were strictly a case of endorsing his views as opposed to mine. But the FEC has never been a body where that has been a litmus test applied to Presidential nominees.

Whether or not this nominee is confirmed will not determine the real issue for Congress—and that is whether we will pass meaningful campaign finance reform laws to restore the public's faith in our elected system of Government.

The fundamental problem we face is not whether Bradley Smith is on the FEC, but whether or not this body, before we adjourn this Congress, is ever going to address the fundamental campaign laws that some of us would like to see modified, including the McCain-Feingold legislation, which has been before this body in the past.

It is time, in my view, to confirm these nominees to ensure that this agency has a full complement of dedicated, talented Commissioners sworn to uphold the laws on the books.

It is time to get on with the work of the Senate to reform our campaign finance laws and give the FEC the resources it needs —both financially and statutorily—to restore the public's confidence in our electoral system.

I yield the floor at this time.

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

Mr. MCCONNELL. Mr. President, let me say briefly to the ranking member of the Rules Committee, I listened carefully to his statement. I thank him very much for respecting the process by which we have selected our nominees for the Federal Election Commission. He made it clear that, had the choice been his, he would not have picked Professor Smith. I will make it clear a little later that had the choice been mine, I would not have picked Commissioner McDonald. This is the way the FEC is supposed to work. I thank my colleague for honoring that tradition.

The PRESIDING OFFICER. Under the previous order, the Senate is to recess at 12:30.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I be recognized at that point to use such time as I am allotted.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:49 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

NOMINATION OF BRADLEY A. SMITH, OF OHIO, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION—Continued

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Wisconsin is recognized.

Mr. FEINGOLD. Thank you, Mr. President.

Today we are debating a nomination that may be just as important to the cause of campaign finance reform as any bill that has been considered by the Senate in recent years. Tomorrow's vote on the nomination of Brad Smith may be just as significant for campaign finance reform as any of the votes we had on those bills.

The issue here is the nomination of Brad Smith to a 6-year term on the Federal Election Commission, and I oppose that nomination.

Like other speakers, I take note of the photograph of Brad Smith's family shown today on the floor only to make a point that this nomination is certainly not analogous to treatment that has been given to judicial appointments, where we have had to wait for years and years for a confirmation vote. Mr. Smith was just nominated a couple of months ago. So this has not been a long drawn out delay of his nomination that would do harm to him, his family, or anybody else. In fact, I rejected that kind of approach to his nomination because, as far as I know, Professor Smith is a perfectly reasonable man in terms of his integrity and his academic ability and the like. He deserved a vote on the floor and he is going to get it, a lot faster than many judicial nominees that President has sent to us.

The problem is that Professor Smith's views on Federal election laws as expressed in Law Review articles, interviews, op-eds, and speeches over the past half decade are startling. He should not be on the regulatory body charged with enforcing and interpreting those laws.

So when words are used on the floor such as ''vilification,'' or questioning his integrity, or any other excuse not to get to the real issue, I have to strongly object. This debate is simply on the merits of what Professor Smith's views are of what the election laws are or should be.

Over the course of the debate—and I note that a number of my colleagues will be joining me on the floor to set out the case against Professor Smith—we will explain, and I hope convince, our colleagues and the public that this nomination has to be defeated.

Let me again make it clear, because I think there was some attempt to suggest the opposite, that I hold no personal animus towards Professor Smith. It is not a matter of personality. I am sure he is a good person. I do not question his right to criticize the laws from his outside perch as a law professor and commentator. But his views on the very laws he will be called upon to enforce give rise to grave doubt as to whether he can carry out the responsibilities of a Commissioner on the FEC. It just isn't possible for us to ignore the views he has repeatedly and stridently expressed simply because he now says he will faithfully execute the laws if he is confirmed.

We would not accept, nor should we accept, such disclaimers from individuals nominated to head other agencies of government. Sometimes a cliche is the best way to express an idea. Professor Smith on the FEC would really be the classic case of the fox guarding the hen house.

Let me illustrate this by pointing out the views of Bradley Smith that caused me and many others who care about campaign finance reform to have a lot of concern about his being on the FEC.

Professor Smith has been a prolific scholar on the first amendment and the Federal election laws, so there is a rich written record to review. Let's start with one of his most bold statements. In a 1997 opinion in the Wall Street Journal, Professor Smith wrote the following:

> When a law is in need of continual revision to close a series of ever changing ''loopholes,'' it is probably the law and not the people that is in error. The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.

That is right. The man who we may be about to confirm for a seat on the Federal Election Commission believes the very laws he is supposed to enforce should be repealed. Thomas Jefferson said we should have a revolution in this country every 20 years. He believed laws should constantly be revised and revisited to make sure they are responsive to the needs of citizens at any given time. Yet Professor Smith sees the need for closing a loophole in the Federal elections laws as evidence that the whole system, the whole idea of campaign finance reform laws, should be completely scrapped. In other words, what would be the purpose of the Federal Elections Commission under his view of the world?

A majority of both the House and the Senate have voted to close the loophole in the law known as soft money. We know that loophole is undermining public confidence in our elections and our legislative process. We have seen that loophole grow until it threatens to swallow the entire system. Many Members think it already has. A majority of the Congress wants to fix that problem. We are willing to legislate to improve an imperfect system. But Brad Smith wants to junk the system entirely and let the big money flow, without limit.

So what are we doing? We are about to put somebody with that view on the body charged with enforcing laws we pass. I don't think this makes any sense.

Another statement by Professor Smith that I think should give us pause, in a policy paper published by the Cato Institute, for whom Professor

Smith has written extensively, he says the following:

The Federal Election Campaign Act and its various State counterparts are profoundly undemocratic and profoundly at odds with the First Amendment.

Of course, this is consistent with his views that the Federal Election Campaign Act should be repealed. The FEC has loopholes and doesn't work. Not only that, it is profoundly undemocratic and profoundly at odds with the first amendment.

How can a member of the FEC, how can Brad Smith, reconcile those views with his new position as one of six individuals responsible for enforcing and implementing the statute and any future reforms that Congress may pass? He has shown such extreme disdain in his writings and public statements for the very law he would be charged to enforce that I just don't think he should be entrusted with this important responsibility.

Let me repeat, this nominee says that the Federal Election Campaign Act is profoundly undemocratic and profoundly at odds with the first amendment. Every bit of it. I am sure this body doesn't agree. Is it profoundly undemocratic to believe that the tobacco companies, the pharmaceutical companies, and the trial lawyers shouldn't be pouring money into campaigns through the parties, while they seek to influence legislation that affects their bottom lines? Is it profoundly undemocratic to believe that $20,000 per year is enough for a wealthy person to be able to contribute to a political party? Is it profoundly undemocratic to argue that the spending of outside groups to attack candidates should be reported? That the public has a right to know the identities and financial backers of groups that run vicious, negative ads against candidates just weeks before an election?

I, for one, take great pride in being a strong defender of the first amendment. I wouldn't vote for a bill that was ''profoundly at odds with the first amendment,'' and I don't think my colleagues, who form a majority of the Senate in support of campaign finance reform, would either. But we are being asked to confirm to a seat on the body that will implement these laws someone who views these laws and our views as totally illegitimate.

Professor Smith does believe, apparently, that disclosure is a good thing, but that is all the regulation he wants to see in our elections.

In another article, Professor Smith writes: I do think that Buckley is probably wrong in allowing contribution limits. He believes and he reaffirmed this belief in the hearings on his nomination held by the Rules Committee that contribution limits are unconstitutional. Professor Smith's view, as quoted by the Columbus Dispatch, is that people should be allowed to spend whatever they want on politics. Whatever they want. He thinks there is no problem with unlimited contributions, none. Congress need not concern itself with that issue at all, apparently. In an interview at MSNBC he said: I think we should deregulate and just let it go. That is how our politics was run for over 100 years.

Think about what this is. We are asking somebody to enforce our election laws who says, literally, ''just let it go.'' That is some enforcement. Professor Smith would have us go back to the late 19th century before Theodore Roosevelt pushed through the 1907 Tillman Act and prohibits corporate contributions to Federal elections.

The limits on contributions from individuals to candidates—the very core of the campaign finance law that the Supreme Court upheld in Buckley v. Valeo and again in Nixon v. Shrink Missouri Government PAC—Brad Smith would junk these provisions along with the very statute that created the FEC, the body on which he now seeks to serve.

Professor Smith thinks that contribution limits are expendable because, in his view, the concerns about corruption are just overblown.

Let's look at what Mr. Smith has to say about that: He wrote in a 1997 law review article:

Whatever the particulars of reform proposals, it is increasingly clear that reformers have overstated the government interest in the anticorruption rationale. Money's alleged corrupting influence are far from proven.

Well it just so happens, Mr. President, that the U.S. Supreme Court doesn't agree. Just a few months ago, the Supreme Court issued a ringing reaffirmation of the core holding of the Buckley decision that forms the basis for the reform effort. The Court once again held that Congress has the constitutional power to limit contributions to political campaigns in order to protect the integrity of the political process from corruption or the appearance of corruption. In upholding contribution limits imposed by the Missouri Legislature, Justice Souter wrote for the Court:

[T]here is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters.

Mr. Smith thinks the dangers of corruption are overblown. The Supreme Court says they are obvious. Professor Smith's disdain for campaign finance reform is so great that he won't even admit the most basic fact about our political life. That at some point, in some amount, contributions can corrupt. Or at least they look like they corrupt, which the Supreme Court recognized is just as good a reason to limit contributions to politicians. The appearance of corruption, Mr. President. We all know it's there. We hear it from our constituents regularly. We see it in the press, we hear about it on the news. But Brad Smith says the corrupting effect of money on the legislative process is far from proven.

Back home if I said that at any town meeting that is a laugh line. Americans scoff at the notion that big money is not corrupting our system.

The Supreme Court held, and by the way, this wasn't a narrowly divided Supreme Court decision in the Shrink Missouri case. This was a 6–3 decision, with a majority containing four Justices appointed by Republican Presidents including Chief Justice Rehnquist. The Supreme Court held as follows:

Buckley demonstrates that the dangers or large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible. The opinion noted that the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem of corruption is not an illusory one.

''The problem of corruption is not an illusory one,'' said the Court. The Supreme Court got it 25 years ago. Brad Smith still doesn't believe it. Professor Smith says: ''Money's alleged corrupting influence are far from proven.'' That's what this debate is all about, Mr. President. If someone can't even see the danger in unlimited contributions, how can he adequately fulfill his duties as an FEC commissioner?

The campaign finance laws are not undemocratic. They are not unconstitutional. They are essential to the functioning of our democratic process and to the faith of the people in their government. As the Supreme Court said in the Shrink Missouri case:

Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance. Democracy works 'only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.

Now, in the wake of that clear declaration by the Court, how can Bradley Smith continue to rationalize the gutting of the Federal Election Campaign Act? And how can we allow him the chance to carry it out as a member of the FEC?

We need FEC Commissioners who understand and accept the simple and basic precepts about the influence of money on our political system that the Court reemphasized in the Shrink Missouri case. We need FEC Commissioners who believe in the laws they are sworn to uphold. We need FEC Commissioners who will be vigilant for efforts to evade the law, to avoid the clear will of the Congress. We need FEC Commissioners who will be alert to the development of new and more clever loopholes, tricks by candidates or parties or advocacy groups to avoid constitutionally valid limits on their activities or requirements that they operate in the light of day. We do not need FEC Commissioners who have an ideological agenda contrary to the core rationale of the laws they must administer.

As any American who has been watching ''The West Wing'' in recent

weeks knows, nominees to the FEC come in pairs, one Democratic, one Republican. And the members of the Commission by tradition are suggested by the congressional leadership to the President. Now it would be a pipe dream to think that the President would actually nominate two Commissioners at once who favor campaign finance reform, as has happened on TV. No, for reality to imitate art to that extent that would be too much to hope for. But at least we shouldn't put the foremost academic critic of the election laws on the Commission. Surely the Republican leadership can suggest another qualified individual for this post who doesn't believe the election laws should be repealed.

We all know this nomination was made as part of an agreement to get a vote on the confirmation of another presidential nominee last year. I am sorry that the Senate's great responsibility to advise and consent to nominations has become a game of political horse trading. In the end, I think the country suffers when these kind of games are played, but I know it goes on, and I did not stand in the way of this most recent agreement to bring Mr. Smith to a vote as part of a larger package of nominations. But we still have a duty of advise and consent on each nomination, and I ask my colleagues to take a very hard look at this particular nomination and after doing so I hope you come to the conclusion to vote no.

The public is entitled to FEC Commissioners who they can be confident will not work to gut the efforts of Congress to provide fair and democratic rules to govern our political campaigns. The time has come for the Senate to say no. The nomination of Brad Smith should not be approved.

I reserve the remainder of my time and I yield the floor.

Mr. WELLSTONE. Mr. President, I rise today to join my colleague, Senator FEINGOLD, and strongly oppose the nomination of Bradley A. Smith to the Federal Election Commission. Mr. Smith has no confidence in federal election law, indeed he believes it to be ''undemocratic'' and ''unconstitutional.'' As a member of the FEC he will have the opportunity to put those views into practice and actually shape election law through rulemaking. But worst of all, Mr. Smith doesn't just disagree with the law, he disagrees with the express purpose of the law—limiting the corrupting influence of money in politic. An FEC nominee who's own personal beliefs and philosophies are so at odds with the purposes and authority of the Federal Election Campaign Act should be rejected by a pro-reform Congress.

I oppose the Smith nomination not only because his philosophies are antithetical to present law, but because I believe they are antithetical to broad political participation, to lowering the price of access to the legislative process, restoring Americans faith in our system, and they are antithetical to everything that is necessary for a functioning democracy.

But before I make my case that the Senate should reject this nomination, let me say this. I have met Mr. Smith and found him to be an earnest and learned advocate of his point of view. I have no reason to question Mr. Smith's honor or his intentions and even his harshest critics do not make the claim that Mr. Smith does not have a strong technical understanding of the law. He seems to be a good guy, so this is not personal and I hope that he does not take my criticisms personally. But I do feel that given Mr. Smith's views, he is a poor fit for this job.

Mr. Smith is a very vocal and articulate critic of current election law—to say nothing of the various reform proposals introduced by members of this body. In fact, Mr. Smith is widely regarded as one of the foremost critics of the current campaign finance system. He has written numerous articles on the subject, he has frequently appeared before Congressional Committees, sat on panels and has appeared on television. Throughout the body of his writings and public appearances he has been consistent: He believes the Federal Election Campaign Act is unworkable, unconstitutional, and undemocratic.

Mr Smith takes the argument one step further: he is an aggressive proponent of near complete deregulation of the campaign finance system and believes that nearly any attempts to regulate the relationship between money and elections is folly. For example, in a 1997 Georgetown Law review article Mr. Smith states quote:

> I have previously argued at length that campaign finance regulation generally makes for bad public policy. Campaign finance regulation tends to reduce the flow of information to the public, to favor select elites, to hinder grass roots political activity, to favor special interests, to promote influence peddling, and to entrench incumbents in office.

I don't want to belabor this point. Other colleagues are speaking to this issue and in all honesty it's the least of my objections to the nomination. But in all I would simply say this to my colleagues: I cannot remember a time when this body confirmed a nominee—for any executive position—who's own views were so completely at odds with the law he was meant to uphold. Mr. Smith claims that his own strong opinions notwithstanding he can and will enforce the law. Still, I don't see how he can be true to both the law and his convictions. He will be responsible for administering a law that in his view that pose a threat to ''political liberty.'' He will be appointed to perpetuate a system that he feels was made ''more corrupt and unequal'' by the Federal Elections Campaign Act. Speaking for myself, I would not want to be charged with enforcing a law that is antithetical to everything I know about politics, democracy, and good government—as Smith feels about current law. But the Senate is being asked to confirm a nominee with just that perspective.

If the FEC were simply an empty vessel, mindlessly executing the will of the Congress as stated in the Federal Election Campaign Act, Mr. Smith's extreme views would be trouble enough. But that isn't how the system works. And, in fact, the FEC has considerable leeway in interpreting FECA when it issues rules. The following are three examples of how a person with Smith's attitudes about the law could do a lot of damage to the integrity of the system of regulations that govern election spending:

No. 1. Redefining ''coordination''—Under current law, contributions to candidates are limited, but independent spending is unlimited. In order to avoid evasion of the contribution limits, the law specifies that any spending that is done in coordination with a candidate counts as a contribution to the campaign. However, the FEC currently is considering a proposed rulemaking that would define ''coordination'' so narrowly as to make it meaningless. Under the proposed rule, there would be no coordination unless the FEC could prove that a candidate specifically requested an expenditure, actually exercised control over the expenditure, or reached an actual agreement with the candidate concerning the expenditure. This rulemaking, if approved, would open a massive loophole that would enable a spender to maintain high level contacts with a campaign and still claim to be acting independently. This is a prime example of how a Commissioner can eviscerate the law while claiming to enforce it.

No. 2. Neglecting to close the ''soft money'' loophole—Soft money—which the Senate has spent years trying to ban—was basically ''created'' by an FEC interpretation of the law. Recently, a complaint filed by five members of Congress and a separate complaint filed by President Clinton have urged the FEC to close the ''soft money'' loophole administratively. The FEC's Office of General Counsel has submitted a notice of proposed rulemaking which outlines the steps that the Commission can take to close the ''soft money'' loophole if it so chooses. Brad Smith's view that it is unconstitutional to prohibit ''soft money'' makes it likely that he would reject a recommendation from the General Counsel to close the ''soft money'' loophole.

No. 3. Regulation of election-related activity over the internet—The FEC is currently considering the whole range of issues raised by the use of the internet to conduct political activity. This is a largely uncharted area, and the current and future FEC Commissioners will play an important role in determining how internet communications will be treated under the law. Brad Smith's view that the federal government should scrap all of its campaign

finance reform efforts can be expected to strongly color his policy judgment about what regulations the FEC ultimately should issue in this area of the law.

I want my colleagues to be clear on this point: This nominee is no empty vessel. He will have the opportunity to actually shape election law through rulemaking—colleagues shouldn't kid themselves that FEC commissioners can just ''follow the law'' and that their personal biases don't matter. An anti-campaign finance law Commission, can promote anti-campaign finance law rules.

Mr. President, I do want to take some time to get to the heart of my objection to the Smith nomination: He doesn't just disagree with the law, he disagrees with the express purpose of the law. The express purpose of the Federal Election Campaign Act is to limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections; regulate spending in campaigns for federal office; and deter abuses by mandating public disclosure of campaign finances. Mr. Smith doesn't just quibble with how the law achieves those goals, he disagrees with those goals completely! Mr. Smith believes that money—regardless of how much or where it comes from—has no corrupting or disenfranchising influence on elections.

For example lets look at what Smith wrote on the effect of money on how the Congress conducts its business, on what gets considered and what doesn't, on who has power and who does not. This is from ''The Sirens' Song: Campaign Finance Regulation and the First Amendment.'' Smith argues:

> If campaign contributions have any meaningful effect on legislative voting behavior, it appears to be on a limited number of votes that are generally related to technical issues arousing little public interest. On such issues, prior contributions may provide the contributor with access to the legislator of legislative staff. The contributor may then be able to shape legislation to the extent that such efforts are not incompatible with the dominant legislative motives of ideology, party affiliation and agenda, and constituent views. Whether the influence of campaign contributions on these limited issues is good or bad depends on one's views of the legislation. The exclusion of knowledgeable contributors from the legislative process can just as easily lead to poor legislation with unintended consequences as their inclusion. But in any case, it must be stressed that such votes are few.

Let me explain what I find so chilling about this statement. It would be one thing if Mr. Smith argued that money had no effect on policy. That regardless of the endless anecdotes and personal testimonials of members of Congress past and present, that having lots of money on your side buys you no extra influence in Congress. Some members of this body take that position. I think it's wrong, I think it's naive, I think the American people see through it. In other words, it would be bad enough if that was Smith's view. But isn't. He asserts that money plays a role but only on ''technical issues that arouse little public interest''—but worse, doesn't seem to be concerned about it!

It does not appear to matter to Brad Smith that money affects the process on those issues that outside of the public attention! Well with all due respect, most of what we do takes place below the surface here! We pass bills with scores of obscure provisions, hundred of pages long. No one knows what they all do, we can't know. We vote on them without knowing. It is there that the system is most ripe for abuse, where the greatest potential exists for those with the money, the clout, the access to game the system, but Mr. Smith isn't much worried about it.

I agree with Smith that it is the small, stealth provisions which are most likely to appear or disappear because of money. But where I strongly disagree with Smith is that I believe that this is a problem. It should be aberrational, not typical. I think it's outrageous that because a person is in a position to donate $200,000 to the NRSC or the DSCC that person is in a position to dictate policy—regardless of how obscure. I think it's wrong that a line in a bill can be bought and paid for with a campaign contribution. I think it's wrong that a patent extension or favorable tariff treatment is up for sale. Because the matters are obscure, they are even more ripe for abuse. I won't speak for my colleagues, but I'd like the Commissioners on the FEC to be concerned with these abuses.

For example, I point my colleagues to an excellent article in the February 7 issue of Time magazine entitled ''How to Become a Top Banana'' by Donald Barlett and James Steele. This article details how it came to pass that the U.S. government imposed 100% tariffs on obscure European imports in an ongoing attempt to force the European Union to allow market access for Chiquita Bananas. As the article notes, the U.S. Trade Representative imposed tariff rates on products essential to the economic health of several U.S. small businesses to promote the interests of a firm who does not even grow its bananas in the United States. As it turns out, campaign contributions may have played a big role. The article concludes:

> So what does the battlefield look like as the Great Banana War's tariffs approach their first anniversary? Well, the operators of some small businesses, like Reinert, are limping along from month to month. Other small-business people are filing fraudulent Customs documents to escape payment. Other businesses are doing just fine because their suppliers in Europe agreed to pick up the tariff or it applies to just a small percentage of the goods they sell. In Europe as in America, small businesses have been harmed by the U.S. tariffs. Larger companies have been mostly unaffected. And the European Union has kept in place its system of quotas and licenses to limit Chiquita bananas. Who, then, is the winner in this war?
>
> That's easy. It's the President, many members of Congress and the Democratic and Republican parties—all of whom have milked the war for millions of dollars in campaign contributions—along with the lobbyists who abetted the process. A final note. While Lindner (owner of Chiquita banana) had many areas of political interest beyond his battle with the European Union, a partial accounting of the flow of his dollars during the Great Banana War—as measured by contributions of $1,000 or more—as well as lobbying expenditures on the war, shows: Republicans—$4.2 million, Democrats—$1.4 million Washington lobbyists—$1.5 million.

Just look at the bankruptcy bills passed by the House and the Senate. I'm told Committee staff refer to the provisions based on which industry ''paid'' for them. This provision is for the credit card companies, this one for the real estate industry, and so on it goes. As the Wall Street Journal noted on April 20 in an article entitled ''Bankruptcy Reform Pits Industries Against Each Other'':

> Lawmakers like to portray the battle over bankruptcy reform as a clash of principles: stopping debtors from shirking their obligations or creditors from fleecing the needy. But in the back rooms of Capital Hill, the nature of the fight changes. Industry lobbyists, many ostensibly allied in favor of bankruptcy overhaul legislation, vie to carve out as many favors for their clients as possible at the expense other business groups. These contests pit auto companies against credit card issuers, retailers against Realtors and the Delaware bar against lawyers from the rest of the U.S.

Again, the major political parties seem to be the major winners in all of this (well, aside from the lenders)—and certainly not low and moderate income debtors. Contributions from the lending industry to both parties since 1997 tops $20 million.

But that doesn't much concern Mr. Smith, the man who would be in charge of enforcing our campaign finance laws.

Smith even argues even more explicitly that tying legislation to campaign contributions is not necessarily a bad thing. Or at least that being attentive to campaign contribution will make politicians more attentive to the public. He argues in ''A Most Uncommon Cause'':

> What reformers mean by corruption is that legislators react to the wishes of certain constituents, or what, in other circumstances, might be called 'responsiveness.' The reformist position is that legislators shape their votes and other activities based on campaign contributions. They call this corruption. Money dominates the policy making process, they argue, unfairly frustrating the popular will. . . . For one this, it is proper, to some extent, for a legislator to vote in ways that will please constituents, which may, from the legislators viewpoint, have the beneficial effect of making those constituents more likely to donate to the legislators re-election campaign.''

But who does it make them more attentive to? The wealthy, the heavier hitters, the tiny proportion of the population who can make substantial contributions to candidates. Again, the fact that Smith admits this is the case is not surprising. Many critics of private money in politics draw the same conclusion. What colleagues should find outrageous is that Smith, again,

sees nothing wrong with this relationship.

