Mr. President, I hope for a spring of millennial proportions—a spring of renewed vigor and energy in this nation to tackle the challenges ahead. I hope for new growth in our economy. Over the past weeks, the Senate has been debating the budget and tax cuts. It has been a difficult task, made more so by the lack of detail provided by the administration. The size of the tax cut promise has been clear, but the spending plans to accompany it have been vague. The administration is asking us to trade our cow for a handful of magic beans but, unlike Jack in the fable, I am not so sure that this fairy tale will end well. It may be that the giant comes crashing down on us in the form of large future deficits. After all, these projected surpluses are based upon projections of economic growth that have not, and may not, materialize.

Every good gardener knows, especially in springtime, that garden plans made in the glow of a winter's fireside do not always pan out when faced with the vagaries of late frosts, early droughts, or insect infestations. Indeed, one fierce storm can lay low all of one's efforts in a single blow. A wise gardener dreams big but takes care of the basics first. He builds rich soil, clears it, weeds it well, plants strong seedlings, and tends to them carefully. Patience and a long viewpoint are the watchwords. On the national economic level, that means paying down the debt and maintaining the economic infrastructure that is the soil for our current and future economic growth. Just as a garden needs hoses to carry water and flats in which to tend seedlings, so the nation needs transportation networks to carry commerce and schools in which to nurture and teach our children. Then as prosperity blossoms can some blooms be harvested in the form of targeted tax cuts, leaving most of the plant intact to set seeds and prepare for the coming winter. But one certainly does not pull up the entire plant at the first sign of fruit! That is short-sighted and imprudent. It leaves nothing to carry the family through the winter that will surely come.

But now, Mr. President, it is springtime and everything feels possible. Let us rejoice—my dear friend, Senator MCCAIN, and Senator DODD, an equally dear and trusted friend—let us rejoice in the new growth and in the growing strength of the brightening sun. Let us take up with patience the gardener's hoe and weed the row before us. Our diligence and care now will bring us rewards later. Let us savor the moment and rejoice in the first day of spring. Who knows whether we shall see another, so let us rejoice in this one. I close with the words of the poet Robert Browning that have always captured for me the spirit of this time of year:

The year's at the Spring,
And the day's at the morn;
Morning's at seven;
The hillside's dew-pearled;
The lark's on the wing;
The snail's on the thorn:
God's in his Heaven—
All's right with the world!

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank our distinguished colleague from West Virginia. In the midst of a debate on campaign finance reform, this was a needed respite from the minutia of fundraising, attempts to modify the present system. His words of eloquence are always welcome in this body but never more so than in the midst of the debate today.

I appreciate his quoting of Robert Burns and Browning and Wordsworth, but listening to him describe the arrival of spring and the departure of winter is poetic in itself. I can see one day people quoting ROBERT C. BYRD, the poet, when they welcome the spring at some future year.

Mr. BYRD. Mr. President, I thank my distinguished friend for his overly gracious comments.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank Senator BYRD for his annual admonition to all of us to conduct ourselves in a way that reflects the dignity and comity of this institution and reminds us of the transience of all this and the importance of friendships and relationships that are established in this very unique organization.

There is a time for us to pause and reflect. There is no one in this body who gives us a more enlightening opportunity than the distinguished Senator from West Virginia.

So I thank Senator BYRD. And I also admire the vest he is wearing today as well. I thank the Senator and I will speak on the pending amendment.

BIPARTISAN CAMPAIGN REFORM ACT OF 2001—Continued

Mr. MCCAIN. Mr. President, it is kind of obvious what the strategy is that is going to be employed here, and that is to sort of love this legislation to death. In other words, let's not leave any stone unturned; let's make sure this is a perfect bill, and anything less than that is not acceptable. So let's have a series of amendments, which I certainly admit are very clever, including this one.

I want to point out that this bill says, basically, ''except that the cost of such establishment, administration, and solicitation may only be paid from funds that are subject to the limitations.'' In other words, only hard dollars can pay for a political action committee's establishment, administration, and solicitation.

Well, Mr. President, we try to help PACs. We try to help political action committees because they provide us, generally speaking, with small donations that are an expression of small individuals' involvement, as opposed to the so-called soft money, which we are trying to attack. So we have tried to, in the past, make it as easy as possible for political action committees to function, rather than make it difficult.

Also, the Senator from Utah interprets this as some way to put pressure on to increase hard money limits. Hard money limits will be debated, and I am confident, to some degree, that hard money limits will be raised. But here is the situation: We have a company, a corporation, in Salt Lake City, UT, and it has a PAC. Where is the office of that PAC? Generally speaking, they don't go out and rent a building or a home or something. They set up a PAC in one of the offices in their building. Usually, the person who administers that PAC—it is not their sole job. It is something that they many times do on a voluntary basis and many times with small compensation for their time, and they are located usually in the building. That is generally the way PACs are administered. So how do you get money for your PAC? You probably put it in the company newsletter, where you say, ''All employees who want to contribute to Acme PAC, please do so,'' and then that money comes in and the individual puts it in their account, et cetera.

How do you assess the cost of that? Who pays for that? The CEO, probably on an annual basis, calls the senior managers together and says: I want all you guys and women to contribute to our political action committee. It is that time of year. We are in an election year and we want to support good old BOB BENNETT. He has always been a friend of business.

What is that worth? How do you assess the cost of that good friend of Senator BENNETT's soliciting money for his political action committee so he can support him? Does a notice of contributions in an internal newsletter have a value? What is the value in a newsletter?

