I look forward to working with Secretary Peña on these and other important issues. The next Secretary of Energy has a great opportunity to give our country an energy policy that values energy sufficiency for our country.

I thank you for this opportunity to speak on behalf of Secretary Peña. I yield the floor.

Mr. DOMENICI. Mr. President, I ask unanimous consent to speak for 30 seconds.

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

Mr. DOMENICI. Regarding soon-to-be-confirmed Secretary of Energy Peña, I want to tell the Senate I know him and his family very well, in particular his wife, who went to school with my children. We are good friends. I do not support him on that basis only. I think he is ready to undertake this very difficult job. I wish him well.

I think we can work together to make the Department of Energy a better department under his administration. I look forward to working to that end. I yield the floor.

## EXECUTIVE SESSION

### NOMINATION OF FEDERICO PENA, OF COLORADO, TO BE SECRETARY OF ENERGY

The PRESIDING OFFICER. Under the previous order the Senate will now go into executive session and proceed to vote on the Peña nomination.

Mrs. HUTCHISON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Federico Peña, of Colorado, to be Secretary of Energy? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER (Mr. ROBERTS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 30 Ex.]

YEAS—99

| | | |
|---|---|---|
| Abraham | Coats | Glenn |
| Akaka | Cochran | Gorton |
| Allard | Collins | Graham |
| Ashcroft | Conrad | Gramm |
| Baucus | Coverdell | Grassley |
| Bennett | Craig | Gregg |
| Biden | D'Amato | Hagel |
| Bingaman | Daschle | Harkin |
| Bond | DeWine | Hatch |
| Boxer | Dodd | Helms |
| Breaux | Domenici | Hollings |
| Brownback | Dorgan | Hutchinson |
| Bryan | Durbin | Hutchison |
| Bumpers | Enzi | Inhofe |
| Burns | Faircloth | Inouye |
| Byrd | Feingold | Jeffords |
| Campbell | Feinstein | Johnson |
| Chafee | Ford | Kempthorne |
| Cleland | Frist | Kennedy |
| Kerrey | Moseley-Braun | Smith, Bob |
| Kerry | Moynihan | Smith, Gordon H. |
| Kohl | Murkowski | Snowe |
| Kyl | Murray | Specter |
| Landrieu | Nickles | Stevens |
| Lautenberg | Reed | Thomas |
| Leahy | Reid | Thompson |
| Levin | Robb | Thurmond |
| Lieberman | Roberts | Torricelli |
| Lott | Rockefeller | Warner |
| Lugar | Roth | Wellstone |
| Mack | Santorum | Wyden |
| McCain | Sarbanes | |
| McConnell | Sessions | |
| Mikulski | Shelby | |

NAYS—1

Grams

The nomination was confirmed.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

## CAMPAIGN FINANCE AMENDMENT TO THE CONSTITUTION

Mr. HOLLINGS. Mr. President, in accordance with the unanimous-consent agreement, I call up Senate Joint Resolution 18 on behalf of myself, Mr. SPECTER, Mr. DASCHLE, Mr. BYRD, Mrs. BOXER, Mr. BRYAN, Mr. BIDEN, Mrs. FEINSTEIN, Mr. REED, Mr. REID, Mr. CONRAD, Mr. DORGAN, Mr. FORD, and Mr. HARKIN, and ask the clerk to report.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of Senate Joint Resolution 18, which the clerk will report.

The legislative clerk read as follows:

A joint resolution (S.J. Res. 18) proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

The Senate proceeded to consider the joint resolution.

Mr. HOLLINGS. Mr. President, in a line, what we say is that the Congress is hereby authorized to regulate or control expenditures in Federal elections.

Let me say that I come now to this particular subject of a constitutional amendment, which we have been on for over 10 years, with some hope, because I noticed on yesterday, Mr. President, we had a fit of conscience. We were about to pass a resolution that said Congress was only going to look at illegal contributions and not at improper ones, and, finally, in a fit of conscience, the Congress, particularly here in the Senate, decided that was not going to fly. It would appear to be, if we took that course, a coverup whereby we did not want to get into soft money and all of these other extravaganzas, legal as they are, says the Supreme Court, but as improper as can be.

That is what is causing the headlines and the consternation and the money chase that we read in the headlines and news stories. We had a fit of conscience when we passed the 1974 act. This act came about due to the untoward activity in the 1967 and 1971 Presidential races. In the 1967 race, President Nixon had designated Maurice Stans, later the Secretary of Commerce, to collect the money.

And I will never forget; he came to the State of South Carolina, and he told our textile friends, ''your fair share is $350,000,'' almost like the United Fund or Community Chest. Well, I had been their Governor and everything else and had never gotten $350,000 out of the textile industry, and they were all my friends. But the ten of them, at $35,000 apiece, got up the money, and more than that. There were other large contributions, including one of $2 million from Chicago.

The fact was, after President Nixon took office, Treasury Secretary John Connally went to the President and said, ''Mr. President, you have got a lot of good support and you have not even met these individuals much less thanked them. Why not come down to the ranch and we will put on a barbecue and you can meet and thank them.'' President Nixon said, ''fine business,'' and they did. But as they turned into the weekend ranch barbecue on the Connally Ranch in Texas, there was a big Brinks truck. Dick Tuck, the prankster from the Kennedy campaign, had stationed a truck with signs out there. A picture of it was taken. And we in Washington, Republican and Democrat, said, ''heavens above, the Government's up for sale.'' Thereafter, you had the extremes of Watergate, which everyone is familiar with. So, in 1974 we had a fit of conscience. Yes, everybody thought they had advantages with respect to getting the money. They had gotten here on the ground rules as they then appeared, and said ''Why change? I can operate as the rules are.''

But, with that fit of conscience, we came and passed the 1974 act. I want to remind everyone that this was a very deliberate, bipartisan effort at the time. It set spending limits on campaigns, limited candidates' personal spending on their own behalf, limited expenditures by independent persons or groups for or against candidates, set voluntary spending limits as a condition for receiving public funding, set disclosure requirements for campaign spending and receipts, set limits on contributions for individuals and political committees, and created the Federal Election Commission.

When you hear the debates, some of the new Members will come on the floor talking about what we really need is disclosure. That is what we have, still, under that 1974 act. I am required to record every dollar in and out with both the Secretary of the Senate on the one hand and the secretary of state back in the capital of my State, Columbia, SC, on the other. We have complete disclosure. You cannot take cash.

I had always thought it was illegal to take a contribution on Government property. And we thought we had soft money and independent contributions regulated.

But, in Buckley versus Valeo they stood the original intent of the Congress on its head. It is this original intent of limited expenditures in Federal elections that our constitutional amendment is offered, in a bipartisan fashion, with the distinguished Senator from Pennsylvania, Senator SPECTER, and myself in the lead, along with the strong support of those I have enumerated.

Now, back to the fit of conscience. I initiated this particular approach, in frustration, over 10 years ago, after realizing, like a dog chasing its tail, we were not getting anywhere. We had voluntariness prescribed by giving certain amounts of money if you voluntarily limited. There was free TV. You had public financing. You had all the different little tidbits of the different bills that have come around.

Necessarily, I support them for the simple reason I am looking for votes. I am looking to finally get a concurrent majority of 67 Senators, so I do not want to turn off any of these sponsors, even though I know there are constitutional questions under the Buckley versus Valeo decision. But the real opposition is not the freedom of speech under the first amendment in the Bill of Rights to the Constitution. The real opposition, if you please, is a small group among us Senators who feel like this money is a tremendous advantage and they are not going to give it up.

I know where the opposition lies. It is in the very thought that we are not spending enough. As was said in the debates here on the floor: ''On Kibbles and Bits cat and dog food we spend $4 billion; why don't we spend $4 billion on national elections?'' So I hope we can flush those who really believe this to come up and debate this idea on its merits.

They will come under the cover of the freedom of speech. It is very interesting that what we have under consideration is paid speech, not free speech. Heavens above, we have all the free speech that you can think of.

I remember for 20 years in politics we had more or less a one-party system in my State. We would go around stump speaking, as we call it, from county to county. In some of the larger counties several speeches were made. Each of the candidates would come and get up on the stump and say what they stood for. The battle was not in the financial arena; the battle was in the political arena. It was not who had the most money but who had the better ideas, the better initiatives, the better vision, the better programs. But they have tried, following the Buckley decision, to equate just exactly that. What you pay for is free.

It amuses me when they come up here and read the Washington Post editorials. Go down to the Washington Post and say, ''Now I want some of that free speech. I would like about a quarter page of that free speech, or a half page of that free speech you just editorialized about.'' And they will say, ''Son, bug off. There is nothing free down here in this newspaper. You are going to have to pay for it, and you are going to have to pay for it under our rules and our regulations and our limits.'' The very crowd editorializing about free speech is the very crowd that is demanding their pay—paid speech. So let us not come here with an adulteration of the first amendment.

As Judge J. S. Wright stated in the Yale Law Journal, ''Nothing in the first amendment commits us to the dogma that money is speech.'' That was their finding. But, unfortunately, the Supreme Court found that you should have total freedom with respect to spending, speech, and politics. But when it came to the contributions, the court's Buckley decision amended them. They may come now and say the first amendment has never been amended in 200 years. They are very authoritative, but Buckley versus Valeo amended the first amendment. It limited speech of those who contribute.

What did Chief Justice Burger say about that? I will quote from the Buckley versus Valeo dissent of the Chief Justice.

> The Court's attempt to distinguish the communications inherent in political contributions from speech aspects of political expenditures simply will not wash.

That was Chief Justice Burger. And, as everybody with common sense knows, here was the original intent. Here were the big ads. Here were the big contributors. Here was all the cash and the corruptive influence of large amounts of money. And after Congress acted in a bipartisan fashion in 1974, here came the United States Supreme Court, in a 5-to-4 decision, if you please, and by a 1-vote margin, with this distortion, this more or less amendment of the first amendment.

Certainly it is an amendment with respect to contributors' speech. If I am a contributor and I want to contribute to the distinguished Presiding Officer, I am limited in my speech, my political expression. I can only give him $1,000 in his primary and $1,000 in his general election. That is the limit in Buckley versus Valeo, amending, if you please, the first amendment to the Constitution of the United States.

We act as if, Mr. President, there is some sanctimony or sanctified position of the first amendment, and, of course, the Senator would agree in a breath that there should be. We should really approach amending the Constitution of the United States with trepidation. I know some of the arguments are: Wait a minute, the President's got one on victims rights, and others have one on prayer in school. Somebody else has a constitutional amendment about the flag. Someone else has another constitutional amendment. This is an exception, already written in the Constitution and recognized in the Constitution in the 24th amendment, the influence of money on political expression, the influence of money on the freedom of political speech.

I have to emulate the distinguished leader from West Virginia, the Honorable Senator ROBERT BYRD, who says he carries his contract up here in his left-hand pocket, and I find that is a pretty good habit.

Let me read amendment 24, section 1:

> The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

So they said, if you are going to put a financial burden on the voter that he can't participate in the freedom of political expression because of a tax, that is unconstitutional, and we have expressed already in that 24th amendment our abhorrence of the financial influence and corruption, so to speak, upon political expression.

In a sense, it gives us one man, one vote. The poorest of the poor can cancel out the richest of the rich. I can take Bill Gates and say, ''Ha-ha, I vote the other way,'' and his vote is gone. I can take Steve Forbes and say, ''Ah, yeah, you can pay your own $35 million,'' or whatever it was, ''to get in the race at the last minute and mess up Bob Dole.'' I better not get off on too candid a delivery here this afternoon. But, in any event, Steve Forbes cannot only buy a vote, he can buy several States in the primaries. He has proven that. But when it comes down to one vote, I can cancel him. That is the greatness of our democracy, our republic form of Government.

Here we are coming around and talking totally out of mystery and nonsense about the unlimited freedom of speech, that it has never been amended in 200 years. I want the Senator from Kentucky to come, because we are going to read those amendments. One, obviously, is with respect to public safety. You can't walk into a theater and shout, ''Fire.'' That is a limit on your freedom of speech and an amendment of the first amendment.

You have the exemption for national security with respect to disclosing secrets of the Government itself. Senator MOYNIHAN just sent around a book this thick about secrets and classifications and everything else. Perhaps the distinguished Senator is correct, we ought to do away with at least half of them, because when you see that book, you say, ''We are overwhelmed now with the so-called classified, the so-called eyes only, the so-called top secret.''

Although we have the best of the best intelligence systems, we didn't even know about the fall of the wall. It happened, and we all got the news within 24 hours. The intelligence community S2175—and

I was on the Intelligence Committee at the time—had nothing to say. We were talking about all the other extraneous things, but nothing about the greatest happening, in a sense, in the last generation of our time.

So we have the exception, too, for fighting words, where they would provoke retaliation or cause retaliation. We know about that one.

We know about the exception for obscenity. In fact, the FCC has been given the authority—we had the seven or eight little dirty words on a radio station out on the west coast, and that decision, Pacifica, went all the way up to the U.S. Supreme Court, and we found out that, yes, the Federal Communications Commission, the entity and agency of the executive branch, the administrative body, could determine whether or not it was a violation on the public airwaves of obscene talk and speech, and that is limited. We said it could be limited. We legislated that it could be limited.

False and deceptive advertising. If you want to come up to just 2 weeks ago, Mr. President, they had the buffer zone—I hate to raise the question of abortion—but by legislation, they put a buffer zone around these abortion clinics, and those who demonstrate and say, ''Wait a minute, we have the freedom of speech,'' the Supreme Court ruled 2 weeks ago, ''No, you don't, not in that buffer zone, keep your mouth shut, stay out of that zone, your freedom of speech is limited.''

Mr. President, I certainly want to hear from the distinguished Senator from Nevada. He has been a strong supporter and leader in this particular cause, and he has other commitments. So, at the present time, I yield the floor.

Mr. BRYAN. Mr. President, I thank my good friend for his courtesy and his most generous remarks and to say, again, as I have on previous occasions, that I am very pleased to be a supporter of this constitutional amendment that he has authored each and every Congress that I have been here since 1989. I believe what we are discussing today is central to the issue of meaningful campaign reform, and I want to publicly commend him for his leadership and express my admiration for him and my conviction that I share with him that this is the essence of what we need to do.

Let me just say that I believe that the most corrosive force in our political culture today, and what lies at the heart of many problems in our political system, is the amount of money required to run a campaign for elective office. Money has become the dominant factor in deciding who runs, who wins and, too often, who has the influence and power in the halls of Government.

Mr. President, I don't say that with a partisan vein. That is true with respect to the system that we are all a part of—Democrats, Republicans and Independents alike.

Every year, the expense of campaigning increases, and the pressure to seek financial support, wherever it can be found, intensifies. Clearly, good people are trapped in a system where the amount of money needed to run a campaign can overshadow their views and the issues. Too often, candidates are forced to spend as much time raising money as going out and meeting the voters or to develop responsible solutions to the critical issues that face our society.

It is a fact that all of us would acknowledge that every night here in Washington someone has a political fundraiser, either a Democrat or a Republican running for office, running for reelection.

And much like an ever-escalating arms race, the cost of Senate campaigns have increased sixfold over the last 20 years, from $609,100 in 1976, to $3.6 million in 1996.

The average cost for a winning House candidate during that same period of time increased from $87,000 in 1976, to $661,000 in 1996.

And between 1992 and 1996, fundraising by political parties increased 73 percent.

Simply put, Mr. President, there is too much money in the political process.

Mr. President, the recently concluded Presidential and congressional campaigns were the most costly ever in American political history, with combined amounts of more than $2 billion. The two parties raised $263.5 million in soft money in the 1996 campaign, almost three times the amount raised in the 1992 election.

Unless the rules are changed, candidates and their parties will continue to pursue the money chase and the amount of money involved in future campaigns will continue to grow exponentially.

Mr. President, I might make an aside here, if the distinguished primary sponsor has a moment for me to expand for just a moment.

Mr. HOLLINGS. Sure.

Mr. BRYAN. And I say that we all lament the declining participation in the political electoral process in America. The 1996 election turnout was said to be the lowest since 1920. I would offer this as at least a significant contributing factor. There is no question the folks back home are pretty upset with those of us who serve in the Congress. I believe that that is their thought, seeing each party and each of us who are part of this system—I want to be clear, Mr. President, I include myself as being part of this system—who are forced to go out there and raise these inordinate, scandalous amounts of money to be competitive—to be competitive.

In the State of Nevada, it was about $3.5 million for my last campaign for reelection to the U.S. Senate. They see this. And I think it has engendered a sense of public cynicism that all of this money that is involved—I believe in the public mind, they frequently link the big money, the big contributors to the political system that we have today. And because most of them are not in the category of being big money contributors, they have been turned off. The system no longer works for them, the system is no longer responsive to their needs, is their perception.

So, as a result, I hear good people, Democrats and Republicans alike, in increasing and in alarming numbers saying, ''I'm not going to vote. I'm not going to vote.'' I do not agree with that proposition and get into spirited discussions. ''What difference does my vote make? Look, the folks who have got the money, they're the ones who really control the electoral process in America today. Why should I get involved?'' And I must say, as we see these campaign expenditures continue to mount, I believe that we provide the evidence for their rising levels of cynicism.

I was a young man in the State legislature in the 1970's, and the centerpiece to the Watergate reform was, as the distinguished junior Senator from South Carolina has pointed out, the concept of controlling and limiting the amount of money that is spent in running for office.

The other provisions which continue to survive—individual campaign contribution limits and the Federal Election Commission disclosures, the distinction between soft money and hard money—which are still very much a part of the political environment, have survived, to some extent, successive legal challenges in the courts.

But the centerpiece, limiting the amount of money spent for running for office, has essentially been eviscerated by the Buckley versus Valeo decision. I was in the legislature and responding to some of the reforms that came out of the Watergate Congress. We adopted, in the State of Nevada, a series of campaign limitations. Those, too, fell by the wayside by the Supreme Court's decision in the Buckley versus Valeo case in 1976, which I believe to be an ill-considered decision, but which, as everybody in this Chamber knows, essentially equated political expenditures on behalf of the individual candidate as being tantamount to free speech, and any attempt to limit the amount of money that a candidate can spend is constitutionally infirm.

I must say, recent decisions in the Court, and the recent Colorado decision, give us no hope to believe that the Court is about to reconsider its position. It is my humble opinion that the Colorado case has made matters even more difficult and has continued to shred what vestiges remain of a comprehensive and, I think, carefully thought-out campaign finance reform legislation in the aftermath of the Watergate.

Amending the Constitution is not something that should be undertaken lightly. That admonition is frequently given by our colleagues. And they are

right. We ought not just to do that. We ought not to think of the Constitution as a rough draft that we can improve upon with a wholesale series of amendments. I agree with that admonition.

But I would say, Mr. President, with great respect, that our forefathers could never have anticipated the consequences of the electoral system they put in place, with all of its checks and balances and with the genius that we all revere, Democrat and Republican alike, that this has increasingly become a money chase. So it seems to me we have two choices: To either do nothing and to allow a situation which I believe to be appalling to get measurably worse, or we can take corrective action.

The American people want us to take corrective action. The American people do not fully understand that it is the Court's decision itself that prevents us from legislative action to impose a limit on the amount of money as candidates we spend in running for the Congress and in other elective offices in America.

I believe one of the most important steps we can take to restore public confidence in our political process is to pass the amendment, which I am proud to cosponsor with my friend and colleague from South Carolina, and to give the Congress and to give State legislatures power that they thought that they possessed in the 1970's and to impose limitations on the amount of money that is spent in running for public office.

Individuals who want to run for Congress and other elective offices ought to be able to run on the basis of the ideas that they represent, the vitality that they bring to the process, not as is so often the case, ''Can I raise $3 million or $4 million or $10 million or, in some instances, $20 million?''

Unless we can find a way to limit the amount of money spent on Federal campaigns and place a greater emphasis on getting support from the people back home that we represent, we will fall short of real reform. Any serious reform proposal must start with the constitutional amendment to allow the States and Congress to craft measures that would take Government out of the pockets of the special interests and back in the hands of the American people who we represent.

Mr. President, I am not unmindful of the fact that our task is difficult. Many of our colleagues do not agree. But I must say that as I talk with my own constituents, I think there is an overwhelming interest across a broad spectrum, Republican, Democrat, liberal and conservative, to do something about this political process that we are all a part of.

In the Nevada legislature this year there is a proposal that will require further disclosure on the amount of campaign contributions. That, so far, the Supreme Court has said is legal, and that enjoys bipartisan support and is likely to pass overwhelmingly.

A ballot proposition on the Nevada ballot this past fall which sought to further limit the amounts of individual campaign contributions in statewide and local races passed by 71 percent.

I understand if you ask people about things that concern them most in life, they are not going to list campaign finance reform. They are interested in crime, in schools, in drugs, and those kinds of issues, which I understand. But I have yet to be in an audience of any size in which you ask people about this system that we are part of, and they do not say, ''I hope that you will do something to reform it. Campaign finance reform is something that you should undertake.'' They understand, as do each of us in this Chamber, it will not come about without bipartisan support.

Mr. President, let me again commend my friend and colleague, who has really been the laboring force on behalf of this constitutional amendment, for his courage and tenacity and, I think, the wisdom of his proposal. I am proud to support in this Congress, as I have previous Congresses, such a constitutional amendment.

I thank him for his courtesy in allowing me to speak, as I need to return to a committee hearing.

Mr. HOLLINGS. The distinguished Senator from Nevada made a very valuable contribution to the consideration of this all-important initiative.

Our democracy has cancer. It has to be excised. As I explained in my opening remarks, and as has been emphasized by the distinguished Senator from Nevada, all of these little things that come about—whether you get the money from the State, whether you get the money from bundling, soft money, hard money, voluntarism, free TV—just go around and everybody has an eye on it. But if you put a limit, as the 1974 act said, of so much per registered voter, then you have stopped, once and for all, that problem, because with disclosure you can see exactly what you have on top of the table.

I remember in one of the debates we had with the distinguished then-Senator from Louisiana, Senator Russell Long, and we both agreed that if I appeared, by my disclosure, to get a substantial sum of contributors from the textile industry, call me the textile Senator. There it is. I defend it. I frankly brag about it. If he gets the contributions all from the oil industry and is known as the oil Senator, so be it. The distinguished Presiding Officer, the farm Senator, the agriculture Senator, because his leading talent has been in that field over the years.

But by disclosure you can see it, and by the limit you cut out all of the shenanigans of the soft money, hard money, bundling and all of the roundabout end course taken to get around the law.

This amendment, Mr. President, is absolutely neutral. My friend from Kentucky, Senator MCCONNELL, who has been the leader in opposition, can still prevail under the amendment. The amendment says Congress is authorized to limit. It does not say limit; it does not say not to limit. It just gives the authority to Congress to act so that when we do get out here, we can have a majority vote so without going through the legal hurdles and delay and put off that we have been going through now for 30 years. That is why I say a constitutional amendment is our only recourse.