It is the money in politics which has stripped away from many Americans the capacity to have one's vote weigh as much as the person in the next polling booth, to have a vote in the South Central, LA to be worth as much as a vote in Beverly Hills. The vote is undermined by the dollar. The vote may be equally distributed, but dollars are not. As long as elections are privately financed, those who can afford to give more will always have a leg up—in supporting candidates, in running for office themselves, and in gaining access and influence with those who get elected. We all know this is the way it works. And the American people know it, too.

Bizarrely, though, Smith argues that wealth, and therefore the ability to affect elections is distributed equitably enough through out our society that the inordinate influence of money is not inordinately concentrated among a small subset of the population. In a 1997 piece entitled ''Money Talks: Speech, Equality, and Campaign Finance'' Smith states:

> Very few citizens have the talent, physical and personal attributes, luck of time and place, or wealth to influence political affairs substantially. Thus a relatively small number of individuals will always have political influence far exceeding that of their neighbors. However, to the extent that wealth (however that might be defined) than there are citizens capable of running a political campaign, producing quality political advertising, writing newspaper editorials, coaching voice, and so on. In other words, it may be true that more people are ''good looking'' than rich, it may be true that more people are ''educated'' than rich. However, the number of people capable of meaningful nonmonetary contributions to a political campaign—that is the type of contribution that will give the individual some extra say in policy-making—is much smaller than the group of monied people.

I frankly think this argument is ridiculous and insulting. It suggests that if you're not a $500 an hour consultant telling the candidate to wear earth tones, if you're not a big name pollster you can't make a meaningful nonmonetary contribution to a political campaign. No one who has actually run for office would hold this view. Taken to a logical extreme its effect would be to limit participation by those other than the monied elite—the hundred of folks who volunteer at a phone bank, put up yard signs, or write letters to the editor. My point is that almost everyone has something to offer regardless of how wealthy they are.

But there is a larger point here; the fact that Brad Smith believes that there are more people in America capable of donating $1000 than there are people who can take a few afternoons to lick envelopes. I'm not sure where Smith comes by this view but it obviously falls on its face.

Of course, it does explain where Smith is coming from. I mean, if you believe that money is speech and that campaign contributions profoundly impacts the legislative process, you are one of two things: You are either a defender of a political oligarchy of the wealthy and well-heeled or you believe that this money, this power, is distributed equally throughout society. To be fair to Smith, he genuinely seems to hold the latter view. But while this might be a less cynical reason to be comfortable with money influencing politics, he's still flat out wrong. In fact, he has it completely backward.

The picture of those who contribute the vast majority of money to candidates under the current contribution limits does not look like America, it is overwhelmingly white, male, and wealthy. A study conducted of donors in the '96 election found the following characteristics of such donors: 95 percent were white, 80 percent were male, 50 percent were over 60 years of age and 81 percent had annual incomes of over $100,000. The population at large in the United States had the following characteristics at that time: 17 percent was non-white, 51 percent were women, 12.8 percent were over 60, and only 4.8 percent had incomes over $100,000.

For example, the organization Public Campaign found that during the 1996 elections, just one zip code—10021, in New York City—contributed $9.3 million. There are only 107,000 people in that exclusive slice of Manhattan real estate and the vast majority (91 percent) are white. On the other side of the lop-sided equation are 9.5 million residents of the 483 U.S. communities that are more than 90 percent people of color. They gave $5.5 million. Are these groups equal before the law?

Additionally, Only a spectacularly small portion of U.S. citizens contribute more than $200 to political campaigns. In the first half of 1999:

> Only 4 out of every 10,000 Americans (.037%) has made a contribution greater than $200.
>
> As of June 30, 1999 only .022% of all Americans had given $1000 to a presidential candidate.
>
> In the '98 election, .06% of all Americans gave $1000, or 1 in 5000.

So again, Smith has the argument precisely backward, because so few can effectively participate through campaign contributions it is inherently unequal means of political participation. The fact that a few actors—big corporations, Unions, the truly wealthy—have nearly limitless funds to pour into races exacerbates the disparity between the average citizen and the monied citizen. But other means of political participation are inherently limited—no matter who you are, there are still no more than 24 hours in a day or seven days in a week—do no one has that much of an advantage.

But Smith goes further than simply arguing that campaign contributions can buy legislative favors, he argues in ''Money Talks'' that money is speech—not in the sense that it buys speech or allows for getting out the candidates message—but in the sense that making a campaign contribution is an act of symbolic, political speech in of itself. This argument, I should point out to colleagues, goes way beyond the Supreme Court's linkage between speech and money in Buckley. Smith argues:

> The Court's rationale that contribution limits only ''marginally'' burden First amendment rights is suspect on its own and at odds with the traditional First Amendment right of association. The Court was correct that the size of a contribution does not express the underlying basis of support, but wrong when it held that it involved ''little direct restraint on political communication.'' Is not a substantially different message communicated when a local merchant pledges $10,000 to one charity (or political campaign) and just $25 to another? In such an instance, is it not the size of the donation, rather than the act of donating, that sends the strongest message to the community? It is true that the basis of support for the cause (or candidate) remains vague, yet the message in each gift is substantially different.

Combined with the fact that only a tiny percentage of voting citizens are making large hard money contributions (much less truly massive soft money contributions) Smith is advocating for a system where much political speech is effectively closed to most Americans because they can't muster the means to make a send a loud ''message.''

If money equals speech, we can clearly see who we are letting do all the talking—or at least those are the folks that we're listening to. The hopes, dreams, concerns, and problems of the vast majority of the American people are going unheard because the bullhorn of the $1,000 contribution drowns them out. Why would be want to make that bullhorn bigger and louder? Why would we want to give greater access and more control to those who already have it locked up? But that is the direction that this FEC nominee would see us go in.

Like Smith, I too am a critic of our mechanism for financing of elections. This current system of funding congressional campaigns is inherently anti-democratic and unfair. It creates untenable conflicts of interests and screens out many good candidates. By favoring the deep pockets of special interest groups, it tilts the playing field in a way that sidelines the vast majority of Americans. But unlike Smith, I support reforms that would expand political participation. Unlike Smith I have no illusions that inequities in wealth—in a system where wealth rules—do not result in a distorted product.

In 1966 in the case of Harper versus Virginia State Board of Elections, the Supreme Court struck down a poll tax of $1.50 in Virginia state elections. The Court stated in its decision that, quote, the ''State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth.''

In 1972 in Bullock versus Carter, the Court again faced the issue of wealth in

the electoral process and again stated that such a barrier was unconstitutional. This time, the question concerned a system of high filing fees that the state of Texas required candidates to pay, in order to appear on the primary ballot. The fees ranged from $150 to $8,900.

The Court invalidated the system on Equal Protection grounds. It found that, with the high filing fees, quote: ''potential office seekers lacking both personal wealth and affluent backers are in every practical sense precluded from seeking the nomination of their chosen party, no matter how qualified they might be and no matter how enthusiastic their popular support.''

The ''exclusionary character'' of the system also violated the constitutional rights of non-affluent voters. ''We would ignore reality,'' the Court stated, ''were we not to find that this system falls with unequal weight on voters, as well as candidates, according to their economic status.'' unquote. These cases may have no literal legal implications for our system, where deep pockets—either one's own or one's political friends—are a prerequisite for success. But they do have a moral implication.

I do believe that in America's elections today we have a wealth primary, a barrier to participation to those who are not themselves wealthy or who refuse to buy in to monied interests. Is it an absolute barrier? No. Does it mean that every candidate for federal office is corrupt? No. However, the price we pay is what the economists would call the ''opportunity cost.'' It is a cost represented by lost opportunities, by settling for those who are most electable rather than those who are the best representatives of the American people. And I do not believe that in a system where money equals power, inequality of wealth can be reconciled with equality of participation.

That, I say to my colleagues, is why I cannot support Mr. Smith's nomination. And it isn't that he is a critic of the present system. Indeed I agree with Smith that fixing the system is not fundamentally an issue of tightening already existing campaign financing laws, no longer a question of what's legal and what's illegal. The real problem is that most of what's wrong with the current system is perfectly legal.

Many people believe our political system is corrupted by special interest money. I agree with them. It is not a matter of individual corruption. I think it is probably extremely rare that a particular contribution causes a member to cast a particular vote. But the special interest money is always there, and I believe that we do suffer under what I have repeatedly called a systemic corruption. Unfortunately, this is no longer a shocking announcement, even if it is a shocking fact. Money does shape what is considered do-able and realistic here in Washington. It does buy access. We have both the appearance and the reality of systemic corruption.

I wonder if anyone would bother to argue that the way we are moving toward a balanced federal budget is unaffected by the connection of big special-interest money to politics? The cuts we are imposing most deeply affect those who are least well off. That is well-documented. The tax breaks we offer benefit not only the most affluent as a group, but numerous very narrow wealthy special interests. Does anyone wonder why we retain massive subsidies and tax expenditures for oil and pharmaceutical companies? What about tobacco? Are they curious why we promote a health care system dominated by insurance companies? Or why we promote a version of ''free trade'' which disregards the need for fair labor and environmental standards, for democracy and human rights, and for lifting the standard of living of American workers, as well as workers in the countries we trade with? How is it that we pass major legislation that directly promotes the concentration of ownership and power in the telecommunications industry, in the agriculture and food business, and in banking and securities? For the American people, how this happens, I think, is no mystery.

For this reason, I support public financing of elections. It is a matter of common sense, not to mention plain observation, that to whatever extent campaigns are financed with private money, people with more of it have an advantage and people with less of it are disadvantaged.

I think most citizens believe there is a connection between big special interest money and outcomes in American politics. People realize what is ''on the table'' or what is considered realistic here in Washington often has much to do with the flow of money to parties and to candidates. We must act to change this, but a vote for Smith is to move the FEC, and the debate over campaign finance reform, in the opposite direction.

Despite his obvious command of the law, Brad Smith has shown himself through his writings to be completely insensitive to the realities of political participation in America. He is smart enough to know better. The Senate should send a message that it is smart enough to know better too. I urge a no vote.

Recently, a complaint was filed by five Members of Congress and a separate complaint filed by President Clinton which urged the FEC to close the soft money loophole. Brad Smith's view that it is unconstitutional to prohibit soft money makes it likely he will reject any recommendation from general counsel to close the soft money loophole.

Regulation of election-related activity on the Internet—the FEC is looking at a whole range of issues that are based upon or deal with the use of the Internet to conduct political activities. Again, I do not know the potential for all the abuses and the ways in which people can attack and people can raise money for the attack and what they can do on the Internet. I do know Brad Smith's view that the Federal Government should scrap all of its campaign finance reform efforts can be expected to strongly color his policy judgment about what regulations the FEC ultimately should issue in this area of law.

For other colleagues who are thinking of coming to the floor, I will not take a lot more time. I will reserve the remainder of my time. I want to put forth a couple of points.

First of all, Senator FEINGOLD and I have been in opposition. We were part of an agreement this nomination would come to the floor, but that has to do also with the ability to get a number of judges considered. We certainly need to start voting on judges.

I do not believe, I say to my colleagues, that these votes are independent of one another. I do not think colleagues ought to be voting for Brad Smith, the argument being that only if he is so confirmed will judges pass. I do not believe that is part of any formal agreement, and it should not be a part of any informal agreement. We ought to vote on these candidates on the basis of their qualifications. We ought to be voting on them on the basis of what it is we ask them to do in Government.

While I respect Brad Smith's intellectual ability and while I like him as a person—and I am not just saying that—I believe it would be a terrible mistake for the Senate to confirm him. It sends a terrible message of our viewpoint of the mix of money in politics and whether or not we are serious about any reform.

In many ways, this is the core problem—the mix of money in politics. I believe we have moved dangerously close to a system of democracy for the few. Money has hijacked politics in this country. It is no wonder we see a decline in the participation of people in public life and politics. Most people believe money dominates politics, and it does.

I am in disagreement with Brad Smith. Money—other Senators can come to the floor and disagree and debate—determines all too often who gets to run. All too often it determines who wins the election or who loses the election. All too often it determines what issues we even put on the table and consider. All too often it determines the outcome of specific votes on amendments or bills. All too often on a lot of the details of legislation, special interests are able to get their way. All too often it is on the basis of some people, some organizations, some groups having way too much wealth and power and the majority of the people left out.

It is incredible to me. We have all become so used to this system that we have forgotten the ways in which it can be so corrupting, not in terms of individual Senators doing wrong because someone offers them a contribution and, therefore, a Senator votes

this way or that way. I do not think that happens. I hope it does not happen. I pray it does not happen.

I will say this. We have the worst kind of corruption of all. It is systemic, and it is an imbalance between those people who have all the financial resources and the majority of people in the country who do not. It is when too few of those people have way too much of the power and the majority of the people feel left out. When that happens, there is such an imbalance of access, influence, say, and power in the country that the basic standard in a democracy that each person should count as one, and no more than one, is seriously violated.

It is interesting, I point out for colleagues, in the first half of 1999, just looking at the contributions, only 4 out of every 10,000 Americans, .03 percent, made a contribution greater than $200. As of June 30, 1999, .022 percent of all Americans had given $1,000 to a Presidential candidate. In the 1998 election, .06 percent of all Americans gave $1,000, and that was 1 in 5,000.

This does not even take into account all the soft money contributions. This does not take into account the $500,000 and the $1 million contributions. What happens is that the vast majority of people in the country—I am sorry, not just poor people who do not have financial resources—the vast majority of people in the United States of America believe their concerns—for themselves, their families, and their communities—are of little concern in the corridors of power in Washington, DC, where they see a political system and a politics dominated by big money and, therefore, really believe they are shut out. We have given them entirely too much justification for that point of view.

I do not see how in the world we can vote for Brad Smith, given how clear he is in his opposition to reform. Given the positions he has taken which go in the exact opposite direction of believing that money in any way, shape, or form can be corrupting of this political system and corrupting of democracy, we send a terrible message to people in this country if we vote for this nominee.

Again, I am not all that excited about coming here and making these arguments, especially when it is about an individual person. I am not talking about Brad Smith; I am talking about his viewpoint. I think he is wrong. I would love to be in a debate with him. I probably would have a tough time in a debate with him. He has a tremendous amount of ability. It would be a fun debate. I would enjoy it.

The point is, you can respect someone; you can say you would love to debate somebody; you appreciate their writing; you appreciate the speech they have given; you appreciate the lecture they have given—I was a college professor—but to see them on the Federal Election Commission is a different story when he is asked to implement the very laws he says he does not believe in, when he is asked to be there to make decisions—FEC is not an empty vessel, and he certainly is not an empty vessel—where key decisions are going to be made about coordination, soft money, and a whole set of issues that are dramatically important to whether we have a democracy or not.

I cannot vote for him. I believe Senators should oppose this nomination. I do not know what the final vote will be. Maybe there will be a majority vote for him, maybe there will not. His nomination is put forth at precisely the wrong time in the history of American politics in the country.

I say that because I believe people in this country yearn for change. Senator MCCAIN is on the floor. He will be speaking later. His campaign certainly tapped into that. His campaign brought that out in people. That is but one powerful example.

People would love to have a Government they believe is their Government. They would love to have a Senate and a House of Representatives they believe belong to them. People right now—I have said it before in the Senate—believe that if you pay, you play, and if you don't pay, you don't play.

Above and beyond this debate, I want us to get to the point where we make some significant change. What is at stake on this whole reform question is basically whether or not we will continue to have a vibrant representative democracy. If your standard is that each person should count for no more than one, we have moved so far away from that standard, it is frightening.

This may be a terrible thing to say on the floor of the Senate because I love being a Senator. I will thank Minnesota for the rest of my life for giving me this chance. In many ways I think we have a pseudodemocracy, a minidemocracy. We have participation, we have government of, by and for maybe about 20 percent or less of the people.

There are many things that need to be done which can lead to democratic renewal. One of them is to get serious about the ways in which money has come to dominate politics, the ways in which we now have the most severe imbalance of power we could imagine, which is dangerous to the very idea of representative democracy.

I want to see us move to a clean money-clean election. I love what Massachusetts has done; I love what Arizona has done; I love what Maine has done; and I love what Vermont has done. I know other States want to do it. If I ever get the chance, I am going to offer a bill or an amendment that will say that every State should apply clean money-clean election campaigns not only to their State races but to Federal races, give the right to the States as to whether or not they want to have essentially a fund people can draw from—maybe everybody contributes a few dollars a year—which enables people to say: By God, these are our elections; our voice counts; no one person and no one interest is dominant.

There will be the McCain-Feingold bill. I will be pushing hard for the clean money-clean election effort. There are other people who have had ideas. I want us to come out here and get serious about passing reform legislation. We are not there yet; I know that. I think the mode of power for change is going to have to come from a citizen politics; a citizen politics will have to be the money politics. You will have to have an engaged, energized, excited, empowered, determined citizen politics that is going to force us to pass this reform legislation.

In the meantime, I urge colleagues not to vote for Brad Smith's nomination—not because he isn't a good person; he is—because of the basic philosophy he holds, the basic viewpoint he holds which is so antithetical to reform. I think this is a test case as to whether or not we are serious about the business of reform. I hope we vote no.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I rise in opposition to the nomination of Mr. Smith to the Federal Election Commission. I intend no personal aspersions toward Mr. Smith, and I am sure he is a fine man. However, he should not serve in the position to which he has been nominated. Sending Brad Smith to the FEC is akin to confirming a conscientious objector to be Secretary of Defense.

It would be well to put the debate we are having today and for a short period tomorrow in the context of what is going on as we speak. Tuesday, May 23, from an LA Times article, ''Democratic Fund-Raising King Has 26 Million Reasons to Gloat''.

Brash, unapologetic Terry McAuliffe helps party raise ''greatest amount of money ever.'' Critics decry ''political extortion.''

Even on an average day, Terry McAuliffe is exuberant. But these days, the Democrats' fund-raising master can barely contain himself.

After six weeks of making 200 telephone calls a day, attending happy-hour rallies with small time fund-raisers and wooing new high-dollar givers at intimate dinners, McAuliffe is on track to raise $26 million at a blue-jeans-and-barbecue event at a downtown sports arena Wednesday night—''the greatest amount of money ever in the history of American politics.''

Then, turning to leave for another dinner where he would woo a likely big-money contributor, McAuliffe added: ''Get those checkbooks out!''

Although a $100,000 contribution was a benchmark in the last presidential election, this time around fund-raisers are collecting scores of checks for $250,000 and more from those who want to qualify as political players.

For Wednesday night's event at Washington's MCI Center, no fewer than 25 people raised or donated at least $500,000, McAuliffe said.

By March, unregulated ''soft money'' donations to both parties were soaring, with Democratic totals nearly matching Republicans for the first time.

Officials of both parties say that the record-setting inflow reflects enthusiasm for

their candidates and their platforms, but the reality is more complicated.

''There is just raw greed on the part of the solicitors, and it is corrupting,'' said Fred Wertheimer, a longtime leader in the effort to reform the nation's campaign finance laws.

''When you're dealing with $250,000 and $500,000 campaign contributions you are flatly dealing with influence -buying and -selling and with political extortion.''

Faced with what many would consider a daunting task, the callers appeared driven by a mix of humor, commitment, swagger and chutzpah.

''I want to ask you a question,'' McAuliffe told one donor on the phone. ''If the world blew up tomorrow would you do 500?'' meaning $500,000.

''We should have gone for RFK,'' McAuliffe bellowed, referring to the 50,000-seat stadium that once housed the NFL's Washington Redskins.

But when one top DNC donor inquired about getting a second table at the event, McAuliffe said, ''For 500 grand, I think we could give him two tables.

In the few in-depth conversations . . . donors seem more interested in talking about pet legislative issues than about the merits of the Democrats' presidential nominee, AL GORE.

Mr. President, that is the context in which we are considering the nomination of a man who has written extensively and spoken, not very persuasively, on the fact of no regulation whatsoever concerning the role of money in American politics. We know that the role of the FEC is to ''administer, seek to obtain compliance with, and formulate policy with respect to'' the Federal Election Campaign Act.

The FEC has the exclusive authority with respect to civil enforcement of the act. Clearly, then, it is obvious that FEC Commissioners should be dedicated to the proposition of Federal election regulation. Each Commissioner must be committed to ensuring a fair and open election process which is not tainted by the appearance of impropriety. Each Commissioner must be prepared to—I emphasize—uphold the law and preserve its intent by prohibiting the use and proliferation of loopholes.

I do not believe Mr. Smith has a philosophical commitment to upholding the intent of the law necessary to perform the duties of an FEC Commissioner. In fact, Mr. Smith has been highly critical of campaign reform. It is not that Mr. Smith simply disagrees with particular details of campaign finance reform. He disagrees with the basic premise that campaigns should be regulated at all—a distinctly and unique minority position in America—or that campaign contributions play any part in public cynicism of our political system.

I read from a March 17, 1997, article that Mr. Smith wrote, published in the Wall Street Journal. It is entitled ''Why Campaign Finance Reform Never Works.'' The title says it all in terms of his philosophy. Apparently, Mr. Smith never heard of Theodore Roosevelt.

I quote from his article, Mr. President:

In fact, constitutional or not, campaign finance reform has turned out to be bad policy. For most of our history, campaigns were essentially unregulated, yet democracy survived and flourished. However, since passage of the Federal Elections Campaign Act and similar State laws, the influence of special interests has grown, voter turnout has fallen, and incumbents have become tougher to dislodge. . . .

Apparently, Mr. Smith lived in some other nation during the Watergate scandal, when unlimited amounts of money would be carried around this town in valises, when corporations and companies and individuals were literally being extorted for money which was unaccounted for. Apparently, Mr. Smith missed the widespread, nationwide revulsion at these abuses, which brought about the campaign finance reform laws of 1974. Apparently, Mr. Smith was not seeking public office, as I was in 1982, when there was no such thing as soft money, where we had to go out and raise small amounts of money from many, many donors, where we had to conduct the kind of grassroots campaign to which Americans have grown accustomed. Perhaps Mr. Smith was not aware that, until late into the 1980s, campaigns were conducted in a very different fashion than today.

Not recognizing any role that creative evasion of the laws has played in these results, Mr. Smith concludes his article by writing:

When a law is in continual revision to close a series of everchanging ''loopholes,'' it is probably the law, and not the people, that is in error. The most sensible reform is a simple one—

I am quoting from Mr. Smith's article in the Wall Street Journal:

The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.

That is a remarkable statement, a remarkable statement, from one who is required in his new position to enforce the very law that he wants repealed. Remarkable, Mr. President, remarkable.

Is someone who advocates a total repeal of the very law he would be enforcing as a Commissioner the right person for this job? Additionally, what job, over time, does not need revision or reauthorization? I am pleased to be the chairman of the Commerce Committee. We spend a great deal of time reauthorizing agencies of Government. That is an important part of our duties because time and circumstances and technology and issues change. For Mr. Smith to somehow condemn a law that is as important as the Federal Election Campaign Act because it needs to be reviewed, revised, and renewed, is, of course, showing incredible ignorance of the way that Congress functions.

Unfortunately, this is not an isolated example. In January 1998, Mr. Smith authored an article for USA Today. In that article, he said:

The First Amendment was based on the belief that political speech was too important to be regulated by the government. Campaign finance laws operate on the directly contrary assumption that campaigns are so important that speech must be regulated. . . . The solution to the campaign finance dilemma is to recognize the flawed assumptions of the campaign finance reformers, dismantle the Federal Elections Campaign Act, and the FEC bureaucracy, and take seriously the system of campaign finance ''regulation'' that the Founding Fathers wrote into the Bill of Rights: ''Congress shall make no law abridging the freedom of speech.''

Is Mr. Smith ignoring the fact that President Theodore Roosevelt led the fight to enact meaningful reform in 1907? Is Mr. Smith ignoring the fact that Republican majorities in Congress led the fight to prohibit union campaigns and corporate contributions to American political campaigns? Is Mr. Smith ignorant of the fact that the overwhelming majority of both Houses of Congress enacted comprehensive campaign finance reform in 1974? I stand proudly by Theodore Roosevelt in believing the 1907 reforms were valid. Mr. Smith does not.

Apparently, Mr. Smith missed, or has not heard of, the recent decision of the U.S. Supreme Court which directly repudiates Mr. Smith's assertions. I also find it curious that a person would hold views that have been directly repudiated by the U.S. Supreme Court—not holding their views as to the validity or his commitment to them, but certainly it is hard for me to understand how he would hold views that the U.S. Supreme Court, in their appointed duties, has ruled as constitutional.