What about the electricity costs of the office that houses the PAC of the employee who does it on a part-time basis? Well, what we need, obviously, is a new arm of the IRS, or the FEC, or maybe a new organization that we could call the ''PAC police,'' who say, aha, you spent 2 hours today, and that, at your hourly salary, is so much money, and that has to come from hard money donations. Clearly, my friends, this is not an amendment that would have an effect that we could ever enforce, that we could ever make a reasonable kind of a thing. Obviously, it would have some debilitating effects on PACs.

The authors of this amendment could not really understand too well how political action committees—particularly the small ones—operate, and think somehow that we could assess the costs and then take that out of hard money and put it into some kind of payment or payback.

So I have to oppose this amendment. I think it is not workable. I don't think it is logical or reasonable to do so. The Senator from Utah mentioned the fact that this is soft money and that we are

banning all soft money. Well, as the Senator from Utah knows because he mentioned that he read the bill, we don't ban soft money in a lot of areas such as for State parties, or we don't ban soft money in some other areas. But we certainly are banning soft money for the use in Federal campaigns.

So I have to oppose the amendment. I hope that my colleagues will understand that this amendment is not an acceptable one.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I yield 15 minutes to my good friend and colleague from the State of New York, Mr. SCHUMER.

Mr. SCHUMER. Mr. President, I thank the Senator from Connecticut for yielding. I thank all of my colleagues—the Senator from Kentucky and the Senator from Connecticut for leading this debate, as well as, of course, my colleagues from Arizona and Wisconsin for their leadership on this issue, which is something I believe in, as they do.

As we go through this debate on campaign finance reform, I guess there are two ways to look at it. They are the larger picture and the smaller picture—the forest or the trees. When you look at the trees, it is awfully difficult to come up with a perfect bill. I think every one of us has found numerous objections to any proposal that is made. None of them works perfectly. None of them is without flaws. Much of what we will talk about today and over the next two weeks will be in discussion of those trees: It will be better to do something this way or there is an inequity when ''A'' is put slightly disadvantaged to ''B.'' I can figure out a scheme that will work for my State better than the present one. Over and over again, we can hear arguments just like that. And because of the fragility of campaign finance reform, because it has taken so long for it to come here, because it is not easy for people to reform themselves, which is basically what we are doing, any one of those arguments, those trees, could end up ruining the whole forest.

The other way to look at this is as a forest, Mr. President. Our system is simply a mess. I say this to my colleagues on my side of the aisle particularly but to everybody here as well: We believe in Government. We don't believe Government is an enemy. We believe Government is something to do good, to improve the lives of people. We believe it is basically a necessity. And this system of finance so erodes confidence in this Government that we have all dedicated our lives to seeing that something has to change.

The forest is the right argument here—looking from 10,000 feet at the landscape is far more important than looking from 100 feet above the landscape on this issue. It may not be true of all issues, but it is true of this one. So if I had a plea to make to my colleagues, who I know are torn on this bill, who I know are ambivalent about whether this provision or that provision not only affects them—those who write and say, well, they are just interested in their own survival, hegemony, that is really not fair because we all live with this system. We all have ideas about it, like a carpenter would have better ideas about how to carve a chair, or a doctor might come and tell us how to design a better medical system. I say to my colleagues who do care about this Government, and we have devoted our lives to it, that if there were a watchword for this debate, it would be a simple one: Do not let the perfect be the enemy of the good because if there was ever a place where the perfect or the desire to attain perfection could kill the good that would come about, it is in campaign finance reform. That is what we have seen over and over.

I know there are some, such as my colleague, my friend from Kentucky, who are just opposed to this bill in broad concept. He believes it violates the first amendment, and he has put his money where his mouth is and his courage in supporting the amendment against burning of the flag. So I do not begrudge his point of view; I disagree with it. We are not going to win him over.

The worry I have is with many of my colleagues who are unsure, who look at one imperfection or another in this bill and let it be, let those imperfections prevent us from moving forward at all, as move forward we must.

When the Founding Fathers put together our Government and when you read the Federalist Papers and some of the commentaries, the thing they probably worried more about than anything else, even more than the overarching power of a central government, was the apathy of the citizens, the lack of involvement by the citizens. They wondered if people would put themselves forward for public office, and they wondered if people would participate in a government where they had control.

For quite a while, in the flush of democracy and with so many of the early issues, those worries subsided, but since World War II, they have come back at us larger than ever in the history of our country.

The percentage of people who vote, the percentage of people who regard the Government with only cynicism, the percentage of people who believe they do not have any power, even the brief antidote of the Florida election has not stemmed that tide.

One of the main reasons people have that apathy, that cynicism which is so corrosive to democracy, is the way we finance our campaigns. They know they cannot write out large checks, and they believe, rightly or wrongly, that those who can have far more weight than they do. I think most of us in this body have to say certainly that appearance is there, even for those who do not agree that the reality is there.

We are here really not just to fix a system, not just to tinker and say we can make it a little better here, a little better there, not just to smooth off the surface; we are here in an attempt to revitalize our sacred democracy.

I say to my colleagues, that is what is at stake, no less. If we pass up the opportunity to pass a bill, if each of us has to have his or her own way and say, I want it my way or no way, we are not just changing the balance of power between the parties or how this candidate or that candidate might run in a new election. We are passing up an opportunity to stem the tide of negativity toward our Government which at least, it seems to me, is probably the greatest problem this Government faces as we move into the 21st century.