I got into a debate on this in 1967 when we passed an act. It is now 1997. We have been trying to get our hands around this problem of campaign finance without a constitutional amendment. Having made the good college try now over the many, many years and listened to all the others, and analyzed as they put up McCain-Feingold and the many other fine initiatives, you can look at the Supreme Court, particularly in the Colorado case, not just the Buckley case, and you can say you are wasting your time. The voluntarism we know in politics means temporary. You saw this in the race up in Massachusetts. They voluntarily said they would have a limit. They got down to the wire and that limit went out of the window.

What we are trying to do is give everybody back their freedom of speech. Namely, that I may not be extinguished by money. When I say that I say that advisedly. I know the mechanics of political campaigns, and when you have an opponent with $100,000 and I have $1 million, all I need do is just lay low. He only has $100,000 and I know that he wants to wait until October when the people finally turn their interest to the general election in November. Say he is only in print, in polls, and what have you, he spent over $25,000 and you cannot get a good poll for less than $26,000 or $27,000, but he only has $50,000 to $75,000 left, and then I let go, come October 10. That is 3 to 4 weeks leading into the campaign, and I have yard signs, billboards, newspapers, TV, radio for the farmer in the early morning, I have early morning driving-to-work radio, I have radio for the college students. I know how to tailor make with my million bucks, and I can tell you by November 1, after 3 weeks of that, my opponent's family has said what is the matter? Why are you not answering? Are you not interested anymore?

I have, through wealth, taken away his speech. I know that, you know that, that is the reality, the political game. That is what we are talking about, making it so that you cannot take away that freedom of speech, so that you can reinstill the meaning of the first amendment. It was adult rated by the five-vote majority against the four minority in Buckley versus Valeo.

We will see what the Court said and go to some of the expressions, Mr. President. Here is not what politician HOLLINGS said, but what a Supreme Court Chief Justice says, ''The Court's result does violence to the intent of

Congress.'' Can I say that again for all those who are listening? That is exactly the belief of this Senator. I am not saying because I need money or want money or I think I have a financial advantage or whatever it is.

Incidentally, I can get on to the point of incumbency. We just swore in some 15 new Senators about 6 or 8 weeks ago. All my incumbents, friends I used to sit around with, are just about gone. I know it is less than 10 years average in the House of Representatives, and I think it is exactly that on the Senate side. What did incumbent minority assistant leader Senator WENDELL FORD of Kentucky say just the day before yesterday about money? He said, ''I neither have the time nor the inclination to collect that $14,000 to $20,000.'' He has to get $5 million in Kentucky. I think he mentioned $100,000. But he said ''Look, in order to qualify as a candidate, I have to defend my incumbency role, and my incumbency role involves thousands of votes.'' I can say to the other side of the aisle, I have been in the game. They are very clever. They know how to put up and force-feed votes on very, very, controversial amendments or subjects.

How do you explain in this day and age in a 30-second sound bite, a particular vote? You take 5 minutes, and you can go down to WRC, right here in Washington, with all the money they talk about, or freedom of speech as they call it, with the wealth of Bill Gates, and say I want to buy an hour on the eve of the election, the night before the election. They will tell him to bug off, it is not for sale. It is limited. It is paid speech.

Free speech—I am trying to reinstill a freedom of speech among those who are financially limited so we make certain that our democracy is not imperiled.

I read again what Chief Justice Burger said. ''The Court's result does violence to the intent of Congress.'' He is exactly right. I was there in 1974.

> In the comprehensive scheme of campaign finance, the Court's result does violence to the intent of Congress. By dissecting bit by bit and casting off vital parts, the Court fails to recognize the whole of this act is greater than the sum of its parts. Congress intended to regulate all aspects of Federal campaign finances but what remains after today's holding leaves no more than a shadow of what Congress contemplated.

Now, I cannot say it any better. That is exactly what we had in mind, to limit the spending. And that is exactly what they did not do. They limited the contributions on the premise that it gave the appearance of corruption, or was corruption itself, but not the expenditures. Let's see what Byron Raymond White, the Associate Justice said:

> Congress was plainly of the view that these expenditures also have corruptive potential, but the Court strikes down the provision, strangely enough, claiming more insight as to what may improperly influence candidates than is possessed by the majority of Congress that passed this bill and the President who signed it. Those supporting the bill undeniably included many seasoned professionals who have been deeply involved in the elective processes and who have viewed them at close range over many years. It would make little sense to me—and apparently made none to Congress—to limit the amounts an individual may give to a candidate or spend with his approval, but fail to limit the amounts that could be spent on his behalf.

There, again, I could not say it better. That was Justice Byron White.

I quote him further:

> The judgment of Congress was that reasonably effective campaigns could be conducted within the limits established by the act and that the communicative efforts of these campaigns would not seriously suffer. In this posture (section 264 of the case) there is no sound basis for invalidating the expenditure limitations so long as a purpose is served or is legitimately and sufficiently substantial, which, in my view, they are.

We might get into the debate, Mr. President, about the word ''reasonable.'' That word appears, if you please, because of the suggestion by the commission on the constitutional system. They wanted ''reasonable'' limits. I think they were right. I am going back to the Court's decision, trying to aim the gun barrel down the constitutionality of the better constitutional thought in these dissenting opinions.

> Expenditure ceilings reinforce the contribution limits and help eradicate the hazard of corruption.

That is exactly what common sense would indicate. Here is a court finding that expenditures do not contribute at all to any kind of corruption whatsoever and, therefore, spend to the ceilings. We will have a chart here and put it up and show you how, as the Senator from Nevada said, a Senate race used to be. In 1980, it was about $1 million. By 1986, it was $2 million. By 1990, it was $3 million. By 1994, the average one was $4 million. So it keeps going up, up and away. Expenditures in the Presidential race are up around $670 million. It has gone through the roof.

Now, Mr. President, I will quote further Justice White:

> I have little doubt that, in addition, limiting the total that can be spent will ease the candidate's understandable obsession with fundraising and so free him and his staff to communicate in more places and ways connected with the fundraising function. There is nothing objectionable, and indeed it seems to me a weighty interest in favor of the provision, in the attempt to insulate the political expression of Federal candidates from the influence inevitably exerted by the endless job of raising increasingly large sums of money. I regret that the Court has returned them all to the treadmill.

Here, this was written 20 years ago. How pathetic. ''Treadmill.'' When I was first here in the U.S. Senate, from time to time we would rearrange the fundraisers in accordance with the schedule that we had. You would not dare go up to a leader on either side of the aisle and say: Mr. Leader, I hope we can get a window, or whatever it is, because I have a fundraiser. He would look at you and—if nothing else, I guess it was unethical. They ought to refer that to the Ethics Committee. But we have given up on that now. It is like the tail is wagging the dog. It is now turned around, and we schedule the Senate around the fundraising schedules—what 20 years ago Justice White called the treadmill. You are just constantly having a fundraiser to get on TV, to have a fundraiser to get on TV, to have a fundraiser to get on TV; all paid speech, not free. I haven't seen anything free yet out of that TV crowd. They will charge you for it one way or the other.

I will quote Justice Marshall, and then I will yield. I see that my colleague is prepared to comment. Justice Marshall said:

> It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant head start. Of course, the less wealthy candidate can potentially overcome the disparity and resources through the contributions from others. But ability to generate contributions may itself depend upon a showing of a financial base for the campaign or some demonstration of preexisting support, which in turn is facilitated by expenditures of substantial personal sums. Thus, the wealthy candidate's immediate access to a substantial personal fortune may give him an initial advantage that his less wealthy opponent can never overcome. And even if the advantage can be overcome, the perception that personal wealth wins elections may not only discourage potential candidates without significant personal wealth from entering the political arena, but also undermine public confidence in the integrity of the electoral process.

And here we continue and oppose, willy-nilly, any effort, really, to excise this cancer.

I yield the floor.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, this is a very important debate, which I always enjoy with my distinguished colleague from South Carolina, who fully admits that the various campaign finance reform bills we have tried to pass here in the last few years are unconstitutional. He is right, and I commend him for his observation.

That having been stated, clearly, the only way you can do the kinds of reform bills that have been proposed around here in the last 10 years is to amend the Constitution—amend the first amendment for the first time in history, to give the Government the power to control the speech of individuals, groups, candidates, and parties. The American Civil Liberties Union calls that a recipe for repression. It clearly is, and I am happy today that we are finally having the debate on this amendment, which is indeed a recipe for repression.

I see my good friend, the Senator from Kansas, here, who is anxious to speak on this. I yield to the Senator from Kansas.

Mr. ROBERTS. Mr. President, I come to this issue not only as a Member of

the Senate, but also as a former newspaperman. So when we get to the freedom-of-speech issue, I have some pretty strong feelings. In saying that, I want to make it abundantly clear—very clear—that I do not, in any way, question the intent of the supporters, but I do question their practical effect.

When I was presiding, I listened intently to the distinguished Senator from South Carolina, whom I respect. I was very interested in his comments with regard to the kind of political debate that he would like to go back to, that I would like to go back to. He calls it a stump speech. In South Carolina, it is a stump speech. My wife is from South Carolina. Many times I have listened to the distinguished Senators from South Carolina. It is a privilege to hear them discuss the issues—old-style campaigning and politics, grassroots politics. In Kansas we call it ''listening tours.'' I had the privilege before serving in this body to be in the lower body. I represented 66 counties. I went on a listening tour every August. It took about 5,000 miles and about 3 weeks. That is the old style of discussing the issues for people where they come to the courthouse and the sale barn or the Rotary Club. And we would discuss the issues. I enjoyed that. The Senator from South Carolina is a master. That is why the people doubtless send him back to represent that outstanding State.

In entering this debate I am reminded that America has been here before. It seems to me that our task today is a moral and ethical and philosophical exploration of free speech, and its role in the political affairs of mankind. It is that serious. It is that encompassing.

''Tyranny, like Hell, is not easily conquered,'' said the patriot Thomas Paine in ''Common Sense.''

This resolution—not the intent, but this resolution—in terms of practical effect is tyranny. Adopt it and wonder whether ''Common Sense'' could exist in our time in terms of public distribution and dissemination and understanding.

This resolution is tyranny of the worst kind: Government tyranny. Adopt it and wonder whether ''The Federalist Papers,'' written by James Madison and John Jay to influence voters in New York to adopt a new Constitution, could, in fact, exist in our time.

Listen carefully to this resolution where Congress and the States are given unlimited power to set limits. Limits on what? Limits on ''* * * the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to a candidate for nomination for election to, or for election to * * *'' Federal, State, and local offices.

Now my colleagues, I urge you. Do not be misled. The debate today is not about elections. It is not about campaign finance reform. We are all for that, more especially in regard to public disclosure, as the distinguished Senator from South Carolina certainly has described in his remarks. It is not about Republicans, or Democrats, or what party controls the Congress. That is not what it is about.

It is, rather, about the most basic right of individuals guaranteed by our Constitution—the right of free speech, the right written first, the right without which no other right can long exist.

Listen carefully again to the language of the first amendment, which we proposed to change:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

My colleagues, those words have magic. They are among the most important accomplishments of mankind. Democracy is an experiment in progress. Yet, the rights guaranteed in the first amendment have stood for more than 200 years. Seldom have legislative assaults on the first amendment been so far-reaching and so onerous as the resolution that we debate today.

Columnist George Will has called this effort more dangerous than the infamous Alien and Sedition Acts passed in 1798. Those laws placed Government controls on specific kinds of speech. This resolution proposes general Government controls on both the quantity and the quality of political speech.

The Alien and Sedition Acts were passed by a young country that had adopted, but did not fully appreciate, the first amendment rights of free speech. They were passed because some in the Government didn't like what some of its citizens were saying about politicians, politics, and Government.

Like we are today, some in the Government were worried, of course, about the national security. But it is instructive to note that Government's attempt to limit free speech is like walking in a swamp—your good intentions are tugged and pulled simply from all sides.

Abigail Adams, for example, urged passage of the acts to deal with Benjamin Franklin Bache. He was an editor who had referred to her husband as ''old, querulous, bald''—I can sympathize with that—''blind, crippled, toothless.''

He was arrested but died before he could be prosecuted, according to historians Jean Folkerts and Dwight Teeter in their book, Voices of a Nation.

Twenty-five persons were charged under the sedition laws. Included was one unlucky customer in a Newark tavern who staggered into the sunlight to make a negative comment about John Adams' anatomy as the President's carriage passed by.

Only after the rights of American citizens to speak freely were trampled by their Government did our young country come to appreciate the real meaning of the first amendment.

James Madison and Thomas Jefferson objected to the attack on free speech with their Virginia and Kentucky resolutions.

Madison presented the importance of free speech to democratic government. His argument has great relevance to our discussion today as he drew the connection between free speech and elections.

''Let it be recollected, lastly, that the right of electing members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right depends on the knowledge of the comparative merits and demerits of the candidates for public trust; and on the equal freedom, consequently of examining and discussing these merits and demerits of the candidates respectively.''

That is the essence of free political speech. That is the essence of the philosophy advanced by the great philosophers like John Milton, John Locke, John Stuart Mill: The consent of a marketplace of ideas based on unfettered speech and thought.

Mill argued that people could trade their false notions for true ones only if they could hear the true ones. And he denounced all government attempts to censure expression.

One of America's great jurists, Louis Brandeis, warned us to ''be most on guard to protect liberty when the Government's purposes are beneficent * * *''

We could substitute ''reform'' for ''beneficent.''

''* * * the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.''

Well, the advocates of this resolution want us to believe that the need for Congress to limit campaign spending is so great that the first amendment's rights are secondary. Well, first let me lay to rest any notion that virtually everybody in this distinguished body is somehow against campaign reform. It is the definition of campaign reform in the practical effect that is exceedingly important. But the proponents of this legislation further argue that limits on campaign spending are really not limits on speech at all. I think that is the point that was made by the distinguished Senator from South Carolina.

The Supreme Court, in its Buckley decision, dispensed with that argument in this way: Yes. It was a 5-to-4 vote. Yes. I know it is controversial. But listen.

''A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.

I can go to 66 counties or 105 counties in Kansas, and I can meet with every

farmer, businessman, any member of a civic group, and I can discuss the issues. And when I am done, I have probably touched 1 percent of the populace.

This decision by the Supreme Court certainly applies.

''This is because,'' and I am quoting again, ''virtually every means of communicating ideas in today's mass society requires the expenditure of money.''

I wish it was not so but that is the case.

''The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event.''

''The electorate's increasing dependence on television, radio''—and I am quoting again from the Buckley decision—''and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.''

Now, in Kansas, Mr. President, a full-page advertisement in the Topeka Capital Journal costs $4,400. One 30-second television ad to reach across the State costs more than $33,000. Too much? Well, I would think it would be too much. Of course, if you are the publisher of the Capital Journal, or the advertising manager, or the same in regard to the TV station and you look at your costs and the comparative costs of what is happening in today's mass communications, it might not be too much. That is the going rate. I do not think we can legislate that rate. Even speech via the Internet or the Postal Service requires the spending of resources.

Now, suppose we adopt this resolution and that it is ratified by the States. What will we tell the Kansas business owner who wishes to petition his Government either for a redress of any kind of a grievance or to criticize a candidate or to urge the election of another candidate? Will we say that free political speech is only a half-page of advertisement? In our infinite wisdom as incumbents in office, will we say free speech only applies to 15 seconds at one TV station?

Mr. MCCONNELL. Will the Senator yield?

Mr. ROBERTS. I would be delighted to yield to the distinguished Senator.

Mr. MCCONNELL. Reading from the Hollings amendment, it says, ''A State''—this is referring to the power given to the States. Same power to the Federal Government. ''A State shall have the power to set reasonable limits.'' I say to my good friend, the Senator from Kansas, put another way, the Government would decide how much speech is reasonable. Is that the interpretation of my good friend?

Mr. ROBERTS. The incumbents of the Government, whether it be State, I suppose county, or in the Congress of the United States, would decide what is appropriate in terms of spending limits not only for themselves but for their challengers.

Mr. MCCONNELL. Will the Senator yield for a further question?

Mr. ROBERTS. I would be delighted to yield.

Mr. MCCONNELL. So it would not be inconceivable then that all of us in the Senate and House might decide that what is a reasonable amount of speech for a challenger could be $5,000 in the next election.

Mr. ROBERTS. That might be a little harsh.

Mr. MCCONNELL. We have total power to do that under the amendment.

Mr. ROBERTS. That is correct.

Mr. MCCONNELL. I say to my good friend from Kansas, if the candidates in the next election in a typical race were limited to spending $5,000, who does my good friend from Kansas think would win?

Mr. ROBERTS. I think probably the incumbent would have an edge.

Mr. MCCONNELL. Just might. So the Government here has the power to determine how much speech there may be. I thank my good friend from Kansas.

Mr. ROBERTS. I thank the Senator from Kentucky for his contribution and his leadership.

If this resolution is adopted, what will we tell the local citizens group working to elect a new mayor or a city council? Will we say that free speech extends no further than the classified advertisements? Remember, we have full-page ads costing x and we have 30-second television ads costing x but you put a limit on it: Sorry, no TV. Maybe it will get on the news, maybe not.

The Supreme Court in Buckley put it this way: ''Being free to engage in unlimited public expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline.'' You can't get there from here to Kansas on a single tank of gasoline—whether it is traveling the State or in regards to any kind of expression in regard to any kind of politics or any kind of campaigning.

The tyranny of this resolution, like tyranny forever, is based on a false assumption that somehow we have too much, too much political speech and it should be limited. How much political speech in a democracy is too much?

Last year, millions of Americans gave $2.6 billion to fill 476 offices. Again, columnist George Will points out they still had enough left over to spend $4.5 billion on potato chips. We spent more on yogurt in this year than we spent on political discourse, discussing the great issues of the day. Or put another way, one Super Bowl ad could finance two campaigns for Congress. One Super Bowl ad, 2½ districts in the Congress. How much is enough? I submit we need more political speech, not less. And further, what will be the chilling impact of this resolution on citizen involvement in the election and the governmental process?

The Senator from Nevada said people are sick and tired of politics and business as usual and they are not choosing to vote. I submit it is not because we need to give more power to the Federal Election Commission and limit political debate. The problem is, in my view, that too many candidates do not speak out on the issues in candor and say they are for something that identifies with the individual who is going to vote.

Our democracy survives solely on the consent of the governed. That is pretty basic. That consent is given as long as the governed have confidence in the men and women they elect to public office.

We have in place a number of filters through which candidates must be sifted to ensure those who survive receive a consensus. These filters give the electorate opportunities to eliminate candidates, many candidates who aspire to public office but quite frankly, judged in the eyes of the public, are not serious candidates, they sift out those who cannot attract a consensus. We do this in order that our form of government can so long exist.

I want to ask the question. There is a feeling here in this body that Senators feel put upon that they have to sit, hopefully in another office, and raise campaign funds. My word, what a terrible chore. What a condescending, elitist point of view, that we should be free of asking people for their trust and their support, their investment in good government, their partnership in good faith so we can shine the light of truth in the darkness and discuss these issues free from that terrible burden. What a terrible burden.

Is a candidate's ability to attract campaign funds—let me repeat this. Is a candidate's ability to attract campaign funds any less important to this process than his or her ability to attract votes? How can a candidate expect to get the consent of the governed if he or she cannot attract their support in funds to wage a campaign?

Make no mistake. Our debate today is important. It is about freedom. Said the distinguished Hugo Black: ''There are grim reminders all around this world that the distance between individual liberty and firing squads is not always as far as it seems.''

The great men and women who debated this issue before us arrived at a simple but eloquent conclusion—to limit political speech is to limit and lose freedom. We are called again to reach this same conclusion. I urge rejection of the resolution. Said the statesman George Mason: ''No free Government, or the blessings of liberty, can be preserved to any people, but by frequent recurrence to fundamental principles.''

First amendment freedoms are fundamental principles. Let us preserve the blessings of liberty.

I thank the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank my distinguished colleague from

Kansas for an excellent speech. I ask him if he has just one more moment here before he leaves the floor?

Mr. ROBERTS. I will be delighted to respond.

Mr. McCONNELL. I say to my friend from Kansas, in looking at the Hollings amendment, in addition to giving to the Government the power to control the speech of candidates, as we just discussed in our earlier colloquy, which could be, presumably, $5,000, which would certainly guarantee the election of every incumbent, I would also ask my good friend how he would interpret the following power given to the Government. It says the Government could limit the amount of expenditures that may be made ''by''—I assume that is the candidate—''in support of the candidate, or in opposition to the candidate.''

Now, let me ask my good friend from Kansas, since we would be making the rules here in Congress, and since we would be given the permission to make these rules since this is an amendment to the first amendment of the Constitution of the United States for the first time in history, I ask my good friend from Kansas, might it not be a shrewd move on the part of all incumbents to say that those in support of or in opposition to a candidate cannot speak at all?

Mr. ROBERTS. I really had not thought of that proposal because it is so farfetched from democracy as we know it and participation in the election process as we know it. It could happen. It could happen. I have confidence it would not happen, but, then, one never knows.

Could I ask the distinguished Senator a question? And that is this: Right now, in the campaign process, we have regular contributions. As the distinguished Senator from South Carolina has pointed out, there are limits in terms of giving; in terms of individuals it is $1,000 an individual, et cetera. And he uses that as a reference point from which to control the total spending.

But in the real world, what we have found, more specifically in this last election cycle, those regular contributions are reported. If there is one thing I agree very strongly with the Senator from South Carolina on, it is we need full public disclosure. He referred to Steve Forbes. As a matter of fact, he was very candid with regard to Mr. Forbes' candidacy, and what happened to my dear friend and former senior Senator from Kansas, Bob Dole, in his campaign. So, public disclosure, I think, is very important. I think the American people are six jumps ahead of the whole process. If they discover where the money comes from and the amount of money spent, they make the appropriate decision.

But we have other contributions. We have independent expenditures, and in the Colorado case it is very clear where the court is. So here is the challenger and the incumbent limited in terms of spending, and then in comes a ''independent expenditure,'' which we all know in some cases are not quite so independent.

Then, second, we have other expenditures. They are called ''educational ads.''

How on Earth do we control those expenditures with the campaign limits envisioned in many of the alleged campaign reform bills? I can tell you, we have colleagues who subscribe to State campaign limits, only to find we have these other contributions coming in, these other expenditures, and, frankly, they were beaten about the head and shoulders so much in the last part of the campaign, they had to violate that campaign limit or they would have been defeated, paying a fine, filling out paperwork. It is a very unfair system. I do not see anything in this particular endeavor that would prevent that.

That is a long question for the Senator to answer.