In one of the comments made by the U.S. Supreme Court, in U.S. Supreme Court decisions, at the end of part B, the U.S. Supreme Court goes out of its way to even mention Mr. Smith:

There might, of course, be need for a more extensive evidentiary documentation if petitioners had made any showing of their own to cast doubt on the apparent implications of Buckley's evidence and the record here, but the closest respondents come to challenging these conclusions is their invocation of academic studies said to indicate that large contributions to public officials or candidates do not actually result in changes in candidate's positions. Brief for Respondents Shrink Missouri Government PAC; Smith, Money Talks: Speech, Corruption, Equality, and Campaign Finance; Smith, Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform. Other studies, however, point the other way.

Obviously, the U.S. Supreme Court did not agree with Mr. Smith's conclusions. If Mr. Smith were intellectually honest, he would note in his next upholding of his view that his view has been directly repudiated by the U.S. Supreme Court.

Another example. In light of Senator THOMPSON's investigation in the 1996 finance scandal, the unfettered buying and selling of influence, which the Clinton-Gore campaign practiced, such as overnight stays at the White House, selling seats on foreign trade missions, and receiving money from foreign governments, what Mr. Smith wrote in USA Today on July 8, 1997, was this:

Campaign reform is not about good government. It's about silencing people whose views are inconvenient to those with power. . . . The real campaign-finance scandal has little to do with Senator Fred Thompson's investigation. The real scandal is the brazen effort of reformers to silence the American people.

I have been around here a lot of years. An allegation of that nature, even though I have been here for some period of time, I find very offensive. I repeat what Mr. Smith said:

The real scandal is the brazen effort of reformers to silence the American people.

I think the record is clear of not only my advocacy but my service to this Nation on behalf of free speech, and certainly to argue that those of us who have a different opinion than Mr. Smith are conducting a brazen effort to silence the American people is obviously something that not only do I find offensive, but something that I find disqualifying in Mr. Smith.

It is clear that Mr. Smith believes there is no such thing as appropriate campaign finance reform. He believes that all campaign contributions, spending, and influence peddling are protected without limitation. He has advocated time and again the repeal of the very law he would be sworn to uphold and enforce. How can we seriously consider confirming his nomination to serve as a Commissioner?

I would like to say a word about his really inappropriate remarks about Senator FRED THOMPSON's advice. Senator FRED THOMPSON's investigation got into some very serious issues, such as breach of national security, such as foreign influence peddling, such as unlimited amounts of money coming in from foreign nations to influence our political process. Whether most Americans believe Senator THOMPSON's conclusions were correct, I think they certainly agreed it was an appropriate action. In fact, it was agreed to by both Republicans and Democrats that Senator THOMPSON's investigative hearings take place.

Mr. Smith says, ''The real scandal is the brazen effort of reformers to silence the American people.'' That is a remarkable statement among many remarkable statements Mr. Smith has made.

Others are equally concerned about Mr. Smith's suitability to serve on the FEC. The Brennan Center for Justice at the New York University School of Law has this to say. This is the Brennan Center for Justice at the New York University School of Law:

Imagine the President nominating an Attorney General who believes that most of our criminal laws are 'profoundly undemocratic' and unconstitutional. Or an SEC Commissioner who has publicly called for the repeal of all securities laws with the plea, 'We should deregulate and just let it go.' Or a nominee for EPA Administrator who believes that the agency he aspires to head and 'its various state counterparts' should be abolished. It would be unthinkable. In a society rooted in the rule of law, we would never tolerate the appointment of a law enforcement officer who has vocally and repeatedly denounced the very laws he would be called upon to enforce, much less one who has called for the repeal of those laws and the abolition of the very agency he aspires to head.

'Unthinkable. Yet, President Clinton, at the urging of Senator Lott and Senator McConnell, has nominated Bradley A. Smith to fill one of the vacancies on the Federal Election Commission. Brad Smith, a law professor at Capital University Law School, has devoted his career to denouncing the FEC and the laws it is entrusted to enforce in precisely those strident terms. He believes that virtually the entire body of the nation's campaign finance law is fundamentally flawed and unworkable-indeed, unconstitutional. He has forcefully advocated deregulation of the system. And if the James Watt of campaign finance had his way, the FEC and its state counterparts, would do little more than serve as a file drawer for disclosure reports . . .

Brad Smith's sponsors and supporters are floating the myth that it is campaign finance reformers, rather than Smith, who are the radicals on these issues. However, the Supreme Court only last month in Shrink Missouri cited two of Smith's academic articles by name in its opinion and then repudiated his view that there is no danger of corruption or the appearance of corruption from large campaign contributions. However, we do not need the U.S. Supreme Court to tell us that Brad Smith is a radical, who is out of step with the mainstream. In his own words, when he was approached about serving on the FEC, Smith stated: 'My first thought was ''they've got to be just looking at me put my name on the list so that whoever they really want will look less radical.'' Even Smith did not believe, at first, that the Republicans would seriously put forward his name for this position because his views are so extreme. . .

Brad Smith and his supporters have asserted that, although Smith personally disagrees with much of the law, he can nevertheless be counted on to faithfully enforce it. One is forced to ask, however, why an academic who has made his career by criticizing the nation's election laws would want the job of stoically enforcing those laws? The answer, of course, is that Brad Smith recognizes that federal election law, like any complex regulatory regime, is open to interpretation and it is the process of interpretation that gives the law its meaning. Brad Smith's goal, whenever there is any room for interpretation, will doubtless be to allow federal campaign finance law to whither on the vine. And any member of Congress that supports additional campaign finance regulations—such as McCain-Feingold or Shays-Meehan, should be very troubled by the prospect that the rules and regulations governing their implementation might be drafted by such an arch-nemesis of those reforms.

I think there are a couple of additional points to be made here. One is, how can the President of the United States be committed to finance reform and submit Mr. Smith's name? That nominating process comes from the President of the United States. The next time you hear the President of the United States reiterate his commitment to meaningful campaign finance reform, remember the type of person who was nominated by the President of the United States for this position.

In deference to the President of the United States, we have a little unwritten rule that the President gets to appoint some and the majority—in this case, the Republicans—appoint others. The President still had the ability and the authority to reject this most extreme nominee for any position that I have seen in my years here since 1987.

There is another point that I think is important. Why would someone who disagrees with campaign finance laws, who believes they should be scrapped, and who believes fundamentally they are unconstitutional—not just the personal dislike but a firmly held tenet that all campaign finance laws should be scrapped and are unconstitutional—how in the world could you then expect someone to face a fundamental contradiction of their basic beliefs that a law is unconstitutional and yet seek the position where his sole duties are to enforce those laws? How Mr. Smith could even take an oath to uphold the same laws of which he has time and again rejected and advocated their repeal is a mystery.

What does that say? Either he is willing and able to cast aside lifelong beliefs and principles in order to hold a prestigious position or he is less than sincere in undertaking enforcement of campaign reforms or enforcing existing law.

President Reagan once said no to a Democrat whose name was submitted. President Clinton could have done the same. I say, shame on you, Mr. President, for not rejecting this name.

Let me be perfectly clear that I do not oppose Mr. Smith simply because he disagrees with my proposed legislation. Many of my closest friends take issue with aspects of McCain-Feingold. I respect the opinion of others, and I respect the right of Mr. Smith to hold a view contrary to mine. It is because he objects to any form of campaign finance regulation that I oppose him.

If you took a poll of the 100 Members of this body, I don't think you would find more than perhaps 1 who would hold the view that Mr. Smith does. My friends on both sides of the aisle at least say we need some form of campaign finance reform. Most are offended by this latest loophole called 527. Most find it egregious that we now have $500,000 contributors. Most of them believe the money chase has lurched out of control to the point where, by actual acts of commission and omission, young Americans have become cynical and alienated from the political process. The 1996 election had the lowest voter turnout of 18- to 26-year-olds than at any time in the history of this country.

There was recently a poll taken by the Pugh Research Center—which I will submit for the RECORD at a later time—which showed that 67 percent of young Americans say they are disconnected from government. And the reason given is the influence of special interests and big money in Washington. The system cries out for reform, if not for McCain-Feingold, then some other vision of reform.

Mr. Smith believes campaign finance reform is not about good government.

It is about silencing people whose views are inconvenient to those with power. The real scandal, Mr. Smith says, is the brazen effort of reformers to silence the American people.

A statement such as this impugns the motives of many millions of good and decent Americans who believe this reform is necessary in a remarkable way. I do not impugn the motives of Mr. Smith. I disagree with him. I do not believe Mr. Smith is trying to silence the American people. I do believe he is wrong in his positions and he is wrong for this job.

It is because he objects to any form of campaign regulation that I oppose him, because he can acknowledge all the examples of campaign abuse witnesses in the 1996 election, as he did in an article published by the American Jewish Committee in December 1997, and still he contends that the only reform necessary is deregulation. So those kinds of abuses become the norm.

In that article he cited the many unsavory examples of fundraising by the Clinton-Gore campaign. He goes on to say:

Yet, we now see, on videotape and in White House photos, shots of the President of the United States meeting with arms merchants and drug dealers; we learn of money being laundered through Buddhist nuns and Indonesian gardeners; we read that the acquaintance of the President are fleeing the country or threatening to assert Fifth Amendment privileges to avoid testifying before Congress. . . .

What troubles me most abut Mr. Smith is that, after acknowledging all of these incidents, he concludes that since campaign reform has not eliminated those abuses, we should simply give up and allow a free for all. That's like saying, ''Since the laws against murder haven't eliminated murders, we should simply legalize murders.'' Or, ''Since the country's drug laws haven't been enforced sufficiently to eliminate illegal drug deals, we should simply legalize drug use.''

Is someone with that kind of attitude the right person for the job? I don't think so, and I cannot believe that my colleagues can in good faith and with a straight face assert that he is.

It should be a grave concern to my colleagues that Brad Smith concedes all of the facts of the 1966 campaign scandal, but apparently sees nothing wrong with perpetuating and legalizing those wrongs. I do not believe the American public concurs.

Mr. Smith advocates anything goes in election campaigns and says no tactic is too unseemly, too corrupt to be protected by the first amendment of the Constitution. By the way, I believe it was Justice Stevens who said in his opinion in the Shrink Missouri decision that money is property, money is not free speech.

I do not agree that our Founding Fathers could have intended such a result any more than prosecuting someone yelling ''fire'' in a crowded theater. The Supreme Court has concurred in the recent Shrink Missouri decision in upholding the State of Missouri's campaign contribution limits. The Court reiterated its determination from their earlier Buckley v. Valeo decision that the prevention of corruption and the appearance of corruption is a constitutionally sufficient justification for limiting contributions as a form of speech.

Mr. Smith's position is in direct contradiction to what the U.S. Supreme Court stated in Shrink Missouri. I repeat, the U.S. Supreme Court said the prevention of corruption and the appearance of corruption is a constitutionally sufficient justification for limiting contributions as a form of speech.

In speaking of ''improper influence'' and ''opportunities for abuse'' in addition to ''quid pro quo'' arrangements, we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind our recognition that the Congress could constitutionally address the power of money ''to influence governmental action'' in ways less ''blatant and specific'' than bribery.

As Justice Stevens said in his concurring opinion in the *Shrink* case, responding to the arguments raised by Justice Kennedy in his dissent:

Justice Kennedy suggests that the misuse of soft money tolerated by this Court's misguided decision in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, demonstrates the need for a fresh examination of the constitutional issues raised by Congress' enactment of the Federal Election Campaign Acts of 1971 and 1974 and this Court's resolution of those issues in *Buckley* v. *Valeo*. In response to his call for a new beginning, therefore, I make one simple point. Money is property; it is not speech.

Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.

I find it incredible that a law professor speaking on the topic of constitutionality of campaign finance reform would not cite the most recent Supreme Court ruling and opinion pertinent to the topic. Yet, notwithstanding the fact that the Supreme Court issued its ruling in the *Shrink* case in January of this year, in Mr. Smith's testimony during his confirmation hearing before the Senate Rules Committee in March offered no recognition that the Supreme Court had most recently upheld campaign contribution limitations. He made no attempt to renounce his earlier writings or opinions based upon the opinion. He made no acknowledgment that the Supreme Court had recently reached a conclusion as to the constitutionality of contribution limitations at odds with his views. Instead, he focused his presentation on the uncertainty of the law, and in particular the confusion surrounding the Buckley opinion. This, even though the Supreme Court had in *Shrink* reiterated and clarified the state of the law. Perhaps it was because he had not read the *Shrink* opinion, a disturbing omission for a law school professor—or perhaps simply because he disagrees with it. In either case, I find the omission troubling and indicative of why Mr. Smith would be unsuitable as an FEC Commissioner.

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

COMMON CAUSE,
Washington, DC, March 8, 2000.

Hon. MITCH MCCONNELL,
Hon. CHRISTOPHER DODD,
Senate Committee on Rules, U.S. Senate, Washington, DC.

DEAR CHAIRMAN MCCONNELL AND SENATOR DODD: While Common Cause believes the Committee and the Senate would have been better served with full and open hearings regarding the nomination of Bradley A. Smith to be commissioner to the Federal Election Committee (FEC), I request that this letter be made part of the record.

Common Cause strongly urges the Committee to reject the nomination of Bradley A. Smith, Professor of Law at Capital University in Ohio, to serve on the Federal Election Commission. Mr. Smith has written extensively about the need to deregulate the campaign finance system, has stated that the FEC should be abolished, and has written that the Federal Election Campaign Act (FECA) is unconstitutional. Clearly, as someone who strongly opposes the law he would be duty-bound to uphold and administer impartially, Mr. Smith should not be confirmed.

The FEC was created for the sole purpose of upholding and enforcing the FECA. Mr. Smith, however, strongly believes that the Act should be repealed. In a 1997 op-ed published in The Wall Street Journal, Smith stated: ''When a law is in need of continual revision to close a series of ever-changing 'loopholes,' it is probably the law, and not the people, that is in error. The most sensible reform is a simple one: repeal of the Federal Election Campaign Act.''

Elimination of FECA would repeal, among other provisions, the ban on corporate and labor union contributions to federal candidates, the limits on individual and PAC contributions to federal candidates, the ban on foreign contributions to federal candidates, the ban on cash contributions of more than $100 to federal candidates, and the prohibition on federal officeholders converting campaign contributions to personal use.

In short, repeal of the Federal Election Campaign Act would return this country to the days before Watergate when hundreds of thousands of dollars in cash were being given directly to candidates from undisclosed wealthy contributors.

Any member of a federal regulatory agency should, at a minimum, believe in the mission of that agency, and the constitutionality of those laws. Not only does Mr. Smith demonstrate utter contempt for the agency, he also demonstrates his comprehensive hostility to the federal campaign finance laws—laws which he believes are wrong, burdensome, and unconstitutional.

Mr. Smith is on record stating that federal campaign finance laws are, in their entirety, unconstitutional. He has written that ''FECA and its various state counterparts are profoundly undemocratic and profoundly at odds with the First Amendment.''

Smith also wrote: ''The solution is to recognize the flawed assumptions of the campaign finance reformers, dismantle FECA

and the FEC bureaucracy, and take seriously the system of campaign finance regulation that the Founders wrote into the Bill of Rights: 'Congress shall make no law . . . abridging the freedom of speech.' ''

Any individual who believes that an agency's organic statute is unconstitutional and should be repealed in toto, is not fit to serve as a Commissioner of the agency charged with administering and enforcing that statute.

No one, for example, would conceive of appointing to head the Drug Enforcement Agency an individual who believes all federal anti-drug laws are unconstitutional and should be repealed. Such an appointment would be viewed as an act of utter disdain and disrespect for the laws to be administered by the agency involved.

Mr. Smith believes the federal campaign finance laws are not only unconstitutional, but misguided in their very purpose. In supporting repeal of the campaign finance laws, he has written that the country ''would best be served by deregulating the electoral process.''

Mr. Smith's ideas are not simply a matter of whether one takes a liberal or conservative view of the existing campaign finance laws. What is at stake here is whether the law will be administered and enforced to its full extent. While Mr. Smith's ideas may be appropriate for an academic participating in public debate, they are wholly unacceptable for a Commissioner charged with administering and enforcing the nation's anti-corruption laws enacted by Congress and upheld by the Supreme Court. The purpose of the FEC is not to be a debating society. The role of a FEC Commissioner is not to be an advocate.

Indeed, Mr. Smith fails even to accept the fundamental anti-corruption rationale for the campaign finance laws—the rationale that was at the very heart of the Supreme Court's decision in Buckley v. Valeo, upholding the constitutionality of the existing campaign finance laws, and which was reaffirmed this year by the Supreme Court in Nixon v. Shrink Missouri Government PAC. In that case, Justice David Souter, writing for the majority, stated ''There is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters.''

Mr. Smith dismisses the rationale by writing that ''money's alleged corrupting effects are far from proven . . . that portion of Buckley that relies on the anti-corruption rationale is itself the weakest portion of the Buckley opinion—both in its doctrinal foundations and in its empirical ramifications.''

The FECA requires the members of the Federal Election Commission shall be chosen ''on the basis of their experience, integrity, impartiality, and good judgment.'' 2 U.S.C. 437c(a)(3). While we believe President Clinton would have been within precedent to reject the recommendation from Senate Majority Leader Trent Lott (R–MS) of Mr. Smith's nomination (President Reagan rejected a proposed FEC nominee in 1985), the Committee now has the responsibility to judge whether Mr. Smith meets these criteria.

Mr. Smith is in no way ''impartial'' about the campaign finance laws. He simply does not believe in them.

Mr. Smith's extreme opposition to the existence of the federal campaign finance laws, and his clearly stated views that they are unconstitutional, make him unfit to serve as a Commissioner of the FEC.

Common Cause strongly urges the Committee to vote against Mr. Smith's nomination. A vote to confirm Mr. Smith is a vote against campaign finance reform.

Sincerely,

SCOTT HARSHBARGER,
President.

THE WRONG MAN FOR THE JOB
(By Fred Wertheimer, President, Democracy 21)

Would an individual who believes the nation's drug laws should be repealed and are unconstitutional be appointed to head the Drug Enforcement Agency?

No way.

Would the United States Senate confirm an individual with these views to be the nation's chief drug law enforcement official?

Absolutely not.

Then, what in the world is Bradley Smith's name doing pending before the Senate for confirmation to serve as a Commissioner on the Federal Election Commission (FEC)?

Mr. Smith—who has stated that the nation's campaign finance laws should be repealed and are unconstitutional—was nominated by President Clinton earlier this month to serve on the FEC, the agency responsible for enforcing the nation's campaign finance laws.

That's the same President Clinton who is a self-proclaimed supporter of campaign finance laws and campaign finance reform.

The Smith nomination was dictated by Senate Republican Majority Leader Trent Lott and Senator Mitch McConnell, the leading Senate defenders of the corrupt campaign finance status quo in Washington, and Smith's two leading advocates for the Commission job.

President Clinton lamely explained his nomination of Smith, a strong opponent of federal campaign finance laws, on the grounds that he was just following custom in ceding to the other major party the ability to name three of the six FEC Commissioners. In fact, however, when the Republicans held the White House, President Reagan had no problem rejecting the appointment of an FEC nominee of the Democrats that he found to be objectionable.

So what are the potential consequences of Clinton's campaign finance betrayal if the Senate confirms Smith to serve on the Commission?

Here is what Bradley Smith has said about the nation's campaign finance laws: ''[T]he most sensible reform is a simple one: repeal of the Federal Election Campaign Act (FECA).''

And, here is what Mr. Smith's ''reform'' would accomplish: repeal of the ban on corporate contributions to federal candidates; repeal of the ban on labor union contributions to federal candidates, and repeal of the limits on contributions from individuals and PACs to federal candidates.

Mr. Smith's ''reform'' also would repeal the system for financing our presidential elections, the ban on officeholders and candidates pocketing campaign contributions for their personal use, the ban on cash contributions of more than $100, and various other provisions enacted to protect the integrity of our democracy.

Mr. Smith also has stated that the federal campaign finance law, known as the FECA, is ''profoundly undemocratic and profoundly at odds with the First Amendment.''

Mr. Smith's position that the FECA, and its contribution limits, are unconstitutional, however, is directly contradicted by numerous Supreme Court decisions.

Just last month, for example, the Supreme Court reaffirmed in Nixon v. Shrink Missouri Government PAC that contribution limits are constitutional.

The Court cited ''the prevention of corruption and the appearance of corruption'' as the rationale for upholding contribution limits, a rationale that Smith firmly rejects.

Justice Souter, writing for six of the nine Justices including Chief Justice Rehoquist, stated, ''Leave the perception of impropriety unanswered and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.''

Mr. Smith, it goes without saying, is entitled to hold and express whatever views and philosophy he may have about campaign finance laws.

It should also go without saying, however, that the American people are entitled to have law enforcement officials who believe in the validity and constitutionality of the laws they are charged to enforce, and who do not view these laws with total disdain and hostility.

As The Washington Post noted in an editorial, Smith's premises ''are contrary to the founding premises of the commission on which he would serve. He simply does not believe in the federal election law.''

And, The New York Times wrote in an editorial that Smith's stated positions ''make plain that his agenda as a commission member would be a further dismantling of reasonable campaign limits intended to curb the corrupting influence of big money rather than serious enforcement of current campaign finance laws.''

Mr. Smith's nomination is a classic symbol of the breakdown in law enforcement that has occurred when it comes to the nation's campaign finance laws. Mr. Smith's confirmation to be an FEC Commissioner would be an insult to the American people.

United States Senators should not allow this to happen.

Mr. MCCAIN. Mr. President, I see my friend and comrade in arms, Senator FEINGOLD. Let me mention what is going on not only as far as the fundraiser is concerned, but recently we received information there will be a hearing tomorrow before the Senate Judiciary subcommittee and on Thursday before the House Government Reform Committee.

According to a December 9, 1996, memo by FBI Director Louis J. Freeh, Mr. Radek [head of Justice Office of Public Integrity] told Mr. Esposito [who was a deputy director of the FBI] he was ''under a lot of pressure not to go forward with the investigation,'' and that Ms. Reno's job ''might hang in the balance.'' The memo said Mr. Freeh met with Ms. Reno and personally suggested she and Mr. Radek recuse themselves from the probe.

What we are talking about here is a situation that, if campaign finance laws had been obeyed and enforced, we would not be subjected to as a nation; that is, disturbing allegations that information was brought by the FBI, the Director of the FBI, Mr. Louis Freeh, and by Mr. Charles LaBella, who was appointed as the head of the task force to investigate these very allegations by the Attorney General herself—those recommendations were ignored by the Attorney General. The recommendation for the appointment of an independent counsel was ignored by the Attorney General of the United States. A recommendation by Mr. Freeh was not accepted by the Attorney General of the United States and, according to the Deputy Director of the FBI, Mr. Radek, whose office is described as the Office

of Public Integrity in the Justice Department, he said he was ''under a lot of pressure not to go forward with the investigation''—I wonder who from—and that Ms. Reno's job ''might hang in the balance.''

This is the pernicious effect of a campaign finance system which has run amok. That is not confined to the Democratic Party. There have been abuses on my side as well because this system knows no party identification. This system knows only the increasing avariciousness of a system that has run amok.

We are now about to confirm as one of those whose appointment is to enforce the law someone who is adamantly opposed to the law, believes the law is unconstitutional. And we are in a situation in America today that, in the view of more objective observers than I, can only be compared to the turn of the century when the robber barons of this Nation, through huge input of contributions to political campaigns, had basically bought the American Congress. Thanks to the brave and courageous efforts of one Theodore Roosevelt, joined by millions of other like-minded reformers, we brought an end to that corruption.

Now we are about to appoint to that body an individual who will not only not be opposed, who will not only not support trying to clean up this system, but will try to remove the last vestiges of campaign finance reform law as it exists today. All I can say is it is a 5-year appointment. He will not be there forever. We will have campaign finance reform.

As my colleagues know, I recently completed an unsuccessful campaign for the nomination of my party for the Presidency of the United States. It was one of the most rewarding and uplifting experiences of my life. I learned many things during that campaign. I will not clutter the RECORD with the lessons I learned.

When I began the campaign, I said the theme of my campaign would be reform. Every political pundit said there was no room for reform in the political agenda. In hundreds of townhall meetings and thousands of speeches, I said: Campaign finance reform is the linchpin; if we want to reform education, if we want to reform the military, if we want to reform the Tax Code, if we want to reform the institutions of government, we must get this Government out of the hands of the special interests and back to the people. I believe that message resonated then and resonates to this day.

We are about to appoint an individual now in complete contradiction to what I believe is strongly the will of the people, not only that existing laws be enforced but new laws be enacted in order to close the loopholes that have been created since the passage of the 1974 law.

We, in our wisdom, are about to appoint an individual who flies in the face of everything I learned in my campaign, despite a clear voice from the American people, particularly from our young, particularly from our young citizens to whom, sooner rather than later, we will pass the torch of leadership of this Nation, who have become cynical and even alienated from the political process—not without good reason.

