union dues being used for political purposes, that is exactly what occurs. So we have a very simple provision that says you can't do that anymore, it has to be voluntary.

Poll union members—not the union bosses, union members—and ask them whether they would like the right to be able to give money voluntarily instead of having it taken out of their dues. By overwhelming numbers—I just saw a poll in California—by a 4 to 1 margin, union members themselves said they want that choice.

Yet—and I always find this really funny because people for McCain-Feingold say, ''well, we have to fight the special interests; it's the special interests that are the problem.'' Then they stand up here and fight against a bill that says all contributions should be voluntary. Why? Because the unions and their big money backing them in their campaigns won't allow them to do what's right. This just exposes it for what it is. This is about power. They just want to make sure that they can keep all the money funneling toward them, and then go about taking away power from you. Keep the money flowing on that side and then take the power away from you.

I don't necessarily think that is the right approach to take. When it comes to union dues being used involuntarily for political campaigns—there is absolutely no excuse for not having the voluntary campaign finance system. That should be at the fundamental core. The only reason it is not is because of the special interests supporting the other side of the aisle, the special interests that they get up and rail against: ''Oh, this is horrible; special interest money and, by the way, we're going to stop campaign finance reform because of the special interest money we get from involuntary contributions being maced out of the people who work in unions. Maced is actually too kind of a word because some people get maced when they don't go along, because they have no choice. It is not a matter of being maced and losing your job. You just have to go along. You can't even say no.

So No. 1, it has to be a voluntary system.

No. 2, a goal of a campaign finance system should be to increase participation by the people who are most affected by the election, and that is your constituents. The goal of the bill that I am going to be introducing is to increase the amount of influence—I use that term advisedly—influence that constituents within the State in which you reside, such as my State of Pennsylvania, to influence the election disproportionate from anybody else, whether they be political action committees or people from California—I like people from California but they are not from Pennsylvania and, frankly, the people from Pennsylvania should have more of a say who the Senator is from Pennsylvania than the people from Washington State, Maine or anyplace else.

What I have suggested in my bill is we are going to increase the amount of contributions that can be given by people in Pennsylvania. The proposal that I have is to take the $1,000 limit and increase it to $4,000 per individual per election for people who reside in the State in which you run. Everybody else is kept at the $1,000 limit. But people in your State are going to have more of an ability to contribute.

I know, because I was a challenger twice. I am a rare breed of cat around this place. I defeated an incumbent Congressman to get into the House and defeated an incumbent Senator to get into the Senate. There are not very many of us around who have that honor, I guess, or burden, one of the two. So I know what it is like to be a challenger. I know what it is like to be the big underdog. I know what it is like to be outspent 3 to 1, and I didn't like it.

But I will tell you what I didn't like more than anything else. I didn't like the fact that my opponent, who was a sitting Congressman, had the ability to raise money all over the country. Because of being in Congress, he had connections. He could raise money from all over the place. He was known, not only all over the country, but all over the State. Nobody knew who I was.

I remember when I first ran for office, they took a poll 6 months before the election in 1990, and my name recognition in my district was 6 percent. I thought that was pretty great; ''Yea, it is 6 percent.'' Then my pollster informed me that usually when they put somebody's name on the ballot, they get about 8 percent, because about 8 percent of the people are afraid to answer that they don't know the person, figuring if they were on the survey, they should know the person. So I got below what Mickey Mouse would get. Nobody knew me.

It was hard for me to raise money. I didn't have any money. And it was harder only because I could raise $1,000 at a time. If I was lucky enough to find someone who would support me who had any kind of resources, all I could get was $1,000. That makes it very, very hard for a challenger. You have to find a lot of people to help you, to get at least a bit of seed corn to build a campaign organization.

There was a comment from a person who was going to run for the U.S. Senate in Pennsylvania next year. She was headed toward running, but she announced abruptly she was not going to run. The reason she gave for not running was that she found it incredibly hard to find so many people to give her $1,000 at a time. She just couldn't find that many people to build up the seed corn necessary to start a campaign. Once you start a campaign, you can broaden out your search, you can get, as I have done—I have 35,000 donors, I believe, to my committee. And that is a lot of donors. I am very proud of that.