Mr. McCONNELL. I would say to my friend from Kansas, most of us in the political arena do not like independent expenditures. But the court has made it quite clear that it is constitutionally protected speech. No matter how much we do not like it when people criticize us, these individuals and groups have a constitutional right to engage in these independent expenditures. As a result of the Colorado case, parties do as well.

In looking at the Hollings amendment, it seems to me that Congress would be given the power to completely shut up these groups. They could say, ''No longer can you speak at all.'' That way, we would be able to silence all of these people who do not like what we stand for, totally—totally—under this. If Congress is given the power to control the amount of expenditures that may be made ''by''—I assume that is the candidate—''in support of,'' referring to outside groups, or ''in opposition to,'' referring to outside groups, why, by golly, under this amendment we could shut them up entirely. Our lives would be a lot easier. We could just limit spending in the campaign to about $5,000, eliminate all the speech of these outside groups. Boy, you would never have any turnover here, would you?

Mr. ROBERTS. If I could ask one other question of the Senator, I think an additional two questions that people should be asking are: Who decides? Who decides what the limit is?

Mr. McCONNELL. We do.

Mr. ROBERTS. That is the incumbency, with all due respect. And second, who is going to enforce all this? We are going to need a SWAT team down at the Federal Election Commission.

Mr. McCONNELL. If I may say to my friend, I often say the FEC would soon be the size of the rest of the administration. There would be battalions of auditors and lawyers crawling all over the books, not just of candidates for public office but every organized group out in America seeking to express itself in the course of the campaign. They would be crawling all over them. Let some little group in Kansas utter a peep in the next race against Senator ROBERTS, and the FEC could come down on them like a house of bricks saying, ''Shut up. Congress has said you don't get to speak. You don't get to say how you feel in the election—or any other time. Shut up.''

All of that is possible under this amendment, to amend the first amendment for the first time in history, to give this Congress the power to quiet the voices; quiet the voices, not just of Members of Congress and the people who may oppose them, but anybody else who may oppose it, any individual, any group, anybody. We could shut them all up. And in what way would America be better for that?

Mr. ROBERTS. I thank the Senator for his contribution and again would only summarize by saying that we could get at much of the problem here with real campaign reform legislation that centers on public disclosure. I repeat my remarks that I think the American people are six jumps ahead of the process here. It has been my experience, if they know how much money is being spent and where the money is coming from, they make a pretty good decision. Candidates cannot—well, in some cases it might work —but in most cases they cannot buy elections. It works against them. I will put my money on the free press and free speech and public disclosure, and I urge rejection of this resolution.

I thank the Senator for yielding.

Mr. McCONNELL. Mr. President, once again I thank the distinguished Senator from Kansas for an outstanding speech. I appreciate his contribution to this debate.

The question before us, as I have said, as we all know, is whether to amend the first amendment for the first time in history to give to the Government the power to control the political discourse in this country across the board; the political speech of candidates, political speech of individuals, the political speech of groups—all of this, because we have concluded that there is too much political discourse in this country.

Senator ROBERTS mentioned, and others are familiar with, some of the statistics. Of all the commercials run in the previous year, 1 percent of them were about politics; 1 percent of them. The notion that we have an excessive amount of political discussion in this country is absurd on its face. It is absurd on its face.

The good thing about the debate that we are having is it is an honest debate. The Hollings amendment concedes that there is very little you can do, consistent with the first amendment, in the campaign finance reform field that the Supreme Court will not strike down. The measure most commonly referred to by the reformers, the McCain-Feingold proposal, is unconstitutional at least 12 different ways. It would be dead on arrival in the Federal courts.

At least this debate helps sum up what is really needed if Senators believe that there is too much political discussion in our country.

It should not be surprising, Mr. President, that this amendment has almost no constituents. Common Cause, the group most often thought of when you think of the subject of campaign finance reform, opposes this constitutional amendment. The Washington Post, which writes a story on these kinds of issues virtually daily, opposes this amendment. The New York Times opposes this amendment. The American Civil Liberties Union opposes this amendment.

In short, even the proponents of some kind of effort to restrict the speech of people who are involved in the American political process look at this particular effort to carve a big hunk out of the first amendment for the first time in history as an overreaching and ill-advised step in the wrong direction.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter I received from the ACLU dated March 6, 1997, in opposition to the constitutional amendment.

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

AMERICAN CIVIL LIBERTIES UNION,
WASHINGTON NATIONAL OFFICE,
*Washington, DC, March 6, 1997.*

DEAR SENATOR: The American Civil Liberties Union strongly opposes S.J. Res. 18, the proposed constitutional amendment that permits Congress and the states to enact laws regulating federal campaign expenditures and contributions.

Whatever one's position may be on campaign finance reform and how best to achieve it, a constitutional amendment of the kind here proposed is not the solution. Amending the First Amendment for the first time in our history in the way that S.J. Res. 18 proposes would challenge all pre-existing First Amendment jurisprudence and would give to Congress and the states unprecedented, sweeping and undefined authority to restrict speech protected by the First Amendment since 1791.

Because it is vague and over-broad, S.J. Res. 18 would give Congress a virtual ''blank check'' to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy. In addition, this measure should be opposed because it provides no guarantee that Congress or the states will have the political will, after the amendment's adoption, to enact legislation that will correct the problems in our current electoral system. This amendment misleads the American people because it tells them that only if they sacrifice their First Amendment rights, will Congress correct the problems in our system. Not only is this too high a price to demand in the name of reform, it is unwise to promise the American people such an unlikely outcome.

Rather than assuring that the electoral processes will be improved, a constitutional amendment merely places new state and federal campaign finance law beyond the reach of First Amendment jurisprudence. All Congress and the states would have to demonstrate is that its laws were ''reasonable.'' ''Reasonable'' laws do not necessarily solve the problems of those who are harmed by or locked out of the electoral process on the basis of their third party status, lack of wealth or non-incumbency. The First Amendment properly prevents the government from being arbitrary when making these distinctions, but S.J. Res. 18 would enable the Congress to set limitations on expenditures and contributions notwithstanding current constitutional understandings.

Once S.J. Res. 18 is adopted, Congress and local governments could easily further distort the political process in numerous ways. Congress and state governments could pass new laws that operate to the detriment of dark-horse and third party candidates. For example, with the intention of creating a ''level playing field'' Congress could establish equal contribution and expenditure limits that would ultimately operate to the benefit of incumbents who generally have a higher name recognition than their opponents, and who are often able to do more with less funding. Thus, rather than assure fair and free elections, the proposal would enable those in power to perpetuate their own power and incumbency advantage to the disadvantage of those who would challenge the status quo.

S.J. Res. 18 would also give Congress and every state legislature the power, heretofore denied by the First Amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed articles or commentary printed at the publisher's expense are more certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

Even if Congress exempted the press from the amendment, what rational basis would it use to distinguish between certain kinds of speech? For example, why would it be justified for Congress to allow a newspaper publisher to run unlimited editorials on behalf of a candidate, but to make it unlawful for a wealthy individual to purchase an unlimited number of billboards for the same candidate? Likewise, why would it be permissible for a major weekly news magazine to run an unlimited number of editorials opposing a candidate, but impermissible for the candidate or his supporters to raise or spend enough money to purchase advertisements in the same publication? At what point is a journal or magazine that is published by an advocacy group different from a major daily newspaper, when it comes to the endorsement of candidates for federal office? Should one type of media outlet be given broader free expression privileges than the other? Should national media outlets have to abide by fifty different state and local standards for expenditures? These are questions that Congress has not adequately addressed or answered.

Moreover, the proposed amendment appears to reach not only expenditures by candidates or their agents but also the truly independent expenditures by individual citizens and groups—the very kind of speech that the First Amendment was designed to protect.

If Congress or the states want to change our campaign finance system, then it need not throw out the First Amendment in order to do so. Congress can adopt meaningful federal campaign finance reform measures without abrogating the First Amendment and without contravening the Supreme Court's decision in *Buckley* v. *Valeo.* Some of these reform measures include: public financing for all legally qualified candidates—financing that serves as a floor, not a ceiling for campaign expenditures; extending the franking privilege to all legally qualified candidates; providing assistance in some form for broadcast advertising through vouchers or reduced advertising rates; improving the resources for the FEC so that it can provide timely disclosure of contributions and expenditures; and providing vouchers for travel.

Rather than argue for these proposals, many members of Congress continue to propose unconstitutional measures, such as the McCain/Feingold bill that are limit-driven methods of campaign finance reform that place campaign regulation on a collision course with the First Amendment. Before Senators vote to eliminate certain first Amendment rights, the ACLU urges the Congress to consider other legislative options, and to give these alternatives its considered review through the hearing process.

The ACLU urges Senators to oppose S.J. Res. 18.

Sincerely,

LAURA W. MURPHY.

Mr. MCCONNELL. Also, I ask unanimous consent that a Washington Post editorial of Monday, December 2, 1996, in opposition to the constitutional amendment, be printed in the RECORD.

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

WRONG WAY ON CAMPAIGN FINANCE

Campaign finance reform is hard in part because it so quickly bumps up against the First Amendment. To keep offices and officeholders from being bought, proponents seek to limit what candidates for office can raise and spend. That's reasonable enough, except that the Supreme Court has ruled—we think correctly—that the giving and spending of campaign funds is a form of political speech, and the Constitution is pretty explicit about that sort of thing. ''Congress shall make no law * * * abridging the freedom of speech'' is the majestic sentence. So however laudable the goal, you end up having to regulate lightly and indirectly in this area, which means you are almost bound to achieve an imperfect result.

As a way out of this dilemma, Senate Minority Leader Tom Daschle added his name the other day to the list of those who say the Constitution should be amended to permit the regulation of campaign spending. He wasn't just trying to duck the issue by raising it to a higher level as some would-be amenders have in the past. Rather, his argument is that you can't win the war without the weapons, which in the case of campaign finance means the power not just to create incentives to limit spending but to impose spending limits directly.

But that's what everyone who wants to put an asterisk after the First Amendment says: We have a war to fight that we can win only if given the power to suppress. It's a terrible precedent even if in a virtuous cause, and of course, it is always in a virtuous cause. The people who want a flag-burning amendment think of themselves as defenders of civic virtue too. These amendments are always for the one cause only. Just this once, the supporters say. But having punched the one hole, you make it impossible to argue on principle against punching the next. The question becomes not whether you have exceptions to the free speech clause, but which ones?

Nor is it clear that an amendment would solve the problem. It would offer a means but not the will. The system we have is a system

that benefits incumbents. That's one of the reasons we continue to have it, and future incumbents are no more likely to want to junk it than is the current crop.

The campaign finance issue tends to wax and wane, depending on how obscene the fund-raising was, or seemed, in the last election. The last election being what it was, Congress is under a fair amount of pressure to toughen the law. The Democrats doubtless feel it most, thanks to the revelations of suspect fund-raising on the part of the president's campaign, though the Republicans have their own sins to answer for—not least their long record of resistance to reform. with all respect to Mr. Daschle, a constitutional amendment will solve none of this.

The American political system is never going to be sanitized nor, given the civic cost of the regulations that would be required (even assuming that a definition of the sanitary state could be agreed upon), should that be anyone's goal. Rather, the goal should be simply to moderate the role of money in determining elections and of course the policies to which the elections lead. The right approach remains the same: Give candidates some of the money they need to run, but exact in return a promise to limit their spending. And then enforce the promise. Private money would still be spent, but at a genuine and greater distance from the candidates themselves. It wouldn't be a perfect world, and that would be its virtue as well as a flaw.

Mr. MCCONNELL. Senator ROBERTS referred to the recent George Will column entitled ''Government Gag,'' which appeared in the Washington Post of February 13, 1997. I ask unanimous consent that that also be printed in the RECORD.

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

GOVERNMENT GAG

To promote the fair and effective functioning of the democratic process, Congress, with respect to elections for federal office, and States, for all other elections, including initiatives and referenda, may adopt reasonable regulations of funds expended, including contributions, to influence the outcome of elections, provided that such regulations do not impair the right of the public to a full and free discussion of all issues and do not prevent any candidate for elected office from amassing the resources necessary for effective advocacy.

Such governments may reasonably define which expenditures are deemed to be for the purpose of influencing elections, so long as such definition does not interfere with the right of the people fully to debate issues.

No regulation adopted under this authority may regulate the content of any expression of opinion or communication.—Proposed amendment to the Constitution

Like the imperturbable Sir Francis Drake, who did not allow the Spanish Armada's arrival off England to interrupt a game of bowling, supposed friends of the First Amendment are showing notable sang-froid in the face of ominous developments. Freedom of speech is today under more serious attack than at any time in at least the last 199 years—since enactment of the Alien and Sedition Acts. Actually, today's threat, launched in the name of political hygiene, is graver than that posed by those acts, for three reasons.

First, the 1798 acts, by which Federalists attempted to suppress criticism of the government they then controlled, were bound to perish with fluctuations in the balance of partisan forces. Today's attack on free speech advances under a bland bipartisan banner of cleanliness.

Second, the 1798 acts restricted certain categories of political speech and activities, defined, albeit quite broadly, by content and objectives. Today's enemies of the First Amendment aim to abridge the right of free political speech generally. It is not any particular content but the quantity of political speech they find objectionable.

Third, the 1798 acts had expiration dates and were allowed to expire. However, if today's speech-restrictors put in place their structure of restriction (see above), its anticonstitutional premise and program probably will be permanent.

Its premise is that Americans engage in too much communication of political advocacy, and that government—that is, incumbents in elective offices—should be trusted to decide and enforce the correct amount. This attempt to put the exercise of the most elemental civil right under government regulation is the most fundamental principle of the nation's Founders.

The principle is that limited government must be limited especially severely concerning regulation of the rights most essential to an open society. Thus the First Amendment says ''Congress shall make no law * * * abridging the freedom of speech,'' not ''Congress may abridge the freedom of speech with such laws as Congress considers reasonable.''

The text of the proposed amendment comes from Rep. Richard Gephardt, House minority leader, who has the courage of his alarming convictions when he says: ''What we have is two important values in conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.''

However, he also says: ''I know this is a serious step to amend the First Amendment. * * * But * * * this is not an effort to diminish free speech.'' Nonsense. Otherwise Gephardt would not acknowledge that the First Amendment is an impediment.

The reformers' problem is the Supreme Court, which has affirmed the obvious: Restrictions on the means of making speech heard, including spending for the dissemination of political advocacy, are restrictions on speech. It would be absurd to say, for example: ''Congress shall make no law abridging the right to place one's views before the public in advertisements or on billboards but Congress can abridge—reasonably, of course—the right to spend for such things.''

Insincerity oozes from the text of the proposed amendment. When Congress, emancipated from the First Amendment's restrictions, weaves its web of restraints on political communication, it will do so to promote its understanding of what is the ''fair'' and ''effective'' functioning of democracy, and ''effective'' advocacy. Yet all this regulation will be consistent with ''the right of the people fully to debate issues,'' and with ''full and free discussion of all issues''—as the political class chooses to define ''full'' and ''free'' and the ''issues.''

In 1588 England was saved not just by Drake but by luck—the ''Protestant wind'' that dispersed the Armada. Perhaps today the strangely silent friends of freedom—why are not editorial pages erupting against the proposed vandalism against the Bill of Rights?—are counting on some similar intervention to forestall today's ''reformers,'' who aim not just to water the wine of freedom but to regulate the consumption of free speech.

Mr. MCCONNELL. Mr. President, a couple of years ago, George Will, in his Newsweek column, wrote an article in opposition to the constitutional amendment. The headline is, ''So, We Talk Too Much?''

The Supreme Court's two-word opinion of the Senate's reform bill may be, ''Good grief.''

I ask unanimous consent that that also be printed in the RECORD.

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

[From Newsweek, June 28, 1993]

SO, WE TALK TOO MUCH?

(By George Will)

Washington's political class and its journalistic echoes are celebrating Senate passage, on a mostly party-line vote, of a ''reform'' that constitutes the boldest attack on freedom of speech since enactment of the Alien and Sedition Acts of 1798. The campaign finance bill would ration political speech. Fortunately, it is so flagrantly unconstitutional that the Supreme Court will fling it back across First Street, N.E., with a two-word opinion: ''Good grief!''

The reformers begin, as their ilk usually does, with a thumping but unargued certitude: campaigns involve ''too much'' money. (In 1992 congressional races involved a sum equal to 40 percent of what Americans spent on yogurt. Given the government's increasing intrusiveness and capacity to do harm, it is arguable that we spend too little on the dissemination of political discourse.) But reformers eager to limit spending have a problem: mandatory spending limits are unconstitutional. The Supreme Court acknowledges that the First Amendment protects ''the indispensable conditions for meaningful communication,'' which includes spending for the dissemination of speech. The reformers' impossible task is to gin up ''incentives'' powerful enough to coerce candidates into accepting limits that can be labeled ''voluntary.''

The Senate bill's original incentive was public financing, coupled with various punishments for privately financed candidates who choose not to sell their First Amendment rights for taxpayers' dollars and who exceed the government's stipulated ration of permissible spending/speech. Most taxpayers detest public financing. (''Food stamps for politicians,'' says Sen. Mitch McConnell, the Kentucky Republican who will lead the constitutional challenge if anything like this bill becomes law.) So the bill was changed—and made even more grossly unconstitutional. Now it limits public funding to candidates whose opponents spend/speak in excess of government limits. The funds for the subsidy are to come from taxing, at the top corporate rate, all contributions to the candidate who has chosen to exercise his free speech rights with private funding. So 35 percent of people's contributions to a privately funded candidate would be expropriated and given to his opponent. This is part of the punishment system designed to produce ''voluntary'' acceptance of spending limits.

But the Court says the government cannot require people ''to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege.'' The Court says that the ''power to tax the exercise of a right is the power to control or suppress the exercise of its enjoyment'' and is ''as potent as the power of censorship.''

Sen. Fritz Hollings, the South Carolina Democrat, is a passionate advocate of spending limits but at least has the gumption to attack the First Amendment frontally. The Senate bill amounts, he says candidly, to ''coercing people to accept spending limits while pretending it is voluntary.'' Because ''everyone knows what we are doing is unconstitutional,'' he proposes to make coercion constitutional. He would withdraw First

Amendment protection from the most important speech—political discourse. And the Senate has adopted (52–43) his resolution urging Congress to send to the states this constitutional amendment: Congress and the states ''shall have power to set reasonable limits on campaign expenditures by, in support of, or in opposition to any candidate in any primary or other election'' for federal, state or local office.

Hollings claims—you have to admire his brass—that carving this huge hole in the First Amendment would be ''a big boost to free speech.'' But by ''free'' he means ''fair,'' and by ''fair'' he means equal amounts of speech—the permissible amounts to be decided by incumbents in Congress and state legislatures. Note also the power to limit spending not only ''by'' but even ''in support of, or in opposition to'' candidates. The 52 senators who voted for this included many who three years ago stoutly (and rightly) opposed carving out even a small exception to First Amendment protections in order to ban flag-burning. But now these incumbents want to empower incumbents to hack away at the Bill of Rights in order to shrink the permissible amount of political discourse.

Government micromanagement: The Senate bill would ban or limit spending by political action committees. It would require privately funded candidates to say in their broadcast advertisements that ''the candidate has not agreed to voluntary campaign limits.'' (This speech regulation is grossly unconstitutional because it favors a particular point of view, and because the Court has held that the First Amendment protects the freedom to choose ''both what to say and what not to say.'') All this government micromanagement of political speech is supposed to usher in the reign of ''fairness (as incumbents define it, of course).

Incumbents can live happily with spending limits. Incumbents will write the limits, perhaps not altogether altruistically. And spending is the way challengers can combat incumbents' advantages such as name recognition, access to media and franked mail. Besides, the most important and plentiful money spent for political purposes is dispensed entirely by incumbents. It is called the federal budget—$1.5 trillion this year and rising. Federal spending (along with myriad regulations and subsidizing activities such as protectionist measures) often is vote-buying.

It is instructive that when the Senate voted to empower government to ration political speech, and even endorse amending the First Amendment, there was no outcry from journalists. Most of them are liberals and so are disposed to like government regulation of (other people's) lives. Besides, journalists know that government rationing of political speech by candidates will enlarge the importance of journalists' unlimited speech.

The Senate bill's premise is that there is ''too much'' political speech and some is by undesirable elements (PACs), so government control is needed to make the nation's political speech healthier. Our governments cannot balance their budgets or even suppress the gunfire in America's (potholed) streets. It would be seemly if politicians would get on with such basic tasks, rather than with the mischief of making mincemeat of the First Amendment.

Mr. MCCONNELL. Finally, Mr. President, in terms of insertions into the RECORD, I ask unanimous consent that a letter dated March 12, by Common Cause, opposing the constitutional amendment which is before us, be printed in the RECORD.

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

COMMON CAUSE,
*Washington, DC, March 12, 1997.*

DEAR SENATOR: The Senate is expected to vote later this week on a proposed constitutional amendment to provide Congress with the ability to impose mandatory limits on campaign spending, thus overriding a portion of the Supreme Court's 1976 decision in Buckley versus Valeo.

Common Cause opposes the constitutional amendment because it will serve as a diversionary tactic that could prevent Congress from passing campaign finance reform this year. We believe that a constitutional amendment is not necessary in order to achieve meaningful and comprehensive reform.

Under existing Supreme Court doctrine, Congress has significant scope to enact tough and effective campaign finance reform consistent with the Court's interpretation of the First Amendment in Buckley.

The McCain-Feingold bill, S.25, provides for significant reform within the framework of the Buckley decision. The legislation would: ban soft money; provide reduced postage rates and free or reduced cost television time as incentives for congressional candidates to agree to restrain their spending; close loopholes related to independent expenditures and campaign ads that masquerade as ''issue advocacy''; reduce the influence of special-interest political action committee (PAC) money; strengthen disclosure and enforcement.

A recent letter to Senators McCain and Feingold from constitutional scholar Burt Neuborne, the Legal Director of the Brennan Center for Justice and a past National Legal Director of the ACLU, sets forth the case that the McCain-Feingold bill is constitutional. Professor Neuborne finds that the key provisions of the bill are within the Court's existing interpretation of the First Amendment, and he thus demonstrates that a constitutional amendment is not necessary to enact reform.

Professor Neuborne concludes that the voluntary spending limits the McCain-Feingold bill are consistent with the Supreme Court's ruling in Buckley. He further concludes that ''Congress possesses clear power to close the soft money loophole by restricting the source and size of contributions to political parties. . . .'' He also concludes that efforts to close loopholes relating to independent expenditures and so-called ''issue ads'' are also within Congress' existing authority.

It is, therefore, not necessary to amend the Constitution in order to enact meaningful campaign finance reform. Congress has the power, consistent with the First Amendment, to enact comprehensive reform by statute.

A constitutional amendment for campaign finance reform should not be used as a way to delay reform legislation. Typically, amending the Constitution takes years. After both Houses of Congress adopt an amendment by a two-thirds vote, it has to be approved by three-quarters of the state legislatures. Even then, the Congress would still have to take up enacting legislation. This is a lengthy and arduous process.