Mr. President, I note the presence of the Senator from Vermont. I might say to the Senator from Vermont, I had a wonderful day in his State long ago, where he is well respected and well loved by the citizens of his State. I appreciate the opportunity, always, to be in lovely Montpelier. I thank him and his fellow citizens for all their hospitality.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I ask unanimous consent I be allowed to take 7 minutes of the 15 minutes that is reserved to the Senator from Vermont on the Timothy Dyk nomination.

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

Mr. MCCAIN. Mr. President, I reserve the remainder of my time.

Mr. LEAHY. Mr. President, while the Senator from Arizona is still on the floor, I was going to say at the beginning of my remarks, the Vermont press showed very clearly how well respected the Senator from Arizona is in Vermont and how well received he was. He was one of the biggest vote getters our State has ever had. He did an extremely good job. He won his party's primary overwhelmingly. In Vermont his victory was declared within, I think, 5 minutes after the polls closed on primary day because the number was so overwhelming.

I say this because, while I was not at the convention where he spoke, as he can imagine—it was the Republican State convention—many of my dear friends and supporters were there. They told me also how much they respected what the Senator from Arizona said, as they had when he had been in Burlington earlier in his campaign and spoke to an overflow crowd. Montpelier is where I was born, so I always watch what happens there. I say to my friend from Arizona, the calls and e-mails I got after his appearance about him were all positive.

Mr. MCCAIN. I thank my colleague.

NOMINATION OF TIMOTHY B. DYK

Mr. LEAHY. Mr. President, I am pleased that the Senate is finally going to vote this week on the confirmation of Timothy Dyk.

A vote on this nominee has been a long time coming. He was first nominated to a vacancy on the Federal Circuit Court of Appeals in April of 1998—over 2 years ago—by some reckonings, in the last century. He had a hearing. He was reported favorably by the Judiciary Committee of the Senate in September of 1998. His nomination was left on the Senate calendar that year without any action and eventually was returned to the President, 2 years ago as the 105th Congress adjourned.

Then Mr. Dyk was renominated in January of 1999. He was favorably reported to the Senate floor, again, in October of 1999. For the last 7 months, this nomination has been waiting on the Executive Calendar for Senate action.

Let me just tell you a little bit about Timothy Dyk. He has distinguished himself with a long career of private practice in the District of Columbia. From 1964 to 1999, he worked with Wilmer, Cutler, and Pickering as an associate and then as a partner. Since 1990 he has been with Jones, Day, Reavis, and Pogue as a partner. He has been the chair of its issues and appeals section.

He received his undergraduate degree in 1958 from Harvard College; his law degree from Harvard Law School in 1961. Following law school, he clerked for three U.S. Supreme Court Justices: Justices Reed and Burton, and Chief Justice Warren. He was also a special assistant to the Assistant Attorney General in the Tax Division.

His is a distinguished career. He represented a wide array of clients, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the National Association of Broadcasters, the National Trucking Association, and he has the support of a wide variety of these organizations. We have received strong letters of support for him. Here are some of those who sent in letters saying let's get this man confirmed:

The U.S. Chamber of Commerce, the American Trucking Association, the National Association of Manufacturers, the National Association of Broadcasters, IBM, Gannett, Eastman Kodak, Brush Wellman, Rockwell, LTV Corporation, SkyTel Telecommunications, the Lubrizol Corporation, Ingersoll-Rand, the American Jewish Congress, the Anti-Defamation League, the American Center for Law and Justice, and Trinity Broadcasting Network.

I said many times on the floor that we take far too long to confirm good people. We are wrong and irresponsible to hold people up basically on a whim until we feel like bringing up their names. Nominees deserve to be treated with dignity and dispatch, not delayed for 2 or 3 years. Of course, any Senator can vote as he or she wants, but let's understand the human aspect.

When somebody has gone for their hearings, when they have been voted out of committee, when they are pending in the Senate, their life is on hold until we act. It is unfair, it is unreasonable to tell somebody in a law practice: The good news is the President has nominated you to the Court of Appeals. You will be congratulated by your partners, by your clients, and then they will say: When are you going to be confirmed? If you have to respond: When the Senate gets around to it, that is not a good answer. Vote somebody up or vote somebody down.

This is a man who should have broad, strong bipartisan support, just as the letters of support show broad, strong bipartisan support.

I am glad that Tim Dyk will be voted on for the Federal Circuit. We have worked long and hard to get him the vote to which he is entitled. I worked to have him confirmed in 1998. I worked to have him confirmed in 1999. I am glad that finally, he will be accorded a vote on this long pending nomination.

He and his entire family have much of which to be proud. His legal career has been exemplary. He will make a superb judge.

I know Timothy Dyk. I know him and his wife, both of whom have had long, distinguished careers in the private sector and the public sector. Let's give the country the opportunity to have him join the Federal Circuit Court of Appeals, just as we did late last year with his colleague, Richard Linn. It is time for the Senate to confirm Timothy Dyk to the Federal Circuit.

Mr. President, not seeing anybody on the floor, I suggest the absence of a quorum and ask unanimous consent that it not run against the time of either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SCHUMER. Mr. President, I yield to myself as much time as I may consume from Senator LEAHY's time on the nomination of Mr. Gerard Lynch to become a district court judge for the Southern District of New York.

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

NOMINATION OF GERARD LYNCH

Mr. SCHUMER. Mr. President, I thank the majority leader and the minority leader for coming together on an agreement that allows for a number of vital votes on judicial nominees. I also thank Chairman HATCH for, again, tending to our judicial needs in my State and in so many States, and for the fairness with which he has tried to move this process forward.

It is with great pride and pleasure that I rise in support of the nomination of Gerard Lynch to be district court judge for the Southern District of New York. At my recommendation, President Clinton nominated Professor Lynch to fill a vacant Federal judgeship in the Southern District.

Professor Lynch's experiences and accomplishments as a prosecutor, as a private lawyer, as a professor of law, and as a public servant make him a superb candidate to be a Federal judge. I have never, in my days, seen such high recommendations from people from all parts of the political spectrum simply about this man's intellect and accomplishments.

Professor Lynch's background and career accomplishments are, frankly, staggering. He was born and raised in Brooklyn, a place near and dear to my heart. He then attended Columbia College, where he graduated first in his class—a highly competitive school—followed by Columbia Law School, where he also was No. 1 in his class.

After law school, he accepted two judicial clerkships— first, with one of New York's great jurists, Judge Wilfred Feinberg of the Second Circuit, and then with Justice William Brennan on the Supreme Court. He was at the top of the legal profession as he went through his education and his clerkships. You could not have a better record.

Since that time, he has had a multifaceted career, mostly as a prosecutor and professor, and that is as impressive as any judicial candidate I have seen in years.

Since 1977, he has served as the Paul K. Kellner Professor of Law at Columbia Law School, where he teaches criminal law and criminal procedure, as well as constitutional law and other courses.

He is a leading expert on the Federal racketeering laws and has written numerous articles on the subject. He has also published articles on other aspects of criminal law, constitutional theory, and legal ethics.

Maybe most importantly, he is considered one of Columbia Law School's outstanding professors, winning a number of awards for excellence in teaching and serving as a guide and mentor to countless students over the years.

Professor Lynch, however, has not only been a professor, he also spent many years as a Federal prosecutor in the Southern District of New York, one of the premier U.S. Attorney's Offices in the country. He tried numerous cases, including white collar and political corruption cases, and eventually rose to be the chief of the appellate division.

In 1990, after a stint as a professor, he was asked to return to that office as chief of the Criminal Division under U.S. Attorney Otto Obermaier. In that capacity, he supervised more than 135 prosecutors and oversaw all of the office's criminal cases. Mr. Obermaier, a Republican appointee, handpicked Professor Lynch to serve as his lead criminal prosecutor. I know he has been outspoken in support of this nomination, and Mr. Obermaier was known as a hardnosed, rather conservative prosecutor in the Southern District.

Professor Lynch has also served as counsel to numerous city, State, and Federal commissions, and has worked with a number of special prosecutors investigating public corruption. Moreover, from 1988 to 1990, he served as a part-time associate counsel for the Office of Independent Counsel.

More recently, Professor Lynch has been counsel to a top New York law firm, primarily handling white collar criminal matters and regulatory matters, while still maintaining a full courseload teaching at Columbia.

So, intellectually, he is at the top of the list. Experience-wise, he has done it all. He is also a wonderful, wonderful person. He loves Latin and Greek and he knows them well. He loves theater, art, and ballet.

Just to let my colleagues know what a fine man he is and what an honorable man he is, when Gerry went to Columbia College, the Vietnam war was waging. He came from a working-class background and he knew that many of his classmates in high school would be drafted. He, by being a college student, was not eligible for the draft, but he thought that was unfair. He thought it was unfair that those lucky enough to get into college should have special advantages over working-class young men being called for the front line. So he refused to pursue an exemption. He was not called. But that shows you the mettle of the man.

I will close by admitting that I am very excited about the prospect of Professor Lynch becoming the next member of the Southern District bench. I know his wife and his son are proud of him, and rightfully so.

He meets the criteria I have set for myself in choosing judges, which are:

No. 1, excellence. There is no doubt;

No. 2, moderation. I try to avoid judges who are extreme in either case;

And, No. 3, diversity. While Gerard doesn't quite qualify in that, I think I fulfill that in some other nominations.

Gerard Lynch has the rare combination of intelligence, practical experience, judicious temperament, fairness, and devotion to hard work that makes for truly great judges. He is just what the Founding Fathers and all others throughout have wanted for a Federal judge. All too many people of his qualification don't ask for and don't aspire to the bench. He does. We should take this opportunity and support him wholeheartedly.

I yield to my senior colleague and friend from the State of New York, Senator MOYNIHAN. Is that the proper procedure, Mr. President? Should I yield to Senator MOYNIHAN, or should I yield my time?

The PRESIDING OFFICER. Senator MOYNIHAN is recognized in his own right.

Mr. MOYNIHAN. How very generous of you, Mr. President.

How kind of my beloved colleague and friend.

I rise with a measure of animus, if I may do, sir, this afternoon. I was one of those who, with my colleague, introduced Mr. Lynch to the Committee on the Judiciary with such very considerable pride to have that opportunity.

My colleague remarked about the founders of the Constitution. I will speak in just a moment about the Columbia Law School, which precedes the Constitution, which Constitution was written in very large measure by a graduate of that law school, Alexander Hamilton, and whose first large treatise of explanation was written by

Chancellor Kent, as he is known, having been chancellor of New York State, with his commentaries on the laws of the United States.

It is not a small thing to become a member of that law faculty. It is a large honor carefully reserved for lawyers of successive generations who note history and demand its importance to this time.

We have before us, sir, the nomination of a great lawyer—I use that carefully—who will be a superb judge.

I think he might have been surprised—we would not have been surprised—that early in life and at another time he might not have chosen criminal law as his specialty. But he came of age in the bar when that was the first problem, singularly so, of the Southern District of New York. And he went to work at it.

He was a serious prosecutor, sir, a successful one—a relentless one and a successful one. I want to say that, sir—a successful one. None came into his compass charged with a crime that he did not prosecute fairly, rigorously, relentlessly, and, in the end, sir, with an extraordinary range of success—and I defer to my revered colleague—with an extraordinary range of success.

This is a man of whom criminals had never heard but, when they appeared in court with him, will never forget. This man understood that the principles of a free society require adherence to law with a reverence and respect and, if necessary, a measure of fear: Do not appear before this judge with the burden of guilt or you shall be found guilty.

He has a range of intellectual pursuits. Ought not a member of the school of law that taught Alexander Hamilton and graced by Chancellor Kent and his great success—ought not there be such a range? Ought he not be able to entertain alternative ideas, examine them, and consider the possibilities?

We have, sir, a wonderful symbol—I do not know in my ignorance whether it is from Greece or Rome—of Justice blindfolded, holding up a scale and weighing the evidence. He has done that in a great range of professional articles. He has done that in a long career of prosecution. And he has considered alternatives and made judgments because he is by nature a judge. He has been in the pits where judges have to make determinations from whatever is presented to them as evidence. And he knows the process.

He graduated summa cum laude from Columbia Law School. He clerked for Judge Feinberg on the Second Circuit Court of Appeals —the Second Circuit, sir, the mother court, we should say—and for Justice Brennan on the Supreme Court. Over the past 23 years, he has won award upon award, including the University-wide President's Award for Outstanding Teaching in 1997. He is nationally known as a criminal law expert, for his writings, and particularly his writings on racketeering law.

I come before the Senate to say there has not been a finer judge proposed by the Senate Committee on the Judiciary. We are honored to have him before the Senate. I prayerfully hope none of us ever appear before him.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I be allowed to use my time on two judicial nominations.

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

Mr. SESSIONS. Mr. President, I have great respect for Senator MOYNIHAN and Senator SCHUMER. I know they have great affection and admiration for Mr. Lynch. In no way do I question his integrity. I do not question his legal ability. He is certainly a scholar and a person of intellect.

Except for two leaves of absence, he has been a law professor. The old rule must apply: The A students become professors; B students, judges; and C students make the money. Regardless, he has been a professor, worked on a few cases, and spent several years with the U.S. Attorney's Office prosecuting cases. By all accounts, he is a man of good personal character.

The problem I have with this nomination is that I have come to believe from his writing that he is, indeed, a judge who is an activist. There is only one opportunity for the people of this country to confront the question as to whether or not an individual nominated to be a judge will obtain a lifetime appointment. That is our role under the Constitution, to advise and consent to nominations of the President. The President has nominated Mr. Lynch. I think it is our duty, if we are not to be a potted plant or rubber stamp his record, his skill, his background, his philosophy, and see if we want to authorize him, for the rest of his life, to preside over cases, to interpret the law, to interpret the Constitution, and make major decisions in that regard. That is our question: Do we want to do that?

It would be bad to impose upon the people of New York or any other State any person who is not clearly committed to the judicial role. The judicial role is that a judge should require himself to follow the Constitution of the United States and the laws duly passed by the Congress of the United States. The Constitution is a contract. It was an instrument of agreement between the American people and the government when they formed it. They gave to the government certain limited powers. They reserved for themselves and for the States other powers. That is a fundamental principle.

I think our courts in recent years have done a little better. At one point, they were exceedingly activist. The leader of that activism crusade in the Federal courts was none other than Justice Brennan for whom Mr. Lynch clerked. Subsequent to that, he has written in the Columbia Law Review on two separate occasions. The Columbia Law Review is a prestigious law review and the Columbia Law School is a prestigious law school. One does not write for the Columbia Law Review without giving careful thought to each and every word he utilizes in that law review, even more so if he is a professor at that school.

In the course of writing these articles, Mr. Lynch made some statements that I think represent very serious indications of his philosophy and his willingness to be bound by the law and the Constitution as a judge. Take, for example, this 1984 article, ''Constitutional Law as Moral Philosophy'':

> The Supreme Court, because it is free of immediate political pressures of the sort that press on those who must face the voters, is better placed to decide whether a proposed course of action that meets short-term political objectives is consistent with the fundamental moral values to which our society considers itself pledged.

That is a very risky, dangerous statement, a carefully written statement, words Mr. Lynch chose carefully. He says the Supreme Court, because it doesn't have to answer to the American people in elections, is better placed to decide a proposed course of action that meets short-term political objectives and is consistent with moral values which our society considers itself bound.

Our Constitution is deeply rooted in our moral order and heritage, but our Constitution is a contract; our Constitution is an agreement with the people. It has specific ideas and requirements in it that I expect a judge to abide by.

To show the danger in this philosophy, let me share the example of the death penalty. The eighth amendment prohibits cruel and unusual punishment. Justice Brennan, for whom Mr. Lynch clerked, declared that the death penalty was cruel and unusual and therefore it violates the eighth amendment to the Constitution.

I suggest that is bizarre because at the time the Constitution was adopted, every State had a death penalty. There are six or more references within the very document itself, the Constitution, to a death penalty. Yet he feels it violates some sort of contemporary standards of morality. Justice Brennan used his lifetime appointment as a judge to dissent on every single death penalty case, saying it violates the Constitution, while the Constitution contemplates and says you can take life with due process in several different places.

That is judicial activism.

Mr. SCHUMER. Will the Senator yield? I am happy to yield to him some of my time.

I ask my colleague if he was aware that Professor Lynch is for the death penalty. In fact, he was questioned by Senator THURMOND, on our committee. I will read the question for the RECORD:

> Do you have any personal objection to the death penalty that would cause you to be reluctant to oppose or uphold the death sentence?

And Professor Lynch answered:

No, Mr. Chairman.

So I submit to my friend that, while Justice Brennan may have had a more broad—I tend to agree with my colleague. I am for the death penalty myself, but I tend to agree with my colleague on that issue. That is not Professor Lynch's philosophy. In fact, when one becomes a Clerk for the Supreme Court, high honor that it is, you are chosen simply on your scholastic ability, not on your ideology. I thank the Senator for yielding and letting me add that to the record.

Mr. SESSIONS. Mr. President, I think Senator SCHUMER raises a good point. I never said he opposed the death penalty. What I was trying to point out is that judges, if they desire to impose their fundamental moral values on people when they don't get elected, can end up doing things like Justice Brennan did, for which, certainly, Mr. Lynch admires him.

I have another quote I think is even more clear, a more clear indication of Mr. Lynch's willingness to utilize personal opinions—justifying judges who want to use personal opinions instead of interpreting the law. He was talking about Justice Brennan. This was in 1997, just a few years ago:

Justice Brennan's belief that the Constitution must be given meaning for the present seems to me a simple necessity; his long and untiring labor to articulate the principles of fairness, liberty, and equality found in the Constitution—

Fairness, liberty, and equality sound a little bit like the French Revolution, words they used to chop off a lot of people's heads. Our Constitution is a document of restraint. But:

. . . in the way that he believed made most sense today.

Justice Brennan's belief that the Constitution must be given:

. . . meaning for the present in the way he believed made most sense today seems far more honest and honorable than the pretense that the meaning of those principles can be found in 18th- or 19th-century dictionaries.

In the course of my time on the Judiciary Committee, I have voted for well over 90 percent of the nominees, I suppose, that the President has submitted. This Senate has confirmed a large number of them. I suggest that this may be the most dramatic example of any nominee that we have had, that they have explicitly stated that a judge has the ability to ignore the meaning of the words that were put in the Constitution. In other words, he doesn't have to use the dictionary definition of words. He doesn't have to use dictionary definitions of words. He just goes to whatever the meaning of ''is,'' is, I suppose.

In other words, there is no constraint on a judge who will not adhere to the words himself and admit that he needs to be bound by the plain words in a statute or our Constitution. He puts down the philosophy that a judge has to show restraint. Even if he did not like the constitutional provision, even if he or she did not like the statute involved, he would be bound to enforce it. It is a fundamental matter of great importance.

Just as Professor VanAlstyn, speaking at a Federal court conference a number of years ago, said:

It is absolutely critical that we enforce this Constitution, the one that we have, the good and bad parts of it.

That is what law is all about, enforcement of law that is written. Without it, we do not have justice. Professor VanAlstyn says you do not respect the Constitution if you don't enforce its plain meaning. You say the Constitution is great; it is a living document. It is not; it is on paper. It is not living; it doesn't breathe. It is a contract with the people of America about how they are going to give power to people who govern them. It is a limited grant of power to the people who govern them.

I will say this. That is another dramatic statement of a judge's ability, according to Mr. Lynch, to redefine meanings of words and to line up contemporary events, as of today, so he can impose a ruling on the people that he believes is just and fitting with community standards and moral decencies and things of that nature. That is a very dangerous philosophy. It is not the philosophy of the mainstream law in America today.

It was advocated by and probably reached its high-water mark under Justice Brennan when he tried to declare the death penalty to be in violation of the U.S. Constitution, when the Constitution provided for the death penalty. That is big-time stuff, when a Justice on the Supreme Court is prepared to say something like that and dissented on every single death penalty case based on that theory.

I suggest Mr. Lynch is a brilliant lawyer, a man of great skill, a lawyer/professor, and he knows what he means and he said what he meant when he wrote that. What else can we think? If that is so, then I believe we cannot be sure, Members of this Senate, that he would consider himself bound by the plain meaning of words, of statutes passed by this body or even more significant, not consider himself bound by the Constitution itself that was ratified by the American people to protect their liberties.

Remember, when we have a judge who believes in activism, it is at its most fundamental an antidemocratic act. It is an act that goes against democracy because we have a lifetime-appointed judge whose salary cannot be cut so long as he lives. He can stay on that bench as long as he lives. He is asserting for himself or herself the right to declare what he or she thinks is appropriate today. ''It may not have been what they thought when they wrote that old Constitution, but things have changed today. I think today the death penalty is unconstitutional.'' That kind of philosophy is a danger. It disrespects the Constitution. It undermines the Constitution and undermines democracy.

I wish I would be able to support Mr. Lynch. I supported the overwhelming majority of the nominees, some of them maybe even more liberal than Mr. Lynch, but I haven't had anything to indicate that or I would have probably opposed them. Some I have.

This document, these law review articles are extraordinarily troubling to me. I do not think it is a minor point. I think it is a big point. I know the Senator from New York, both Senators from New York, think highly of Mr. Lynch and I respect that. But based on what I have observed, I believe his written remarks indicate he is unwilling to be bound by the law. Therefore we should not impose him on the people of New York and the United States.

I see the Senator from New York might want to comment on that before I go to the next nominee? I have one more nominee I would like to comment on.

Mr. SCHUMER. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I thank my friend from Alabama for his heartfelt remarks. I understand the passion from which he comes and, while I do not agree with him completely, as those on my judicial panel will tell him, one of the things I always cross-examine them about is, Is this person going to go off and make their own law? Because I do not like that either. As I said, my three watchwords in appointing judges in my first year, and I think I have lived up to them with every nominee, are: Excellence, moderation, and diversity.

Let me just say I think Judge Lynch is clearly a moderate and he clearly is not the kind of activist that my good friend from Alabama is saying. In fact, he has criticized Justice Brennan for being ''activist'' in some of his interviews. Judge Posner noted the same about Judge lynch. Judge Posner is someone who probably agrees with the Senator from Alabama more than he agrees with the Senator from New York.

But the two quotes there that my friend from Alabama cited are snippets of articles. Two paragraphs later Professor Lynch expostulates further and greatly narrows what he has said here. Let me read a quote from the first article. I think it is important the record have it for the edification of my good friend from Alabama.

Admittedly, Professor Lynch is a professor. He has written a lot more than a lot of the other judges and, given as many writings as he has, I guess you could take two paragraphs and say: This man is a judicial activist.

If you look at the entire warp and woof of his work, as well as what he actually meant even in the two paragraphs my good friend from Alabama has mentioned, I think the Senator is not correctly stating Professor Lynch's view.

I will read a paragraph from the same article from which the previous quote

the Senator from Alabama had mentioned appears. This is what Professor Lynch says a few paragraphs later:

It is the text itself that embodies and defines what has been agreed on. What survived the rigorous ratification process to become fundamental law, after all, was not what Madison or Bingham believed in his heart, or even what they said on the floor of the Convention or the House, but rather what was contained in the text of the ratified provision. Thus, the text is not merely evidence from which the mind of the (perhaps partly mythological) lawgiver should be deduced; rather, the text is the definitive expression of what was legislated.

I will repeat that again for my colleague from Alabama:

. . . the text is the definitive expression of what was legislated.

That is hardly the writing of somebody who wants to go far, far afield. As I mentioned, the example my good friend from Alabama keeps hearkening back to is the death penalty and the way Justice Brennan interpreted it. If Professor Lynch agreed with that, I would say the Senator from Alabama had a point, but he explicitly disagrees and has criticized Justice Brennan as being too active.

The second quote Senator SESSIONS focuses on, the quote before us on the chart, comes from a tribute to the memory of Justice Brennan that Professor Lynch, who clerked for Justice Brennan after graduating from law school, wrote in 1997. Again, in the context of the whole essay, Professor Lynch's point is noncontroversial. He is writing here about what a judge is to do when the broad language in the Constitution does not speak to a modern-day issue. We are not talking about expanding but interpreting the spirit of the Constitution.

I say to my colleague from Alabama, when the fourth amendment speaks of unreasonable searches and seizures and says nothing about wiretaps of telephones or the Internet, it does not mean the judges are unable to interpret what search and seizure means in the context of telephones or wiretaps. That is all Professor Lynch is saying.

He is saying judges must look at the text and the values underlying the text and interpret both in light of developments of the present. Do not expand what unreasonable searches and seizures are, rather interpret them in light of new changes in technologies, such as telephones. Otherwise, the Constitution—and I am sure my colleague from Alabama can admit this—would be largely irrelevant to today's legal problems.