The average contribution is well under $100. But you have to get to there. And it takes time. It takes some money to start. Unless you are a millionaire, which I plead guilty of not

being, then it is very difficult for the average Joe Citizen to get enough resources together to start a campaign when you have to raise it $1,000 at a time.

When you consider the fact that in a Senate race in Pennsylvania it is going to cost about probably $9 or $10 million, someone giving you $4,000 hardly warrants notice in the big scheme of things.

So to suggest that somehow, you know, this person has inordinate influence is ridiculous. And you are going to get hundreds of people to give you that kind of money. I guarantee you, within those hundreds of people there will be hundreds of different opinions on probably the same issue. So to suggest you are going to do one for one—it just doesn't work that way.

Anybody who believes—this is another fallacy of campaign financing—that Members of Congress get donations to do favors for people, I mean, that is just ridiculous. I mean, it is absolutely absurd. And that is why I am for limits on contributions, and I am for low limits. I think $4,000 is a low limit because I don't want someone to be able to give $100,000 or $200,000 or $500,000 because then, whether it occurs or not, the appearance of impropriety is there. With a small donation, relatively small, I am talking in terms of a $10 million campaign, $4,000 does not, I think, stick out to say they are buying a more disproportionate interest here.

The fact of the matter is, we have low limits. I think we should keep them relatively low, but they should be high enough so people can have some ability to form a little bit of seed corn to start a campaign if they want to run for office. So I believe that raising the limit, oddly enough, would help challengers and open-seat candidates more than it will help incumbents.

Incumbents can raise money now. They are one of the few who can raise money now. This is to help challengers. The other thing—follow me on this concept—what I believe has happened over the past 25 years and why campaign reform has come to be such a ''scandal,'' although I think it is a somewhat created scandal in some respects; in many respects it is a scandal because people are breaking the laws—is what we did in 1974. It was well-intentioned. It was to limit the influence of special interests and limit the influence of big donors. Remember, $1,000 was set in 1974. If you index that to inflation, it would be over $3,000 today. That is why we increase it from $1,000 to $4,000. And campaigns have increased by 10 or 20 times as far as expenses since 1974.

What we have done—if I can give an example of a heart—you have a main artery that flows into the heart that provides the blood for the heart muscle so the heart can pump. What we did in 1974 was we occluded partially, we blocked that artery. We said, we are no longer going to allow a free flow of resources, blood, into the heart muscle, the candidate; we are going to block it.

It was an artificial block. It was artificial in the sense that the heart still needed the resources, but you have limited the ability for direct resources to flow into that heart.

If you are lucky, what happens if you are a human being and that happens? What happens is, you build up what is called collateral circulation, other circulation to feed the heart, to keep it alive and going and working.

Collateral circulation in politics is called soft money. By limiting the amount that you or anybody can give directly to a candidate, you have not stopped the need for the money to get to the candidate; all you have done is stop the main, most efficient, most disclosed, most apparent way of feeding that heart muscle, of feeding that candidate.

So what has happened is the money still wants to get there because the candidate needs it to run a race, and so what has happened is these collateral sources have been built up. We have built up all these soft money trees to feed the candidate behind the scenes, undisclosed or disclosed not as efficiently or not as readily as the direct pipeline to the heart or to the candidate.

So what I want to do is do a little angioplasty. Let us clear out the heart artery to allow some more resources and blood to flow so you can watch it. What I propose in my bill is to require monthly reporting—not quarterly, but monthly. Let us have more disclosure. Let us have more prompt disclosure. Let us find out who is giving the money and how much they are giving.

So we have, by doing that, and by raising the limits of people who live in the State, you will reduce the need for this other circulation for this other money to come into the system.

I think the best way to cure soft money is not Government to restrict it because, you know, we restricted hard money, that money, that direct pipeline, that main artery going into the campaign, we restricted it, and what happened? They figured out another way, constitutionally another way. We try to restrict that, and guess what will happen? They will figure out some other way. I mean, look, the big problem here is that Government is too big, it spends too much, and it regulates too much. It is involved in everything. We have this huge Government that people want to have some say in how the Government governs. They want to have some say in who is elected to make those decisions. And they have every right to do so.