Congress needs to act now to address the growing scandal in the campaign finance system. Congress can act now—and constitutionally—to adopt major reforms. Congress need not and should not start a reform process that will take years to complete by pursuing campaign finance reform through a constitutional amendment. Instead, the Senate should focus its efforts on enacting S.25, comprehensive bipartisan legislation that represents real reform. It is balanced, fair, and should be enacted this year to ensure meaningful reform of the way congressional elections are financed.

Sincerely,

ANN MCBRIDE,
*President.*

Mr. MCCONNELL. Mr. President, the question before us, the resolution by the junior Senator from South Carolina to amend the Constitution, grounds the campaign finance debate right where it needs to be and where it is, in the first amendment. That is where this debate should be centered. Lest anyone outside of the Senate construe this as an endorsement, I hasten to clarify that I regard this proposal as totally abhorrent. However, this is a debate we needed to have. This is an important discussion which clarifies that the campaign finance issue is really about political speech and about participation in our democracy. That is what this is about. That is the whole discussion.

In an effort to pave the way for restrictive legislation, such as the McCain-Feingold campaign finance bill, the amendment before us would amend the Constitution to grant Congress and the States the power to ''set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, or in support of, or in opposition to, a candidate.''

When Senator ROBERTS was here a few minutes ago, we talked about just what that means. Clearly, this amendment would give incumbent Members of Congress the ability to make it impossible to lose, short of some commission of a felony or some outrageous act on the part of an incumbent that brought total disfavor upon his or her head in their constituency. It would give to the Congress the power to totally mug, muzzle, shut up critics out in our constituencies who may have organized together. In fact, about the only group it leaves untouched are our friends in the gallery, the press, who would have enhanced power as a result of an effort to shut up everybody else. If you are going to go down this route, some would even advocate telling the press how much they can criticize us.

While we are messing with the first amendment, if we wanted to make it totally impossible for us to be defeated, why not, in addition to shutting up our challengers in the next election and muzzling all of the groups outside that may or may not like what we do, let's just go on and trash some of the rest of the first amendment. We can get rid of those nasty editorials that all of us despise, put some restrictions on those pesky little reporters who tend to point out our shortcomings, as they see them.

In short, there is no end to how much of this speech we could contain if we really wanted to do it. I mean, it is a short step, it seems to me, from amending the first amendment to give the Government the power to shut up its critics in a campaign to giving the Congress the power to shut up its critics in the gallery, and pretty soon, of

course, the first amendment doesn't have any resemblance whatsoever to what it has today.

This amendment that we are debating applies to Federal, State, and local elections. Any future Congress would have a free hand to regulate, restrict, or even prohibit any activity which is perceived by the Government—perceived by the Government—to constitute an expenditure by, in support of, or in opposition to a candidate.

Mr. President, the words are few; their ramifications are simply stunning. Quite simply, this amendment empowers future Congresses to severely restrict—I would argue eliminate—the universe of political spending/speech which is deemed by Congress or some Government bureaucracy to effect an election. Candidate spending, independent expenditures, even issue advocacy by private citizens and groups, all of it could be muzzled under this amendment.

Senate Joint Resolution 18, which is the amendment before us, is a blank check for a Congress 10, 50, 100 years from now, or maybe tomorrow, the day after this is approved, to gag American citizens, candidates, groups, and parties. They could do it with a Constitution altered by this resolution. And some call this reform.

Mr. President, maybe some people believe that the 105th Congress or the 106th Congress would not do much damage with the power granted by this resolution, but I ask our friends on the left: Are you confident that some Republican-controlled Congress in the future with a 60-plus majority, with a Republican in the White House, will not seize the occasion to limit political activities by liberal-leaning groups, labor unions, the media, and others? Would you not like the Court to be able to stop such an effort on the grounds that it violated the first amendment?

My conservative friends, I ask you: Are you not relieved the Supreme Court was able to strike down the draconian restrictions on independent expenditures in campaigns in the 1978 campaign finance law?

I say to my conservative friends: Are you confident that liberal Democrats would never be in a position to enact into law a regulatory scheme on campaign finance that restricts your ability to communicate while leaving the media and labor unions unfettered and even more powerful than they already are? All of that, Mr. President, would be possible under this amendment.

No campaign finance bill will pass this or any Congress that was not drafted and amended by people fully cognizant of the partisan implications. That is why it is so important to have the impartial reasoning of the Supreme Court. The Supreme Court is the backstop. It saves the country from legislative excess, ignorance, and mischief.

Having said that, it doesn't mean I agree with all the Supreme Court's decisions or I will not scrutinize Supreme Court nominees, but I do recognize that the Court, be it of liberal or conservative leaning—it is interesting to note in the Buckley case there were many liberals on the Court at that time. The Court was much more liberal than it is now when the Buckley case was rendered, a very sound decision, which the Court has only expanded in the direction of more permissible speech during the years, including the Colorado case last summer.

The Court is an essential check on legislative and executive branches. This amendment seeks to take the Court out of the picture where campaign finance is concerned so that those who desire campaign spending limits and restrictions on independent expenditures and issue advocacy will not be inconvenienced, will not be inconvenienced by Court action such as the Buckley decision.

The Supreme Court got in the way. The Supreme Court got in the way and said you cannot do that, that it is impermissible for the Government to dole out political speech to candidates, individuals, or groups.

Revolting as the Clinton reelection team's fundraising practices were, or anybody else's, they do not justify restricting the rights of law-abiding American citizens in the future to participate in politics and spend as much as they want on their own campaigns for office. American democracy should not be diminished because a 1996 reelection effort violated current laws and flouted commonsense decency out of a ruthless, ruthless desperation to get reelected or some self-righteousness that their success was essential to the country, that the ends justified even illegal and unethical means.

Freedom should not be negotiable because one political party or other benefits disproportionately at a given point in time from some form of political speech or participation. Nor should freedom, Mr. President, be dialed back—dialed back—because some level of campaign spending violates somebody's notion of what is proper. The future should not be made to suffer so that some may appear to atone for misdeeds in the present or impose on the country their own view of what is an appropriate level of campaign spending.

Mr. President, God bless their souls, the Founding Fathers had the wisdom and the courage to construct the Constitution of the United States. Though I have much admiration for my colleagues in this Senate, I do not think we have the collective wisdom to improve upon the first amendment ratified by the States in 1791.

The amendment says:

> Congress shall make no law [no law] respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The critical part is ''abridging the freedom of speech.'' That is what the Buckley case is about. And that is what this amendment seeks to revise.

Mr. President, reflecting upon the formulation of the Constitution, De Tocqueville observed in the 19th century that:

> The course of time always gives birth to different interests, and sanctions different principles, among the same people; and when a general constitution is to be established, these interests and principles are so many natural obstacles to the rigorous application of any political system with all its consequences. The early stages of national existence are the only periods at which it is possible to make legislation strictly logical; and when we perceive a nation in the enjoyment of this advantage, we should not hastily conclude that it is wise, but only remember that it is young.

I would contend that our Nation 200 years ago was both young and its leaders wise. I have also considered the environment in which the Founding Fathers toiled, free of the harsh glare of our modern media, unfettered by the influence of present-day polling, and blissfully unacquainted with grassroots lobbying machines.

Absent those factors, I suspect much in the legislation in this body, most especially campaign finance reform, would have a different outcome. Then again, we did not have to face down the Red Coats, and I am confident that the confluence of greatness which gave us the Constitution would have done so by candlelight or klieg lights.

The first amendment has served our Nation well for over 200 years. If this Senate will resist the temptation to scale it back, it can serve our descendants for 200 years more. The first amendment's speech protections are a legacy we are extremely fortunate to have inherited. It is the one we most certainly ought to bequeath, in turn, to generations to come.

The first amendment is America's premier political reform. It is at the heart of the campaign finance debate. This is not just my view. It is the opinion of the U.S. Supreme Court and the American Civil Liberties Union—America's specialists on the first amendment. As the Court stated in the 1976 Buckley case:

> The first amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive or unwise.

That gets right to the heart of it. The first amendment prohibits the Government from determining ''that spending to promote one's political views is wasteful, excessive or unwise.'' In other words, when it comes to our political speech, we can be wasteful, we can be excessive and we can be unwise, and it is none of the Government's business.

> 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.

So the proponents of this amendment look at that decision and say we need

to cut a niche out of the first amendment and hand over to the Government the power to determine what is reasonable speech. In short, they could determine that no speech was reasonable under this amendment.

The Court has been clear and consistent on campaign finance, stating further in Buckley:

A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

It just does. The Court observed that even ''distribution of the humblest handbill'' costs money. Further, the Court stated that the electorate's increasing dependence on television and radio for news and information makes ''these expensive modes of communication indispensable [the Court said ''indispensable''] instruments of effective political speech.''

''Indispensable.'' Under this amendment there would be nothing to keep the Congress from saying you do not get to use television at all—at all.

Quite simply, the Government may no more ration the political speech of an American citizen via campaign spending regulations than it can tell the Washington Post how many newspapers it may distribute or how many hours a day CNN may broadcast. Nor can the Government dictate the content of campaign ads, just as it cannot control the content of television news programs.

Mr. President, there is no reason sufficient to justify, in the eyes of the Court, campaign spending limits. Not to alleviate the appearance of corruption: The Court held there is ''nothing invidious, improper or unhealthy'' in campaigns spending money to communicate—nothing. Not to stem the growth in campaign spending. Again, the Court was clear:

. . . the mere growth in the cost of federal election campaigns in and of itself provides no basis [no basis] for governmental restrictions on the quantity of campaign spending. . .

And not to level the political playing field, a notion flatly rejected by the Court in Buckley.

. . . the concept that the government . . .

This is in response to the level playing field argument, Mr. President. In the Buckley case the Court said:

. . . 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.

''Wholly foreign.''

So, Mr. President, the Government cannot, by congressional edict or regulatory fiat, impede or impair the ability of candidates, groups, individuals or parties to communicate with the electorate. Nor can Congress, as the American Civil Liberties Union has observed, coerce what it cannot command. In other words, spending limits that are voluntary in name only, such as in the McCain-Feingold bill, would have in the Court a half-life of an ice cube on a sun-baked Constitution Avenue on the 4th of July. That is about how long that would last.

There is nothing in Buckley, or any subsequent Supreme Court decision, upon this to pin hope that McCain-Feingold or any similarly coercive bills would be upheld. Buckley was not an aberration. In fact, the Court is increasingly of a deregulatory mind on campaign finance, as evidenced by last June's Colorado decision allowing the political parties to make independent expenditures.

Now, some seek to nullify the Court, and thereby pave the way for bills like McCain-Feingold, by amending the first amendment, and that is the issue before us—amending the first amendment for the first time in two centuries and thus make the unconstitutional, constitutional. They would rewrite the first amendment, a frontal assault on American freedom that the ACLU has characterized as ''a recipe for repression.''

That is what is before the Senate today. What is before us today has no constituency. Common Cause is against it. The New York Times is against it. The Washington Post is against it. The ACLU is against it. Importantly, an overwhelming number of Senators will be against it.

I personally recoil at the prospect of a Constitution so altered, while I relish the debate itself. This is an honest debate because it shows what you have to do to carve a big hunk out of the first amendment, if you will try to achieve the result that some are trying to achieve. This is an honest debate. It draws a clear line between those like myself who look on last year's record election spending as illustrative of a robust national debate over the future of the Nation, and those who believe you cannot have both freedom of speech and a healthy democracy.

Looking upon the first amendment as an impediment to reform, rather than reform, itself steers even well-intentioned reformers on a path of Government regulation, restriction, and even prohibition of fundamental political freedoms. A myopic determination to restrict campaign spending can result, as it has today, in an effort to essentially repeal the first amendment's protection of political speech. That is what is before the Senate today.

The Court stated in the 1937 case Palko versus Connecticut that freedom of speech ''is the matrix, the indispensable condition, of nearly every other form of freedom.''

Whatever one believes about the current state of campaign finance or the validity of the Buckley decision, surely it is not cause to carve out of the first amendment fundamental protection for core political speech by American citizens. The first amendment was borne of extraordinary people in an extraordinary time. Let us not diminish that freedom, 200 years later, out of frustration with Court decisions.

The campaign finance reform debate is necessarily difficult. It is difficult because the ramifications of any significant change in this area are serious. A ban on soft money, for instance, will have serious repercussions, because—like it or not—the political parties do some good things. For one, they are the only entity in the system that will support challengers without regard to ideology.

The Democratic Party committees support challengers—pro-choice or pro-life, or pro-gun control or con-gun control, you name the issue and they have supported candidates of their side. In the case of the Democratic committee, because they are Democrats; in the case of the Republicans, because they are Republicans.

Our criteria is, first and foremost, a candidate's party affiliation. Then we consider their ability and the availability of money to help their candidates. The political party's helping challengers is often all that stands between an incumbent having real competition and not just a coronation on election day.

Much is said about independent expenditures and issue advocacy. The truth is, politicians hate independent expenditures because by definition they are out of our control. We do not get to control them. A group that thinks your reelection is the most important goal may make independent expenditures that are intended to help you but, in fact, inject into the election an issue you wish was not going to be discussed. In other words, a group can love you to death with independent expenditures. That is why politicians would like to have complete control of elections. That is what they would be given under this amendment—complete control.

Mr. President, the candidates do not own the elections. They are the people's elections, not the candidates. They are the people's elections to influence through independent expenditures, issues advocacy, and through the support of candidates and political parties of their choosing. These reform bills would take elections away from private citizens, groups, and parties and hand them over, exclusively, to the candidates and to the media.

Issue advocacy is a recent addition to the reform lexicon. Some reformers profess to be horrified by all the issue advocacy that occurred last year because—news flash—they affected the election. They decry issue advocacy as another loophole that has been blasted through allowing groups to circumvent campaign finance restrictions.

A funny thing about citizens, groups, and parties who wish to make themselves heard in a democracy: They always seem to find a way around Government speech roadblocks.

If Congress ever does impose Government regulations on issue advocacy

and the courts do not strike them down, the first amendment will be a hollow shell. Soft money limits, independent expenditure limits, issue advocacy regulations, spending limits, PAC limits—these are all euphemisms for speech limits.

Under this amendment before the Senate—by carving out a huge chunk of the first amendment—Congress could succeed in imposing all of these speech limits. America would then spend less on elections. Elections would be quieter, politics—at least, on the surface—would be more civil because dissent would be tightly regulated by this Congress and incumbents would be less bothered by fundraising. And we will have gutted American democracy.

Mr. President, I am confident this amendment is not going to be approved. I hope it will be rejected overwhelmingly. It is one of the most frightening proposals we have had before this body in the 13 years I have been here. The first amendment should be the touchstone of reform, and the Buckley case, its guide.

Within those parameters, we could enact bipartisan reform to strengthen, rather than diminish, our democracy. I hope at some point that is what we will be doing.

The PRESIDING OFFICER (Mrs. COLLINS). The Senator from South Carolina.

PRIVILEGE OF THE FLOOR

Mr. HOLLINGS. Madam President, I ask unanimous consent that Maury Lane be permitted privileges of the floor during the consideration of Senate Joint Resolution 18.

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

Mr. HOLLINGS. Madam President, there were certain statements made that I am sure should be corrected immediately. I ask unanimous consent the statement in support of overturning Buckley versus Valeo, some 50 law professors from the various schools, be printed in the RECORD.

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

STATEMENT IN SUPPORT OF OVERTURNING BUCKLEY VERSUS VALEO

In its 1976 decision. Buckley v. Valeo, the United States Supreme Court held that limiting political expenditures by law is an unconstitutional denial of free speech in violation of the First Amendment.

We believe that the Buckley decision is wrong and should be overturned. The decision did not declare a valuable principle that we should hesitate to challenge. On the contrary, it misunderstood not only what free speech really is but what it really means for free people to govern themselves.

We the undersigned call for the reconsideration and reversal of the Buckley decision.

Bruce Ackerman, Professor of Law and Political Science, Yale Law School
Ellen Aprill, Professor, Loyola Law School
Peter Arenella, Professor of Law, UCLA Law School
Robert Aronson, Professor of Law, University of Washington Law School
Robert Benson, Professor of Law, Loyola Law School
Steve Bachmann, General Counsel, ACORN
Gary L. Blasi, Professor of Law, UCLA Law School
John Bonifaz, Executive Director, National Voting Rights Institute
Richard M. Buxbaum, Dean of International and Areas Studies, Boalt Hall Law School
John Calmore, Professor of Law, Loyola Law School
Erwin Chemerinsky, Professor of Law, University of Southern California Law School
Joshua Cohen, Professor of Political Science, Massachusetts Institution of Technology
James W. Doig, Professor, Woodrow Wilson School, Dept. of Politics, Princeton University
Ronald Dworkin, Professor of Law, New York University School of Law
Roger Findley, Professor of Law, Loyola Law School
Catherine Fisk, Professor of Law, Loyola Law School
Edward B. Foley, Associate Professor, Ohio State University College of Law
Milton S. Gwirtzman, member, Senior Advisory Board, Institute of Politics, John F. Kennedy School of Government, Harvard University
Richard L. Hasen, Assistant Professor of Law, Chicago-Kent College of Law
Roland Homet, Principal, Public Purpose Presentation
Lisa Ikemoto, Professor of Law, Loyola Law School
Gregory C. Keating, Professor of Law, University of Southern California Law School
Stephen Loffredo, Associate Professor of Law, CUNY Law School
Harry Lonsdale, Founder, Campaign for Democracy
Karl Manheim, Professor of Law, Loyola Law School
Frank Michelman, Professor, Harvard Law School
Ralph Nader, Center for the Study of Responsive Law
Burt Neuborne, Professor of Law, New York University School of Law
John Nockleby, Professor of Law, Loyola Law School
H. Jefferson Powell, Professor of Law, Duke University Law School
William Quigley, Associate Professor, Loyola University School of Law
Jamin Raskin, Associate Dean, American University Washington College of Law
John Rawls, University Professor, emeritus, Harvard University
Clifford Rechtschaffen, Professor of Law, Golden Gate University School of Law
Joel Rogers, Professor of Law, Political Science and Sociology, University of Wisconsin-Madison
E. Joshua Rosenkranz, Executive Director, Brennan Center for Justice at New York University School of Law
Thomas M. Scanlon, Jr., Professor of Philosophy, Harvard University
Whitney North Seymour Jr., former U.S. Attorney, Southern District of New York
W. David Slawson, Professor of Law, University of Southern California Law School
Rayman L. Solomon, Associate Dean, Northwestern University School of Law
Peter Tiersma, Professor of Law, Loyola Law School
Georgene Vairo, Professor of Law, Loyola Law School
Jim Wheaton, Founder, First Amendment Project
Louis Wolcher, Professor of Law, University of Washington School of Law

Mr. HOLLINGS. Madam President, I ask unanimous consent that the 24 State attorneys general also asking for reversal of Buckley versus Valeo be printed in the RECORD.

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

TWENTY-FOUR STATE ATTORNEYS GENERAL ISSUE CALL FOR THE REVERSAL OF BUCKLEY VERSUS VALEO

DES MOINES, IOWA—The attorneys general for twenty-four states released a joint statement Tuesday calling for the reversal of a 1976 Supreme Court decision which struck down mandatory campaign spending limits on free speech grounds. The attorneys general statement comes amidst a growing national debate about the validity of that court ruling; *Buckley v. Valeo.*

Former U.S. Senator Bill Bradley has denounced the decision and has helped lead the recent push in the U.S. Congress for a constitutional amendment to allow for mandatory spending limits in federal elections. The City of Cincinnati is litigating the first direct court challenge to the ruling, defending an ordinance passed in 1995 by the City Council which sets limits in city council races. And, in late October 1996, a group of prominent constitutional scholars from around the nation signed a statement calling for the reversal of Buckley.

The attorneys general statement reads as follows:

''Over two decades ago, the United States Supreme Court, in *Buckley v. Valeo,* 424 U.S. 1 (1976), declared mandatory campaign expenditure limits unconstitutional on First Amendment grounds. We, the undersigned state attorneys general, believe the time has come for that holding to be revisited and reversed.

''U.S. Supreme Court Justice Louis Brandeis once wrote '[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning * * *' *Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 406–408 (1932) (Brandeis, J., dissenting).

''As state attorneys general—many of us elected—we believe the experience of campaigns teaches the lesson that unlimited campaign spending threatens the integrity of the election process. As the chief legal officers of our respective states, we believe that the force of better reasoning compels the conclusion that it is the absence of limits on campaign expenditures—not the restrictions—which strike 'at the core of our electoral process and of the First Amendment freedoms.' *Buckley v. Valeo,* 424 U.S. 1, 39 (1976) (quoting *Williams v. Rhodes,* 393 U.S. 23, 32 (1968).''

The United States has witnessed a more than a 700% increase in the cost of federal elections since the *Buckley* ruling. The presidential and congressional campaigns combined spent more than $2 billion this past election cycle, making the 1996 elections the costliest ever in U.S. history.

Iowa Attorney General Tom Miller, Nevada Attorney General Frankie Sue Del Papa, Arizona Attorney General Grant Woods, and the National Voting Rights Institute of Boston initiated Tuesday's statement. The Institute is a non-profit organization engaged in constitutional challenges across the country to the current campaign finance system. The Institute serves as special counsel for the City of Cincinnati in its challenge to *Buckley,* now in federal district court in Cincinnati and due for its first court hearing on January 31.

''*Buckley* stands today as a barrier to American democracy,'' says Attorney General Del Papa. ''As state attorneys general,

we are committed to helping remove that barrier.'' Del Papa says the twenty-four state attorneys general will seek to play an active role in efforts to reverse the *Buckley* decision, including the submission of friend-of-the-court briefs in emerging court cases which address the ruling.

''Maybe it wasn't clear in 1976, but it is clear today that financing of campaigns has gotten totally out of control,'' says Iowa Attorney General Tom Miller. ''The state has a compelling interest in bringing campaign finances back under control and protecting the integrity of the electoral process.''

Arizona Attorney General Grant Woods adds, ''I believe that it is a major stretch to say that the First Amendment requires that no restrictions be placed on individual campaign spending. The practical results, where millionaires dominate the process to the detriment of nearly everyone who cannot compete financially, have perverted the electoral process in America.''