Moreover, Professor Lynch was asked at his nomination hearing about this article by Senator THURMOND. Here is what he said. His response was unequivocal:

I believe, Mr. Chairman, that the starting place in interpreting the Constitution is with the language of the document. As with the legislation passed by the Congress, it is the wording of the Constitution that was ratified by the people and that constitutes the binding contract under which our government is created.

In attempting to understand that language, it is most important to look to the original intent of those who wrote it and the context in which it was written.

It seems to me, and I did not realize it until I read this paragraph again, those are the exact words my good friend from Alabama mentioned as his views of what the Constitution is all about: Not some document that expands at the whim, wishes, or ideology of the judge but rather a written contract, words, black and white with the American people. Judge Lynch—I do not want to presume anything here, particularly in this Chamber—Professor Lynch makes, in fact, the same point that my good friend from Alabama did.

The PRESIDING OFFICER. The time of the proponents of the nomination has expired.

Mr. SCHUMER. Mr. President, I ask unanimous consent that 1 additional minute of Senator LEAHY's time on another judge where there is not going to be any contest or discussion be given to me. I am not expanding the time.

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

Mr. SCHUMER. I thank Senator LEAHY in absentia for allowing me to do that. I hope he is not upset.

It is certainly the prerogative of my good friend from Alabama to interpret snatches of text from book reviews and tributes to conclude that maybe Professor Lynch has a judicial philosophy with which he disagrees, but this is the definitive and current statement on the issue by the nominee, and I think it prevails.

In conclusion, if Professor Lynch is confirmed, I believe Senator SESSIONS and I—and I have enjoyed working with him on so many issues—will look back 5 or 10 years and both approve of the work Judge Lynch has done, admire his faithfulness to the words of a document we both regard as sacred—and I believe he does as well—the Constitution, a document we are all sworn to uphold. I yield back any time and thank my colleague for the dialog and for making us think and explore as he always does.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. What is the time left on the Lynch nomination?

The PRESIDING OFFICER. The Senator from Alabama has 4 minutes.

Mr. SESSIONS. Mr. President, I note that Mr. Lynch's words are pretty explicit and leave little doubt. I am pleased to see before his hearing—talk about a death-bed conversion. His testimony sounds somewhat improved over the language here, but it does concern me when he dismisses concepts such as actually looking at dictionaries that refer to the time of the people who wrote the document and review words to see what they actually were intended to mean.

That is what a judge really ought to do, and Mr. Lynch dismisses that almost with contempt. We have to consider it awfully dangerous when a judge feels the principles of the Constitution of liberty, equality, and fairness are in the Constitution when that phrase is really not in the Constitution, and the danger of those words are they are great ideals, but they are general; they have no definitiveness, and they give a platform for a judge to leap off into different issues about which he may personally feel deeply and simply do so on the basis that it is fair or it is a question of equality: This is fairness so I will just rule this way.

We have preserved our Nation well by insisting that our judiciary remain faithful to the plain and simple words of the Constitution and the statutes involved.

NOMINATION OF TIMOTHY B. DYK

Mr. SESSIONS. Mr. President, I will use what time I have remaining on the Lynch nomination for the Dyk nomination, and I will yield the floor to Senator SMITH who wants to speak.

Mr. Dyk has been nominated to the Federal circuit here in Washington. Mr. Dyk is a good lawyer, apparently with a good academic background, and has certain skills and abilities that I certainly do not dispute. I do not have anything against him personally, but I do have serious concerns about this court. I do not believe we need another judge on this court.

The Federal circuit is a court of limited jurisdiction. It handles patent cases and Merit Systems Protection Board cases, certain international trade cases, and certain interlocutory orders from district courts. It is a specialized court and does not get involved in too many generalized cases.

We have analyzed the caseload of this circuit. I serve on the Administrative Oversight and Courts Subcommittee of the Senate Judiciary Committee with Senator CHUCK GRASSLEY, who is chairman. I have been a practicing prosecutor for 15 years in Federal court before Federal judges; that is where I spent my career. I know certain judges are overwhelmed with work, and I have observed others who may not be as overwhelmed with work.

I will go over some numbers that indicate to me without doubt that this circuit is the least worked circuit in America. It does not need another judge, and I will share this concept with fellow Members of the Senate.

They handle appeals in the Federal Circuit, appeals from other court cases and boards. In 1995, there were 1,847 appeals filed in the Federal Circuit. Four years later, in 1999, that number had fallen to 1,543 appeals, a 16-percent decline in cases filed.

Another way to look at the circuit is how many cases are terminated per judge. The Administrative Office of Courts provides a large statistical report. They analyze, by weighted case factors, judges and cases by circuits and districts and so forth. It is a bound volume. They report every year. The numbers are not to be argued with.

The Federal Circuit has by far the lowest number of dispositions per

judge. The Federal Circuit has 141 cases per judge terminated. There are 11 judges now on that circuit. As a matter of fact, those 141 cases were when the court had 10 judges. We now have 11 judges on that court, and we are talking about adding Mr. Dyk, who would be the 12th judge on that court, to take the numbers down even further.

The next closest circuit is a circuit that is also overstaffed—the D.C. Circuit. I have opposed nominees to the D.C. Circuit in Washington. Oddly enough, both the circuits that I believe are overstaffed and underworked are located in this city. The average case dispositions for a circuit judge in America are more than double that. Let me provide some examples.

The Third Circuit average number of terminations per judge is 312; the Fourth Circuit, 545; the Fifth Circuit, 668—that is four times what the Federal Circuit does—the Seventh Circuit, 352; Eighth Circuit, 440; Ninth Circuit, 455, the Tenth Circuit, 350; the Eleventh Circuit—my circuit, Florida, Alabama, and Georgia—820 cases, compared to 141. That is six times as many cases per judge in the Eleventh Circuit as in the Federal Circuit.

The taxpayers of this country need to give thought to whether or not we need to add a judge to this circuit. It is pretty obvious we ought to consider that. Terminations per judge on the Federal Circuit represent only 17 percent of the cases terminated by a judge on the Eleventh Circuit.

Senator GRASSLEY issued a report on March 30, 1999, ''On the Appropriate Allocation of Judgeships in the United States Court of Appeals.'' The report assessed the need to fill one vacancy on the Federal Circuit. The court already had 11 active judges of the 12 authorized.

The Federal Circuit also had five senior judges at that time. Senior judges contribute a lot to the workload. That is a pretty high number. Almost half as many judges are senior judges who come in on a less-work level. They don't handle the most important en banc cases, but they participate in drafting opinions. They have law clerks. Many of them do almost as many cases as an active judge. So they have five senior status judges. Maybe it is down to four now, but at that time there were five senior judges.

The Grassley report states:

> In fact, the current status of the circuit actually supports the argument that the court could do its job with a smaller complement of 11 judges. As such, the case has not yet been made that the current vacancy should be filled.

That remains true today. The Federal circuit has 11 active judges now and 4 senior judges.

On the issue of the cost of a judgeship, people ask, how much does it cost to add another judge? Just add a judge and pay his salary, $140,000, $150,000 a year? That is not too bad. However, the actual cost of a Federal judge is $1 million annually. They have two, three law clerks, secretaries, office space, libraries, computers, travel budgets, and everything that goes with being a Federal appellate judge. It is an expensive process. That number is a legitimate number, 1 million bucks.

We have judges in this country who are working night and day, but this circuit is not one of them. Before we do not fill some of those vacancies, before we do not add new judges to some of those districts—and it is not that many, but some are really overworked—we ought to think about whether we ought to continue a judge where we don't need one.

The Grassley report also dealt with the problem of having more judges than you need, sort of a collegiality question. The report said:

> Judge Tjoflat [chief judge at the Eleventh Circuit at one time] testified that some scholars maintain that a ''perfect'' appellate court size is about 7 to 9 judges, and when a court reaches 10 or 11 judges, ''you have an exponential increase in the tension on the court of the ability of the law not to be certain.'' Judges claimed that there is a marked decrease in collegiality when the appeals court is staffed with more than 11 or 12 judges. Chief Judge Posner of the Seventh Circuit thought that with 11 judges, the Seventh Circuit was ''at the limit of what a court ought to be'' in terms of size.

The Seventh Circuit had more than twice as many cases per judge as the Federal Circuit does today.

The Grassley report further stated there is a consistency cost with expanding courts:

> Not only is there a loss in collegiality the larger a court becomes, there is also an increase in work required by the judges to maintain consistency in the law. Judge Wilkinson felt that more judges would not lighten the burdens of a court, but would actually aggravate these burdens further.

The Federal Circuit, to which this judge would like to be appointed—and it would be a good position to draw that big Federal judicial salary and have the lowest caseload in America—has the lowest terminations per judge of any circuit court of appeals. It has a 16-percent decrease in overall caseload, with a clear recommendation from the Grassley subcommittee report that there is not a need to add another judge to this circuit.

I suggest that we not approve this judge, not because he is not a good person but because we don't need to burden the taxpayers with $1 million a year for the rest of his life to serve on a court that doesn't need another judge. In fact, they could probably get by with two or three fewer judges than they have right now and still have the lowest caseload per judge in America.

We don't have money to throw away. People act as though a million dollars isn't much money. A million dollars is a lot of money where I came from. I think we ought to look at that and put our money where we have to have some judges. There are some of those areas.

I thank the Chair for the time to express my thoughts on the Dyk matter and yield the remainder of my time to Senator SMITH from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

The PRESIDING OFFICER. Nineteen minutes remain for the Senator from Alabama. Fifteen additional minutes are under the control of the Senator from Utah.

Mr. SMITH of New Hampshire. Mr. President, I rise today in opposition to the nominations of both Mr. Dyk and Mr. Lynch. But I also rise to briefly discuss the role of the Senate in judicial nominations, the issue of advice and consent. What is the appropriate role for the Senate? Should we be out here opposing nominations? You can be criticized for it because they say: Well, the President is in the other party; therefore, every time you oppose a nomination, it is for political reasons.

The truth is, by either voting for or not asking for a recorded vote, I have allowed many Clinton nominees to move forward. But I think we have an obligation under the advise and consent clause of the Constitution that if we don't think the judge is qualified to be on the Court, or perhaps he or she is too much of an activist and not really upholding the Constitution as it was written, then I think we have an obligation to say that.

It is with some reluctance I must do that. That is my view. When I say ''qualified,'' we don't merely look at the educational background of the nominee or to the employment history to understand qualifications. I am more interested in the judicial philosophy: Is this nominee going to be an activist judge for one issue or another? Whether conservative or liberal, is that the purpose of a judge—to go on the Court and be an activist for some particular issue—or is it more appropriate for the judge to go on the Court and be an activist for the Constitution of the United States and interpret that Constitution correctly? The latter is what I believe is the appropriate thing to do.

As a member of the Judiciary Committee, I have searched through many of the nominees this President has sent forward. I must say I am shocked at the amount of judicial activists. We have had some great clashes in this body on Presidential nominees for the Court—Robert Bork, to name one, and Clarence Thomas was another. It seems that when the liberal side of the aisle goes after a judge, it is always appropriate, but if we go after a judge because we think he or she is too far to the left in terms of activism, then, of course, it is wrong.

But article II, section 2, of the Constitution states that the President ''shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.'' That means the lower courts, to put it in simple terms.

The Senate is not a rubber stamp for any nomination, nor should it be. We

have a right to speak out, and I specifically, along with Senator SESSIONS, asked for a recorded vote in the case of Mr. Dyk and Mr. Lynch because I believe the Senate should go on record. Sometimes if the nominees are not controversial but simply share a different philosophical view from mine and are not activist, and based on their background I believe they will look at the Constitution as fairly as possible, in an objective manner, I don't object to those nominees.

I don't expect President Clinton to appoint a judge I might appoint. I respect that, and I understand that. That is not the reason for the advise and consent clause, to simply disapprove every single nominee because you disagree with the President's politics.

The framers of our Constitution settled on a judicial selection process that would involve both the Senate and the President. Remember, these are lifetime appointments. There is no going back, unless some horrible thing happens in terms of malfeasance, where the judge is impeached. But for the most part, a judicial appointment is lifetime. A Federal judge is a Federal judge for life. So if a few of us come down to the Senate floor, as Senator SESSIONS and I have done, and talk about these nominees, I don't think that is so bad. They are appointed for life. So if we have concerns, I think they should be raised. That is legitimate on either side of the aisle.

Nominees who are a danger to the separation of powers, who have shown evidence of legislating from the bench, those are the kinds of nominees to whom I am opposed. I am not opposed to nominees based on a President's political philosophy. I am opposed to nominees who have shown evidence of legislating from the bench. That is a very important point to make.

I might also say, before discussing specifically the two nominees just for a moment, that there is some irony in this debate today because this is the first time nominations have come before the Senate for a vote since the President of the United States has been recommended for disbarment as an attorney by the State of Arkansas. Now, I don't know if that has happened in American history before. I don't believe so. So I think I am correct in saying this is the first time in American history that a sitting President has been recommended for disbarment from the State he came from, and then that same President is submitting nominees to the courts in our land.

I do not mean to imply anything by this in terms of the qualifications of the nominees, about their conduct in office or anything such as that. That is not the intention. The intention here is to point out that it is somewhat ironic that a man who showed total disregard for the law, according to the law in the State of Arkansas, would now be sending judges up to the Senate for approval. So I bring this to the attention of my colleagues because it is the first time in American history this has ever happened. We are standing here in judgment of people who are appointed by a President who has been recommended for disbarment.

The Arkansas bar, as you know, a day or so ago recommended this. A committee of the Arkansas Supreme Court recommended this past Monday that the President be disbarred because of ''serious misconduct'' in the Paula Jones sexual harassment case. A majority of the panelists who met Friday to consider two complaints against the President found that the President should be disciplined for false testimony about his relationship with Monica Lewinsky, the Arkansas Supreme Court said. He was, indeed, fined by another judge from Arkansas for lying under oath.

So it is ironic we are debating the qualifications of many fine jurists, frankly, before us today, and in the newspapers we read about how our President is facing disbarment. So it is a unique situation we face here and one I want everybody to understand.

We break a lot of ground here. We do a lot of things that have never been done before. We had an impeachment trial in the Senate a few months ago. The Senate, in its infinite wisdom, said the President was not guilty, but the Arkansas bar said otherwise. So it is a very interesting twist of fate that now nominees are being sent to the Senate by a man who is recommended for disbarment, and probably will be disbarred, from the practice of law in the State of Arkansas.

Let me conclude on a couple of points on the nominees. I have spent a lot of time on the nomination of Timothy Dyk, and I am very much opposed to Mr. Dyk being a District Judge for the U.S. Circuit Court of Appeals for the Federal Circuit. Some of the material I looked at I am not going to go into on the Senate floor. But a couple of things in which Mr. Dyk was involved concerned me.

In a Washington Post article appearing in May of 1984, the Post reported that Timothy Dyk ''agreed to work for free for the anti-censorship lobby, People for the American Way, to sue the Texas Board of Education over the board's 10-year-old rule that evolution be taught as ''only one of several explanations of the origins of mankind.''

People for the American Way is pretty much a liberal activist, anti-Christian group that seeks to rid public education of any mention of God at all in its educational language and literature, or in schools.

The president for the People for the American Way, Ralph G. Neas, spoke in January of 1999 about his vision of the People for the American Way. Listen to what he said because you have to remember that Mr. Dyk worked for them pro bono, for nothing. Mr. Neas said:

> As you may know, People for the American Way has always carefully monitored the radical religious right and its political allies.

Mr. Neas believes that most if not all Republicans are members of the ''radical right.''

He further said:

> The effort by some elements of the conservative religious and political movements to undermine support for public education goes back decades before Phyllis Schlafly and Gary Bauer and Pat Robertson came on the scene, before the days of the Heritage Foundation, back before Newt Gingrich and the Contract with America.

As you can see by his comments, People for the American Way is now and has always been an anti-Christian, anti-conservative organization.

He continues by attacking ORRIN HATCH, Governor George Bush, and Senator JOHN MCCAIN for supporting schooling voucher legislation.

Let me repeat that. He attacked Senator JOHN MCCAIN, Senator ORRIN HATCH, and Governor George Bush for supporting school vouchers.

I guess Timothy Dyk might turn out to be one of the greatest judges in the history of the world, for all I know. I can't predict that. I am not in the business of predicting the future. I am trying to take a look at what I have before me to make a decision on whether or not a person is fit to be on the court.

I understand that the U.S. Chamber of Commerce is a staunch supporter, but I have to vote no because I don't believe that a potential judge who uses that kind of language and who makes those kinds of decisions with those kinds of organizations on a pro bono basis is the kind of person I want on the court.

I must say that there are thousands of judges—and thousands of people who want to be judges—all over America who serve, do it honorably, and interpret the Constitution as fairly and as equitably as possible.

Why is it that time and time again before this body come these outrageous judicial activists appointed by this President? Some have said, well, the other side of the aisle gave you a lot of judges during the Bush administration. A lot of those judges, if not most, were not judicial activists.

It is one thing to have a different philosophical view and to be nominated by a President of a different philosophical view. We are not interested in philosophy on the Supreme Court, or on any court. We are interested in supporting the Constitution and interpreting the Constitution the way the founders would have wanted us to do it. They are not your activists. I don't care about your activists. But I think when you hear people representing on a pro bono basis—for no money; you are doing it because you want to do it; you are not getting paid—there is a difference. When somebody retains you as a lawyer, you have every right to do that. That is the American way, and you have every right to do it pro bono. But it tells you about somebody when they represent somebody pro bono. Terrorists were represented pro bono by Mr. Dyk.

I think when you are looking at these things, you have to say to yourself, well, these are the people with whom he wants to surround himself with pro bono services. I guess I have to ask, isn't there anybody out there somewhere that we could have as a nominee who doesn't have to be out there talking about and criticizing Members of the Senate because they support school vouchers and are representing groups that do that, or even on the issue of evolution? I think it is going too far. I think it is sad, frankly, that we have to deal with it.

The other nominee before us who has been talked about already is Gerald Lynch for the Southern District of New York. The reason I oppose his nomination is for the same reasons.

As my colleague, Senator SESSIONS, quoted, Attorney Lynch wrote:

> Justice Brennan's belief that the Constitution must be given meaning for the present seems to me a simple necessity; his long and untiring labor to articulate the principles of fairness, liberty, and equality found in the Constitution in the way that he believed made most sense today seems far more honest and honorable than the pretense that the meaning of those principles can be found in eighteenth or nineteenth-century dictionaries.

That is a pretty legalistic phrase. Let's put it in English. It means what the founders said in the 1700s isn't relevant. It is not relevant. It is relevant today. What is relevant today is relevant today. And, frankly, the Constitution those guys wrote in the late 1700s doesn't apply to us today. The Constitution is not the same. It is totally wrong.

Why is it that we criticize those who wrote the Constitution when we attribute time and time again to some great people who profess to be scholars on the Constitution? They come down here on the Senate floor saying: You know, the founders didn't mean that; that isn't what they meant; they didn't mean to say that; if you look at it literally, it does not mean that.

When you go back and find the comments of the founders, over and over again the founders say exactly what they meant. Not only did they write it in the Constitution but they explained it in their own words in the debate. And they still say they didn't mean what they said.

I think if you find a document that was written by somebody and then you find the explanation, and it says what they meant—they said, ''This is what I meant''—that is pretty obvious.

I think we are seeing evidence here again of a person who will be another judicial activist who is going to say the Constitution isn't relevant today, so, therefore, I can put my interpretation into the Constitution. That is the kind of nominees that we are talking about here. This is very troubling.

That is why I rise today to oppose both the nominations of Timothy Dyk and Gerard Lynch, and I will also oppose a couple of other nominees in the future.

Mr. LEAHY. Mr. President, I am delighted to support the confirmation of Jerry Lynch to the District Court for the Southern District of New York. Professor Lynch is the Paul J. Kellner Professor of Law at Columbia Law School, the outstanding law school from which he received his law degree in 1975. He began his legal career by clerking on the Second Circuit Court of Appeals for Judge Feinberg and then on the United States Supreme Court for Justice Brennan.

He served as an Assistant U.S. Attorney in the Southern District of New York back in the early 1980's and as the Chief Appellate Attorney for that office. In 1990 he returned to the office at the request of President Bush's U.S. Attorney to head the Criminal Division of that office.

Even his opponents must describe him as ''a man of personal integrity and a man of considerable legal skill.'' That he is. He is also a person who served as a prosecutor during two Republican Administrations.

Professor Lynch is well aware that he has been nominated to the District Court and not to the United States Supreme Court and that he will be bound by precedent. He has committed to follow precedent and the law and not to substitute his own views. In his answers to the Judiciary Committee, he wrote:

> There is no question in my mind that the principal functions of the courts is the resolution of disputes and grievances brought to the courts by the parties. A judge who comes to the bench with an agenda, or a set of social problems he or she would like to ''solve,'' is in the wrong business. In our system of separation of powers, the courts exist to apply the Constitution and laws to the cases that are presented to them, not to resolve political or social issues. The bulk of the work of the lower courts consists of criminal cases and the resolution of private disputes and commercial matters.

In fact, in specific response to written questions from Senator SESSIONS, Professor Lynch wrote that he understands that the role of a district court judge requires him to follow the precedents of higher courts faithfully and to give them full force and effect, even if he personally disagrees with such precedents.

His opponents excerpt a couple lines of text from a 1984 book review and a eulogy to his former boss, Justice Brennan, rewrite them and argue that their revisions of his words indicate a judicial philosophy that he will not enforce the Constitution but his own policy preferences. They are wrong.

I have read the articles from which opponents excerpted out of context a phrase here and a phrase there to try to construct some justification for opposing this nominee. In his 1984 book review, Professor Lynch was criticizing a book that defended the legitimacy of constitutional policymaking by the judiciary. That's right: Professor Lynch was on the side of the debate that criticized personal policymaking by judges and counseled judicial restraint.

Professor Lynch criticized the author for a ''theory justifying judges in writing their own systems of moral philosophy into the Constitution.'' Nonetheless, opponents of this nominee turn the review on its head, as if Professor Lynch were the proponent of the proposition he was criticizing.

These opponents take a throw-away line out of context from the book review and miss the point of the review. What his critics miss is the fact that Professor Lynch argued against the Supreme Court being the politically activist institution that the book he is criticizing seeks to justify. Professor Lynch argues against judges, even Supreme Court Justices, becoming moral philosophers. He writes, following the excerpt on which his critics rely:

> [N]either of these claims has force when the Court speaks through the medium of moral philosophy. First, there is little reason to expect judges to be more likely than legislators to reach correct answers to moral questions. After all, judges possess no particular training or expertise that gives them better insight than other citizens into whether abortion is a fundamental right or an inexcusable wrong. Disinterestedness alone does not determine success in intellectual endeavor. . . .

Ignored by his critic is also the written answer that Professor Lynch furnished Senator SESSIONS explaining what he meant by the statement that is being misread and misinterpreted, again, by his opponents. Professor Lynch explained:

> The quoted statement comes from a book review in which I sharply criticize a book that makes the claim that courts have authority to enforce moral principles of its own choosing, a position I do not share. In the quoted passage, I was attempting to explain why the Supreme Court is given power to enforce the text of a written Constitution.

The other quote being criticized is taken from a short memorial to Justice Brennan, a man for whom Professor Lynch had clerked and whom he respected. The memorial was apparently written just after Justice Brennan's funeral. Professor Lynch wrote of Justice Brennan's humanity and his patriotism. Nonetheless, it appears that even this statement of tribute to a departed friend is grist for the mill of opponents looking for something they can declare objectionable.

Ignored by opponents is the direct response to Senator SESSIONS' question about the eulogy for Justice Brennan. Professor Lynch responded to Senator SESSIONS:

> The statement quoted comes from a eulogy to Justice Brennan on the occasion of his death. I do not believe that good faith attempts to discern the original intent of the framers are dishonest or dishonorable. Judges and historians daily make honorable and honest attempts to understand the thoughts of the framers.
>
> Too often, however, the history that lawyers present to courts is deliberately or inadvertently biased by the position that lawyers as advocates would like to reach, and such resort to partial and limited sources can be used to support results that accord with policy preferences. While Justice Brennan took positions that can be criticized as activist, it

is generally agreed that he was forthright in stating his approach.

Likewise ignored is Professor Lynch's statement to Senator SESSIONS: ''The judge's role is to apply the law, not to make it.''

Also ignored are the acknowledgments by Professor Lynch in the course of the memorial itself that the ''charge that Justice Brennan confused his own values with those of the Constitution does capture one piece of the truth'' and that the ''problem, and here is the heart of the argument against Brennanism, is that there will always be different interpretations of what those core shared values mean in particular situations.'' I commend Professor Lynch for his candor.