What the folks who are for McCain-Feingold say is, ''Well, we don't want you to have that right. We want to limit your right to do that.'' I think that is ridiculous. I think that is, frankly, undemocratic, certainly undemocratic, and I will go as far as to say it is un-American. We are a country that fought hard, we fought wars, we fought a Revolutionary War and many others to maintain our freedom. And first among them—the first amendment—first among them is the freedom of speech.

What this debate is fundamentally about is the freedom of political discourse, of your right to influence the course of an election, and, therefore, the course of the country. It is your only chance. This is a Republic, not a democracy. We are not all gathered here in the Senate—we do not get all 250 million people in the room and everybody says ''aye'' and ''no.'' That is not how we do things. You elect me for better or for worse. You elect a Member of the Senate, two Members in the Senate from each State, and however many House Members you have, and those people represent you.

If you want to be represented here, you have to work through the electoral process to influence the decision as to what Member of Congress is elected and what Senator is elected. That is your outlet. What the people in this room, many who are for McCain-Feingold, want to do is limit the people's ability to impact that election. When I say ''people,'' I don't just mean individuals, but associations and others who have every right under the first amendment to be heard.

So when you hear all this talk about, ''Oh, special interests,'' remember one thing, the biggest special interest that is holding up this bill is labor unions who do not want voluntary contributions to be the law of the land. That is No. 1. So anytime you hear ''special interests'' from people who support McCain-Feingold, ask this question: ''Are you for voluntary contributions for every member of society?'' When they say, ''No,'' then you say, ''Don't talk to me about special interest because I know what special interest is buying you. So don't talk to me about, 'Oh, we need to get rid of special interests when your first vote is to defend it and to exhibit the power.' ''

Voluntary contributions, increased participation, particularly from people who are within the boundaries of the district or your State, and increased disclosure. It is much easier for the cardiologist to be able to find a problem with the flow of blood to the heart by looking at one source where it is supposed to be. It is much easier to determine where the problem is than looking at all the other different sources that may be feeding that heart.

So if we allow the resources to be channeled, and we have disclosure of those resources promptly—monthly—then you are going to have a system that I think everyone will be proud of that will encourage participation, that will be voluntary, and that will be disclosed.

I yield the floor.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Michigan is recognized.

Mr. GORTON. Would the Senator from Michigan yield for a unanimous-consent request?

Mr. LEVIN. I would be happy to.

Mr. GORTON. I ask unanimous consent, Madam President, that I be permitted to speak in morning business at the conclusion of the remarks of the Senator from Michigan.

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

The Senator from Michigan.

THE INDEPENDENT COUNSEL LAW

Mr. LEVIN. Madam President, I want to speak today about the independent counsel law and the political pressure being put on the Attorney General to appoint an independent counsel in the campaign fundraising investigation.

One Member has called on the Attorney General to resign. Some Members of the House are threatening impeachment proceedings against the Attorney General unless she reaches their conclusion on the appointment of an independent counsel.

For 18 years I served as either the chairman or ranking Democrat on the subcommittee of the Governmental Affairs Committee with jurisdiction over the independent counsel law. I have been actively involved in three reauthorizations of this important statute. And having experienced and studied the history of this law, I am deeply disturbed by this type of pressure being exerted.

Politically motivated attempts to intimidate the Attorney General runs directly counter to the fundamental purpose of the independent counsel law and counter to our constitutional system that makes the prosecution of crimes the sole responsibility of the executive branch.

The independent counsel law was enacted in the aftermath of Watergate. The Watergate committee recommended, and the Congress agreed, that we need a process by which criminal investigations of our top Government officials should be conducted in an independent manner as free as possible from any taint of favoritism or politics.

This was necessary, we decided, in order to maintain the public's confidence in one of the basic principles of our democracy, that this is a country that follows the rule of law. So we established a process whereby the Attorney General would follow certain established procedures in reviewing allegations of criminal wrongdoing by top Government officials and decide at certain stages whether to ask a special Federal court to appoint a person from the private sector to become a Government employee to take over the investigation and conduct it independently from the chain of command at the Department of Justice.