The full listing of signatories is as follows:

Attorney General Grant Woods of Arizona (R)
Attorney General Richard Blumenthal of Connecticut (D)
Attorney General Robert Butterworth of Florida (D)
Attorney General Alan G. Lance of Idaho (R)
Attorney General Tom Miller of Iowa (D)
Attorney General Carla J. Stovall of Kansas (R)
Attorney General Albert B. Chandler III of Kentucky (D)
Attorney General Andrew Ketterer of Maine (D)
Attorney General Scott Harshbarger of Massachusetts (D)
Attorney General Frank Kelley of Michigan (D)
Attorney General Hubert H. Humphrey of Minnesota (D)
Attorney General Mike Moore of Mississippi (D)
Attorney General Joseph P. Mazurek of Montana (D)
Attorney General Frankie Sue Del Papa of Nevada (D)
Attorney General Jeff Howard of New Hampshire (R)
Attorney General Tom Udall of New Mexico (D)
Attorney General Heidi Heitkamp of North Dakota (D)
Attorney General Drew Edmondson of Oklahoma (D)
Attorney General Charles W. Burson of Tennessee (D)
Attorney General Jan Graham of Utah (D)
Attorney General Wallace Malley of Vermont (R)
Attorney General Darrel V. McGraw of West Virginia (D)
Attorney General Christine O. Gregoire of Washington (D)
Attorney General James Doyle of Wisconsin (D)

Mr. HOLLINGS. Madam President, I ask unanimous consent to have printed in the RECORD the rollcall of May 1993, of the majority of the U.S. Senate expressing the sense of the Senate that the Congress should be empowered constitutionally, the Constitution should be amended to authorize the Congress to regulate or control expenditures in Federal elections.

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

ROLLCALL VOTE No. 129, MAY 27, 1993

YEAS (52)

Democrats (46 or 85%): Akaka, Biden, Bingaman, Boren, Bradley, Breaux, Bryan, Bumpers, Byrd, Campbell, Conrad, Daschle, DeConcini, Dodd, Dorgan, Exon, Feingold, Feinstein, Ford, Glenn, Graham, Harkin, Hollings, Inouye, Johnston, Kennedy, Kerry, Lautenberg, Levin, Lieberman, Mathews, Metzenbaum, Mitchell, Moseley-Braun, Murray, Nunn, Pryor, Reid, Riegle, Robb, Sarbanes, Sasser, Shelby, Simon, Wellstone, Wofford.

Republicans (6 or 15%): D'Amato, Hatfield, Kassebaum, Pressler, Roth, Specter.

NAYS (43)

Democrats (8 or 15%): Boxer, Kerrey, Kohl, Leahy, Mikulski, Moynihan, Pell, Rockefeller.

Republicans (35 or 85%): Bennett, Bond, Brown, Burns, Chafee, Coats, Cochran, Cohen, Coverdell, Craig, Danforth, Dole, Domenici, Durenberger, Faircloth, Gorton, Gramm, Grassley, Gregg, Helms, Jeffords, Kempthorne, Lott, Lugar, Mack, McCain, McConnell, Murkowski, Nickles, Packwood, Simpson, Smith, Stevens, Wallop, Warner.

NOT VOTING (5)

Democrats (3): Baucus, Heflin, Krueger.
Republicans (2): Hatch, Thurmond.

Mr. HOLLINGS. I thank the distinguished Chair.

When you sit up limply and say there is no constituency for this, the constituency is building. There is no question about that.

It is bipartisan. It is very clever in trying to say that the Hollings resolution is the Hollings-Specter, when it is bipartisan. They will talk with conviction that McCain-Feingold is bipartisan, but not Hollings-Specter. The fact of the matter is, Madam President, that we had a news conference—we have had various ones over the 10-year period—and hardly anyone attended. On yesterday, the room was overflowing, in the context that they realize now that after all the endeavors made to try to reconcile this situation, the only route left for us now to correct this cancer that imperils our democracy is authority for the Congress to act.

Now, they, in sanctimony, stand and talk about Buckley versus Valeo, and in the same breath, ''200 years,'' ''the first amendment,'' ''loopholes,'' ''let's don't have a loophole or gut out the first amendment''— my opponent is very erudite, a very learned Senator, and he has been working on this particular subject for quite some time, and he has to know that Buckley versus Valeo does exactly that.

Buckley versus Valeo limited the speech, the first amendment rights, of contributors. Say I make a contribution to the Senator from Utah for only $1,000 in the primary and $1,000 in the general election; my freedom of speech has gutted a hole in the first amendment by Buckley versus Valeo, because my freedom of speech to contribute and participate has already been limited by Congress, of all people, and upheld by the U.S. Supreme Court. I gave example after example of the safety measures with respect to not being able to shout ''fire'' in a theater. I went to the national security. I went to the obscenity provisions. I wish I had the time and disposition here this afternoon to put in Laurence Tribe's restatement of the freedom of speech, and you would have a powerful grasp of what is in order and what is not in order. You can bet your boots that this has been building.

In 1993, we had a sense-of-the-Senate resolution, and a majority of the U.S. Senate said that they should have a constitutional amendment, such as is here now introduced. The Senator comes and limply says, ''I have Common Cause, the Washington Post, the New York Times, and the ACLU, and the Senator from South Carolina has no constituency.'' We have the constituency. We know about the newspapers. They don't want to recognize the fact that we are talking about ''paid'' speech in this constitutional amendment—expenditures—not ''free'' speech. ''Limit the amount of contributions that may be accepted by and the amount of expenditures that may be made by''—expenditures for speech, paid speech, not free speech.

A State shall have the power to set reasonable limits on the amount of expenditures made. So they don't have to go to the straw man. I got interested in the straw man. They said Congress could come around and limit you to $5,000 in a campaign and get rid of all of these groups. I hadn't thought of that. That would probably be a pretty good idea, because we know all the groups are really not interested, except in beating those candidates, getting over them.

Our colleagues on the other side of the aisle very cleverly got out in Saturday's Washington Post—I will have to get a copy of that article about all of these different groups. You wonder where their names come from. I remember one out in California, with some spurious name, and they found out that Philip Morris, the tobacco folks, were behind it. Upon that being discovered, they said they had to take credit for that particular group. But you have them all bouncing up and down. The gimmick today is to get a group for ''free Government,'' or for ''free speech,'' or ''for clean politics,'' or anything that sounds pretty. You will find out that it is politically motivated by either national party.

I can tell you, our national groups are there and they are really ruining the political process. But the Senator from South Carolina just says ''expenditures.'' Once you limit the expenditures, you can get those groups, you can get the bundling, you can get the soft money, you can get the direct money, you can get whatever you are going to get. If you have the wrong kind of support, then your opponent is going to be quick to point it out and expose it because you have disclosure. That's what we had in the 1974 act, and that's what we must continue.

But this has to do with expenditures and paid speech. Of all people to really talk—let me comment, Madam President, about the limits of speech. We know that there is good reason to limit speech. The U.S. Senate, the U.S.

House of Representatives, the U.S. Congress knows better than any that you must limit speech in order to get a good product. Over on the House side, you are given, under the rule, 1 minute or 3 minutes, and over here, we have bragged about the unlimited speech. But the fact of the matter is that we can cut off the filibuster, and we further limit it. Rather than the two-thirds—you need the accepted large majority of a 60-vote majority to limit the speech, cut it off.

I was at a committee hearing and we had a 5-minute rule. We accept that. So all the Senators limit speech. You are not allowed to stand up and say: Wait a minute, the first amendment, we can't gut a hole in this first amendment for the first time in 200 years.

That is hogwash. Buckley versus Valeo limits speech—the very authority that the opposition uses here to maintain and oppose the joint resolution to amend the Constitution, so that we can reinstill the freedom of speech that is robbed by way of financial power from an individual trying to express himself. That is the nature of the campaign financing now.

As I explained earlier, you could take an individual with $100,000 and me with $1 million. I can tell you that any candidate who is going to start anywhere to get recognition, he is going to spend half of his money on polls. Then he is going to come in in October with $50,000 for TV. I will have a million, and I will squash him; I can tell you that right now. I could come in there and take over the airwaves and billboards and newspapers, and radio at various times, for the various groups, and his family will wonder why he is not interested in his campaign. He is not interested for the simple reason that he is not financially capable of responding. That is what Buckley versus Valeo provides.

That is why Chief Justice Burger, in the dissenting opinion, said this differing of contributions, where it can be limited from expenditures, which cannot be limited, ''simply won't wash.'' That is Chief Justice Burger's expression. You can go right on down the various comments I have given. But them there is the same argument, the same straw man, what the Congress might do. They assume the actions of Congress. That is why we put ''reasonable limits.''

They talk about, I think, the ACLU. I could not get the copies of the other ones just inserted into the RECORD, but I have the ACLU letter. It says, reasonable limits is vague and overbroad.

That is why we said ''reasonable'' because of the straw men that have been erected back in all of these elections. They could limit here, they could do this, or they could do that. We assume that the Congress is going to be reasonable and that the Congress and the courts are not going to stand for any egregious conduct on the part of the Congress that would do as they threaten this particular constitutional amendment would. These straw men that they put up and knock down: Who is going to enforce? We are going to have to put a SWAT team down there, and everything else of that kind. And that, oh, horrors, this applies not only to the Federal but the States and the local elections.

Madam President, I can tell you that the State elections are included because they requested the Senator from South Carolina that they be included. There is no question in my mind that this would be ratified in the 1998 elections in November of next year; no question. I will bet anybody on it. You come and put this before the American people. They have been denied the right by the Senator from Kentucky and others who come around and try to erect straw men talking about 200 years of freedom of speech, when the very authority, the Supreme Court, already has in Buckley versus Valeo. But they said, ''please include State elections.'' I have already inserted the statement of the States' attorney generals in the RECORD. There is a driving force that this Congress has prohibited now for the last 10 years because we put it in. We have had a majority vote. The majority of the Senators themselves expressed the sense of the Senate. They now say that the majority of the Senate is not any constituency. I don't know of a better constituency, if I can get the 67. That is what we need; not just the majority. If I can get the 67, we would really be in a good state.

The Washington Post says we should have limits on advertising, but a constitutional amendment is a bad idea. ''It would be an exception to the free speech clause.'' Oh, no. It is an exception to the paid speech clause. ''And once that clause is free for one purpose, who is to say how many others may follow?'' That is a misgiving. That is a concern. That is a concern in this Senator's mind. It was after 10 years was wasted—from 1976 to 1987. We tried all of these things and got nowhere that you could see, by the way the Court was talking, and particularly now with the Colorado decision. There is no question in my mind that the Court is not going to reverse Buckley versus Valeo. They have pretty well thrown all caution out of the window, and said, ''So long as it is not coordinated, these separate groups can come in and come to the national parties,'' and, by Jove, they spend the money, and, obviously, it is going to be to the benefit of this particular candidate.

That is what we call soft money. It has adulterated the process so that I have business friends at fundraisers when that occurred that said, ''My heavens, Senator. I gave the $1,000, and I am willing to give the second $1,000. But I am getting calls on the phone now to raise $100,000. What in the world? They are calling and asking for $50,000 and $100,000, and so forth, for soft money to give to the party.'' They say that you will benefit from it. They might under oath say something differently. But everybody knows what the national parties are doing, and that is why we have this investigation going on.

It says here again in that particular Washington Post editorial that ''The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections in Federal offices. But that is much too vague.'' It says ''vague.'' I do not think it is vague at all. I think it has worked out in accordance with the wording of the Buckley versus Valeo decision. It is not vague at all—not as the ACLU would state it, and not my good friend George Will. We have his particular comments. That is the gentleman who believes that we ought to have term limits for Senators but not for editorial writers. I think we ought to have term limits for these editorial writers. It is sort of getting boring. You can look at the name, and you pass over it because you know what is going to be written. They are hired hands for a particular viewpoint, and on and on again.

I am quoting from the editorial by George Will:

''Hollings claims—and you have to admire his brass—that carving this huge hole in the first amendment''—that is where they get the ''carving,'' the pejorative expressions without any real substantive argument—''would be a big boost to free speech.''

Mr. Will says there isn't any question that ''by 'free' I mean 'fair.'" No; I mean ''free.'' I do not mean ''paid speech.'' I mean what I say: ''Free speech.'' By limiting contributions you have come in and stated that they are going to have a corruptive influence and that is why contributions need to be limited. If that is the case, most assuredly the amount of spending, not just the contributions, in campaigns is most corrupt.

When Mr. Will refers to ''amounts of speech,'' he means the permissible amounts to be decided by incumbents in Congress and State legislatures. Well, when he says ''incumbents in Congress'', he is speaking in the pejorative again because he doesn't like incumbents. He just likes incumbent news editorialists but not incumbent Congressmen or incumbent Senators.

Will continues, ''Note also the power to limit spending not only by but even in support of or in opposition to candidates.''

That is exactly right.

''The 32 Senators who voted for this include many who 3 years ago stoutly opposed carving out a small exception to the first amendment protections in order to ban flag burning.''

I am going to come back to that. He jogs my memory.

''But now these incumbents want'' —that is the third time he has used ''incumbent'' in this passage—''to hack away at the Bill of Rights'' —this is not to hack away at the Bill of Rights; we are trying to restore the Bill of Rights freedom of speech for the impoverished individual in this country in order to strengthen the permissible amount.

''Government micromanagement,'' Will says. Well, that is exactly what Buckley versus Valeo sustains. It says you can only give $1,000. A PAC, no matter how large the organization, can only give $5,000. We had individuals at the time we passed this in 1974 giving $500,000, giving $1 million, and giving $2 million in cash. Now we know with the Colorado decision and the investigation that will ensue, that we all voted for yesterday, that we are back to the millions, the $500,000, the $100,000 contributions. It destroys the confidence of the people in their representative government. They think ''representative.'' It is, by gosh, bought-and-paid-for government. Whoever has the money is going to control.

Going back to the Will writings,

> Government micromanagement: The Senate bill would ban or limit spending by political action committees. It will require privately funded candidates to say in their broadcast advertisements that the candidates have not agreed to voluntary campaign limits.

Well, that is not in any Hollings joint resolution whatsoever.

''All this Government micromanagement of political speech is supposed to usher in the reign of 'fairness' as incumbents define it, of course.'' Here is a strawman. Vote against incumbents. If you read this, get rid of the incumbents. He is back to term limits again. Let me read the next paragraph.

''Incumbents,'' it starts off—this is the sixth time in 10 lines that he has used the word ''incumbents.'' He knows how to get a drumbeat going. ''Incumbents can live happily with spending limits. Incumbents will write the limits, perhaps not altogether altruistically, and spending is the way challengers can combat incumbents advantages such as name recognition, access to media and franked mail. Besides, the most important and plentiful money spent for political purposes is dispensed entirely by incumbents. It is called the Federal budget—$1.5 trillion and rising * * * Federal spending often is vote buying.''

Now, he even blames us for passing a budget, and he calls that political. Why can't we get a vote on the budget? We have been here since January. It is the middle of March. We cannot even get the Republicans to put up a budget. I remember back on December 18, 1994, on ''Meet The Press,'' they had Mr. GINGRICH and Mr. KASICH and Mr. DOMENICI, the two budget chairmen and the Speaker, and they said we are going to have three budgets. We do not care about the President. We are going to pass them and he is going to sign them or else, that the President is irrelevant.

That was the argument in the first part of 1995. They came on on ''Meet The Press'' and they had three budgets. Now I cannot get one of them. But George Will says it is a political document and an advantage to the incumbents. The incumbents do not think so. Nobody wants to support any budget because nobody wants to pay for it. It is not complicated at all. But so much for the Mr. ACLU and Mr. George Will and Mr. Washington Post and Mr. New York Times.

I want these gentlemen talking about free speech to go to the New York Times and say I want a half-page. See how free it is. Go to the Washington Post and say I want a quarter-page, I want to put this ad in here. There is nothing free about it.

From time to time they will take an editorial, but they will have to review it and like it or else they will not take it. I can tell you that, because I have been trying to point out one that has been refused for many years as to the matter of now having to spend $1 billion a day just on interest costs on the national debt. It amounts, in essence, because you add it to the debt, to increasing taxes $1 billion a day. We are on that particular treadmill of a $1 billion-a-day increase in taxes.

The American people have no idea of it. They have no idea that the deficits for the past 15 years on an average have been $277 billion. It has been $277 billion in Government that we are giving them but we are not willing to pay for. But the American public, depending on the free press, does not know that because the free press does not report that.

And back now to their so-called freedom of speech and first amendments, you are not going to get any freedom of speech there at all. It will be ratified by the States. It is not the first time, in all candor, for the strawman that they have been proposing here. But let me read this that was stated in ''Politics and Money'' by Elizabeth Drew. I quote:

> Until the problem of money is dealt with, it is unrealistic to expect the political process to improve in any other respect. It is not relevant whether every candidate who spends more than his opponent wins, though in races that are otherwise close this tends to be the case. What matters is what the chasing of money does to the candidates and to the victor's subsequent behavior. The candidate's desperation for money and the desire to effect public policy provide a mutual opportunity. The issue is not how much is spent on elections but the way the money is obtained. The point is what raising money, not simply spending it, does to the political process. It is not just that the legislative product is bent or stymied. It is not just that well armed interests have a head start over the rest of the citizenry, for that often is not even a contest. It is not even relevant what interest happens to be winning. What is relevant is what the whole thing is doing to the democratic process. What is at stake is the idea of representative Government, the soul of this country.

That is 15 years ago now, Madam President, by the distinguished writer Elizabeth Drew in ''Politics and Money.''

I think that is what we have to get our media to have, is that fit of conscience developed that we saw developed on the floor of the Senate on yesterday afternoon. In that fit of conscience, we got together in a unanimous vote, a unanimous vote—one Senator abstained under the rules, but the other 99 Senators, Republican and Democrat, Conservative and Liberal, all joined in to not only investigate the illegal but the improper.

Now, there was a little band over there that fought that. They fought Chairman THOMPSON's idea that he was going after not only the illegal but the improper. Under the Klieglight of the free press, not the paid or the expenditures but the free press and the free speech, not the paid speech, under the free press and the free speech, they realized that it was going to be tremendously embarrassing, appear as a coverup.

That is the kind of fit of conscience that must be developed if we are really going to come to grips with this cancer on the body politic. As Justice Jackson says, ''The Constitution is not a suicide compact.'' We do not have to look at the Constitution in a casual way, but we do not have to look upon it as having any relation to this particular predicament. The Founding Fathers had no idea of television. They had no idea of the expense. They had no idea of the time. They had no idea of the effort. They had no idea of the corruption. There is no better word for the process than what is demanded now, as you can see, is going up, up and away. As Justice Byron ''Whizzer'' White said, ''We are going on a treadmill and you can see its direction.'' All election spending back in 1976—I have it all here estimated—was only $540 million. Now, by 1996, in 20 years, it has gone up 641 percent, to $4 billion.

Necessarily, the newspapers who are looking for these paid ads are going to say, ''free press, free press.'' No: Paid speech. ''Free speech, free speech,'' they will caterwaul. The truth of the matter is, we are talking about expenditures, and paid speech. There it is. It is going up, up, and away. I do not know how we are ever going to get a grip on that unless we give Congress the authority.

Once again, I emphasize not what, ipso facto, will happen under these straw men that the Senator from Kentucky puts up. I have no idea of those things he talked about, of limiting the campaign to $5,000, and only the incumbents could run, and do away with all the committees and everything else of that kind. He just arranged a hall of horrors with respect to an amendment. It simply does just exactly what that 24th amendment did when they found the freedom of speech, namely the most solemn act of political speech, voting, was adulterated by money, namely a poll tax. The Congress came immediately back in the 24th amendment to the Constitution and said thou shalt not exact a poll tax or any other kind of tax, as a financial burden on that vote.

Here, now, we have a financial burden on the entire political process. The decision is not being made in the political marketplace, the marketplace of

ideas and vision and programs. The decision is being made in the financial marketplace. And then we go around and ask each other, why don't the people have more confidence in the Congress and the Government up here in Washington?

I see my colleague is momentarily wanting to speak. Madam President, I thank the Senators for listening and I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Madam President, I appreciate the opportunity to visit on this subject. My mind goes back to a little history lesson, which many probably know but I would like to rehearse, just as a background for this.

The Constitution was written primarily by one man, James Madison. After it went through the convention in Philadelphia, James Madison went back home to Virginia to campaign for its ratification.

Ratification of the Constitution really depended on two States. Yes, it required that it be ratified by three-fourths of the States, but if New York and Virginia had not ratified, it would not have mattered if every other State did because those were the two dominant States in the confederacy and without their ratification and joining the new federation, created by the Constitution, the country would not have survived.

So, Madison's role in getting ratification by Virginia was as important to the survival of the Constitution as his role in writing it. He had a significant opponent in the State of Virginia, arguably the most popular and powerful political figure in that State, five times, I believe, Governor of that State, a man named Patrick Henry. Patrick Henry took the stump in opposition to the Constitution, put his full prestige and oratorical powers behind the forces that were in opposition, and his reason was, among others, that the Constitution did not include a list—or, in 18th century language, a bill—of rights.

It is not necessary, said Madison in the debates, because the rights of the individuals of this new country, created by this Constitution, are all implied in the Constitution itself. They do not need to be listed. If they are listed, they will be limited only to those rights on the list. So the best thing we can do, said Madison, is ratify the Constitution as it stands, rather than talk about a list or Bill of Rights.

Patrick Henry wasn't buying it. And he was powerful enough in the State of Virginia, that he could have blocked ratification of the Constitution by virtue of his political power. Well, Madison being the practical politician he was, as well as the theoretician, said to the voters of Virginia: I'll make a deal with you. If you will ratify this Constitution, I will run for Congress and in my first term as a Member of the House of Representatives, I will propose a Bill of Rights. And Madison prevailed in that debate, Virginia ratified the Constitution, it became the basic document upon which this country was built, and Madison was true to his political promises. He came to the House of Representatives and Representative James Madison of Virginia proposed 12 amendments to the Constitution, every one of them outlining rights of individuals. Ten of those were adopted and have come to be known as the Bill of Rights.

As a historical footnote, the 11th one that was lost to history for over 200 years got discovered a few years ago and ratified. So that the so-called Madison amendment now, which was No. 11 of his 12 listed amendments to the Constitution, as the Bill of Rights, is now also part of the Constitution. The 12th one is gone and deserves to be gone, it is so tied to that period of time it has no relevance to us today and nobody wants to revive it.

The first of those amendments offered by Representative Madison was, of course, the amendment outlining freedom of speech, freedom of religion, freedom to petition the Government for redress of your grievances. That is his generation's term for lobbying, Madam President—lobbying is a protected, constitutionally recognized activity that is a key part of our democracy. I like to remind people of that, as they stand up and talk about the evils of lobbying. Heaven help us if the day ever comes when citizens are denied the right to petition the Government for redress of their grievances or are told that they cannot hire an advocate more articulate than they are, to do it for them. That would diminish our constitutional rights.

That is all in that first of those amendments offered by Madison. Patrick Henry lost the battle in terms of the ratification, but this country owes Patrick Henry a tremendous debt of gratitude for his forcing James Madison into that political deal and putting down on paper those rights that we have listed for us in the Bill of Rights.