I urge my colleagues to summon forth and see the big picture. I urge my colleagues to not get mired in every single detail because there is no perfect system. There is certainly no perfect system with Buckley v. Valeo as the supreme law of the land, and there is probably no perfect system without Buckley v. Valeo as well. We are not going to achieve perfection, and none of us is going to be 100 percent or even 90 percent happy with the bill, but the alternative, which is we do nothing—this is our last chance, that is for sure—the alternative of doing nothing and allowing the mistrust to continue, the alternative of throwing up our hands, which is what the public will think, in deadlock and not reforming is too great a danger and too foreboding to the Republic to entertain.

I urge my colleagues, again, to keep their eye on the ball, keep their eye on the big picture, keep their eye on the problem we face and make sure we pass McCain-Feingold because it is so important to rejuvenating the democracy we have.

There is one final point I will make on an issue I will be speaking a lot about the following week, which is the Hagel amendment and soft money.

I have seen, during the brief time I have run for higher office, how dramatically this has changed, not only the amount of soft money but the restrictions on soft money. It is such that in the 2000 elections, one could do virtually the same thing with soft money as one could with hard money. Yes, there may be a little sentence put in the commercial that says, ''Call up so and so,'' or even some words that are put at the bottom of the ad that can hardly be seen, but the bottom line is that the ability to spend soft money on virtually everything has made a mockery of the original law we passed in the seventies.

The Hagel amendment, which will allow lots of soft money to continue to cascade into our system, is, in my judgment, a killer amendment. It is a killer amendment not simply because of what it means for McCain-Feingold in terms of how many votes it has, but it is a killer amendment in the sense that the whole idea behind McCain-

Feingold—which is to limit the influence of large contributions—would be thrown out the window.

When it comes to the Hagel amendment—and he is a good friend of mine and I respect completely his sincerity in offering this amendment—but when it comes to the Hagel amendment, we would end up being a little bit pregnant and that just does not work.

I thank my colleagues for their efforts. I say to my friend from Wisconsin, he has done a marvelous job on our side. I say to, again, my friend from Connecticut that he, too, has led the early hours of this debate extremely well and extremely fairly, and that also goes for the Senator from Kentucky.

I hope in this body we can debate the issue as seriously as we can, and then my sincere hope is that at the end of the day, we emerge with the same basic bill that the Senator from Arizona and the Senator from Wisconsin introduced.

I yield back whatever time remains to me.

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

Mr. FEINGOLD. Mr. President, I thank the Senator from New York. His comments are among the most important comments that have been made so far in this debate and, frankly, on any other debate we have had on campaign finance reform in the last 6 years. That is because he has identified the real issue.

When the Senator from New York was in the other body, he was part of the solution there. He was part of the effort to get through a similar bill in the House where people did see the forest for the trees, exactly the point the Senator from New York is making.

There are so many amendments that are attractive to us, including many provisions that Senator MCCAIN and I have offered in the past, having to do with free television time, having to do with other improvements in the system that many of us would like to see. We have to keep our eye on the ball, as the Senator from New York has suggested. I don't know if he is a Mets or Yankees fan.

Mr. SCHUMER. Yankees.

Mr. FEINGOLD. Yankees.

Keeping the eye on the ball is the final goal and the central issue. I am grateful after all these years of the frustrating process of coming to the floor and having a few speeches and a cloture vote and having to shut it down, we can have a Senator from New York talk about something real, about a process that can have an end and actually work. It will require the kind of unity and discipline of reformers on both sides of the aisle that has been demonstrated in the other body on a number of occasions.

My hat is off to the Senator from New York, but also the reformers in the other body, particularly Representatives SHAYS and MEEHAN, who have shown the way. Now it is up to the Senate to do what the Senator from New York suggested. There will be attractive amendments on aspects of public financing which I would like to see that could upset the balance we have. There will be poison pill amendments to try to embarrass one particular series of interests such as unions, to try to kill the bill, and then there will be so-called alternatives, as the Senator from New York has suggested—in particular, the Hagel alternative offered by a colleague we all respect—which is, in fact, worse for the current system because it will put the stamp of approval on the soft money system once and for all.

I think the Senator from New York is right. I don't think we will ever be able to change it if we adopt that kind of amendment. I am grateful to him for his work in the House, especially grateful to him for his work with a small group of Members who have been working on this for over a year, and particularly grateful for his leadership that has started today and will continue through this process of pointing out that the Hagel alternative is, frankly, worse than no bill at all. My thanks, again, to the Senator from New York for his leadership and his commitment to this issue.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I enjoyed listening to the Senator from New York and will respond in a moment. We are on my amendment so I would like to talk about the details of my amendment. Before I do, the Senator from Arizona gave an example of volunteer activity, all of which is currently exempted under Federal law and which would continue to be exempted under Federal law.

My amendment goes to organizations such as those we have all seen in the field where there are a number of paid employees devoted full time to PAC activities, occupying dedicated facilities that can be easily identified, running up travel expenses that are clearly billed to that activity. There would be no difficulty on the part of the cost accountant, be it in a union or a corporation, to identify that kind of PAC activity. There is no question that the sort of informal activity of people talking in the workforce, saying they want to support Senator BENNETT or Senator MCCAIN, does go on, is voluntary, is completely exempted from all law now, and would continue to be exempted. My amendment would not apply to that.