It is sad that Senators have come to oppose nominees and the Senate has refused to move forward on nominees because they clerked, as young lawyers just out of law school for a certain judge or because clients they represented during the course of their practice and while fulfilling their professional responsibilities had certain types of claims and charges against them or brought certain types of claims. That is what underlies the opposition to both this highly qualified nominee and to Fred Woocher, a nominee to an emergency vacancy on the District Court for the Central District of California.

Mr. Woocher participated in a confirmation hearing last November and has been denied consideration by the Judiciary Committee for more than six months. Mr. Woocher has had a distinguished legal career and is fully qualified to serve as a District Judge. But Mr. Woocher clerked for Justice Brennan after his academic studies at Yale and Stanford.

Apparently, Senators who are holding up consideration of Mr. Woocher likewise believe that those who do not favor the conservative activism of Justice Scalia or Chief Justice Rehnquist should oppose the appointment of people who clerked for such jurists. Certainly that is the point that they are establishing by their opposition to these outstanding nominees.

Any Senator is entitled to his or her opinions and to vote as he or she sees fit on this or any nominee. But the excerpts relied upon by opponents of Professor Lynch, from over 20 years of writing and legal work, do not support the conclusion that Professor Lynch is insensitive to the proper role of a judge or that he would ignore the rule of law or precedent. To charge that Judge Lynch would consider himself not to be bound by the plain words of the Constitution is to misperceive Jerry Lynch and ignore his legal career.

With respect to the unfounded charge that Professor Lynch would interpret the Constitution by ignoring its words, that is simply not true. Here is what Professor Lynch told Senator THURMOND at his confirmation hearing:

I believe, Mr. Chairman, that the starting place in interpreting the Constitution is with the language of the document. As with legislation passed by the Congress, it is the wording of the Constitution that was ratified by the people and that constitutes the binding contract under which our Government is created.

In attempting to understand the language, it is most important to look to the original intent of those who wrote it and the context in which it was written. At the same time, with respect to many of those principles, the Framers intended to adopt very broad principles. Sometimes the understanding of those principles changes over time.

In truth, the opposition to this nomination seems to boil down to the fact that Professor Lynch clerked for Justice Brennan, a distinguished and respected member of the United States Supreme Court, more than 20 years ago.

In light of the arguments made by the Senator of Alabama on the workload of the Federal Circuit, I wanted to add to the RECORD the letter from the Chamber of Commerce to the Subcommittee on Administrative Oversight and the Courts from last summer. Although these statistics are as out of date as those used by the Senator from Alabama, the letter makes several important points. The caseload of the Federal Circuit is not inflated by prisoner cases but is filled with complicated intellectual property cases and other complex litigation. I ask consent to print the August 1999 letter from the Chamber of Commerce in the RECORD.

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

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Washington, DC, August 3, 1999.

Hon. CHARLES E. GRASSLEY,
Chairman, Subcommittee on Administrative Oversight and the Courts, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN GRASSLEY: This letter again urges that the Judiciary Committee promptly consider the nomination of Timothy Dyk for the Federal Circuit and that that nomination be reported out of Committee before August recess. It has been almost sixteen months since Mr. Dyk was first nominated to the Federal Circuit, it has been nearly a year since he was first voted out of Committee. So far as the Chamber is aware, he is the only judicial nominee voted out of Committee last year who has been scheduled for a second hearing. We urge that a second hearing is unnecessary.

We understand that the principal concern about Mr. Dyk's nomination now relates to the need to fill the vacancy. There are now not one, but two vacancies on the Federal Circuit. We recommend that Mr. Dyk's nomination be acted upon promptly so that the Federal Circuit will not be seriously understaffed.

The question about the need to fill the vacancy was considered in the March 1999 Report on the Appropriate Allocation of Judgeships in the United States Courts of Appeals. The Report generally agrees that ''the best measure of when a court requires additional judges is how long it takes, after an appeal is filed with a court, to reach a final decision on the merits.'' (p.5) The Report also states that: Over the last five years, the Federal Circuit's ''mean disposition is the lowest of any circuit court. . . .''

But the Report's comparison between the Federal Circuit and the other Circuits is a comparison of apples and oranges. The Federal Circuit data appear to have been computed using a ''mean'' or average number, while the data for the other Circuits was computed using a median number. Over the most recent five-year period (1994–1998), using median data, the disposition time for the Federal Circuit exceeded that for the Second, the Third and the Eighth Circuits. The most recent data (for 1998) show that the median disposition time for the Federal Circuit equals or exceeds that from four other Circuits (the First, Third, Eighth and District of Columbia). Moreover, the median disposition time for the Federal Circuit increased 20%; from 7.9 months in 1994 to 9.5 months in 1998. These data directly support acting on the pending nomination.

To be sure the Federal Circuit has a smaller numerical caseload than other Circuits because the Federal Circuit, as Congress prescribed, does not hear criminal or prisoner cases. But it does have a heavy (and increasing) docket of intellectual property cases and other forms of complex litigation.

Congress intended to give the Federal Circuit exclusive jurisdiction over patent cases, and to be the court of last resort in the vast majority of those cases. (Supreme Court Review is unlikely because there can be no conflict with another Circuit). Under these circumstances, it is critical to the Congressional design and to the business community that the court not give short shrift to these important cases. There is a substantial risk that if the Federal Circuit is understaffed, and limited to ten judges, it will not have time to give these cases the attention that they deserve. The Chamber, as well as business-organizations such as Eastman Kodak, Ingersoll Rand and Lubrizol, expressed this concern to the Committee.

Finally, we understand Senator Grassley's concern that the Federal Circuit does not have a formal mediation program. We note that Mr. Dyk, in his first hearing, supported the creation of such a program, and that he has extensive experience in mediating intellectual property cases. He could make it important to the Court in that area, and we urge that the Court be allowed to secure the benefit of Mr. Dyk's services as soon as possible.

Sincerely,

LONNIE P. TAYLOR.

Mr. KOHL. Mr. President, I rise to support the long overdue confirmation of Tim Dyk to the Federal Circuit. The Judiciary Committee reported out Mr. Dyk in 1998 by an overwhelming, bipartisan margin. Unfortunately, Mr. Dyk's nomination died a slow death last Congress, as he waited in vain for confirmation by unanimous consent or, in the alternative, at least a floor vote.

This Congress, Mr. Dyk has had wait yet another year and a half for Senate consideration after his renomination and second overwhelming Judiciary Committee approval. This delay has been unfair to Mr. Dyk and his family, who have had to put their lives on hold as he awaits confirmation. It has also been unfair to the Federal Circuit, which will be enormously enhanced by his ascension. We are lucky Mr. Dyk was willing to wait; other outstanding candidates, however, may be dissuaded from making the already arduous sacrifices necessary to serve in the federal judiciary.

Finally, it now appears that Mr. Dyk is reaching the end of his long road to

confirmation and will soon take his deserved seat on the bench. He is an excellent candidate—a graduate of Harvard College and Harvard Law School, a law clerk to Chief Justice Earl Warren on the Supreme Court, and a litigator with a long, distinguished practice and a history of public service.

I strongly support this nominee and urge my colleagues to join me in supporting his confirmation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NOMINATION OF BRADLEY SMITH

Mr. MCCONNELL. I yield myself whatever time I consume.

Mr. President, I begin my comments by rebutting some of the points made by colleagues on the other side of the Brad Smith nomination. One of the quotes used against Professor Smith out of context was that he said:

> The most sensible reform is the repeal of the Federal Election Campaign Act.

Using this quotation to imply that Professor Smith would repeal the FECA exemplifies the meritless arguments being used to block the nomination of the most qualified FEC nominee in the history of the Federal Election Commission.

When this statement is read in context and the ellipsis are removed, it is clear that Professor Smith is only talking about the contribution limits in the Federal Election Campaign Act. On that point he is in pretty good company: Chief Justice Warren Burger and Justice Hugo Black also held that view. Justices Scalia and Thomas hold that view. Professor George Priest of the Yale Law School, Professor John Lott of Yale Law School, Dean Kathleen Sullivan at Stanford Law School, Dean Nelson Polsby at George Mason Law School, and former Solicitor General and Justice of the Massachusetts Supreme Court and now Harvard law professor, Charles Fried, have all espoused this view on campaign contribution limits.

I assume all of them would by that argument be barred from serving on the Federal Election Commission. Of course, they would not be barred from serving on the Federal Election Commission, and neither should Professor Smith.

In holding this view, Mr. Smith is no more in disagreement with the law than the Brennan Center and Common Cause, Professor Neuborne, and others who think the law should allow expenditure limits. These people at the Brennan Center and Common Cause advocate a position contrary to the law as declared by the Supreme Court in Buckley and affirmed in Shrink PAC. Under the standard being applied to Mr. Smith, all of them are barred also from serving on the FEC. Clearly, that would be an absurd result.

The Democratic nominee before the Senate, Mr. McDonald, disagrees even more sharply with the Supreme Court than Professor Smith. In open and recorded meetings of the FEC on August 11, 1994, in response to a recitation of election laws interpreted by the Supreme Court, Mr. McDonald declared: The Court just didn't get it.

He doesn't care what the courts say. Clearly, we can't confirm him if disagreement with the law disqualifies an FEC nominee. If there is anyone who has displayed contempt for the law, it is Danny McDonald, not Brad Smith.

Mr. Smith has acknowledged that his view that there should be no contribution limits is no more the law than is the view of the Brennan Center and Common Cause and some of my colleagues that there should be expenditure limits. Moreover, he has made clear he would have no problem enforcing contribution limits.

When asked if he would pledge to uphold his oath, he said he would proudly and without reservation take that oath, and everyone who knows him, including Dan Lowenstein, former national board member of Common Cause, has no doubt that Brad Smith will faithfully enforce the laws written by Congress and interpreted by the courts.

Professor Smith's detractors fail to note that he has made clear in his testimony before the Rules Committee that if the Shrink Missouri case had been a Federal case and come before the FEC for an enforcement action, he would have had no problem voting for enforcement action in that kind of case.

So the notion that Smith ignored Shrink PAC in his testimony is completely unfounded. I refer my colleagues to page 40 of the Rules Committee Hearing Report dated March 8 of this year. Opponents argue Professor Smith says problems with election law have been ''exacerbated or created by the Federal Election Campaign Act'' as interpreted by the courts.

So what? Supreme Court Justices have expressed concern that the Federal Election Campaign Act as interpreted by the courts has had unintended consequences which have exacerbated or created problems with our campaign finance system. The Supreme Court Justices have said that. In Shrink PAC, Justice Kennedy opined: It is the Court's duty to face up to adverse, unintended consequences flowing from our prior decisions.

He goes on to assert, FECA and cases interpreting it have ''forced a substantial amount of political speech underground.'' Noting the problems created by the Federal Election Campaign Act, Justice Kennedy explained that under existing law ''issue advocacy, like soft money, is unrestricted—see Buckley at 42 to 44—while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public, is not * * * This mocks the First Amendment. Our First Amendment principles surely says that an interest thought to be the compelling reason for enacting a law is cast into grave doubt when a worse evil surfaces than the law's actual operation.

In my view, that system creates dangers greater than the one it has replaced.

So, I guess this passage would disqualify Justice Kennedy of the Supreme Court from serving on the Federal Election Commission. So, are we to punish Professor Smith for telling the truth? Professor Burt Neuborne of the Brennan Center has written that at least three extremely unfortunate consequences flow from Buckley.

Neuborne also writes that:

> Reformers overstate the level of downright dishonesty existing in our political culture; furtherer deepening public cynicism.

Then is Professor Neuborne prohibited from serving on FEC? We all know that many of the problems with the current system are caused by excessively low contribution limits. President Clinton, other Democrats, and many people from my own party have publicly acknowledged this reality and the need for raising hard money limits. So I guess all of those folks would also be disqualified from serving on the FEC.

Professor Smith is opposed also because he has written that the Federal election law is profoundly undemocratic and profoundly at odds with the first amendment.

It has been said that Professor Smith is unfit for the FEC because he believes that the Federal election law is profoundly at odds with the first amendment. Quoting his 1995 policy study from Cato Institute:

Here is the Supreme Court in Buckley. Justice Brennan, in fact, who is known to have written the opinion:

> The Supreme Court's decisions in Mills v. Alabama and Miami Herald Publishing v. Tornillo held that legislative restrictions on advocacy of the election and defeat of political candidates are wholly at odds with the first amendment.

So, now we are keeping Professor Smith off the FEC, it is argued, for quoting from the majority opinion in the Buckley case? From quoting from the majority opinion in the Buckley case? Before reformers began attacking Justice Brennan for authoring this quotation that Mr. Smith has cited, let me note that Justice Brennan's observation has been borne out by the fact that provisions of FECA are still being declared unconstitutional as recently as the first week of May, when the Tenth Circuit Court of Appeals declared unconstitutional the party-coordinated expenditure limits.

It is worth noting this was in a 1996 case on remand from the Supreme Court, a case known as Colorado Republican, in which the Supreme Court declared unconstitutional the party

independent expenditure limits in the Federal Election Campaign Act, despite reformer assertions that they were undoubtedly constitutional.

So, it is simply absurd to attack Professor Smith for quoting from a majority opinion in a Supreme Court case. But that is what Professor Smith's detractors are doing. They are saying he is unfit to serve on the Supreme Court—in this case the Federal Election Commission—because he quotes majority opinions that are binding laws and factually correct statements of how FECA has been treated by the courts.

I might also note that efforts to paint this quotation as an absolute statement of his views on the entire Federal Election Campaign Act also lack any merit. If one reads the article in which Bradley Smith recites this quotation by the Court, he makes clear that he supports many aspects of the Federal Election Campaign Act, including the statute's disclosure provisions. Arguments being asserted against Professor Smith are, at best, half truths constructred by reform groups, but many simply misstate Smith's position and reformers and their allies at the New York Times and the Washington Post persist in advancing these specious arguments, even after they have been shown to lack any merit whatsoever.

It seems that Professor Smith's detractors will say anything to get what they want without any regard for either facts or logic.

I also note even the intellectual leader of the reform movement, Burt Neuborne, has written that:

> The arguments against regulation are powerful and must be respected.

Professor Smith's opponents conclude he should not be confirmed because he has said:

> People should be allowed to spend whatever they want on politics.

Well, so what? Under current law, people can spend whatever they want in the form of independent expenditures. Parties can spend whatever they want in the form of independent expenditures and coordinated expenditures. Wealthy candidates such as Jon Corzine in New Jersey can spend whatever they want from their personal fortunes. Moreover, this statement clearly refers to expenditure limits. Since Buckley, the Supreme Court has consistently held expenditure limits unconstitutional. Although so-called reformers wish this were not the law, it is the law. So, again, we are punishing Professor Smith for stating what the law is, not what the reformers would like it to be.

I would also like to note that Burt Neuborne of the Brennan Center agrees with Brad Smith that contribution and spending limits have undemocratic effects. Neuborne has written:

> Contribution and spending limits and unfair allocation of public subsidies freeze the political status quo, providing unfair advantage to incumbents.

Even the Brennan Center acknowledges that disagreement over Buckley does not disqualify a person from interpreting Buckley. The Brennan Center has come under fire for its book ''Buckley Stops Here,'' and its views that the current Federal Election Campaign Act is flawed. I wonder if my colleagues on the other side of the aisle would vote against the executive director of the Brennan Center or the legal director of the Brennan Center who have criticized the current campaign finance law and the Supreme Court's decision in Buckley? The Brennan Center has committed blasphemy, equal to that of Professor Smith, by actually criticizing the reformers.

For example, Burt Neuborne, the Brennan Center's legal director, has stated:

> Reformers overstate the level of downright dishonesty existing in our political culture, further deepening public cynicism.

Moreover, Neuborne has written that:

> Contribution and spending limits freeze the political status quo by providing unfair advantages to incumbents.

Neuborne has gone after the Holy Grail here. He has actually criticized Congress and the Federal Election Campaign Act. Would those who oppose Brad Smith also oppose the Brennan Center?

I would hope not. In fact, the Brennan Center's own web page acknowledges that this type of reasoning is invalid. Let me quote the Brennan Center regarding disagreements over Buckley and the Federal Election Campaign Act:

> The fact that a person believes that the Court should revise its constitutional rulings does not mean that either side disrespects the law or is disqualified from interpreting Buckley. Moreover, there is no direct correlation between attitudes towards Buckley and constitutional analysis of proposed campaign finance reforms.

One of the most troubling solutions asserted during this confirmation debate is that if a nominee has personally questioned the law of Congress, then somehow that nominee is disqualified from government service. Implementing these new type of litmus tests for government service seems shortsighted and ill advised, to put it mildly. Certainly most Members of Congress would be disqualified from future service in the executive or judicial branch under this new test, since nearly everyday we question the wisdom of our laws and regularly vote in opposition to various laws.

This new litmus test barring government service for those who question the law would clearly exclude many fine and capable men and women. For example, it is not uncommon for Federal judges to personally disagree with Congress' efforts to establish mandatory minimum sentences or uniform sentences through the use of the Federal sentencing guidelines. Judge Jose Cabranes, of the Court of Appeals for the Second Circuit, is a widely respected legal scholar who has been mentioned by both Democrats and Republicans as a possible Supreme Court nominee.

Judge Cabranes, however, has been a frequent and outspoken critic of the law he follows every day. He has written a book and law review articles arguing that current Federal sentencing laws and guidelines are ill conceived and ''born of a naive commitment to the ideal of rationality.'' Judge Cabranes has stated:

> The utopian experiment known as the U.S. Sentencing Guidelines is a failure. . ..

Moreover, the respected Judge Cabranes disagrees with what has been popularly referred to as reform. Specifically, the judge explains that the sentencing reformers' ''fixation on reducing sentencing disparity. . .has been a mistake of tragic proportions. . ..[T]he ideal [of equal treatment] cannot be, and should not be, pursued through complex, mandatory guidelines. We reject the premise of [the] reformers. . ..''

Does this mean Judge Cabranes is unfit to be a Federal judge because he does not personally agree with the sentencing law he must follow every day from the bench? Is Judge Cabranes, who is an otherwise widely respected judge, unfit to serve because he disagrees with the reformers, the wisdom of Congress, and the sentencing laws? Of course not.

Let's look to the Supreme Court for a moment on the specific issue of campaign finance law where reasonable people have and do disagree.

In the landmark case of Buckley v. Valeo, the Court had the difficult task of harmonizing the Federal Election Campaign Act with the First Amendment to the Constitution. Ultimately, the Court's decision in Buckley established what has been the law of the land now for the past quarter-century. I think it is worth noting, however, that every Supreme Court Justice sitting in that case disagreed with the law Congress had passed.

Several of these renowned Justices even questioned the law that was ultimately established by the Court's interpretation in Buckley. For example, Justice Thurgood Marshall dissented in part. Justice Blackmun dissented in part. Justice White, Chief Justice Burger, and the current Chief Justice Rehnquist—all of these jurists disagreed with both the law Congress passed and the law the Court created through its interpretation in Buckley.

Several years after Buckley, Justice Marshall continued to question the law established in Buckley. Does that mean the Senate would have denied Justice Thurgood Marshall a seat on the FEC if he had desired such a seat? Would Justice Marshall be unfit to serve a fixed term on a bipartisan commission?

What about Chief Justice Burger who argued Congress did not have the power to limit contributions, require disclosure of small contributions, or publicly finance Presidential campaigns? If the

Chief Justice had wanted a seat on the FEC, would the Senate have rejected Chief Justice Burger as unfit to serve? After all, Chief Justice Burger's opinion is in contrast with that of the New York Times. Would Chief Justice Burger have been unfit to serve a fixed term on a bipartisan commission?

What about my fellow colleagues who question the Court's decision in Buckley? The junior Senator from California, for example, said on the floor of the Senate only a few months ago:

I am one of these people who believe the Supreme Court ought to take another look at Buckley v. Valeo because I think it is off the wall.

Would my colleagues on the other side of the aisle oppose the junior Senator from California if she retired from the Senate and wanted to become an FEC Commissioner? After all, she disagrees with the law and with the Court's decision in Buckley. Would she be unfit to serve?

What about noted scholars such as Joel Gora, the associate dean of the Brooklyn Law School, who has criticized the Federal Election Campaign Act? Or Ira Glasser of the American Civil Liberties Union? Both Gora and Glasser were lawyers in the original Buckley case. Or Kathleen Sullivan, the dean of the Stanford Law School? Or Lillian BeVier of the University of Virginia Law School? Or Professor Larry Sabato of the University of Virginia and a former member of the 1990 Senate Campaign Finance Reform Panel named by Majority Leader George Mitchell? Would these respected scholars, who question the law and share many of Professor Smith's election law views, be disqualified from Government service at the FEC?

Professor Smith's sin, in the eyes of the reform industry, is twofold: One, he understands the constitutional limitations on the Government's ability to regulate political speech, and, two, he has personally advocated reform that is different from the approach favored by the New York Times.

Let me say loudly and clearly, I believe that neither an appreciation for the first amendment nor disagreement with the New York Times and Common Cause should disqualify an election law expert for service on the Federal Election Commission.

As the numerous letters that have been flooding to me at the committee establish, Professor Smith's views are well within the mainstream of constitutional jurisprudence and commend, not disqualify, him for Government service at the FEC. Personally, I think Professor Smith's views would be a breath of fresh air at a Commission whose actions have all too frequently been struck down as unconstitutional by the courts.

Let me point out that the world of campaign finance is generally divided into two camps of reasonable people who disagree with the Supreme Court's interpretation of the First Amendment in Buckley. One camp prefers more regulation; another camp prefers less regulation. Neither camp is perfectly happy with the current state of the law.

One camp is made up of the New York Times, Common Cause, the Brennan Center, and scholars such as Professors Ronald Dworkin, Daniel Lowenstein, and Burt Neuborne. I might add that reformers Neuborne and Lowenstein have both written strong letters in support of Brad Smith's scholarship and writings on campaign finance.

The other camp is occupied by citizen groups ranging from the ACLU to the National Right to Life Committee, and scholars such as Dean Kathleen Sullivan, and Professors Joel Gora, Lillian BeVier, and Larry Sabato. It is probably fair to say Danny McDonald is in one camp and Brad Smith is in the other. I definitely agree with one camp more than I do the other, but I do not think agreement with either camp makes a person a lawless radical or a wild-eyed fanatic. And, I certainly do not think membership in either camp should disqualify a bright, intelligent, ethical election law expert from service on a bipartisan Federal Election Commission.

Finally, and most importantly, the overwhelming letters of support for Brad Smith and his unequivocal testimony before the Rules Committee convince me without a doubt that Brad Smith understands that the role of an FEC Commissioner is to enforce the law as written and not to remake the law in his own image.

As I mentioned earlier, critics who have philosophical differences with Professor Smith should heed the words of Professor Daniel Kobil, a former board member of Common Cause. This is what he had to say:

I believe that much of the opposition—

Referring to Professor Smith—

is based not on what Brad has written or said about campaign finance regulations, but on crude caricatures of his ideas. . . . Although I do not agree with all of Brad's views on campaign finance regulations, I believe that his scholarly critique of these laws is cogent and largely within the mainstream of current constitutional thought. . . . I am confident that he will fairly administer the laws he is charged with enforcing. . . .

Let me add the sentiments of Professor Daniel Lowenstein of UCLA Law School, also a former board member of Common Cause. This is what he had to say:

Smith possesses integrity and vigorous intelligence that should make him an excellent commissioner. He will understand that his job is to enforce the law, even when he does not agree with it.

Let me say a few words about the Democrats' nominee to the FEC, Commissioner Danny McDonald. First, the obvious: McDonald and I are in different campaign finance reform camps. If I followed the new litmus test that is being put forth by some in this confirmation debate, then I would have no choice but to vigorously oppose his nomination.

I have serious questions about McDonald's 18-year track record at the FEC. Commissioner McDonald's views and actions have been soundly rejected by the Federal courts in dozens of cases.

One of these cases, decided earlier this year, Virginia Society for Human Life v. FEC, resulted in a nationwide injunction against an FEC regulation that Commissioner McDonald has endorsed for years.

Let me point out that this McDonald-endorsed regulation had already been struck down by several other Federal courts. Yet McDonald has continued to defy the Federal court rulings and stubbornly refuses to support changing the regulation. Two other cases, FEC v. Christian Action Network and FEC v. Political Contributions Data, Inc. resulted in the U.S. Treasury paying fines because the action taken by McDonald and the FEC was ''not substantially justified in law or fact.''

Just last Friday, the Tenth Circuit struck down yet another FEC enforcement action as unconstitutional.

I ask unanimous consent to print in the RECORD a list of a dozen cases where the Federal courts have rejected the actions of McDonald and the FEC as unconstitutional.

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

Commissioner Mcdonald's views have been soundly rejected by the federal courts in dozens of cases. The following twelve cases are examples of the court's rejection of Mcdonald's views as unconstitutional.