What does that have to do with this debate? What does that have to do with this discussion about campaign finance reform? I stand here, not as a lawyer, but I hope as one who can read the English language and one who has made something of a study of the Constitution throughout his life. I put myself in the context of that debate between Madison and Henry, and I say: Mr. Henry, would you be satisfied with the reassurance of the following words:

> Congress shall have the power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

I think Mr. Henry would say, ''I will accept James Madison's assurances that all of our rights are, by implication, in the Constitution, before I will accept the notion that Congress has the right to set reasonable limits on what people do in support of or in opposition to a candidate.''

Now, it is presumptuous of me to try to put words in Patrick Henry's mouth. I don't think any of us in this body is a good enough orator to make that attempt. But I, for one, feel that the spirit of Patrick Henry says we have to be a whole lot more specific than this, if we are going to amend the fundamental document that stands as the basis of this Nation.

Mr. McCONNELL. Will the Senator yield for a question?

Mr. BENNETT. I will be happy to yield.

Mr. McCONNELL. Given the general anxiety that candidates for public office experience when independent expenditures, constitutionally protected speech, is directed for or against us, could my friend from Utah not envision a situation in which the Congress would conclude that there should be none, no expenditures in support of, or in opposition to, a candidate? Might not the Congress, in its wisdom, conclude that it was reasonable to have no such expressions by outsiders in the course of the campaign under this amendment?

Mr. BENNETT. As I read the language of this amendment, the determination of what is reasonable and what is not reasonable is left to the Congress. And under those circumstances, I can see a Congress of incumbents deciding that it was eminently reasonable not to allow anyone to oppose them.

Indeed, if I may quote, to the Senator from Kentucky the rationale currently being given by the White House for the excesses to which they went in extracting expenditures which now have had to be returned in the millions of dollars. Their rationale was that they were facing the possibility that the Republicans would win the election, and that that possibility was so overwhelmingly devastating to the future of the country that they had no choice but to go to the absolute limits of propriety and, on occasion, beyond in order to prevent that from happening.

If someone believes that is reasonable, certainly I agree with the implications of the question from the Senator from Kentucky that Members of Congress might agree that it is reasonable to put such low limits on the amount that could be spent in opposition to an incumbent that, in fact, the net result would be zero in support.

Mr. McCONNELL. I ask my good friend from Utah, might not the Congress, full of incumbents, by arguing that the expenditure of money is such a tainting thing in our democracy, conclude that maybe there should be a $10,000 or a $20,000 limit on expenditures by candidates in the next election, thereby virtually guaranteeing the reelection of every one of these incumbents?

Mr. BENNETT. I agree completely that the Congress might do that. Now, to be honest, I would have to say to my

friend from Kentucky, the outcry that would arise from the press, the groups who watch what we do, would be very, very severe if Congress were to do that, and they would scream that that was not reasonable and would demand that the limit be raised.

But you would create, in that circumstance, a political thicket, to use a phrase that the Supreme Court, I understand, has used on occasion, wherein the threads of intelligent debate would be lost completely. You would spend all of your time in that election arguing whether a $5,000 limit or a $10,000 limit or a $100,000 limit, or wherever it might be, was the right limit, and you would never spend your time talking about the important issues facing your country.

Frankly, we are in a microcosm of that right now. We are arguing about the things that get in the way, I think, of more substantive issues.

Mr. McCONNELL. If the Senator will yield, I wonder if the press would argue for more spending. They seem to believe—most of them—that spending is a tainting thing in our democracy. To the extent the campaigns are, basically, out of business, in terms of their own expenditures, to convey their own message to their own constituencies, would that not enhance the power of the press enormously?

Mr. BENNETT. I think it would enhance the power of the press enormously, but I say this to my friend from Kentucky. If we had those kinds of limits, I think the people on the editorial page would begin to hear from the people on the business page, or, that is, on the management side of the paper, saying Congress has just prevented us from selling ads to anybody on any public issue—and there is very significant revenue connected with this—and we think you editorial writers ought to ease up to the point where we can begin to get some of the advertising dollars back that we used to have.

In that circumstance, I agree with my friend from South Carolina, that as a practical matter in a campaign, this speech is not monetarily free. I draw a distinction between ''monetarily free'' and ''philosophically free.'' I believe when I buy an ad in a newspaper, as the purchaser of that space, I am, therefore, philosophically free to say whatever I want. Indeed, I have heard radio ads where, in advance of the ad, the radio commentator has come on and said, ''The ad you are about to hear contains language which this radio station is forbidden to broadcast under normal circumstances, but it is a political ad, and, therefore, the station cannot censor it in any way,'' and people are warned that the ad they are about to hear comes under the freedom of political candidates to say whatever they want.

The ad then used words that, in fact, the station would never otherwise allow. I can say, the candidate who purchased the ad got about 2 percent of the vote, but he was out for the shock value, and he got it in the State of California. Then after the ad was run, the station announcer came back, once again, to disclaim any connection with this but to say we had no choice, since this was a political speech, to allow it to go forward untrammeled and unchanged.

If you want free speech, the Senator from South Carolina is right, in today's world, you have to buy space on the media in order to have it, but if we put limits on the amount of money that can be spent, the net effect of that is to destroy my right to have free speech and to turn the debate over to the commentators who have access to the airwaves and the newsprint without any limitation.

Mr. McCONNELL. One final question for my friend from Utah, following up on the observations he astutely made about the transfer of power to the media when you mandate less speech by the candidates and by groups in support of candidates. Might it not then be the next step for Congress to conclude that since now the press has all the power, that maybe we ought to amend the first amendment a little further and give the Congress the power to maybe say how many hours a day a station may broadcast, because we might conclude that they were engaging in an excessive amount of discussion of our issues, or we might conclude that the circulation of a newspaper might be limited to a certain number, because there was an excessive amount of news out there, an excessive amount of discourse about daily events?

That is also part of the first amendment, is it not, and that is also part of the discourse that goes on in this free society. That would be potentially the next step, might it not?

Mr. BENNETT. Certainly it would be a logical extension of the reasoning behind this. I agree with my friend from Kentucky that would be the case.

My friend from Kentucky raises another issue with respect to the language of this amendment, when it refers to expenditures that may be made in support of, or in opposition to, a candidate.

Let us suppose this circumstance, Madam President. Let us suppose that a corporation—we will call it the ABC Corporation so as to not taint any existing company—purchases half an hour of television time for a news broadcast; in other words, it becomes the sponsor of ''The McConnell-Bennett Hour,'' assuming for just a moment that both my friend from Kentucky and I have concluded our service in the Senate honorably and are looking to extend our careers in the public arena. And McConnell-Bennett, sponsored by the ABC Corp., has a half-hour news show.

In that, McConnell proceeds to say nice things about the Senator from Texas, who has joined us on the floor. And the Senator from Texas has an opponent who immediately calls the network and says, by putting ''The McConnell-Bennett Hour'' on, the ABC Corp. has made an expenditure in support of the Senator from Texas. If the ABC Corp. would just pull their support and sponsorship of that program, MCCONNELL would not have the opportunity to say all those nice things about GRAMM. And GRAMM's opponent says the expenditures made by the ABC Corp. in sponsoring that program are in violation of the Constitution.

If this sounds somewhat silly, Madam President, it is because it is.

I yield to my friend from Kentucky.

Mr. MCCONNELL. I thank the Senator, and think the Senator from Texas would be interested in this as well.

The ACLU, in a letter to me dated March 6, says that this language before us may well give the Congress the power to interfere with editorializing in newspapers. Let me just read this observation for my colleagues and for those who are interested.

> Senate Joint Resolution 18 [referring to the resolution before us] would also give Congress and every state legislature the power, heretofore denied by the First Amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed articles or commentary printed at the publisher's expense are most certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

So what we have here, America's experts on the first amendment—sometimes we agree with them; sometimes we do not—but clearly America's experts on the first amendment, the ACLU, say that this amendment before us gives the Congress, us, the power to control editorial comment in this country.

Mr. BENNETT. If I may, Madam President. I have just thought of an example that I think is a real-life example and not one of the theoretical examples we have been talking about.

I hope I am not offending anyone to say that the new magazine called the Weekly Standard, in my opinion, is not making any money. I know enough about the business world to look at the number of ads in the Weekly Standard and know what it costs to produce the Weekly Standard to say that the Weekly Standard is at the moment a loser financially.

I also know enough about the business world to know that Rupert Murdoch, who is funding the Weekly Standard, hopes that that will change. I know that he is not doing this strictly out of the goodness of his heart. And he has sound past history behind him.

Sports Illustrated, published by Time magazine, did not make any money for

years and years and years while it built a constituency for its product. It is now, I understand, the most profitable publication Time magazine has. Undoubtedly, Rupert Murdoch is hoping for a similar track record for the Weekly Standard. But as of now, the Weekly Standard is not making any money.

Anyone who reads the editorials of the Weekly Standard knows that it is in support of candidates for nomination for office. And Rupert Murdoch is bankrolling it. He is bankrolling it with corporate funds. These are not his personal dollars. He is bankrolling that magazine with corporate funds.

Suppose we pass this amendment and put limits on candidates to the point where they felt they could not get their message out, and a candidate then went, under cover of night, to Rupert Murdoch's office and said, ''Rupert, I am in terrible trouble. Will you please editorialize in the Weekly Standard on my behalf and reprint 400,000 copies and send them as promotional issues to every voter in my home State?''—a corporate contribution made in the name of seeking circulation improvement. It is not an unreasonable scenario.

And the point that it illustrates is the point that the Senator from Kentucky has made since the day I walked in this Chamber and heard him address this issue. And that is this: Somehow, some way, somewhere the inventive American mind will find a way to spend money on political campaigns no matter what we do. Somehow, somewhere—I love his analogy: Like putting jello on a rock, the thing will find someplace else to go.

It seems to me, if we want free, honest, open, fair, direct elections, we should focus on the issue of disclosure rather than limits, because the limits have proven time and again throughout our history never to work.

We talk about how terrible this present situation is. Madam President, I lived through the Watergate era. Indeed, I lived through the Watergate era much closer to the Watergate scandal than I wanted to be.

When I ran for the Senate in 1992, the entire campaign against me mounted by my Democratic opponent was that I was somehow tainted by my association with all of the figures in Watergate. And there are still occasions when I am in these parades on the Fourth of July in the rural towns of Utah where people who are not my political friends holler out, ''Hey, Watergate'' at me hoping the taint will still stick. FRED THOMPSON and I are probably the two Members of this body who know more about Watergate from a personal inside experience than anybody.

Virtually the entire system that we have right now was constructed in response to Watergate. And we were promised at the time it was constructed in a way that it would solve all of our problems. We were promised that with the creation of political action committees, special interest money would disappear. We were promised that with limitations on individuals, we would get democracy like we have never seen it before in campaigns. We were promised that everything would go away if we would just simply adopt these reforms in the name of clean elections.

Twenty years later, what do we hear? From the same people who made those promises, we are told if we adopt this constitutional amendment all will be wonderful, everything will now suddenly take on a rosy hue and there will be no corruption in American politics again.

Madam President, I did not believe them then. And I do not believe them now. And I think the track record of the last 20 years indicates that I was right not to believe them then. I hope we do not have a track record for any of us to find out from actual experience that we should believe them now.

Let me conclude with a personal experience. Everybody always says, no, you should not tell your personal stories. But this is a story I know the best.

I looked at all of the proposals for campaign reform that were around when I ran. And I realized very quickly they were designed for one purpose—to protect incumbents. Of course, you want to have a spending limit if you are an incumbent. The challenger cannot take you on if there is a spending limit. I ran against an incumbent Congressman.

What did that mean? That meant when he put out a press release, the taxpayers paid for it because he had a press Secretary that was on his congressional staff. When I put out a press release, I had to pay somebody out of campaign funds in order to write it and disseminate it.

When he went to see someone in the home State after traveling to Washington, the taxpayers paid for it because he had a travel allowance. When I came to Washington to try to see somebody to raise some money for myself, I had to pay for it myself out of my campaign funds because I did not have any travel allowance. And so on down the list.

Plus the fact, he had all those years of being invited to Rotary clubs and Kiwanis clubs and Lions clubs to be the speaker. I have been involved with trying to line up speakers for clubs. You are always delighted when you can get someone like a Congressman to come talk to you. I had not been to any of those clubs. None of them was interested in talking to me.

So you know what I had to do, Madam President, in order to get anybody to listen to me in that campaign? I had to buy them lunch. When I filed my FEC report, I had $86,000 for food. Because the only way I could get anybody to listen to me: I bought them lunch, I bought them breakfast, I bought them dinner. They would come with no intention of voting for me, but they wanted the free meal. I just hoped if I could get in the room long enough and talk to them, maybe I could pry a few of them away.

I started out in that first campaign for the Republican nomination, and there were four of us running for the Republican nomination. One candidate was at 56 percent, in first place. I was at 3 percent, in fourth place, and there was a 4-point margin of error, so I could possibly have been minus 1.

Would the incumbents have loved a spending limit faced with the opportunity that BOB BENNETT might challenge him? Absolutely, absolutely. And a spending limit would be marvelous because then I could not spend all that money for lunch because I simply could not have done it.

Now, I have said facetiously to some of my Republican friends around here, look, we were opposed to this when we were in the minority. Now that we are in the majority, why are we not for it, because it will return our incumbents and hold the other side down, because their challengers cannot beat us. I am afraid I am not that cynical. I still remember what it is like to be a challenger and the recognition that if we are going to have free and open elections, we have to give the challengers the opportunities to take on the incumbents, and the opportunities to take on the incumbents on the part of the challenger means that the challengers have to have the opportunity to raise the money to pay for the press secretary that the taxpayer pays for for the incumbents, to pay for the travel budget that the taxpayer pays for for the incumbents, to pay for the lunches so they can get in before the audience, that the incumbents get for free. If we put this limit on and say we are going to hold everybody to the same limit, we have just automatically said we are going to take care of the incumbents.

The only thing that makes any sense to me in terms of campaign finance reform is to increase the level of disclosure, not put any limits, recognizing the reality of what the Senator from Kentucky says, that the money will find a way to be spent. The more limits you put on it, the more you make sure it is the rascals who survive and the naive who get caught. The only way you will get the naive, the fellow who has not figured out all of the ins and outs, who has not worked his way through all of the labyrinth and opportunity to serve in public office is to remove the ins and outs and wipe away the labyrinth.

I am sure we will have more to say on this as it goes on. I see my friend from Texas has something to say, as he always does. I will listen with interest, as I always do.

I will leave it at this, Mr. President, but I will return at some future point. I end this as I began.

Patrick Henry was right when he said, you nail it down, you put it on paper, and you make it very clear.

James Madison was right when he caved in to Patrick Henry on that argument, and did it in writing, the Bill of Rights, instead of accepting the assurances that everything would be OK.

I cannot accept the assurance that Congress will automatically come up with what is the right definition of reasonable. I cannot accept the assurance that expenditures made in support of or opposition to a candidate will be reasonably handled by the Congress. I cannot support putting that kind of language into the Constitution of the United States and thereby creating a circumstance of uncertainty over which lawyers will argue for the next 200 years.

I was part of the majority that defeated this amendment the last time it came up. I will be part of what I hope will be the majority that defeats it this time. I yield the floor.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Chair recognizes the very honorable and distinguished Senator from Texas.

Mr. GRAMM. Thank you, Mr. President. I begin my discussion of the resolution before the Senate by reading two things. The first thing I will read is the first amendment to the Constitution. I will then read a statement made by the principal proponent of this amendment as it has evolved through the legislative process, the distinguished minority leader of the House of Representatives, Richard Gephardt. And then I will discuss the fact that for the first time in the debate on campaign finance reform, for the first time ever, we are debating the real issue.

To this point, as is often so true, even in this greatest of deliberative bodies on the planet, we have not really debated the underlying issue, because often either one side or both sides of an argument has an incentive to cloud the real issue so that people do not understand.

The one thing that I am very thankful for, and that I want to congratulate our colleague from South Carolina for in proposing this amendment, is that for the first time in the debate on campaign finance reform, we are finally debating the real issue that is being contested here—I rejoice in having this opportunity to debate.

I will debate the issue a little, then I want to talk about the underlying issue, and then I will say something about our distinguished colleague from Kentucky.

The first amendment to the Constitution, which has been memorized by most schoolchildren in our country, is one of the most recognizable part of the Constitution, and says the following thing:

> Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

That is the first amendment to the Constitution of the United States, and that is the massive thorn in the side, the impediment, and the giant mountain that serves as a barrier to those who want to reform American campaigns to limit the ability of people to raise and spend money. It is this impediment that they face which makes it impossible, without trampling this amendment into constitutional dust, to achieve what they want.

Today, we are debating this issue in a proposal to amend the Constitution and to amend, in particular, the free speech clause of the first amendment.

Now, I want to next read a quote from the distinguished minority leader of the House, Richard Gephardt. This is a quote where Mr. Gephardt is talking about his amendment. He says:

> What we have is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.

Now, let me read that again: ''What we have is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.''

Now, Mr. President, I wish the Founding Fathers could have heard that statement and could have realized that the distinguished leader of the Democratic Party in the House of Representatives, in setting out what he views as desired healthy campaigns and desired healthy democracy, believes that free speech must die for these healthy campaigns to occur. This logic would have rightly been rejected by every single Founding Father. I know it because when they wrote the Constitution and when the first Congress adopted the Bill of Rights, they picked one amendment to be first, and that amendment is very clear: ''Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech * * *''

Now, why this amendment is so important, why this debate is so critical to the debate on campaign finance reform is that, for the first time, we are now discussing the real issue: Do you believe in freedom of speech or not? I do. Therefore, I am opposed to this amendment, and I am opposed to what is posing as campaign finance reform. Or do you believe that Government ought to be given the power to circumscribe free speech to achieve the Government's decision of what, in essence, good elections are? That is what the issue is. For the first time in this long, convoluted debate, we are really now down to that key issue.

I hope and I believe that we are going to reject this amendment and that we are going to say, once and for all, that we believe in free speech. In fact, how can you have genuine elections without free speech? Ultimately, the speech that our Founding Fathers were most concerned about was political speech. Yet, we have an amendment before us that would amend the Constitution and that would limit free speech in the name of—to go back to Leader GEPHARDT's language—''promoting healthy campaigns in a healthy democracy.''

Mr. President, what Mr. GEPHARDT wants to do, and what proponents of this amendment want to do, is to limit free speech because they want to change the balance of power in the political process. Those who believe that the first amendment is a sacred part of the Constitution have to reject this amendment out of hand—and I do. And I believe the majority will as well.

But let me go one step deeper into the process to try to at least give my view as to what this whole debate is about. If you went out in the public, which is reading all of these stories written by all these groups who are promoting various ideas about campaign finance reform, I think what the American people would be saying is that they are concerned that too many groups exert too much control over Government and they would like to fix it. Well, it is interesting, because the Framers of this document, the Constitution, were concerned about exactly the same thing. But maybe because their world was simpler than ours, maybe because their vision was clearer than ours, they understood that the solution to bad speech or ineffective speech or speech you disagree with is not limiting speech, but opening speech up and guaranteeing free speech.

Now, here is the problem. People are worried about interest groups influencing the Government. But, let me go back one more basic step. What is it about Government that people want to influence? Well, what it is about Government that people want to influence is that Government does things that are very valuable. Government sets the price of things. Government runs programs where we set interest rates, where we set rents, where we set the price of commodities, where we impose regulations that benefit some people and hurt others. Government is a major player in the economy as a setter of prices and regulations that accumulate and destroy fortunes. So people want to influence Government.

The second reason people want to influence Government is that Government spends a lot of money and people want part of it.

A third reason people want to influence Government is they care about it. They care about the future of their children. They love their country, and they have philosophies that they believe in. They have a vital interest in their children and grandchildren and they take seriously either their obligations as a citizen, defined in the Constitution, or the biblical admonition, ''Render unto Caesar what is Caesar's.''

Now, nobody wants to limit the third kind of influence, I don't think. If somebody loves America and they want to be involved, or if somebody believes our colleague from North Carolina is the next Thomas Jefferson and they want to support him because they believe in him, nobody in this debate

claims they want to interfere with that right.

It has always amazed me that never once in the campaign debate has anybody proposed eliminating the power that people are trying to affect by engaging in campaigns. If we are worried that milk producers are going to give money to candidates to raise the price of milk, why not stop having the Government set the price of milk? Then, if milk producers are involved in the debate, you do not have to worry about why they are involved. They are involved because they care and they have opinions and they have an interest in the country.

If we are worried that people are wanting to sleep in the Lincoln bedroom or go to a coffee with the President because they want a contract from HUD, and we think that is the wrong use of political power, why not get HUD out of the contract business? Why do we not mandate competitive bidding? Why not eliminate all of this discretion? If we are worried that people want a contract or a benefit or something, why do we not go after that power and eliminate it? That is what the Founders would have said we should do, yet nowhere is that being proposed.

What is being proposed, then, is not eliminating all the reasons people want to influence the Government for their own benefit, but what is proposed is changing who is allowed to intervene in that debate. The basic argument, which on its face is a self-contradiction, always seems to be that we want to limit the ability of citizens to contribute to the candidate of their choice so that this candidate can express his views.

I have heard nobody object to the AFL–CIO endorsing a candidate, which is worth millions of votes nationally, is worth hundreds of thousands of volunteers, and has the monetary equivalent of millions of dollars. Nobody says there is anything wrong with that. Nobody says that there is something wrong with the teacher's union, the National Education Association, endorsing the President and putting thousands of teachers into phone banks and doing all kinds of letters to their members to promote the President.

But there is an effort to single out one particular type of involvement, and that involvement is where a person puts up their time, talent, and especially their money to support a candidate. There is somehow supposed to be something wrong with somebody writing a check to support their local candidate or their State candidate or their national candidate. But notice that if we ban contributions completely so that nobody could spend any money and so that the only people who would have the ability to communicate would be big, powerful organizations like the AFL–CIO, organizations that are able to manipulate the media—like environmental groups or Ralph Nader—people who are rich enough to own newspapers, and people who were simply influential enough to command attention for their ideas. I have a constituent, Ross Perot, who is worth over a billion dollars. When you are worth over a billion dollars, people listen to what you have to say.

But the point is that this effort to limit the ability of free people to contribute does not eliminate what people do not like about the system; it simply makes other groups more powerful.

I would like to establish a principle which I think it is made very clear by this proposed amendment. What we are seeing here is an effort not to eliminate political power, but to redistribute it. Limiting the ability of people to raise money or contribute money or spend money would clearly eliminate part of the competition in the battle for ideas in America. But it would leave all the other competitive groups in place and would clearly tilt the balance of power.