I also point out McCain-Feingold has some of the same aspects of how to anticipate time because, as currently drafted, in Federal election years, McCain-Feingold requires State, district, and local parties to use 100-percent federally regulated hard dollars for the entire salary of any State, district, or local party committee employees who spend 25 percent or more of his or her time in a single month in any of the above-mentioned Federal election activities. If it will be difficult, as the Senator from Arizona described, to figure out what constitutes volunteer activity on behalf of a PAC and what constitutes activity that should be reimbursed out of the hard dollar profits of the PAC, it will be equally difficult, if not more so, for some Federal official to determine what constitutes 25 percent or more of an individual's time in a single month on a particular Federal activity. There will be hairsplitting in that regard that will go further than the hairsplitting to which the Senator from Arizona objected as he made his comments about my amendment.

Let me respond in a different way to the comments of the Senator from New York when he said we should look at the forest. I agree with him absolutely. We should look at the forest. I have tried to do that in all of my activity with respect to campaign finance reform since I first came here in 1993.

The forest I look at, that must be preserved and protected—indeed, that which I have taken an oath to preserve and protect—is the Constitution of the United States. I do not want to be part of a Congress that dilutes the freedoms that are outlined in the Constitution of the United States and, specifically, the first amendment thereto.

We are in the 250th anniversary of the birth of James Madison, little Jimmy, as he was called by his contemporaries, because he was short. That seemed to be the kind of nickname that stuck with him. I make this interesting point about Madison before I go on. This comes from an article on money and politics that was printed in the Wilson Quarterly in the summer of 1797. Reference has been made to the Founding Fathers. The Founding Fathers were geniuses, the Founding Fathers gave us an incredible legacy, but the Founding Fathers were also very practical politicians or they wouldn't have been in the positions where they were.

Quoting from the Wilson Quarterly:

> George Washington spent about 25 pounds apiece on two elections for the House of Burgesses, 39 pounds on another, and nearly 50 pounds on a fourth, which was many times the going price for a house or a plot of land.

Going back to the debate we had with the amendment of the Senator from New Mexico, George Washington was a wealthy man, trying to buy his election, if we use today's rhetoric.

Washington's electioneering expenses included the usual rum punch, cookies and ginger cakes, money for the poll watcher who record the votes, and even one election eve ball, complete with fiddler.

Now it talks about James Madison and money:

> James Madison considered the ''corrupting influence of spiritous liquors and other treats'' ''inconsistent with the purity of moral and Republican principles.'' But Virginians, the future president discovered, did not want ''a more chaste mode of conducting elections.'' Putting him down as prideful and cheap, the voters rejected his candidacy for the Virginia House of Delegates in 1777.

Leaders were supposed to be generous gentlemen.

Madison's attempt at purity, though futile, signified the changing ideological climate. Madison obviously learned elections cost money, even in the days of the Founding Fathers.

The one thing that Madison guaranteed would happen in every election was that there would be complete freedom of expression at every place and at every point.

Since this is the 250th anniversary of Madison's birth, may I, with the suspension of belief, resurrect James Madison and place him in the gallery, if you will, in the press gallery, because James Madison has a history of being an author and a journalist, being the author of much of the Federalist Papers. Let us have Madison up there, listening to this debate. Now, he would turn to one of his friends in the press gallery to have him explain terms that would be unfamiliar to him. He would say: What is hard money? What is soft money? What is the difference?

What is it used for? He would have explained too much hard money is this and soft money is that. He might have a little trouble understanding the difference because he would say: Wait a minute. In the first amendment that I authored you were free to speak in whatever way you wanted. You could be like Washington and buy rum punch and ginger cakes, if that is what it took to get the voters to listen to you; or you could run an ad. You could print a pamphlet. That is what Hamilton and Jay and I did. We went out and raised money and printed our own pamphlets and circulated them. Maybe you have seen them.

Madison's friend up there in the press gallery might say: Yes, I have seen them.

We call them the Federalist Papers today. But we must remember that when they were written, they cost money. Madison could not have spoken if he had not raised and spent some money. Money was speech all the way back in James Madison's time.

As James Madison sits there in the gallery, and he hears the details of McCain-Feingold, James Madison says: Wait a minute. You are telling me that there will be limits on how Americans can participate in the political process?

Yes. There will be limits.

James Madison asks: Who is in charge of this outrageous idea?

You see the handsome young fellow from Madison, named after you, from Wisconsin, his name is RUSS FEINGOLD. He has been pushing for this.

James Madison says: I must do something about this. I must express my opinion with respect to Senator FEINGOLD.

He snaps a finger and gets his partner, Alexander Hamilton, to join him.

He says: Alexander, look what is happening. There is that fellow down there from Wisconsin. He comes from a town named after me. He is trying to limit Americans' ability to speak in politics. What do we do about it?

Alexander Hamilton says: You do whatever you always do when you want to make a statement. You write a letter to the New York Times.

James Madison says: Great, Alexander, let's do that.

Alexander Hamilton and James Madison sit down and write a letter to the New York Times protesting the activities of Senator FEINGOLD.

The editor of the New York Times says: We are not going to run it.

Madison says: Well, Alexander, you certainly lost your cachet. There was a time when anything you said in New York automatically was run in any newspaper. What do we do?

Alexander Hamilton says: Well, we are going to have to buy an ad in the New York Times. That way they cannot censor our speech. Money is required. How much money do you have, little Jimmy?