One of these cases, decided earlier this year, Virginia Society for Human Life v. FEC, resulted in a nationwide injunction against an FEC regulation that Commissioner Mcdonald has endorsed for years—in refinance of several court rulings declaring it unconstitutional.

Two of these cases, FEC v. Christian Action Network and FEC v. Political Contributions Data, Inc. resulted in the U.S. Treasury *paying fines* because the action taken by Mcdonald and the FEC was ''not substantially justified in law or fact.''

1. Fed v. Colorado Republican Party, U.S. Supreme Court, 116 S. Ct. 2309 (1996).
2. Fed v. National Conservative PAC, U.S. Supreme Court, 470 U.S. 480 (1985).
3. Colorado Republican v. FEC, 10th Circuit Court of Appeals, 200 U.S. App, LEXIS 8952 (May 5, 2000).
4. FEC v. Christian Action Network, 4th Circuit Court of Appeals, 110 F.3d 1049 (1997) (Court fined FEC for baseless action).
5. Faucher v. FEC, 1st Circuit Court of Appeals, 928 F.2d 468 (1991).
6. Clifton v. FEC, 1st Circuit Court of Appeals, 114 F.3d 1309 (1997).
7. RNC v. FEC, D.C. Circuit Court of Appeals, 76 F.3d 400 (1996).
8. FEC v. Political Contributions Data, Inc., 2nd Circuit Court of Appeals, 943 F.2d 190 (1991). (Court fined FEC for baseless action).
9. FEC v. NOW, U.S. District Court for the District of Columbia, 713 F. Supp. 428 (1989).
10. FEC v. Survival Education Fund, U.S. District Court for the Southern District of New York, 1994 WL 9658 at *3 (1994).
11. Right to Life of Dutchess County v. FEC, U.S. District Court for the Southern District of New York, 6 F. Supp. 2d 248 (1988).

12. Virginia Society for Human Life v. FEC, United States District Court for the Eastern District of Virginia, 3:99CV559 (2000).

Mr. MCCONNELL. The list certainly does not contain all the cases where McDonald's views have been rejected by the Federal courts, but it should give Members on both sides of the aisle a sense for which nominee is truly out of step with the law, the courts, and the Constitution.

I ask unanimous consent to print in the RECORD a copy of a letter from a first amendment lawyer, Manuel Klausner, who has been honored with the Lawyer of the Year award for the Los Angeles Bar Association. Mr. Klausner details serious concerns about Commissioner McDonald's voting record at the FEC.

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

LAW OFFICES OF MANUEL S. KLAUSNER,
Los Angeles, CA, February 29, 2000.

Senator MITCH MCCONNELL,
Chairman, United States Senate Committee on Rules and Administration, Senate Russell Bldg., Washington, DC.

DEAR SENATOR MCCONNELL: I am an attorney in Los Angeles, and my practice emphasizes First Amendment, election law and civil rights litigation. By way of background, I am a founding editor of REASON Magazine and a trustee of the Reason Foundation. I serve as general counsel to the Individual Rights Foundation. This letter is written on my own behalf, and is not intended to reflect the views of Reason Foundation or the Individual Rights Foundation.

I was formerly a member of the faculty of the University of Chicago Law School and am a past recipient of the Lawyer-of-the-Year Award from the Constitutional Rights Foundation and the Los Angeles Bar Association. I have written and spoken on First Amendment and election law issues at law schools and conferences in the United States and Europe.

As an attorney well versed in the First Amendment, I am writing to urge you to reject the nomination of Danny Lee McDonald to the Federal Election Commission.

As you well know, for many years the FEC has sought to expand the scope of its jurisdiction beyond the limitations the First Amendment places on the agency's authority to regulate political speech. This has resulted in the FEC having the worst litigation record of any major government agency. It has also resulted in many citizens and citizen groups being needlessly persecuted for exercising their First Amendment rights. Some have blamed an overzealous general counsel for the FEC's long history of contempt for the First Amendment. But it must be remembered that, under the FECA, the general counsel cannot pursue litigation that impermissible chills free speech—unless commissioners such as Danny Lee McDonald vote to adopt and enforce unconstitutional regulations.

Commissioner McDonald's disregard for the rule of law in our constitutional system of government is illustrated by his role in the FEC's ongoing efforts to expand the definition of express advocacy. In *Buckley v. Valeo*, 424 U.S. 1, 44 (1976), the Supreme Court ruled that the FECA could be applied consistent with the First Amendment only if it were limited to expenditures for communications that include words which, in and of themselves, advocate the election or defeat of a candidate. This clear categorical limit served a fundamental purpose: It provided a way for people wishing to engage in open and robust discussion of public issues to know ex ante whether their speech was of a nature such that it had to comply with the regulatory regime established by the FECA. The Court did not want people to have their core First Amendment right to engage in discussion of public issues (even those intimately tied to public officials) burdened by the apprehension that, at some time in the future, their speech might be interpreted by the government as advocating the election of a particular candidate. Ten years after *Buckley*, in *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986), the Court reaffirmed the objective, bright-line express advocacy standard.

Despite these clear,unequivocal precedents from the Supreme Court regarding the bright-line, prophylactic standard for express advocacy, it is my view that Commissioner McDonald has flouted the rule of law. He has consistently supported FEC enforcement actions and regulations that seek to establish a broad, vague and subjective standard for express advocacy. In doing so, Commissioner McDonald seeks to create exactly the type of apprehension among speakers that the First Amendment (as interpreted by the Supreme Court) prohibits.

After the 1992 presidential election, Commissioner McDonald voted to pursue an enforcement action against the Christian Action Newtwork (CAN) for issue ads it ran concerning Governor Bill Clinton's views on family values. McDonald supported the suit against CAN despite the fact that the General Counsel conceded that CAN's advertisement ''did not employ 'explicit words,' 'express words' or 'language' advocating the election or defeat of a particular candidate for public office.'' *FEC v. Christian Action Network*, 110 F.3d 1049, 1050 (4th Cir. 1997). McDonald voted for the case to proceed on the theory that the ad constituted express advocacy—not because of any express calls to action used in it, but rather because of ''the superimposition of selected imagery, film footage, and music, over the non-prescriptive background language.'' Id. This was basically an effort to blur the objective standard for express advocacy into a vague, subjective ''totality of the circumstances'' test.

The United States District Court for the Western District of Virginia dismissed the FEC's complaint against CAN on the grounds that it did not state a well-founded legal claim. *FEC* v. *Christian Action Network*, 894 F. Supp. 946, 948 (1995). This was because the agencies's subjective theory of express advocacy was completely contrary to the bright-line standard articulated in *Buckley* and *MCFL*. Id. After this stern rebuff by the district court, Commissioner McDonald voted to appeal the case to the United States Fourth Circuit Court of Appeals. The Circuit Court summarily affirmed in a per curiam opinion. *FEC* v. *Christian Action Network*, 92 F.3d 1178 (4th Cir. 1996).

The Christian Action Network subsequently asked the court to order the FEC to pay the expenses it had incurred in defending against the FEC's baseless lawsuit. The Fourth Circuit ruled in CAN's favor, explaining that:

''In the face of unequivocal Supreme Court and other authority discussed, an argument such as that made by the FEC in this case, that 'no words of advocacy are necessary to expressly advocate the election of a candidate,' simply cannot be advanced in good faith (as disingenuousness in the FEC's submissions attests), much less with 'substantial justification.'''

Commissioner McDonald's vote to authorize the CAN litigation was unfortunate, because taxpayers ended up footing the bill for CAN's defense of meritless litigation. His vote was particularly disturbing, because the CAN case was not the last time Commissioner McDonald voted to pursue litigation based on an impermissibly broad and subjective definition of express advocacy. *See, e.g., FEC* v. *Freedom's Heritage Forum,* No. 3:98CV–549–S (W.D. Ky September 29, 1999). Sadly the CAN litigation did not cause Commissioner McDonald to question his broad and subjective theory of express advocacy. While the CAN case was being litigated, Commissioner McDonald voted to enact a regulation that defines express advocacy in exactly the same broad and subjective terms that the courts have rejected. And despite this regulation being declared unconstitutional on several occasions, *see, e.g., Maine Right to Life Committee* v. *FEC*, 98 F.3d 1 (1st Cir. 1996), Commissioner McDonald has *repeatedly* voted against amending the agency's definition of express advocacy to comply with the law as declared by the courts of the United States. Earlier this year, the United States District Court for the Eastern District of Virginia issued a nationwide injunction against the FEC's enforcement of the broad and subjective definition of express advocacy that Commissioner McDonald has consistently supported. *Virginia Society for Human Life, Inc.* v. *FEC*, No. 3:99CV559 (E.D. Va. Jan. 4, 2000). Nevertheless, just a few weeks ago, Commissioner McDonald voted against reconsidering the agency's definition of express advocacy.

It must be noted that Commissioner McDonald cannot reasonably assert that his support for a broad and subjective definition of express advocacy is grounded in the Ninth Circuit's decision in *FEC* v. *Furgatch*, 807 F.2d 857 (9th Cir. 1987). As more than one court has made clear, *Furgatch* is an inherently suspect decision because it does not discuss or even mention the Supreme Court's ruling in *MCFL,* which was decided a month before *Furgatch*. But, even to the extent *Furgatch* is good law, the broad definition of express advocacy that Commissioner McDonald consistently supports goes *beyond* what even the *Furgatch* court permitted. The Fourth Circuit has aptly summarized the discrepancy between the broad FEC regulation defining express advocacy (which Commissioner McDonald voted to approve) and the loose definition used in Furgatch:

''It is plain that the FEC has simply selected certain words or phrases from Furgatch that give the FEC the broadest possible authority to regulate political speech * * * and ignored those portions of Furgatch * * * which focus on the words and text of the message.''

Moreover, the FEC itself has acknowledged that its broad definition of express advocacy is not fully supported by *Furgatch*. In its brief in opposition to Supreme Court review of *Furgatch* the FEC described as dicta the portions from *Furgatch* that made their way into the agency's express advocacy regulation. See FEC Brief in Opposition to Certiorari in Furgatch at 7. And just last year in FEC Agenda Document No. 99–40 at 2, the FEC's General Counsel conceded that the broad view of express advocacy Commissioner McDonald endorses is not completely supported by *Furgatch,* but only ''largely based'' on *Furgatch*. In short, neither the courts nor the FEC view *Furgatch* as fully justifying the definition of express advocacy that Commissioner McDonald endorses.

Unfortunately, the history of the FEC's express advocacy rulemaking is just one of many examples I could proffer of Commissioner McDonald's disregard for the Constitution and the rule of law. By supporting the agency's willful efforts to disregard the law as pronounced by the courts of the United States, Commissioner McDonald has

helped to create a situation in which an individual's First Amendment rights vary—depending upon where they happen to live in the United States. Of course, even people who reside in regions of the country where the controlling court of appeals has rejected the FEC's efforts to expand its jurisdiction over political speech, are still chilled from conveying their views on issues. After all, if they fund a public communication that is broadcast into a neighboring state that is in a federal circuit which has not ruled on the FEC's novel theories, they may find themselves the test case for that Circuit and be exposed to lengthy and costly litigation.

When federal agencies are allowed to create such a patchwork system of speech regulation, public confidence in the competence and integrity of the administrative state declines. People come to feel that their rights extend no further than the capricious whims of government bureaucrats.

It is for Congress in its capacity as the body charged with overseeing independent agencies to take the lead in remedying such problems and reining in agencies that are out of control. You can start reining in the FEC by making public officials such as Commissioner McDonald accountable for disregarding the rule of law and the constitutional rights of citizens. By rejecting the nomination of Danny Lee McDonald, Congress can signal that it will not tolerate FEC Commissioners who arrogantly refuse to honor their oath to uphold and defend the Constitution. By rejecting Danny Lee McDonald—a man who has for almost twenty years demonstrated contempt for the rights of ordinary Americans and the rulings of federal courts—Congress can begin to restore confidence that the Federal Election Commission will not continue to trample on core First Amendment rights.

Very truly yours,

MANUEL S. KLAUSNER.

Mr. MCCONNELL. I think Commissioner McDonald's voting record has displayed a disregard for the law, the courts, and the Constitution. It has hurt the reputation of the Commission, chilled constitutionally protected political speech, and cost the taxpayers money.

Equally troubling is the fact that Commissioner McDonald apparently chose to pursue the chairmanship of the Democratic National Committee while serving as a Commissioner to the Federal Election Commission.

On August 22, 1997, the General Counsel to the Democratic National Committee, Joseph Sandler, testified under oath that it was his understanding that Commissioner McDonald had pursued the ''chairmanship'' of the DNC in late 1996 or 1997. I must say I am very troubled by the fact that an FEC Commissioner, who is charged with displaying impartiality and good judgment, would seek the highest position in the Democratic National Committee while regulating the Democratic Party and its candidates and, I might add, while regulating the archrival of his party; that is, the Republican Party, and its candidates.

As the distinguished Minority Leader stated in a floor speech on February 28 of this year:

[The] law states that [FEC] Commissioners should be ''chosen on the basis of their experience, integrity, impartiality and good judgment.''

I have serious questions about whether an FEC Commissioner exhibits ''impartiality and good judgment'' when he seeks the highest position in his political party and simultaneously regulates that party and its candidates and regulates the competitor party and its candidates.

All that being said, I am prepared to reject this new litmus test whereby we ''Bork'' nominations to a bipartisan panel based on their membership in a particular campaign finance camp. I am prepared to follow the tradition of respecting the other party's choice and to support Commissioner McDonald's nomination, assuming that McDonald's party grants similar latitude to the Republican choice.

In fact, I believe it is the very presence of Commissioners such as Mr. McDonald who make Professor Smith all the more necessary at the FEC. The FEC needs Brad Smith's constitutional expertise to help prevent the string of unconstitutional FEC actions which McDonald supported. As Dean Kathleen Sullivan stated in support of Brad Smith:

I think it is a good thing . . . to have people who are very attuned to constitutional values in government positions[.]

So I say to my colleagues, I personally believe that Professor Smith's intelligence, his work ethic, his fairness, his knowledge of election law, and, to quote from the statute, his ''experience, integrity, impartiality and good judgment'' will be a tremendous asset to the FEC and to the American taxpayers who have been forced to pay for unconstitutional FEC actions.

Professor Smith is a widely respected, prolific author on Federal election law and, in my opinion, the most qualified nominee in the 25-year history of the Federal Election Commission. I am firmly convinced he would faithfully and impartially uphold the law and the Constitution as a Commissioner at the FEC, and I wholeheartedly support his nomination.

In the words of the Wall Street Journal:

This Mr. Smith should go to Washington.

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

The PRESIDING OFFICER. The Senator has 60 minutes remaining.

Mr. MCCONNELL. I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, first let me remind my colleagues that Mr. Smith, in an article he wrote in the Wall Street Journal, concluded his article by saying:

The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.

I ask unanimous consent that the entire article of Wednesday, March 19, 1997, entitled ''Rule of Law, Why Campaign Finance Reform Never Works,'' by Bradley A. Smith, be printed in the RECORD.

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

[From the Wall Street Journal, Mar. 19, 1997]

RULE OF LAW

WHY CAMPAIGN FINANCE REFORM NEVER WORKS

(By Bradley A. Smith)

Think campaign finance reform isn't an incumbent's protection racket? Just look at the spending limits included in the Shays-Meehan and McCain-Feingld bills, the hot ''reform'' bills on Capitol Hill.

Shays-Meehan would limit spending in House races to $600,000. In 1996, every House incumbent who spent less than $500,000 won compared with only 3% of challengers who spent that little. However, challengers who spent between 0,000 and $1 million won 40% of the time while challengers who spent more than $1 million won five of six races. The McCain-Feingold bill, which sets spending limits in Senate races, would yield similar results. In both 1994 and 1996, every challenger who spent less than its limits lost, but every incumbent who did so won.

This anecdotal evidence supports comprehensive statistical analysis: The key spending variable is not incumbent spending, or the ratio of incumbent to challenger spending, but the absolute level of challenger spending. Incumbents begin races with high name and issue recognition, so added spending doesn't help them much. Challengers, however, need to build that recognition. Once a challenger has spent enough to achieve similar name and issue recognition, campaign spending limits kick in. Meanwhile the incumbent is just beginning to spend. In other words, just as a challenger starts to become competitive, campaign spending limits choke off political competition.

This is not to suggest that the sponsors of McCain-Feingold and Shays-Meehan sat down and tried to figure out how to limit competition. However, when it comes to political regulation and criticism of government, legislators have strong vested interests that lead them to mistake what is good for them with what is good for the country. Government is inherently untrustworthy when it comes to regulating political speech, and this tendency to use government power to silence political criticism and stifle competition is a major reason why we have the First Amendment.

The Supreme Court has recognized the danger that campaign finance regulation poses to freedom of speech, and for the past 20 years, beginning with Buckley v. Valeo, has struck down many proposed restrictions on political spending and advocacy, including mandatory spending limits. Supporters of campaign finance reform like to ridicule Buckley as equating money with speech. In fact, Buckley did no such thing.

Instead, Buckley recognized that limiting the amount of money one can spend on political advocacy has the effect of limiting speech. This is little more than common sense. For example, the right to travel would lose much of its meaning if we limited the amount that could be spent on any one trip to $100.

Shays-Meehan and McCain-Feingold are Congress's most ambitious attempt yet to get around Buckley. The spending limits in each bill are supposedly voluntary, so as to comply with Buckley, but in fact the provisions are so coercive as to be all but mandatory, which should make them unconstitutional.

For example, Shays-Meehan penalizes candidates who refuse to limit spending by restricting their maximum contributions to

just $250, while allowing their opponents to collect contributions of up to $2,000. Shays-Meehan also attempts to get around Buckley by restricting the ability of individuals to speak out on public issues. The bill would sharply limit financial support for the discussion of political issues where such discussion ''refers to a clearly identified candidate.'' In Buckley, the Supreme Court struck down a similar provision as unconstitutionally vague.

Fueling the momentum to regulate ''issue advocacy'' is Republican outrage over last year's advertising blitz by organized labor attacking the Contract With America and the GOP's stand on Social Security and Medicare. Even though the AFL–CIO's ads were ostensibly about issues, there is no doubt that they were aimed at helping Democrats regain control of the House.

Of course, the purpose of political campaigns is to discuss issues; and the purpose of discussing issues it to influence who holds office and what policies they pursue. Naturally, candidates don't like to be criticized, especially when they believe that the criticisms rely on distortion and demagoguery. But the Founders recognized that government cannot be trusted to determine what is ''fair or unfair'' when it comes to political discussion. The First Amendment isn't promise us speech we like, but the right to engage in speech that others may not like.

Recognizing that many proposed reforms run afoul of the Constitution, some, such as former Sen. Bill Bradley and current House Minority Leader Richard Gephardt, are calling for a constitutional amendment that would, in effect, amend the First Amendment to allow government to regulate political speech more heavily. This seems odd, indeed, for while left and right have often battled over the extent to which the First Amendment covers commercial speech or pornography, until now no one has ever seriously questioned that it should cover political speech.

If fact, constitutional or not, campaign finance reform has turned out to be bad policy. For most of our history, campaigns were essentially unregulated yet democracy survived and flourished. However, since passage of the Federal Elections Campaign Act and similar state laws, the influence of special interests has grown, voter turnout has fallen, and incumbents have become tougher to dislodge. Low contribution limits have forced candidates to spend large amounts of time seeking funds. Litigation has become a major campaign tactic, with ordinary citizens hauled into court for passing out homemade leaflets; and business and professional groups have been restrained from communicating endorsements to their dues-paying members.

The reformers' response is that more regulation is needed. If only the ''loopholes'' in the system could be closed, they argue, it would work. Of course, some of today's biggest loopholes were yesterday's reforms. Political action committees were an early 1970s reform intended to increase the influence of small donors. Now the McCain-Feingold bill seeks to ban them. (Even the bill's sponsors seem to recognize that this is probably unconstitutional—Sen. Feingold boasts that in anticipation of such a finding by the Supreme Court, the bill includes a fallback position.) Soft money, which both bills would sharply curtail, was a 1979 reform intended to help parties engage in grasroots political activity, such as get-out-the-vote drives.

When a law is in need of continual revision to close a series of ever-changing ''loopholes,'' it is probably the law, and not the people, that is in error. The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.

Mr. McCAIN. He begins by saying:

Think campaign finance reform isn't an incumbent's protection racket? Just look at the spending limits included in the Shays-Meehan and McCain-Feingold bills, the hot ''reform'' bills on Capitol Hill.

I will provide for the RECORD that as increases in spending have gone up, they have favored the incumbents, and more incumbents have been reelected over time. Mr. Smith is obviously wrong in his allegations as far as the facts are concerned. Then obviously he goes on to say at the end that campaign finance reform has turned out to be bad policy. He goes on to say:

For most of our history campaigns were essentially unregulated, yet democracy survived and flourished. However, since passage of the Federal Elections Campaign Act and similar State laws, the influence of special interests has grown, voter turnout has fallen, and incumbents have become tougher to dislodge.

That is an interesting view of history.

In 1974, we enacted campaign finance reform. The abuses of the 1972 campaign were well known. They were extremely egregious and everyone knows there was a movement across America to clean up those incredible abuses that took place in the 1972 campaign. I guess what Mr. Smith either doesn't know or has ignored is that for a long period after campaign finance reform was enacted, there were better campaigns in America. They were a lot cleaner. They were more participatory.

It was not until beginning in the middle to late 1980s, as smart people began to find loopholes, began to find ways around those campaign finance restrictions, that the influence of special interests grew, voter turnout fell, and incumbents became tougher to dislodge.

I am a student of history. One of the reasons why I am is because it has a tendency to repeat itself. There was a period late in the last century, actually in the 19th century, when the robber barons took over American politics. That is a matter of history and disputed by very few historians. Fortunately, a man came to the fore in American politics by the name of Theodore Roosevelt. His words are as true today as they were then.

I quote from his fifth annual message to the Congress, Washington, December 25, 1905:

All contributions by corporations to any political committee or for any political purpose should be forbidden by law. Directors should not be permitted to use stockholders' money for such purposes. And moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at the Incorrupt Practices Act.

On October 26, 1904, Theodore Roosevelt made the following statement:

I have just been informed that the Standard Oil people have contributed $100,000 to our campaign fund. This may be entirely untrue. But if true I must ask you to direct that the money be returned to them forthwith. . . . Moreover, it is entirely legitimate to accept campaign contributions, no matter how large they are, from individuals and corporations on the terms on which I happen to know that you have accepted them; that is, with the explicit understanding that they were given and received with no thought of any more obligation on the part of the National Committee or of the national administration than is implied in the statement that every man shall receive a square deal, no more, no less, and that this I shall guarantee him in any event to the best of my ability. . . . But we cannot under any circumstances afford to take a contribution which can be even improperly construed as putting us under an improper obligation, and in view of my past relations with the Standard Oil Company, I fear such a construction will be put upon receiving any aid from them.

On 1908, September 21, in a letter to the treasurer of the Republican National Committee, Theodore Roosevelt wrote:

I have been informed that you, or someone on behalf of the National Committee, have requested contributions both from Mr. Archibold and Mr. Harriman. If this is true, I wish to enter a most earnest protest, and to say that in my judgment not only should such contributions not be solicited, but if tendered, they should be refused; and if they have been accepted they should immediately be returned. I am not the candidate, but I am the head of the Republican administration, which is an issue in this campaign, and I protest earnestly against men whom we are prosecuting being asked to contribute to elect a President who will appoint an Attorney-General to continue these prosecutions.

Mr. President, in his State of the Union speech, President Roosevelt said on August 31, 1910:

Now, this means that our Government, National and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics.

Mr. President, as I said, Theodore Roosevelt's words in those days were as true then as they are today. I believe we are again in the same situation we were in before when he was able to get an all-out prohibition of corporate contributions to American political campaigns. That law is still on the books. That law has never been repealed.

Why is it that tomorrow night there will be a fundraiser when individuals and corporations are allowed to contribute as much as $500,000 to enjoy the hospitality of the Democratic National Committee at the MCI Center? It is because the loopholes have been exploited. People such as our nominee, Mr. Smith, have made the process such that we can no longer expect the influence of special interests not to predominate here in our Nation's Capitol. Young Americans are tired of it. Young Americans are cynical, and they have become alienated.

The nomination of Mr. Smith has not gone unnoticed beyond the beltway. The irony of his appointment to the FEC has been the subject of numerous editorials since the name first surfaced as a potential nominee. Let me read to you some of these editorials, Mr. President.

The Palm Beach Post:

You wouldn't put Charlton Heston in charge of gun control, and you wouldn't put Bradley A. Smith in charge of enforcing the nation's campaign-finance laws.