What is really being said here is that something pretty fundamental has happened in America. It is really the confluence of two forces, and if I were on the other side of this political debate, it would scare me to death. No. 1, people don't write small checks, by and large, to Democrats. I have had the great honor of heading up the National Republican Senatorial Committee, where we had a power that our Democratic colleagues never had. We could send out a letter to millions of people and we could get hundreds of thousands of people to write us checks for $25, $50, or $75. Never was there a day while I was chairman of the National Republican Senatorial Committee when the Democrats average donor did not give somewhere between 3 and 10 times as much, in terms of the amount of money, as our average donor. The plain truth is, if your agenda is more government, more taxes, and less freedom, you have a hard time sending out a fundraising letter and getting people to give. You have to let them sleep in the Lincoln Bedroom. You have to hold meetings with them. You have to make them believe they might be getting something for it. So, obviously, if you are on the losing end of this battle of free speech, you want to limit free speech.

The other force that is coming to bear in this confluence is that Reconstruction is over. Reconstruction in the South ended in 1994 when we elected a Republican majority of House Members, Senators, and Governors from the Old South. It is hard to believe that the Civil War and Reconstruction took that long to work its way through the system. But it did, and it is forever changed.

So what we are really seeing here—and, unfortunately, it is aided and abetted by those who want the change to occur because it makes them more powerful—is an effort to change the political landscape of America to give more power to editorial writers, to unions, to teachers, to groups that can manipulate the media, and to take power away from working men and women who are willing to voluntarily contribute their time, their talent, and their money.

Unfortunately, the people who give report cards on this debate and write nasty editorials about our dear colleague from Kentucky are editorial writers who are probably the biggest beneficiaries of this proposed amendment. After all, if we are limited in our ability to either spend our own money or to raise money from other people and then spend it, then editorial writers become very, very important. On the other hand, if you have the ability to raise money and to tell your story, they become far less important. As I have said to those friends that I have had in meetings with editorial boards, ''Endorse my opponent on the editorial page, and write a good story about me on the front page.'' Editorial endorsements are not nearly so important when people can engage in free exercise of free speech.

The issue here is freedom. You either believe in it or you don't. And I do. I have never bought, and I will never buy, the logic that somehow, if you have 88,000 people in your State who have contributed to your Senate campaign, which I do, that somehow we ought to have a law that says we can allow up to 50,000 people to contribute, but when we reach the point of that 50,000th person that has contributed, the 50,001st person will not be allowed to participate. I totally and absolutely reject that. The whole purpose of this amendment is to limit the free speech of that last person because Congress is going to decide who will have power, who will exercise it, and how that power will be exercised.

The founders of this nation, in this debate, would rejected this proposal. They would have said that if you are worried about Congress setting the price of a product, and you are worried that people will give money to politicians to try to get a higher price to benefit themselves and line their pockets, then take the power to set prices away from Congress. If you are worried about construction contracting, eliminate the discretion in giving contracts and limit the number of contracts that Government is engaged in. But do not limit the ability of people to speak and to express their opinion.

I think it is interesting to note—and it is not a debate that I want to get involved in, but I think it is interesting to note—that in the amendment before us, when the amendment says that it gives Congress the power ''to limit the amount of expenditures,'' it is pretty clear that this is very, very broad language. That language could be interpreted, it seems to me, to mean something far more than the authors of this amendment intended.

The authors of this amendment intend to limit one particular kind of free speech; that is, free speech by a candidate and by that candidate's supporters. They clearly do not intend to

eliminate free speech by editorial writers, by unions, or by whomever else. But the point is that this amendment is probably so broad that ultimately it could mean the limitation of that free speech as well.

We have to make a choice as to what we are for. I submit that it is very tempting, in looking at these bills, to say, ''What benefits me?'' And it is very easy for me to devise a campaign finance reform system that benefits me. In fact, I think it is easy for any of us to do that. It might well benefit me to limit contributions because then someone running against me would have no real opportunity to get the kind of exposure I am getting by speaking on television right now with millions of people watching C–SPAN. But I think we have to take a longer view of what these changes are going to mean to people, 20 years from now, who are going to be standing right here where we are standing today.

Limiting free speech is not in America's interest. This is a very bad amendment. The intentions of it are basically founded on the principle that free speech and healthy democracy are in conflict. Free speech and healthy democracy can never be in conflict because when free speech dies, democracy dies. If dead democracy is healthy democracy, then you would view that as a good thing. But I do not view it as a good thing.

The final point on the amendment: We have voted on this as an amendment to the balanced budget amendment. I believe that we have touched on it with other issues. But today this is a freestanding proposed amendment to the Constitution of the United States. I hope some of the people who voted for it, as a way of making it harder for us to pass the balanced budget amendment, will today vote against it on the merits. I know no simpler way of defining what it is about than to quote its author when he said, as I have already read two previous times, ''What we have is two important values in direct conflict, freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both.'' If that is the choice—and it is the choice —do we not choose free speech? Do we not believe in the end, to quote a biblical admonition, ''Ye shall know the truth, and the truth shall set you free''?

Before I yield the floor, I want to say something about our colleague from Kentucky, Senator MCCONNELL.

These issues are very difficult issues. It is not very popular to get into a discussion about these issues, and there is one Member of the Senate who, more than anybody else, has been willing to stand up on these issues, and his leadership and his courage have become fundamental to protecting our constitutional rights.

I just want to say to my colleague from Kentucky that there are millions of Americans who will never know your name, who will never know what you have done, and certainly there are hundreds of editorial writers who will castigate you for it. But I want to tell you in the opinion of one of your colleagues, you have earned our great and permanent appreciation for the courage you have shown on these kinds of issues in standing up for our fundamental constitutional rights. And you have certainly earned our admiration and affection for doing it. Millions of people who will never know your name, will never know about this debate, are beneficiaries of the great leadership you have provided.

I wanted to say that on the floor of the Senate because I believe it.

I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kentucky.

Mr. MCCONNELL. I thank my friend from Texas for his brilliant discourse on the potential damaging effects of this amendment. I thank him deeply for his comments about my work on this first amendment issue. He has been a steadfast ally throughout this debate, and I appreciate very much his being there when we all needed the Senator to be there when we needed to protect the first amendment.

Mr. President, the Senator from Wyoming is here patiently waiting to address the body, and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Wyoming, Mr. ENZI.

Mr. ENZI. I thank the Chair.

I am pleased to be here today and have an opportunity to address Senate Joint Resolution 18, the proposed constitutional amendment to limit campaign contributions and expenditures. I am a freshman Senator. I came through an election last fall and have a number of things I would like to see addressed on campaign reform, but I have to say that I do not think a constitutional amendment is the right forum for beginning that debate.

This attempt to exclude core political speech from the first amendment's protection is a terrible assault on one of the very cornerstones of American representative democracy, the freedom of private citizens to participate in the public forum of political discourse through freedom of speech.

This constitutional amendment is dangerous both in its design and its broad and sweeping scope. This expansive amendment would grant Congress the future power to prohibit independent citizens from distributing leaflets, writing editorials, producing independent commercials, and/or handing out voter guides if Congress finds these measures to be ''in support of or in opposition to a candidate for Federal office.'' This is precisely the kind of Government intrusion our Founders feared when they drafted and adopted the first amendment to the Constitution. The first amendment was designed to protect citizens against the dangers of a tyrannical Federal Government. It was adopted because our Founders rightly realized that there are some freedoms that are so intrinsic to the nature of a representative democracy that they must be protected from the momentary wishes of a majority in the Federal Congress.

When asked what use the Bill of Rights served in our popular Government, James Madison explained, ''The political truths declared in that solemn manner acquire by degrees the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion.'' In other words, it was to protect against such impulses as those now suggested by many of the would-be reformers that the founders drafted the first amendment's protection of speech in broad and unequivocal terms. ''Congress shall pass no law abridging the freedom of speech.''

A brief analysis of the effects of this amendment should terrify even the most ardent reformers. A few examples should show the chilling effect this amendment could have on political freedom of speech. This amendment gives Congress the power to set limits on the amount of expenditures that may be made in support of or in opposition to a candidate for Federal office.

I will start with the worst example first. Suppose that one party again gains control of both Houses of Congress and the Presidency. In order to maintain its monopoly on Government, this Congress could pass a law limiting the expenditures of congressional challengers to $5,000. What sort of possibility would this give any challenger. Such a proposal would all but guarantee a perpetual Congress of incumbents. As outlandish as such a proposal sounds on its face, it would be legal under this amendment.

Again, even the freedom of the press could fall under the vast scope of this amendment. Let us consider a proposal which would prohibit any editorial against a candidate or a group of candidates. Such a law could well be passed under this amendment if Congress decides that such editorials are expenditures by the newspaper ''in opposition to'' a candidate for Federal office. Congress could have the power to limit or even prohibit press reports for or against a particular candidate since expenditures must be made to print and distribute a newspaper or broadcast a television or radio news report.

Finally, let us consider the case where a private citizen wishes to write an editorial or hand out leaflets in favor of a particular candidate or his or her positions. Again, this amendment would give Congress the power to prohibit such activities. Expenditures must be made to write and publish editorials or hand out handbills. Congress could pass a law outlawing such expenditures in support of candidates if it so desired. This amendment would have a drastic and dangerous impact on the free discussion of ideas in this country.

Newspapers also might not come under the law but we might come under an expenditure law, so they could write things about the candidate to which they may now not be able to respond in light of not having sufficient funds within the limited amounts.

Proponents of this constitutional amendment have accepted as their first premise in the campaign reform debate that the first amendment to our Constitution is incompatible with a healthy electoral process. One of the original House sponsors of this gutting of the first amendment proclaimed unabashedly: ''What we have is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy Democracy. You can't have both.''

This remarkable confession by one of the leading reformers is as startling for its boldness as it is for its inaccuracy. We should beware of any campaign reform which can only be achieved by destroying the first amendment. This false conflict between free speech and democracy was rejected by our Founding Fathers, and it should be rejected by the Members of this Senate. Our Founding Fathers rightly understood that it is precisely the unhindered protection of freedom and open political speech that makes democracy possible.

I find it fascinating that in the 2 months I have been honored to serve in this deliberative body we have debated now two proposed constitutional amendments. These two amendments could not be more opposed in their purpose or their effect. The balanced budget constitutional amendment, of which I was a proud cosponsor, would have placed constitutional limits on Congress' power to squander away our children's economic future. Senate Joint Resolution 18 would give Congress expansive and unprecedented new powers of prohibiting core political speech. The balanced budget amendment would have limited the Congress' power by restricting its ability to spend money it does not have. Senate Joint Resolution 18 would constitutionally expand Congress' power to regulate the speech of candidates, businesses, private citizens, and perhaps the press and media.

I support the balanced budget constitutional amendment because I believe that by forcing Congress to live within its means, we give our States, our communities and, most important, our families more freedom to make the decisions which most affect their lives and their futures. I have to oppose this constitutional amendment because it would grant Federal and State governments the power to stifle one of the most basic political freedoms: the freedom of individual citizens to express themselves freely and without restraint in the public forum.

I urge my colleagues to join me in affirming the time-honored wisdom of the first amendment of the Constitution by rejecting Senate Joint Resolution 18.

I yield the floor.

Mr. MCCONNELL. Mr. President, I thank the distinguished junior Senator from Wyoming for his very articulate, knowledgeable speech in support of the first amendment. He has made an important contribution to this debate, and I am very much appreciative, as are my colleagues who feel this is a step in the wrong direction. I very much appreciate his contribution.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Nebraska.

Mr. HAGEL. Mr. President, I rise today in opposition to the constitutional amendment offered by my distinguished colleague from South Carolina. Allow me to say how much I respect my friend Senator HOLLINGS and the years of service he has given to this great body and to America. During this time he has seen more than his share of scandals and has surely grown tired of and frustrated with what seems to be almost daily revelations of political wrongdoing. My argument is not with the Senator's motives or his quest for a better campaign finance system. I think we all agree with that. My argument is with this particular solution.

In many ways it could not be more fitting for this body to begin the important debate over campaign finance reform than with this proposed constitutional amendment. As my colleague Senator ENZI said, by proposing a constitutional amendment, my distinguished colleague from South Carolina concedes what many who support restricting political speech fail to recognize: that denying an American citizen his or her constitutional right to contribute to a candidate of choice requires a fundamental rewriting of our country's most sacred document, our Constitution.

I hope that my colleagues who support this measure will take pause and recognize the significance of what they intend to do. In particular, I hope that my colleagues who support this measure will realize, as Senator ENZI noted, the irony of the fact that less than 2 weeks ago this body killed a constitutional amendment that would have ensured our citizens and future generations a balanced Federal budget. Now, some of my colleagues wish to pass a constitutional amendment that would restrict one of our most basic constitutional rights—freedom of speech.

The people know that we do not need to amend our Constitution, we need to amend our ways. We need to amend ourselves.

Mr. President, I, like all of my colleagues, am concerned about corruption in our political system. And I believe this Congress will find ways to improve upon our campaign finance system. But, like corruption in any organization or system, it is the people who are corrupt, not the system. Why do we blame the system and excuse the violators?

Where is the outrage with those who subvert the system and deliberately break the rules and laws already in place?

The fact is, we already have campaign finance laws. We have a Federal Election Commission to enforce those laws. We do not need to continually add more layers of laws, regulations, and bureaucracy and pass those off to the American people as solutions to the problem. We need to deal severely with those who break the law and violate the trust and confidence the people have placed in them. We need to make certain those who seek public office and their campaign teams follow the current law and we need full and complete disclosure of all campaign receipts and expenditures for and against candidates, by candidates' campaigns, and by all political bodies.

I do not believe we need to pass a constitutional amendment restricting the rights of our citizens. We need to focus on individual violations of current law. We need to focus on individual conduct and behavior, individual responsibility and accountability. I have often said to my colleagues, if each of us in public office conducted our campaigns—every aspect of our campaigns—in a manner that our constituents could be proud of, then we would not be engaged in this debate about campaign finance reform.

I listened with interest to the political posturing and spins of the White House over the weekend and was amused but, more honestly, dismayed by what seemed to be an attitude of the end justifying the means. As the Wall Street Journal rightly noted in an editorial yesterday:

> Public life . . . is about mainly one thing—the law—the rules that all consent to abide by and enforce so that life can be civil.

The role of a public servant, Mr. President, is to protect the laws and make sure they are being followed for the good of society. Our role is not to bend, mold, stretch or interpret the law to our own benefit or arrogantly disregard it in order to achieve a goal of our own making that we may find more noble than others. That is not what we are about.

If it seems that we have heard this all before it's because we have. Senator HOLLINGS knows that. That is why Senator HOLLINGS has taken the floor, trying to resolve this issue. For decades, we have debated important social issues such as crime and welfare, and that violations of our laws were really not the responsibility of individuals—it was the system that we needed to fix. Individual accountability really was not very important. Life was unfair. ''If we truly want to find a solution to all of our problems,'' many argued ''then we should glide over individual responsibility and focus on how we can change the system.'' More laws, more rules, more regulation.

Where is the outrage with men and women who have gained the public trust but violated it by not being held to the highest ethical and moral standards? What we are too often lacking is

leadership and doing the right thing. We have the laws, we have the regulations, we have the enforcement mechanism. But we do not always have leaders who do the right thing.

Mr. President, have we so lowered our standards and expectations in politics and society that the only way we can think to curtail individual wrongdoing is by amending the constitution? I refuse to accept that. I think we are better than that. This country, this society, our people are better than that.

Where is the outrage over individuals who break the law and refuse to take responsibility for their actions? Where are the voices demanding personal responsibility and accountability? I believe that for too long we have been creating a society less dependent on the voluntary rule of good behavior by the citizen than on the oppressive mandate of Government.

We must not be swayed by the emotion of the moment, or the pundits and politicians who would rather lead us down a dangerous path of restricting everyone's rights than have the courage to just do the right thing. The proposed constitutional amendment before us today would be an enormous step in the wrong direction for a society that has already become too dependent on regulation and procedure, and too little influenced by the behavior of its individual citizens.

The goal of meaningful campaign finance reform should be to involve more people in the political process—not to curtail their constitutional rights.

More than two centuries ago, the Framers of our Constitution set out to build a nation dedicated to government by consent of the governed. That Constitution draws its power from only one source: ''We the people.''

For two centuries, we the people have shaped this Nation and made it great.

For two centuries, we the people have chosen our leaders from among ourselves and have held them to the highest standards.

For two centuries, we the people have taken responsibility for the Federal Government of the United States of America.

I sought the privilege to serve in the U.S. Senate with some of my distinguished colleagues like Senator HOLLINGS, because I want to take power and authority away from the Government and return it to the people. I cannot support any proposal that seeks to limit the ability of the people to speak—and takes the power to shape our public debate away from the public and gives it to the Government. That is what this debate is about.

In Buckley versus Valeo, the Supreme Court ruled that the debate about campaign finances is about the fundamental role of the people in our democratic society. The Court wrote:

> 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.

Mr. President, the system has not failed us. Our problems stem from a failure of leadership. I am outraged, not by the system, but by the deplorable conduct of those few men and women who abuse it. That is what outrages the American people.

Before we reform the Constitution, we should first look at how we might reform ourselves.

I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the distinguished Senator from Nebraska for his very important contribution to this debate. He is, indeed, correct: What we have before us is an effort to amend the first amendment for the first time in the history of this country to give to the Government the power to control the speech of individuals, groups, candidates and parties. In short, a complete takeover of political discourse in this country by the Government.

I thank the Senator from Nebraska for his important contribution to this debate. This amendment needs to be defeated, and defeated soundly, in the name of protecting the first amendment. I am sure the Senator from Nebraska is as pleased as I am that even the reform group, Common Cause, is against this. Even the Washington Post is against this. Even the New York Times is against this. I mean, even the reformers think this is a bad idea. So this should be rejected and rejected firmly.

The good thing about this debate is it finally focuses the campaign finance debate where it needs to be focused. This is all about political speech. I thank the Senator from Nebraska for his important contribution.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished Chair for his friendship, even though we don't agree on a particular point, and particularly my friend from Nebraska. There is no question that if he and I could handle this particular problem—like he says, we would have to amend our ways and he and I can amend our ways immediately—we wouldn't have the problem that confronts us.

The Senator from Nebraska did have a comment that was encouraging to me. He said let's not be swayed by the emotion of the moment. I think that is the only way we are going to get something done, is get an emotion of the moment, a fit of conscience, like you saw on the floor of the U.S. Senate yesterday afternoon. We had the emotion of the moment when we realized that it was a total fraud and farce to just investigate illegal activities. The Justice Department is there and fully aware and fully performing the investigation of illegal activities. Ours in the legislative branch is to investigate the improper activities and see what laws we can do to rectify that situation, particularly soft money.

Some who have been on the floor today are the leading opponents of soft money, and that brings me right to the opening statement of the distinguished occupant of the Chair. He said the constitutional amendment is not the way to begin the debate on campaign finance reform. I agree. That is not the way to begin the debate on campaign finance reform. But the distinguished Senator should understand that we began this debate in 1966. The Congress adopted public financing for Presidential elections.

Then, in 1967, we repealed the public financing for Presidential elections.

In 1971, we had the passage of the Federal Election Campaign Act, and by 1974, we passed, which is the major act of today, the amendments to the Federal Election Campaign Act.

In 1976, again we had the amendment of the Federal Election Campaign Act.

In 1985, we had the Boren-Goldwater amendment that changed the contribution limits and eliminated the PAC bundling. But, Mr. President, that was tabled back at that particular time.

In 1986, we had the Boren-Goldwater amendment adopted.

In 1988, we had nine votes on the motion to instruct the Sergeant at Arms to request attendance while trying to get a vote on S. 2. In fact, I think it was at that time we even had to arrest Senators. We are not just beginning the debate on campaign finance reform. We had to arrest Senators and everybody else to try to get a vote. But in 1988, we had a Hollings constitutional amendment to limit campaign expenditures. We had to finally file cloture, and that failed by a vote of 53 to 37.

In 1989, we had S. 139, comprehensive reform, which passed the Senate but never made it out of the conference.

In 1991, we had S. 3. We did pass comprehensive reform of campaign financing, and President Bush vetoed it.

In 1993, we had the Hollings sense of the Senate that Congress should adopt a constitutional amendment limiting campaign expenditures.

In 1993, we had a majority of the Senate vote for it—not the Washington Post, not the New York Times, not the Common Cause crowd or the ACLU group, but the U.S. Senators, the representatives of the people who have been in the game and know it best. The majority said that we ought to have a constitutional amendment limiting campaign expenditures.

In 1993, we had S. 3, comprehensive reform, pass the Senate, but it never made it out of the conference.

I say to our distinguished Presiding Officer, in 1995, again, we had the Hollings constitutional amendment to

limit campaign expenditures offered to the balanced budget amendment, but that was tabled by a majority of the Senate on a vote of 52 to 45, and they had a real chance to do it.

Then, in 1995, we passed the sense-of-the-Senate amendment to address campaign finance reform during the 104th Congress, sort of urging us along. We finally are going to get to it. And, in 1996, cloture on the McCain-Feingold campaign finance reform failed by a vote of 54 to 46.

Mr. President, you are right, a constitutional amendment is not the way to start, but after 30 years of everything that we could get out of Common Cause and the Washington Post and all of those disparate groups like the ACLU, it is time, I hope, that, as the Senator said, that we get swayed by the emotion of the moment, that we get a sort of fit of conscience so that we can really act here and realize that if we don't, we really are in the hands of the Philistines with this Supreme Court.

Read this one. Colorado Republican Federal Campaign Committee versus the Federal Election Commission:

Before the Colorado Republican Party selected its 1986 senatorial candidate, its Federal Campaign Committee (Colorado Party), the petitioner here, bought radio advertisements attacking the Democratic Party's likely candidate.

That is not the candidate that is likely. They are ahead of the curve.

The Federal Election Commission brought suit charging that the Colorado party had violated the party expenditure provision of the Federal Election Campaign Act of 1971 which imposes dollar limits upon political party expenditures in connection with the general election campaign of a congressional candidate.

The Colorado party defended, in part, by claiming that the expenditure limitations violated the first amendment as applied to its advertisements, and filed a counterclaim seeking to raise a facial challenge to the Provision as a whole.

The district court interpreted the ''in connection with'' language narrowly and held that the Provision did not cover the expenditure at issue. It therefore entered summary judgment for the Colorado party, dismissing the counterclaim as moot.

In ordering judgement for the FEC, the Court of Appeals adopted a somewhat broader interpretation of the Provision which it said both covered this expenditure and satisfied the Constitution.

So the judgment was vacated and the case was remanded. But Judge Breyer, joined by Justices O'Connor and Souter, concluded that the first amendment prohibits the application of the party expenditure provision, not the kind of expenditure at issue here, an expenditure that the political party has made independently without coordination of any candidate.

That has thrown open the door. That is the soft money. That is the headlines. That is the debate. That is the grinding the Government to a halt. They talk about closing down the Government in Washington. Well, we very actively closed it down with that Colorado decision, because you can see the headlines. ''The Poor Party Had to Rent the Lincoln Bedroom to Get Money.'' Anything they could do to get money, for Heaven's sake.