Madison puts his hands in his pocket, and he pulls out whatever money he brought with him from the 18th century. And he says: Ready cash, I have $7.23. How about you, Alexander?

Alexander Hamilton says: Don't get into the issue of money. I don't want to talk about the blackmail payments I have been making. It is a very sore political point. I can't help you. But maybe the amount of money you have will do the job.

So they call the New York Times and say: How much is the full page ad in the New York Times?

The New York Times says $104,000.

I have $7.23. I can't speak unless I raise some money. Who do we know that knows how to raise money?

Snap of the finger and Benjamin Franklin appears.

Benjamin, you were one of America's good businessmen. He said: Yes. And I put mine in a CD that has been accumulating interest ever since I died in the 1700s, and I have enough for an ad in the New York Times. But let me be practical with you. Not only am I a practical businessman, but I recognize that most of the people in Madison, WI, don't read the New York Times. That is going to come as a great shock to you, Alexander Hamilton. You think the whole world reads the newspapers in New York. The fact is, if we are going to have an influence by running our ad, we are going to do it in Madison, WI.

They contact the Madison, WI, paper, and find out that the cost of a full-page ad is 10 percent of the cost of the New York Times; $14,000 on a Sunday gets you a full-page ad in the newspaper in Madison, WI.

Let's do it.

But while they are debating, while they are doing this— again we are compressing time—McCain-Feingold passes and is the law of the land, and it is within 60 days of the election of the Senator from Wisconsin.

Alexander Hamilton, James Madison, and Benjamin Franklin walk into the newspaper and say: We want to buy an ad urging people to vote against Senator FEINGOLD.

The editor of the newspaper says: In the name of campaign finance reform, we will not permit you to buy that ad. We will not permit you to express your opinion about Senator FEINGOLD or any other candidate. We will forbid you from speaking.

As they turn to walk from the editor's office, with Madison and Hamilton disconsolate about the fact they cannot speak their mind, Benjamin Franklin says: I can fix it.

How can you fix it, Benjamin? He says: I told you I put my money in a CD, and it has been accumulating interest ever since the 1700s. I have enough to buy the newspaper. I don't have to buy the ad. I have enough to buy the paper. Once we own the paper, then we will have unlimited free political speech because, you see, the impact of McCain-Feingold means the people who have the most speech are the people who truly have the most money—the people who own the newspapers, the people who own the television station, and people named Turner who own networks. They have complete freedom of speech because they have enough money. And it has taken almost 250 years for me to accumulate enough. But I, Benjamin Franklin, have enough that I can buy their newspaper. And then I can run an editorial attacking Senator FEINGOLD every day of the week, if I so choose.

At that point, there are absolutely no limits on any speech. But you, James Madison and Alexander Hamilton, there are limits on your speech placed there by McCain-Feingold saying that there will be no political speech from you during the 60 days before the election.

We come back to reality. James Madison, Alexander Hamilton, and Benjamin Franklin are not available as witnesses in this particular debate, even though I called them up rhetorically. But I am moved to do that by the comment of the Senator from New York who says we must look at the forest and we must protect the big picture. The big picture, as we are debating McCain-Feingold, has to do with freedom of speech. It has to do with robust debate of the American economy. It does not have to do with getting money out of politics because the reality in the big picture is that we never have had money out of politics, starting with George Washington and his rum punch and his ginger cakes. And we never will have money out of politics. Somebody will find a way to do it.

I am a cosponsor with Senator ALLEN who has offered the Virginia Plan. I am not sure it is going to be offered on this floor. But it is offered in the arena of public opinion. I hope it gets offered.

Historians will recognize that the Virginia Plan was James Madison's plan for the Constitution.

What is the Virginia Plan for campaign finance reform? Two sentences.

The first one, worthy of James Madison, says: No American, any provision of law to the contrary notwithstanding, shall be prohibited from expressing himself or herself in any way in any arena or any contribution to any party or any candidate.

That sounds like first amendment language to me. That sounds like James Madison language about which he would be very comfortable.

Then the second one, recognizing where we are in technology, says—I am not quoting the legal language, just the effect of it—every one of those donations will be in the modern world disclosed, using the technology that is available to us.

This means in all probability, 48 hours, and it is on the Internet for everybody to see. Forty-eight hours, and electronically the contribution is there. That is the Virginia plan.

When I discuss this with people outside the Senate, they all say: Gee, that makes a lot of sense. Why don't you start voluntarily disclosing within 48 hours right now? If you are such a great campaign finance reformer, why don't you do that immediately?

I say: You know, there was one candidate for President who did that.

It is a very interesting thing to do. I recommend it to all of you in your town meetings.

I say: There was one candidate for President who did, in fact, disclose every one of his donors within 48 hours.

Question: Do you know who it was?

I did this to a group of political science students the other day.

The first answer I got back was Ralph Nader.

I said: No, Ralph Nader did not do it.

Then someone answered: Well then, was it JOHN MCCAIN?

I said: No, it was not JOHN MCCAIN.

Then someone answered: Gee, Al Gore?

I said: No. The candidate who did it is now sitting in the White House. His name is George W. Bush. He got little or no credit for doing it from those who sit in the press gallery because they do not want to admit that he was on to a good idea—in my opinion, a better idea than the bill we are debating.

None of this has had anything to do with my amendment, and I recognize that. But none of the debate on the other side has had anything to do with my amendment either. And, if I may, if the Senator from West Virginia can talk about spring, I hope the Senator from Utah can talk about the Constitution.