Come to think of it, Republicans want to do both.

Mr. Smith, a law professor in Ohio, feels about soft money the way Mr. Heston feels about assault weapons: More is better. . . . Mr. Smith has advocated the abolition of Federal restrictions on campaign contributions. Yet, Republicans want to nominate Mr. Smith to the Federal Election Commission, which was founded in 1975 to enforce campaign restrictions first imposed after Watergate. . . .

The quote underpinning Mr. Smith's philosophy is, ''People should be allowed to spend whatever they want on politics.'' But when Mr. Smith talks about ''people,'' he means corporations and unions and political-action committees—the big donors who give with the all-too-realistic expectation that they will receive favors from Congress in return.

The story I quoted earlier from the New York Times mentioned that when the big donors were contacted by phone, they wanted to —guess what— talk about legislation before the Congress, for those who were soliciting donations.

The San Francisco Chronicle, April 17:

Seldom has the metaphor of the fox keeping watch over the chicken coop seemed more apt. Bradley Smith has built his career arguing that the 1974 Federal Election Campaign Act, the law regulating campaign expenditures enacted after the Watergate scandal, is unconstitutional and should be abolished.

In various articles, Mr. Smith, an obscure professor at Capital University in Columbus, Ohio, has argued that our nation only spends a ''minuscule amount'' on campaigns, a mere .05 percent of our Gross National Product. Rather than corrupting the process, Smith says campaign spending promotes democracy by generating interest in candidates and issues. . . . ''If anything, we probably spend too little,'' he wrote in one of several guest columns for the Wall Street Journal.

Smith might have remained little more than a professorial provocateur behind the safe ramparts of the ivory tower had not Republicans put forward his name to fill a vacant seat on the Federal Election Commission, the body created by the very law Smith thinks should be abolished.

Washington Post, February 11, 2000:

When the Supreme Court recently reaffirmed that reasonable campaign finance regulations were constitutional, President Clinton sought to portray himself as a fighter for reform. ''For years, I challenged Congress to pass regulations that would ban the raising of unregulated soft money and address back door spending by outside organizations.'' He said, ''Now I am again asking Congress to restore the American people's faith in their democracy and pass real reform this year.'' This week, however, the President nominated to the Federal Election Commission a law professor, Bradley Smith, who not only opposes further reform, but believes that most existing campaign finance law violates the first amendment. Quite simply, Mr. Smith doesn't believe in the bulk of the FEC's work. Mr. Clinton has no business putting him in charge of it.

Mr. President, this is from the New York Times, February 17, 2000:

A vote to confirm Mr. Smith is a vote to perpetuate big-money politics. Campaign restrictions are only as strong as the FEC's interest in enforcing them—an interest Mr. Smith plainly lacks. In an election year in which Washington's failure to end the corrupt soft-money system has become a rallying cause for John McCain's Presidential campaign, the Senate should not seat someone on the FEC who questions the need for change. Mr. Smith, as Mr. Gore aptly noted, ''publicly questions not only the constitutionality of proposed reform, but also the constitutionality of current limitations.'' Mr. Smith does not belong on the FEC, and anyone in the Senate who cares about fashioning a fair and honest system for financing campaigns should vote against his appointment.

Mr. President, I don't want to put too much credence and importance on Mr. Smith's appointment. But I do not see, after the record is replete with Mr. Smith's views concerning campaign finance reform, how anyone in this body who is a sincere supporter of campaign finance reform could possibly have the remotest idea of voting for Mr. Smith.

Finally, I have on this floor many times for too many years been arguing the constitutionality of placing limitations on campaign contributions.

The opponents, time after time, have taken the floor and said: Well, Buckley v. Valeo was only a 5–4 vote, a footnote, which perhaps has become one of the most famous footnotes in the history of any Supreme Court decision concerning exactly what the words are both for and against. Over time, for reasons that are not clear to me, the opponents of campaign finance reform raise the concern in many people's minds that the heart of McCain-Feingold is unconstitutional; in other words, the ability to place a limit on campaign contributions.

I didn't quite understand that because in 1907 there was a law on the books that banned corporate contributions. That has never been repealed, nor declared unconstitutional. There is a law on the books in 1947 banning union contributions to American political campaigns, and then of course there is the 1974 law.

On January 24 of this year, Shrink Missouri clearly and unequivocally in a 6–3 decision upheld the $1,000 limitation on a campaign contribution.

By limiting the size of the largest contributions, such restrictions are aimed at democratizing the influence money itself may bring to bear upon the electoral service.

The U.S. Supreme Court, in a majority opinion, goes on to say that in doing so, they seek to build public confidence in that process and broaden the base of a candidate's meaningful financial support by encouraging the public participation in open discussion that the first amendment itself presupposes.

Mr. Smith directly repudiates—and still does after the U.S. Supreme Court spoke unequivocally—a 6–3 decision by the U.S. Supreme Court. Yet my colleagues feel that he is fit to enforce a law that he directly repudiates.

This is a bit Orwellian, Mr. President.

The Court went on to say in unequivocal terms that the imposition of a $1,000 limit is certainly not only constitutional but should be constitutional because many of the Justices expressed their utter dismay at the state of campaign financing today in a rather forthright and candid manner, which is somewhat uncharacteristic of the U.S. Supreme Court. One of the Justices said, ''Money is not free speech. Money is property.''

On the one hand, a decision to contribute money to a campaign is a matter of first amendment concern, not because money is speech; it is not, but because it enables speech through contributions. The contributor associates himself with a candidate's cause and helps the candidate communicate a political message with which the contributor agrees and helps the candidate win by attracting the votes of similarly minded voters. Both political association and political communications are at hand.

On the other hand, restrictions upon the amount that any one individual can contribute to a particular candidate seek to protect the integrity of the electoral process, the means through which a free society democratically translates political speech into concrete government action.

Moreover, by limiting the size of the largest contributions, such restrictions aim to democratize the influence money itself may bring to bear upon the electoral process.

I don't mean to paraphrase the Supreme Court of the United States, but what they are saying is money in modest amounts is a way of participating in the political process, and it is a good and healthy thing.

One of the great events in politics in the American Southwest is to have a barbecue and everyone pays $10, $15, or $20 to attend. You not only participate in the political process, but you have made an investment in that candidate.

But when we are now at a point where $500,000 buys a ticket to a fundraiser, we have come a long way. We have come a long way. We have come to a Congress which is gridlocked by the special interests.

If you want to look at our failure to enact a Patients' Bill of Rights, if you want to look at our failure to enact modest gun control such as safety locks and instant background checks, if you want to look at our failure to enact meaningful military reform because we continue to buy weapons systems which the military doesn't want or need, and we have 12,000 enlisted families on food stamps, you can look at a broad array of legislation that should have been acted on by any reasonable group of men and women who are elected to represent the people. Instead, it is the special interests.

What is the message we are about to send to the American people when we affirm the appointment of Professor Brad Smith to the Federal Election Commission? We are saying that we are appointing a person for 5 years who not only repudiates the decision of the U.S.

Supreme Court but believes that at no time in our history have we needed to clean up the abuses of the campaign finance system, and clearly has no interest in removing the incredible corruption that possesses the political process today, and is not interested in the fact that young Americans have become cynical and even alienated from the political process, to wit: The 1998 election where we had the lowest voter turnout in history of 18- to 26-year-olds.

The message we are sending to America is: Americans, we are not ready yet to respond to the will of the people. We are still in the grips of special interests. Until we make their voices more clear and more strongly felt, the chances of reforming this system and returning the government to you is somewhat diminished.

I know my colleague who is on the floor, Senator FEINGOLD, and I will continue our efforts to bring McCain-Feingold and Shays-Meehan to the attention of this body for votes between now and when we go out of session. I don't know if we will be able to do that, but have no doubt about what we are trying to do and how we are trying to do it.

All we ask for is a vote up or down. We will agree to 15 or 20 minutes equally divided on both sides on this issue because it has been ventilated time after time on the floor of the Senate. For anyone who has some idea we are trying to hold up legislation or block legislation, all we are asking for is a vote. We know a majority of the Senate would vote in favor.

I think we are going to do something very wrong tomorrow. We are probably going to affirm a person to an office in which the American people place some trust in the enforcement of existing law. That person has made it clear that he is not interested in enforcing existing law, and, in fact, he believes that existing law is unconstitutional.

I think this is a very serious mistake. I hope the American people notice that this is something that will not work in their interests but will clearly work to maintain the status quo in our Nation's Capital.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, although this, too, is an uphill battle, it is a good feeling to be on the floor again with my good friend, the Senator from Arizona, not only to fight this nomination, but also to signal the fact that we are ready to move forward on the campaign finance issue and a ban on soft money.

I think the debate today has turned out to be not only a good chance to review the inappropriateness of the Bradley Smith nomination, but to review what has happened this year on the campaign finance front, particularly the decision by the U.S. Supreme Court in the Shrink Missouri case, and of course, more importantly, the tremendous profile the Senator from Arizona has given to the campaign finance issue through his courageous campaign for President.

All of that is optimistic for the future. But today we have to continue the battle, as the Senator from Arizona has done, to try to prevent the Senate from making a terrible mistake with regard to the Federal Election Commission.

In that regard, let me first elaborate on one item the Senator from Kentucky addressed. Earlier today, the Senator from Kentucky quoted from a number of letters from law professors, allegedly in support of the nomination of Professor Brad Smith. One of those letters was from Burt Neuborne, a professor at NYU Law School and Legal Director at the Brennan Center for Justice, somebody for whom I have tremendous regard and respect. The Senator from Kentucky took great pleasure in quoting that letter because the Brennan Center has been very effective and outspoken in its opposition to Professor Smith.

I was a little surprised by the quote the Senator from Kentucky read from Professor Neuborne, although I noted that Professor Neuborne didn't seem to endorse Professor Smith for the FEC post in the portion of his letter the Senator from Kentucky read.

In the interim, I asked my staff to look into the letter. Although we have not actually seen a copy, it seems the letter quoted by the Senator from Kentucky on the floor was actually a letter in support of Professor Smith's effort to get tenure at his law school a few years ago. I hope I don't need to point out, Mr. President, that there is a big difference between tenure at a law school and a seat on the FEC. Law professors can be and often are provocative, even outrageous, in their views, but FEC Commissioners have to enforce and interpret the law as intended by Congress. It is a very different job from being a professor.

So I want the Record to be clear. Professor Neuborne's comments were quoted at least a bit out of context, and those comments had nothing to do with the decision that will soon be before the Senate on Professor Smith's nomination.

Now let me say a bit more about the nomination and its relationship to the issue of soft money, which the Senator from Arizona was addressing moments ago. I spoke earlier about some of the views of Brad Smith on our current election laws. Now I want to talk about his views on the major reform issue that faces the Congress this year, the proposed ban on soft money.

Professor Smith believes a ban such as the one contained in the McCain-Feingold bill would be unconstitutional. That is another reason I believe he should not be confirmed.

We have had a number of debates on the issue of campaign finance reform in the last few years. They have been hard fought and sometimes illuminating. Particularly interesting to me, I have noticed very frequently the arguments of opponents of reform have changed over time. The first few times the McCain-Feingold bill was brought to the floor, much of the argument was against the spending limits and benefits contained in the original bill. We heard the cry of ''welfare for politicians,'' over and over.

Then, when the bill was modified and spending limits for candidates were dropped, opponents of reform focused on provisions that would have restricted the use of unlimited corporate and union money to pay for phony issue ads that were really nothing more than campaign ads in disguise. Opponents complained that these provisions violated the first amendment. Then the accusation on this floor over and over again became that we reformers were the so-called ''speech police'' and the ''enemies of free speech.''

Last fall, however, Senator MCCAIN and I decided to exclusively focus our attention on the worst loophole in the law, the problem that has undermined the whole of our Nation's election laws, the unlimited soft money contributions to the political parties. We found few, if any, opponents who were actually willing to come to the floor during the latest debate to continue to press some kind of a constitutional attack on this bill.

The reason was very simple. There is no credible argument that a ban on soft money would be struck down by the Supreme Court. That view was supported by a letter to Senator MCCAIN and to me from 126 legal scholars. It was seconded by a letter from every living former president, executive director, legal director, and legislative director of the American Civil Liberties Union. Even one of the strongest and most consistent opponents of reform in this body, the Senator from Washington, Mr. GORTON, conceded on the floor that a ban on soft money is probably constitutional. He even conceded that.

Then we had the Supreme Court weighing in earlier this year in the Shrink Missouri case, reaffirming a portion of the Buckley decision that upheld contribution limits and stating in very strong and clear language that the Congress has the power to limit contributions to protect against actual or apparent corruption, the Court said:

> There is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters.

In my view, and I think in the view of any serious commentator on this subject, the Supreme Court's ruling in the Shrink Missouri case removes all doubt as to whether the Court would uphold the constitutionality of a ban on soft money. That is the centerpiece of the reform bill that has passed the House and is now awaiting Senate action. It is simply not credible to argue

that this same Court that just a couple of months ago so strongly upheld the Missouri contribution limits would somehow completely change its jurisprudence and turn around and strike down an act of Congress that would outlaw soft money. It is simply not credible.

But then there is Bradley Smith, the nominee before the Senate. In a paper for the Notre Dame Law School Journal of Legislation, published in 1998, he wrote the following:

Regardless of what one thinks about soft money, or what one thinks about the applicable Supreme Court precedents, a blanket ban on soft money would be, under clear, well-established First Amendment doctrine, constitutionally infirm.

Professor Smith makes the argument that since the parties use soft money to run phony issue ads and since phony issue ads are constitutionally protected, somehow a ban on soft money must be constitutionally suspect.

The problem with this argument is that the justification for banning soft money has nothing to do with stopping the parties from running phony issue ads. The purpose of a soft money ban is to stop the erosion of public confidence in the political process that unlimited contributions from wealthy corporate, labor, and individual donors have caused—in other words, to put it in simple terms, terms that are not my own but those of the U.S. Supreme Court, to stop the appearance of corruption.

Banning soft money is not about attacking speech, it is about attacking corruption. The parties can continue to run all the phony issue ads they want after soft money is banned; they will just have to use hard money to pay for those ads.

Of course, Professor Smith doesn't agree that unlimited contributions can cause a corruption problem. But the Supreme Court most certainly does.

A majority of this Senate has voted repeatedly in favor of a soft money ban. I cannot imagine that same majority will, tomorrow, vote to confirm a nominee who believes such a ban is unconstitutional. That is why the vote on Mr. Smith is not simply a vote on an executive branch nominee, it is a vote on campaign finance reform

Here is the problem. If we succeed in passing a soft money ban this year, the FEC is going to have to promulgate regulations to implement that law. Numerous questions will undoubtedly arise on the mechanics of that ban. We need an FEC that will vote to enforce the law and to interpret it in a way that is consistent with congressional intent. I simply have no confidence that Mr. Smith will be able do that—how can he? It would be completely at odds with his own loudly professed principles. His view is that the whole exercise of prohibiting the parties from soliciting and receiving unlimited nonfederal contributions is illegitimate.

Shortly after his nomination, Mr. Smith was interviewed by the Capitol Hill newspaper, Roll Call. A story on February 14 of this year, stated as follows:

But Smith said ''the reason most'' why he's agreed to take the position is to ''present the case that there's another way to talk about reform than reform being equivalent to more regulation.''

We are making a decision about putting someone on the Fec who is supposed to enforce the laws we pass. The purpose is not to send an advocate over to the FEC.

That's right, this nominee most wants to be on the regulatory body in charge of administering the statutes that Congress passes in order to present the view that we do not need more regulation. Not to implement Congress's will in passing reform, but to show there is another way of talking about reform. I do not want that kind of Commissioner writing the regulations that will put the soft money ban of the McCain-Feingold bill into practice.

I am not going to stand here and tell you that enactment of the McCain-Feingold bill is assured in this session of Congress. We have a lot of work still to do to convince enough of those who are now voting to permit a filibuster to block us to change their minds. But if you truly believe that soft money must be banished from our system, as you have voted so many times in the past few years, you must vote against the nomination of Brad Smith. Otherwise, you may very well be responsible for ineffective FEC enforcement of the ban which will let soft money back into the system, nullifying all that we have worked so hard to accomplish.

The Senator from Kentucky began his presentation this morning by in essence asking for sympathy for Professor Smith because he has inspired such strong opposition both in the Senate and from outside commentators. He suggests that because the opposition is so heated that it must be distorted. And he quoted from law professors who have written in to defend Professor Smith and criticize the opposition to him. He said that from all that has been said about Professor Smith, one would think he has horns and a tail. I want to reiterate this because I think this approach the Senator from Kentucky has used is unfair to all of us who have opposed Professor Smith. Frankly, I think it is I unfair to Professor Smith.

The opposition to Professor Smith is not personal. There is not a shred of a personal element to it and there never has been. It is based on his views, and in particular on his writings as a law professor and commentator on the election laws. The quotes I have called attention to today are not distortions, they are not taken out of context, they are not a caricature or a misrepresentation. These are Professor Smith's views, and he has reaffirmed them over and over again, including in the hearings held by the Rules Committee on his nomination. Yes, as we saw earlier, he has a beautiful family, and a beautiful dog, but that does not make his views on Federal election law any more acceptable to me or others who care about campaign finance reform.

Professor Smith has not disavowed the views he expressed in his many writings on campaign finance. He simply asks us to take on faith his promise that notwithstanding those views he will enforce the law. But it is not that simple. Issues come before the FEC that are not as clear cut as ''will you enforce the law or not?''

The FEC has to implement and administer the law. It has to promulgate regulations to cover complicated legal issue that come about because candidates and groups do their utmost to get around the law. It has to initiate investigations of suspicious activities, sometimes with great pressure brought by the parties to do nothing.

I simply do not have confidence that an academic who holds the views expressed so clearly by Professor Smith will discharge his duties in a way that will uphold the spirit as well as the letter of the law.

Let me also respond to the argument expressed by both the Chairman and the Ranking Member of the Rules Committee that his Senate is bound to rubber stamp the President's appointments because by tradition each party is entitled to choose the members of the Commission.

First of all, I will say that I was very disappointed that President Clinton put forward this nomination. I expected more from a President who claims to support campaign finance reform. And I am pleased that Vice-President GORE has announced his opposition to the nomination of Professor Smith. I hope some day that we will have a President who will break with tradition—and that's all it is—tradition, and nominate independents or people who are not strongly identified with the parties to the FEC. I don't think the FEC or the country are well served by the kind of ''balanced'' Commission that we now have, where the Democratic and Republican Commissioners reliably line up on opposite sides of issues that have a partisan flavor, and line up in lock step together on issues that implicate the rights of third parties. I would like to see Commissioners on both sides who have an appreciation of the importance of the campaign finance laws and will vote to ensure fairness in elections.

But until we have that kind of President, who is willing to stand up to the leadership of the parties, we still have the Senate's duty of Advice and Consent. Nowhere is it said in the Constitution that the power of Advice and Consent is any different for members of the FEC. Otherwise, why would we not just have the President nominate people and not have the Senate vote. It is an abdication of the Senate's duty, I believe, for us to give any less scrutiny to this nominee simply because it is paired with another nominee from the other party.

The Senator from Kentucky also claimed that a nominee for a spot on the FEC has never been defeated on the floor, and that is true. But it is not true that the wishes of each of the parties has always been respected. In the mid-1980s, the Republican Party, under pressure from the National Right to Work Committee, blocked the reappointment of a Democratic Commissioner, Thomas Harris, because of his work as a lawyer representing unions. President Reagan refused to renominate Harris, and after a lengthy stalemate, another nominee was suggested.

So much of the argument in favor of this nominee today has been based on this notion that to try to stop an FEC nomination is a complete break with precedent, that we have to simply rubberstamp this pairing of two FEC commissioners. The reality is contrary to the suggestion earlier today, the party of the Senator from Kentucky has not always acquiesced in the choice of the Democratic Party for its seats on the commission.

Let me finally just dispel one misconception that I think some might have about the negotiations and agreements that led to this debate, which is clearly tied to various judicial and other nominations. There is no requirement here that Professor Smith's nomination be approved by the Senate in order for these other nominations to go forward. That is a misconception that some, particularly on our side, may believe. It is simply not the case with regard to the unanimous consent agreement and the negotiations between the majority leader and minority leader. In fact, it would be an abdication of our responsibility not to vote on the merits of this particular nominee regardless of the other nominations whose consideration was linked to the consideration of this nomination.

With that I reserve the remainder of my time and I yield the floor.

Mr. President, I ask the time be charged equally as I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. ALLARD. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

SOCIAL SECURITY

Mrs. BOXER. Mr. President, Senator GRAMS quoted a letter to President Clinton that I signed last year. He took this letter out of context. In supporting the public pension systems of state and local government workers, I called for the continuance of those plans—not for the creation of private, individual accounts.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 22, 2000, the Federal debt stood at $5,673,857,621,024.05 (Five trillion, six hundred seventy-three billion, eight hundred fifty-seven million, six hundred twenty-one thousand, twenty-four dollars and five cents).

Five years ago, May 22, 1995, the Federal debt stood at $4,883,843,000,000 (Four trillion, eight hundred eighty-three billion, eight hundred forty-three million).

Ten years ago, May 22, 1990, the Federal debt stood at $3,092,808,000,000 (Three trillion, ninety-two billion, eight hundred eight million).

Fifteen years ago, May 22, 1985, the Federal debt stood at $1,750,663,000,000 (One trillion, seven hundred fifty billion, six hundred sixty-three million).

Twenty-five years ago, May 22, 1975, the Federal debt stood at $522,752,000,000 (Five hundred twenty-two billion, seven hundred fifty-two million) which reflects a debt increase of more than $5 trillion—$5,151,105,621,024.05 (Five trillion, one hundred fifty-one billion, one hundred five million, six hundred twenty-one thousand, twenty-four dollars and five cents) during the past 25 years.

ADDITIONAL STATEMENTS

CELEBRATING THE NALC NATIONAL FOOD DRIVE

● Mrs. BOXER. Mr. President, on the second Saturday of each May, letter carriers across the United States collect food donations on their postal routes to deliver to community food banks, shelters and pantries. I commend the National Association of Letter Carriers (NALC) for creating and sponsoring the largest one-day food drive in the country with over 100,000 letter carriers participating in more than 10,000 cities and towns.

Not only do America's postal workers perform an important function in our economy and in our daily lives, they make a difference in improving the lives of needy citizens. I extend my appreciation and thanks to NALC's leaders and members for their dedication and commitment to their strong tradition of community service.

The food drive started as small pilot program in 10 cities and, as a result of its huge success, was expanded nationwide. The program asks postal patrons to place a box or bag of food next to their mailboxes. The food is picked up, sorted at postal stations and then delivered to area food banks by letter carriers.

I am pleased to note that in my home state, the California State Association of Letter Carriers was among those state associations which donated the largest amount of food in the national drive. It is my hope that during the month of May and throughout the year, Americans will consider becoming involved in the NALC Food Drive and in other activities serving the less fortunate in our communities.●

ABC'S 50TH ANNIVERSARY

● Mr. HUTCHINSON. Mr. President, I rise today to congratulate the Associated Builders and Contractors (ABC) as they approach their 50th Anniversary. ABC was founded by seven contractors in Baltimore, Maryland on June 1, 1950, and is today a national trade association representing over 22,000 contractors, subcontractors, material suppliers and related firms from across the country and from all specialties in the construction industry.

ABC is the construction industry's voice for merit shop (open shop) construction as ABC is the only national association devoted to the merit shop philosophy. Merit shop companies employ approximately 80 percent, or four out of five, of all American construction workers and seek to provide the best management techniques, the finest craftsmanship, and the most competitive bidding and pricing strategies in the industry. ABC believes that union and merit shop contractors and their employees should work together in harmony and that work should be awarded to the lowest responsible bidder regardless of labor affiliation.

I greatly appreciate ABC's commitment to developing a safe workplace and high-performance work force through quality education and training with comprehensive safety and health programs. I also appreciate ABC's dedicated efforts to secure free enterprise, fair and open competition, less government, more opportunities for jobs, tax relief, increased training, and the elimination of frivolous complaints and over-regulation.

Accordingly, I thank ABC for their efforts and wish them continued success in their efforts to ensure that the American construction industry continues to afford the finest work product and greatest opportunity in the world.●

LOCAL LEGACIES PROJECT

● Mr. BAUCUS. Mr. President, I rise today to honor a select few individuals from my home state of Montana. I have personally nominated these individuals to represent Montana in the Library of Congress' Local Legacies Project as part of their Bicentennial Celebration. The Local Legacies project has allowed citizens to participate directly in this great celebration. The participants have documented America's grassroots heritage in every state, the U.S. Trusts and Territories, and the District of Columbia. Their documentation provides