We wanted the public to have confidence that the investigations into alleged criminal conduct by top Government officials were no less aggressive and no more aggressive than similar investigations of average citizens. We particularly wanted to remove partisanship from the investigative and prosecutorial decisionmaking process.

We established the requirement that if the Attorney General receives specific information from a credible source that a crime may have been committed by certain enumerated top Government officials, the Attorney General has to conduct a threshold inquiry lasting no more than 30 days to determine if the allegation is frivolous or a potential legal problem. The top officials who trigger this so-called mandatory provision of the act are the President, the Vice President, Cabinet Secretaries, Deputy Secretaries of the executive branch departments, plus very top White House officials who are paid a salary at least as high as Cabinet Secretaries or Deputy Secretaries and the chairman and treasurer or other top officials of the President's campaign committee.

If, after the threshold inquiry, the Attorney General determines that there is specific information from a credible source that a crime may have been committed by a covered official, the Attorney General must then conduct a preliminary investigation lasting no more than 90 days in which she gathers evidence to determine whether further investigation is warranted. If after the conclusion of the 90-day period the Attorney General determines that further investigation is warranted with respect to a covered official, then she must seek the appointment of an independent counsel from the special court made up of three article III judges appointed for 2-year terms by the Chief Justice of the Supreme Court.

In crafting the independent counsel law, we contemplated a role for Congress with respect to the appointment of an independent counsel in a specific case. We included a provision that is tailored to the purposes of the statute. The independent counsel law explicitly provides that the appropriate avenue for congressional comment on the appointment of an independent counsel is through action of the Judiciary Committee.

The law provides that either a majority of the majority party or a majority of the minority party of the members of the Judiciary Committee may request the Attorney General to appoint an independent counsel.

Upon receipt of such a letter, the law provides that the Attorney General must respond in writing to the authors of the letter explaining ''whether the Attorney General has begun or will begin a preliminary investigation'' under the independent counsel law, setting forth ''the reasons for the Attorney General's decision regarding such preliminary investigation as it relates to each of the matters with respect to which the congressional request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.''

The Attorney General is not obligated to trigger the statute when she receives such a letter. She is not required to initiate a threshold inquiry or conduct a preliminary investigation. She is only required to respond within 30 days. That is the process that we provided for in the independent counsel law for Congress to express an opinion in triggering the statute. That is how the procedure works.

The Attorney General has the sole discretion to determine if the statute is triggered and if an independent counsel should be appointed. That is a constitutional requisite of the statute, and without that discretion, the Supreme Court has said that the separation of powers principle is violated. Congress has the very specific way I indicated to express its opinion on the subject to the Attorney General. In the last analysis, as our chief law enforcement officer, it is her decision alone to make.

While the independent counsel law was designed to make sure that a covered official doesn't get preferential treatment with respect to a criminal investigation, equally important was the concern that the official not suffer worse treatment or a selective process prosecution that would not be applied to an ordinary citizen. In the din surrounding these calls for the Attorney General to seek the appointment of an independent counsel, that very important feature has been lost.

In 1981, our subcommittee that has jurisdiction over the independent counsel law held the first oversight hearings on its implementation. We had a number of knowledgeable witnesses, and we had several years of experience with the statute to review.

One of the cases that the subcommittee reviewed at the time was the case of Hamilton Jordan and Tim Kraft, top White House officials in the Carter administration, who were accused of using a controlled substance at a party in violation of the criminal code. Then Attorney General Benjamin Civiletti testified at the time that under ordinary circumstances the Department of Justice, exercising its discretion on when to prosecute, would not generally prosecute a case such as that against a regular citizen even though there might have been a violation. But because the law at the time didn't permit the Attorney General to consider prosecutorial policies of the Department in deciding whether or not to seek appointment of an independent counsel, the Attorney General felt obligated to seek appointment of independent counsels in those two cases.

Here is what then Attorney General Benjamin Civiletti told our subcommittee in 1981 about this decision:

> In normal circumstances, the Department does not investigate or prosecute every possible felony or every possible fact, or circumstance that comes to its attention. Historically, and within the law, it exercises