I remain ready to answer any questions about my amendment or respond to anything about my amendment. But, so far, there has been little or no debate about it.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Does the Senator from Utah yield the floor?

Mr. BENNETT. Yes.

Mr. MCCONNELL. I congratulate the Senator from Utah for a brilliant discourse on the importance of the first amendment through the course of the debate and in all of our discussions on campaign finance reform. He has made it so clear and understandable for all of our Members. I congratulate him for his contribution.

With regard to his amendment, I am told we will be prepared on both sides to vote at 4 o'clock. I will enter that consent in a moment.

But let me say, with regard the Senator BENNETT's amendment——

Mr. REID. Why don't we do that consent request now?

Mr. MCCONNELL. Mr. President, I ask unanimous consent that a vote on the Bennett amendment occur at 4 o'clock.

Mr. REID. A vote on or in relation to.

Mr. MCCONNELL. It is my understanding, talking to the Senator from Nevada, it was going to be an up-or-down vote.

Mr. REID. I do not know of anyone who wishes otherwise. I think it will be an up-or-down vote.

Mr. MCCONNELL: On or in relation to the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, the only request I have is Senator FEINGOLD wants 5 minutes and Senator LEVIN wants 5 minutes and Senator DODD needs 5 minutes. The time will be a little uneven, but if the Senator will agree to that.

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

Mr. MCCONNELL. Mr. President, let me say, having been involved in this debate over the years, I have frequently heard the words, ''Don't let the perfect be the enemy of the good.'' My friend from Utah recalls that we hear that from time to time.

I have taken a look at when that comes up, ''Don't let the perfect be the enemy of the good,'' and every single time those words come up—''don't let the perfect be the enemy of the good''—is in relation to an amendment that might have some impact on organized labor—some impact.

I have watched this carefully now for some 10 or 12 years, and every time the words ''Don't let the perfect be the enemy of the good'' are expressed, it is because there is an amendment pending that might have some impact—ever so tiny—on organized labor.

Now, the Bennett amendment is very evenhanded. It is not targeted at organized labor, by any means?

Mr. BENNETT. That is correct.

Mr. MCCONNELL. Is that correct? I ask the Senator from Utah, this is not an amendment targeted at the heart of organized labor?

Mr. BENNETT. The amendment deals with activities on the part of corporations every bit as much as on the part of labor.

Mr. MCCONNELL. I thank my friend from Utah.

So this is not about organized labor. It is about how you raise money for political action committees.

It has been said on the floor of the Senate that a political action committee cannot get started without expenditures of soft money. We all know that is not true. There are a number of leadership PACs formed by Members of the Senate and the House. We do not spend soft money to get those leadership PACs up and running. You get a few hard money checks. You file with the FEC. You get a few hard money checks and you are up and running.

Believe me, it is possible to start a PAC without the expenditure of soft money, I say to my friend from Utah. Is that correct?

Mr. BENNETT. Mr. President, I have never started a leadership PAC because I have never been in a leadership position. But I understand that it is, indeed, easy to do; and it is done only with hard money. There does not seem to be any difficulty in keeping track of who is volunteering and who is being paid.

Mr. MCCONNELL. I thank the Senator from Utah.

So this is really an amendment that is quite simple. The principle of the underlying bill, which I, as the Senator from Utah, do not support, is that Federal elections should be conducted in Federal money, hard dollars. And in pursuit of that principle, McCain-Feingold requires the national political parties to operate in 100 percent Federal dollars, so-called hard dollars—100 percent.

And in even numbered years, it essentially requires all the State and local parties in our country to operate, similarly, in Federal hard dollars.

So in the name of fairness, we ask the question, Why should labor and business be allowed to, in effect, subsidize their hard dollar activities, which are their political action committees—100 percent dollars—and why should they be allowed to subsidize the raising of their hard dollars when America's political parties can't do it, and when America's State and local parties can't do it in even numbered years? Where is the fairness?

If the idea is that Federal elections should be conducted in Federal dollars, why is that principle only going to be applied to the Nation's political parties?

The Bennett amendment is quite simple. It is easily understood. For those who believe soft money is a pernicious thing undermining our democracy, then why should they think it would only be pernicious when raised and spent by political parties but perfectly OK when raised and spent by labor and business?

That is the heart of this amendment. That is what this vote will be all about. We will have that vote at 4 o'clock. I think that pretty well adequately describes our side of this amendment.

I will be happy now to yield the floor at this time.

Mr. DODD. Mr. President, I yield 5 minutes to my friend and colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I very much oppose this amendment. The Supreme Court has told us over and over again that the standard for contribution limits that is constitutional is the appearance of corruption, the appearance of impropriety, and the appearance of undue influence, that large contributions or the solicitation of large contributions can create.

There is no such appearance problem with these expenditures. In fact, the expenditures which the Senator from Utah would require to be paid for out of hard dollars has explicitly been excluded from that requirement by law since 1974. So since 1974, the statute under which we have all operated has excluded:

> . . . the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

The administrative expenses, the establishment expenses, and the solicitation of contributions to a PAC have not been considered to be limited by the hard money restrictions of law since 1974.

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

Mr. LEVIN. If I could finish my remarks.

Mr. MCCONNELL. Just a quick question: Isn't that precisely the point? That is precisely the point of the Bennett amendment.