If you can believe the distinguished Senator from Texas coming on the floor, and if you are convinced that the Republicans are the small givers and the Democrats are the big givers, that the Republican Party is the party of the poor and the Democratic Party is the party of the rich, you will believe that the world is flat. This is just flat nonsense.

I mean, come on. They come in here with all this erudition and quote something about a gentleman over on the House side stating that there are two important values: The freedom of speech and our desire for a healthy campaign and a healthy democracy. And you cannot have both. And the free speech must die in order to have a healthy democracy. Nobody believes that, including the gentleman on the House side. I can tell you that here and now.

The Senator from Texas says, ''Do you believe in free speech or not? That is the question.'' We all believe in free speech. And we go about this with trepidation. Only after 30 years and all the initiatives and arresting the Members and cloture votes after cloture votes, and, yes, coming back to the people in a sense of that is what we need do, that is what we need do. And then when we start to do it, we come on the floor of the U.S. Senate and talk about Patrick Henry and freedom of speech and everything else.

This has to do with whether or not you believe in limits on campaign spending. Every one of you believes in limits of the free speech of political contributions. That is the Buckley versus Valeo decision. None of these speakers coming up here opposing this particular initiative have come forward and said, ''Oh, wait a minute. Let's take the limits off on contributions.'' They would not have the unmitigated gall to say that because they know that the evil here is too much money.

If you are going to take the limits off on the contributions and everything else, we are gone as a republic, you are not going to decide anything in the marketplace of ideas. It is all going to be in the financial marketplace. The very idea that we had, the intent of the national Congress, in 1974 was that you cannot buy the office. Under the Buckley versus Valeo decision, now coupled with this Colorado soft money nonsense, you must buy the office.

What did the Senator from Kentucky say, as to withdrawing from running again, on the day before yesterday? That he resented the idea of having to get up all that kind of money. What did the Senator from Ohio say? The same thing. We who have been in it and everything else—I resent it, you resent it.

It is time now that we act. And do not give us this Patrick Henry. The Senator from Utah was quoting Patrick Henry. And the Senator from Texas followed him, and he said about free speech, ''You bet your boots, Patrick Henry had free speech in the campaign.'' There was not any radio to buy. There was not any TV to buy. There was not any political consultant to buy. There was not any money to get out the vote to buy.

You can go on down the list of all the things. That is when the Constitution had free speech. But as J. Skelly Wright stated—and I want to get that right—J. Skelly Wright, the eminent jurist, he said here, Judge Wright in the Yale Law Journal—and I quote:

''Nothing in the first amendment commits us to the dogma that speech is money.''

We are not talking about what is free. We are talking about what is expensive, what is paid for. They know it. You know it. I know it. You have all the free speech you want.

When they talk about the newspapers, you can take the present law. They raise these straw men again and again and again. The Senator from Utah, he got up and said that the Congress could come back and put such low limits on candidates that only the incumbents would prevail, that we incumbents would come in here and Congress might decide not to let anyone oppose them by putting just a limit of $100. Now where have you heard such a thing?

None of this is in the Senator from South Carolina's constitutional amendment. The Senator from North Dakota, the Senator from Pennsylvania—it is bipartisan. I could go on down the list of none of that nonsense of the straw men that could happen. I am going to give one example and then yield to my distinguished colleague.

I know what can happen under the present law because I had it happen to me. The Senator from Texas ran that campaign against me in 1992. And we will get to some issues there in a minute. Since he acknowledged he had that experience, I want to tell you about his experience and what he charged falsely.

But getting right to the point, right before we were going to vote, the week before the election day—they are very clever. They had, first, the Wall Street Journal come out with three articles. The Wall Street Journal has never mentioned me before or since. They could care less about HOLLINGS from South Carolina. But they had three spitball articles in there about the right to work and how I was against business.

They even had coordinated it with the London Economist with ''Quits for Fritz.'' Robert Novak, he came on Saturday night in ''Capitol Gang.'' And he said it is also, ''Quits for Fritz,'' ''The white-headed Senator from South Carolina will bite the dust.'' Well, I am here.

But if you want to use their logic, I would sue Dow Jones. I would sue the Wall Street Journal, that they own, for coming in and making a contribution to my opponent under the present law. Now everybody knows that is out of the question. The press is going to have freedom of the press, and we all defend it.

But under the silly roundabout analysis they give in erecting these straw men on the floor—and I think even the distinguished Senator from Wyoming said that while they did not think newspapers were covered, newspapers could write, but you would not have the money to rebut it. You see the dilemma of the Senator from South Carolina. That is exactly the way it was. I did not have the money to rebut it. I had to let it go the last weekend, going right into that election. There was not any way to buy time to rebut it. There was not any way to answer it at all.

We have that under the present law. But if you limit, as we intended back in 1974, spending as well as expenditures, then all this bundling, soft money and everything else, comes under control because you have to disclose, you have a limited amount. We will still exercise free speech, get out and hustle, like I used to do in the early days of my political career.

I ran for the legislature on $100. I went all over the county and I shook hands and saw everybody. I lucked out. I was elected. I was almost elected by free speech. So I enjoy free speech. When it is so expensive that all you can to is collect money to get on TV to collect money to get on TV to collect money to get on TV, all as expressed by Justice Byron White in the dissenting opinion of Buckley versus Valeo, ''put the Congress back on a treadmill.'' That is his expression, and so aptly expressed. You can see exactly what we have.

Mr. President, I yield the floor to my distinguished colleague. I appreciate his leadership on this floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I rise to support the initiative offered today by the Senator from South Carolina. I do not very often come to the floor supporting constitutional amendments. I think we ought to change the Constitution very rarely.

I think the Supreme Court has made an error here in the Buckley versus Valeo decision. It was a decision by one vote in the Supreme Court, and the decision stands logic on its head. The Supreme Court said it is perfectly constitutional to limit campaign contributions but it is not constitutional to limit campaign spending. Limiting campaign spending, they say, is an abridgement of free speech. I have no idea how the Supreme Court can conceive a logic like that that says it is fine to limit campaign contributions, but you cannot limit spending. We ought to be able to have reasonable spending limits in campaigns.

The Senator from South Carolina brings an initiative to the floor that is the first initiative, in my judgment, in this Congress that says let's reform our campaign finance system in this country. If you need evidence that that needs doing, pick up any paper and go to any page in the last 6 weeks. If you still need evidence, it means you cannot read. All around us there is evidence that we must reform this campaign finance system.

Will Rogers once said something that is probably appropriate to quote in this Chamber, a Chamber that used to have spittoons between every desk, he said, ''When there is no place left to spit, you either have to swallow your tobacco juice or change with the times.'' We either have people willing to vote for this and change with the times, understanding this is necessary and it is necessary now, or I hope they will sit around here and swallow their tobacco juice, because if you still believe campaign finance reform is not necessary, if you still believe, as some do, that there is not enough spending in campaigns and we ought to spend more, and there are people here who believe that, then you are sadly off track with what the American people know about American politics.

I want to refer to a chart. The chart shows spending since 1992. Wages have gone up 13 percent since 1992. Spending on education has increased 17 percent since 1992. So in 4 years, 1992 to 1996, wages in America went up 13 percent, spending on education went up 17 percent, and spending on politics in our country went up 73 percent, 73 percent.

There are people still in this Congress who say and have said repeatedly there is not enough spending in American politics. I have no idea what part of the world you would look in order to find their head. How on Earth can you decide with the kind of political inflation we have seen, where the spending on politics in America outstrips by multiples the spending on other things, how on Earth can you conclude there is not enough spending in politics? The fact is there is too much spending in politics.

Now, we could change that by ourselves. We do not need changes to the Constitution. In 1992, the election that Senator HOLLINGS was speaking of, I was running for the Senate in 1992. I said to my opponent, let us provide in North Dakota the most unusual campaign in America. I was already an incumbent, a Member of the House of Representatives, so I said I am better known than you are, but let me make you a deal. I said I will propose this. Let us decide between the two of us not to do any advertising—no television, no newspapers, no radio, no advertising at all, neither of us. We pledge to do that, and instead pool our money, and from September 1, Labor Day, to the election day in November, let us, once a week, buy prime time television statewide in North Dakota, pool our money, pay half the costs, each of us. We come to this, 1 hour, each week, prime time, with no notes, no handlers, just us, and no moderator, and we spend an hour a week on prime time television, the two of us, telling North Dakotans why we are running for public office, what we believe in, what our passion is, what we believe is necessary for the future of this country. At the end of those 8 weeks you will be as well-known as I am, because I am an incumbent, I am already well-known, you will be as well-known as I am. Prime time, an hour a week, 8 weeks, we could simulcast throughout the State, and at the end of the 8 weeks, North Dakota would have the most unique campaign in the country. No slash and burn 30-second ads, none. There would only have been 8 hours of debate between two people who desired to hold public office and who told the people why they aspire to be able to be given this public trust, why they wanted to hold public office, what their dreams were for the future of this country, what their vision was in public policy changes for America's future.

It would have been the most unique campaign in the country. I regret my opponent said no. I do not know why he said no. He said no. It was a mistake on his part. I am here, so I can say it was a mistake on his part. I think it would have been a better campaign for him and for me had he accepted it, and certainly a better campaign for North Dakotans. But he chose to run the kind of campaign that I had to respond to with 30-second ads here and 30-second ads there, and those are not very informative.

Despite the fact that we have these techniques in the 30-second ads, I might say to my friend, the Senator from South Carolina, I introduced a bill dealing with that in the Congress, the 30-second ads. Do you know that in political spending, a substantial amount of the money in all campaigns goes to television. The law requires that the television stations provide the lowest rate that they provide for their commercial advertisers, the lowest rate for political advertising. So I suggested that we require that the law say that the lowest rate for political advertising will only apply to commercials that are at least 1 minute in length, and only commercials in which the candidate appears on the commercial—75 percent of the commercial. Get rid of the slash and burn 30-second ads, no more of the anonymous voices with slash and burn negatives. I think that is the right incentive, but that is a different subject for a different date.

My point is, there is no one I think who can credibly argue that we are not spending enough in politics. Clearly, political spending is mushrooming in this country. What shall we or could we do about it? The Senator from South Carolina offers a solution. His solution is one that says let us provide that with the right approach we could reasonably limit campaign expenditures. The Supreme Court has said that

is unconstitutional. The Senator from South Carolina says, well, change the Constitution. We should never approach that easily or quickly, but I am with him. Frankly, I guess I would like to see us go to the Supreme Court a second time, and say will you not correct the error you made the first time? I think there might be a chance of getting that done because it was a decision by one vote.

In any event, I think that one of the solutions for campaign finance reform is to limit campaign spending. Is that an inhibition of free speech? Is it an inhibition of free speech to tell somebody who has $100 million, ''You can't spend $30 million buying a seat someplace''? Is that what the Framers of the Constitution decided democracy was about—to make some money, ante up to the trough, and plunk down $30 million and buy a seat? I don't think so. I don't think that's what the method of selecting people who serve in representative government was envisioned to be by the Framers of our Constitution.

This is the first effort to say to my colleagues: Do you believe in campaign finance reform, or don't you? Campaign finance reform. Boy, if we need more discussion about that, then this must be an empty well; this must be a pit without a bottom.

I want to describe what we have had on campaign finance reform in a decade. We have had 6,700 pages of hearings, 3,300 floor speeches, 2,700 pages of Congressional Research Service reports, 113 Senate votes, 522 witnesses, 49 days of testimony, 29 different sets of hearings by 8 different congressional committees, 17 filibusters, 8 cloture votes on one bill alone, and one Senator arrested and dragged to the floor of the Senate. I wasn't here at that point, but I assume Senator HOLLINGS was and could describe in remarkable detail whoever was dragged to the floor. And there were 15 reports issued by 6 different congressional committees.

Now, given that history, can we find some Senators who say we are not ready and it is not time for campaign finance reform? The honest answer, by some, is: Let's not have any reform. Some would say: Let's decide there ought to be more money spent. Let's make campaigning a commercial product. Let's have campaigns compete with Rolaids, dog food, gasoline, and automobiles, in terms of consumer preference. Whoever has the most money can advertise the most.

But the Senator from South Carolina has raised, for most of this afternoon, the right questions. We can spend forever now, talking about what happened in the past. We will and we should. There isn't anything about campaign finance abuses that ought not be investigated if there are reasonable and credible claims of abuses. The FBI is investigating some questions. The Justice Department is investigating some questions. Yesterday, we decided—and I voted for it, as did the Senator from South Carolina—that a committee ought to investigate some of these questions.

There are some serious questions about foreign countries intending to influence American elections that ought to be investigated, and they will be. The American people deserve to know that is the case. But the American people deserve more than just a look back. The American people deserve a Congress that is going to look ahead and say, how do we respond to this question of galloping inflation in campaign finance spending? The galloping inflation of a campaign system that seems almost out of control—spending more and more and more money in State after State, in district after district. There are a hundred reasons to prevent something, and it is easy to do.

The Senator from South Carolina had the job this afternoon of coming and supporting an affirmative proposition, the first proposition on the floor of the Senate to respond to campaign finance reform. I think it was Mark Twain who was asked once to be a participant in a debate. He said, ''Of course, I will be happy to debate, provided I get to take the negative side.'' He was told, ''But you have not asked what the subject was.'' And he said, ''The subject doesn't matter. You don't need any preparation to be on the negative side.''

That is pretty much true with any debate. The easiest proposition in the world is to be on the negative side. Senator HOLLINGS brings to the floor a proposition that is very simple. This proposition is that what is wrong with campaigns in American politics today is too much money is spent. There is too much money around. This is not a democracy that was on the auction block, for sale.

The framers of our Constitution did not envision that representative government was part of a bidding process. We have tried, in a number of different ways, to propose that we have reasonable limits that competitors in this political system would agree to, and we have discovered that the Supreme Court says those limits are unconstitutional. As much as I disagree with the Supreme Court, their decision stands. The Senator from South Carolina now says, let us alter that by making the change he proposes. Does it infringe on free speech? I don't think so. Would it hurt our political system? No, it would help our political system. Would it restore the confidence of the American people in this system? I think so. Would it do the right thing in trying to propose some sensible spending limits that are enforceable? Sure.

Now, we can turn this down, and there may be the votes to do that. But the question everyone ought to ask for those who turn this down is, what next? If you decide this is not the way, then what is the way? Or do you like things just as they are? Do you find recreational reading about campaigns, about the political system in our country, up to its neck in money, do you find that interesting and fun to read about? Or do you really believe that there are ways for us to make some sense out of campaign finance reform in a way that would improve this system?

We had campaign finance reform over 20 years ago, in the 1970's, and it worked for awhile. I think there are people on all sides of the political spectrum who have stretched that and distorted it and discolored it in dozens of ways and found loopholes and hired the best minds to figure out how you jump the fence and get under the fence and through the fence, and the 1970's reforms don't work anymore. So the question will be, should we reform this system now? Or should we just let this roll along and decide it is just fine?

The American people know the answer to that. The American people understand that things are not just fine. The American people support campaign finance reform. This is the first bill and the first opportunity Members of the Senate will have to say: I want to stand up for campaign finance reform.

I ask those who say ''no'' to this, then what? Do you believe the current system works? If you do, you can fit in a mighty small phone booth with all the rest of the American people who believe as you do. If you believe this system is broken and needs to be repaired, if you believe this ought to be fixed, that we ought to stand up for our political system and for its future health, then I think this is a reasonable approach to decide that spending limits make sense. I intend to vote for it. I was pleased to cosponsor the initiative offered by the Senator from South Carolina.

I yield the floor.

Mr. HOLLINGS. Mr. President, I understand that we are about to close debate for this afternoon. Let me thank the distinguished Senator from North Dakota, because he put the issue involved in a very calm and succinct fashion. What we have done here was done with tremendous caution. We haven't come and said, ''Here is the solution.'' We have come and said, ''Here is the authority to solve it.'' Now, they bring in these red herrings and everything about the freedom of speech. We are not disturbing the freedom of speech at all. We would not disturb the freedom of speech, except for Buckley versus Valeo, which did put a hole in that first amendment, as they use that expression.

They say we are limiting the freedom of speech for the political contributor. He can only give so much. If that is what it is, if money is the expression, then that group is limited. But the real evil in causing our dilemma here over the past 30 years, particularly with this Colorado decision now that puts a premium on buying the office by the national parties, if we don't act now to at least have the authority, we don't say in this amendment that the distinguished Senator from Kentucky is

right. We don't say that the distinguished Senator from Kentucky is wrong. He may later on, with the authority, prevail. They might increase spending. Like I say, we are not spending more on yogurt and Crackerjacks, and whatever else they had around here. I have forgotten the things they brought up. I would not have dared to stand up as a candidate and say I spent $86,000 for food. I could not hope to get elected in South Carolina buying $86,000 worth of lunches. That, perhaps, points to the dilemma.

The public that I represent and have worked with over the years really is asking and begging. That is why they included the States.

Mr. President, we know that, as in warfare, he who controls the air controls the battlefield. In politics, he who controls the airwaves controls the campaign. That is where all the money is. That is what we are trying to limit. But I do not say that by voting for this that you limit. I only say that by voting for this you give constitutional authority because you see the extremes of the Supreme Court—it is the ''Extreme Court of the United States''—when they come with the Buckley versus Valeo distortion. It is the ''Extreme Court of the United States'' that comes with Colorado Republican Federal Campaign Committee against the Federal Election Commission.

So, right to the point, we are saying that we can amend this Constitution, that the last five of six amendments dealt with elections, that certainly the weight of money as qualifying a vote was constitutionally outlawed in the 24th amendment. We ought to outlaw extreme and expensive expenditures in this. That would be the 28th amendment, I think. They approved these particular amendments in 18.1 months, which was the average. We know we can get this approved next year in 1998, and we will be on the road to really getting campaign finance reform.

This is the acid test. Do you believe in limiting, or do you not believe in limiting? We are talking about expenditure of paid speech—not free speech. It does not affect free speech whatever. You don't affect it under the Constitution. We wouldn't dare try to affect it under the Constitution. And, of course, after the 30 years and all of the debates in three Congresses having given us a majority here in the U.S. Senate saying we believe in a constitutional amendment and let's see if we can at least get that majority, they are really coming now and are so opposed to McCain-Feingold and are so opposed to any campaign finance reform as to vote this down. Then we will know exactly where they stand.

I thank my distinguished colleague from Kentucky. I appreciate the debate this afternoon.

I yield the floor.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

## MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 5 minutes each.

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

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, March 11, the Federal debt stood at $5,357,359,481,153.10.

One year ago, March 11, 1996, the Federal debt stood at $5,017,404,000,000.

Five years ago, March 11, 1992, the Federal debt stood at $3,848,675,000,000.

Ten years ago, March 11, 1987, the Federal debt stood at $2,249,369,000,000.

Fifteen years ago, March 11, 1982, the Federal debt stood at $1,048,663,000,000 which reflects a debt increase of more than $4 trillion ($4,308,696,481,153.10) during the past 15 years.

## NOMINATION OF FEDERICO PEÑA

Mr. KYL. Mr. President, today, I voted in favor of Federico Peña to be the new Secretary of Energy for the Clinton administration in the sincere hope that he will be able to provide the Department of Energy with the leadership and direction it needs to provide the proper stewardship of our national energy and security needs in the 21st century.

I have addressed the Energy and Natural Resources Committee with my grave concerns about the current direction of the Department of Energy, especially with respect to the maintenance and stewardship of our nuclear weapons complex. I wish to use this forum, and the occasion of the Senate vote on Federico Peña, to restate my concerns and to reiterate my hope that the current trend at the Department of Energy will be reversed.

Of particular concern has been former Secretary Hazel O'Leary's technically insupportable insistence that the United States can both maintain a credible nuclear deterrent and permanently forego nuclear testing. What is more, her lack of familiarity with the critical work of the Nation's nuclear weapons laboratories appears to have emboldened her to exert immense pressure on their directors to abandon the labs' longstanding view that the nuclear stockpile cannot be certified without periodic underground testing.

Indeed, the nuclear weapons complex that the next Secretary of Energy will inherit from former Secretary Hazel O'Leary is a shadow of its former self, thanks in no small measure to a Clinton administration policy which the distinguished chairman of the House National Security Committee, Representatives FLOYD SPENCE, has called erosion by design. In releasing a study of this reckless policy on October 30, 1996, Representative SPENCE observed that:

''The past four years have witnessed the dramatic decline of the U.S. nuclear weapons complex and the uniquely skilled workforce that is responsible for maintaining our nuclear deterrent. The Administration's laissez-faire approach to stewardship of the nuclear stockpile, within the broader context of its support for a Comprehensive Test Ban Treaty, is clearly threatening the Nation's long-term ability to maintain a safe and reliable nuclear stockpile. * * * In my mind, it's no longer a question of the Administration's ''benign neglect' of our Nation's nuclear forces, but instead, a compelling case can be made that is a matter of 'erosion by design.''

Mr. President, I share the concerns expressed in Representative SPENCE's study about the implications of the Clinton-O'Leary program for denuclearizing the United States. In this regard, two portions of the Spence report deserve special attention.

Stockpile stewardship:

The Clinton Administration's Stockpile Stewardship and Management Program [SSMP] entails significant technological risks and uncertainties. Certification that U.S. nuclear weapons are safe and reliable—in the context of a Comprehensive Test Ban Treaty—depends on developing highly advanced scientific diagnostic tools that do not yet exist and may not work as advertised. Funding shortfalls, legal challenges and other problems are almost certain to continue to impede progress in achieving the program's ambitious goals, and raise serious doubts about the ability of the program to serve as an effective substitute for nuclear testing. The Administration's commitment to implementing the SSMP and, more broadly, to maintaining the U.S. nuclear stockpile is called into question by DOE's failure to adequately fund the SSMP and to conduct important experiments.

Dismantling the DOE weapons complex:

Unprecedented reductions and disruptive reorganizations in the nuclear weapons scientific and industrial base have compromised the ability to maintain a safe and reliable nuclear stockpile. The cessation of nuclear-related production and manufacturing activities has resulted in the loss of thousands of jobs and critical capabilities * * *. DOE still lacks concrete plans for resuming the production of tritium * * *. Unlike Russia or China, the United States no longer retains the capacity for large-scale plutonium ''pit'' production and DOE's plans to reconstitute such a capacity may be inadequate.

### INFORMATION AND PHYSICAL SECURITY PROBLEMS

Yet another alarming legacy of former Secretary O'Leary's tenure as Secretary of Energy could be the repercussions of her determination to declassify some of the Nation's most closely held information. As a result, efforts by unfriendly nations—and perhaps subnational groups—bent on acquiring nuclear weapons capabilities have been afforded undesirable insights into designs, developmental experiences and vulnerabilities of U.S. nuclear devices.

Of particular concern is the fact that data concerning the precise quantities