Mr. LEVIN. That is exactly the point of the Bennett amendment: to repeal a law which has been in place since 1974 and has created no harm. Sometimes we say around here that the cure is worse than the disease. This is a cure looking for a disease. There is no disease here that has been shown.

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

Mr. LEVIN. If I could continue, this is just an effort being made to try to say: Oh, you guys over there who are trying to ban soft money, you are not being perfectly consistent because, look, you allow the establishment, administration, and solicitation of contributions to a PAC to be paid for out of treasury dollars. You are not being totally consistent.

The answer to that is, wait a minute, the law of 1974 also says that communications by a corporation to its stockholders and executive administrative personnel and their families or by a labor organization to its members and their families on any subject, that is not subject either.

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

Mr. LEVIN. I will in a couple of moments.

Here we have a cure looking for a problem. There has been no problem on this. There is no practical way to keep track of these expenses, no practical way to do this. A corporation sends out a newsletter to its stockholders or to its executives saying: Which of the candidates out there should our PAC contribute to? Now someone has to sit and figure out: What is the cost of printing that newsletter; what page is that notice on; is that on page 1 where it has the biggest impact or on page 4 of the newsletter; what part of the postage of that newsletter goes to that issue; how much of the time of the secretary who took the minutes of that meeting where we discussed that issue can be attributed to that request.

You have a bookkeeping nightmare that you are creating for no problem. There is no problem, that I know of, that has been shown over these almost 30 years. Yet in order to try to show some kind of a flaw, looking desperately for a flaw in the ban on soft money, the proponents of this amendment say: Aha, you are not being consistent.

Well, we are being consistent because in the case of banning soft money, there is a disease that needs a cure—unlimited contributions to political campaigns that are being accomplished through soft money.

The Supreme Court said: We can prohibit that constitutionally. That is what the Supreme Court has said.

I don't know of any evidence that this particular provision in law, which has been in place for 26 years now, has created a problem. I say to my good friend from Utah, this amendment is not needed. It has not been shown to address a problem in the law. It will create a bookkeeping nightmare to try to in any way comply. It will put people into an illegal netherworld for no good reason that has been demonstrated.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. DODD. I yield 1 additional minute.

Mr. LEVIN. The appearance of impropriety, the appearance of corruption, which is the only basis on which we can act as a justification for limiting contributions of a large size to candidates, that justification does not exist here with corporate or union treasury money being spent to administer a PAC.

I urge that we either table this amendment or defeat this amendment. I am sorry my friend from Kentucky did not have a chance to ask me the additional question. I would be happy to try to answer it, if our good friend from Connecticut wants to yield the time.

Mr. DODD. Mr. President, I think our colleagues have covered this. I think we can get to a vote fairly quickly. As my friend from Utah knows, I think of myself as the third Senator from Utah. I am not sure Utah thinks of me as its third Senator, but he and I have a wonderful relationship and have worked so closely together over the years that I am not comfortable disagreeing with him on his amendment. I admire him immensely.

In addition to what my colleague from Michigan has said about the 1974 law, there is also a restriction in the 1974 law which doesn't pertain to any other kind of activity that has otherwise been described. Under the 1974 act, unions, corporations and membership organizations can only solicit their own members and stockholders, unlike other organizations which can solicit from the universe within the country. Under the 1974 act, as you are establishing your PAC, you can only get the support from your own organization's membership. That is a significant restriction which applies to them which does not apply to others.

In addition, there is this balance that was written into the law in 1974, as the Senator from Michigan properly points out, where there has not been any identifiable abuse of this exception in the law whatsoever here.

Secondly, because of the universe to which they are restricted in soliciting dollars, they then have allowed, in a sense, their general treasuries to be used in order to communicate with their restricted class and membership—not with people outside of that restricted class membership but with their own membership. Were they communicating to the universe at large, then I think the point the Senator from Utah has raised would be appropriate. But when you are restricting, under the 1974 act, the audience to which they can communicate, it seems to me this balance is appropriate, narrowly tailored and proper. To disrupt that now would be a mistake.

The point the Senator from Arizona made is also worth repeating; that is, this is awfully difficult. One of the things we don't want to do is create situations which make people potential targets of indictment. This gets pretty amorphous, as to what constitutes an expenditure of soft dollars in order to solicit hard dollars for your PAC.

Again, the Senator from Michigan and others have made this point. When you get into this area in trying to identify how much has been committed or whether or not it was committed at all, a simple address by the CEO or the president of a local to the membership of that community—how would you put a value on that? Your inability to do so or to provide a proper accounting of it exposes you then to the potential of indictment. I don't think anyone in our interests here should try to necessarily do that. It is so difficult to write that into law, even when the law has only civil jurisdiction.

I urge a rejection of the amendment. A communication which is specifically protected by the Constitution and recognized by Buckley, where it is involved in a significant balance between the ability to communicate with your restricted class or membership and only that group, then the resources of that organization to do so are appropriate and proper. To upset that balance would be a mistake.

The law has worked well for 26 years. We ought not to change it at this

point. For those reasons, I respectfully urge our colleagues to vote against the amendment.

I yield whatever time my colleague from Wisconsin so desires.

Mr. FEINGOLD. How much time remains?

The PRESIDING OFFICER. Five minutes.

Mr. FEINGOLD. Mr. President, I thank the Senator from Connecticut. I thank the Senator from Michigan especially for his excellent remarks on this amendment, and also the Senator from Arizona. We are united in our opposition to it. I, too, as the Senator from Connecticut, find it a little bit unpleasant to oppose the Senator from Utah. We have thoroughly enjoyed working together and share quite an affection for his beautiful State and appreciate those opportunities. On this one, we really have to call this amendment what it is. It is simply another attempt to change the subject.

Somehow it doesn't trouble the Senator from Utah or the Senator from Kentucky that soft money to the parties was $82 million in 1992, $260-some million in 1996, and is now approaching $500 million in the year 2000. That doesn't bother them. That is just fine. What does bother them is somehow trying to undo a reasonable balance that was created back in 1974 in the law at the time after Watergate and in the Buckley decision.

The problem is not PACs. The problem isn't how PACs raise their hard money contributions. We used to think PACs were the problem. I hope the American people now realize that PACs are limited to giving $10,000. We used to think that was a lot of money. Unfortunately, given this insane soft money system, it is starting to look as if it is spare change. But that is what the Senator from Kentucky and the Senator from Utah want to change the subject to: Worrying about how union members and perhaps corporate entities get their people together and spend a little money in order to raise the modest amounts that can be contributed through PACs. It is a blatant attempt to change the subject.

It does not relate at all to the real abuse in the system, the horrible situation where huge contributions on the very day that votes are made are given to the political parties, and then legislation passes creating an appearance of impropriety or corruption that is very disturbing to the American people.

To reiterate, the 1974 act that created PACs had an explicit tradeoff. Separate segregated funds that are connected with the union or corporation can use their treasury funds for their administrative costs, but they can solicit only their members or executive and administrative personnel for contributions. On the other hand, nonconnected PACs must use their PAC money for the costs of administration, but they can solicit the general public. That was the tradeoff.

That was the balance to which the Senator from Connecticut referred. As he said, this amendment would disturb the balance. That tradeoff has been a part of the law for 25 years. It is not a loophole. It is not a cesspool of soft money. It is working. It may not be perfect, but it is the very thing that, along with other things, survived after the Buckley case. We have a fairly decent, but not perfect, system of campaign financing in this country. That is what is falling apart.

There is also a constitutional dimension to this amendment. The law allows corporations and unions to communicate with their members when a union or a corporation solicits members for a PAC contribution. That solicitation is a communication. We cannot interfere with that communication without running afoul of the first amendment. I would think, given the frequent speeches by the Senator from Kentucky on the first amendment, that would concern him as well.

Let me say that I, as well as my lead author, Senator MCCAIN from Arizona, oppose this amendment. It may be particularly targeted at unions because they have less money and may be perceived that way. As the so-called paycheck protection amendment, this is an attempt to cripple a labor union. It is a poison pill amendment targeted at labor unions and perhaps at corporate PACs, as well, and is not reform.

Corporate labor PACs have been permitted to use treasury funds for their administrative costs since the passage of the 1974 act. As the Senator from Michigan said so well, there has been no showing of abuse of this narrow exception—the prohibition of corporate and union spending of treasury funds in Federal elections—and yet these two Senators have virtually nothing to say about the enormous abuse of the gaping loophole of soft money that has destroyed the reforms after the Watergate era. All those supporting McCain-Feingold should strongly oppose the Bennett amendment. We strongly oppose it.

I yield the floor.

Mr. MCCONNELL. Mr. President, I had not realized, until I heard from my friend from Michigan, that the Federal Election Campaign Act was so sacrosanct that it should not be changed. If that is the case, I don't know why we are here at all because the whole purpose of the McCain-Feingold bill is to change the Federal Election Campaign Act of 1974.

Further, it is suggested that this is not an abuse. Well, what we do know is that organized labor spends essentially no hard dollars at all raising hard dollars for their PACs. Now, as a defender of soft money, I must tell you I am not troubled by that in principle any more than I am troubled in principle by the political parties having nonfederal money. It has been suggested on the other side that this would be an inconvenience for organized labor or corporations. What about inconveniencing the parties—by taking away 40 percent of the budget of the Republican National Committee and the Democratic National Committee, and 35 percent of the Republican Senatorial Committee and the Democratic Senatorial Committee, and federalizing State and local parties for even-numbered years? What about the inconvenience to them? Why is it only political parties that it is OK to inconvenience and no one else?

I repeat, every time you hear the argument, ''don't let the perfect be the enemy of the good,'' you can be sure the subject being debated on the Senate floor at that time is an amendment that might have some impact on organized labor. Virtually every time you hear the words ''poison pill,'' you can be assured the subject matter we are debating at that time will be an amendment that might have some impact on organized labor.

The reform industry, led by the New York Times and the Washington Post, has been allowed to get away with defining what reform is. In fact, reform is what the New York Times and the Washington Post and Common Cause say it is, and everything else is a poison pill.

Now, the underlying bill is designed to reduce the effectiveness of America's great political parties—the one entity that will always be there for a challenger. Here Senator BENNETT is just trying to say, look, let's have a level playing field. If the parties are going to have to operate in 100 percent hard dollars, why not the unions and the corporations? Why not? Why not, I ask? What is so pernicious about the influence of Federal, State, and local parties that their resources have to be taken away, their voices lowered, their efforts inhibited, and no one else?

This is not a ''level playing field,'' as often is said by the other side. I have heard the argument over the years that we need to have a level playing field. If hard dollars are to exclusively be the future of the parties, why not for business and labor?

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. MCCONNELL. Yes.

Mr. BENNETT. The Senator from Michigan said this is a solution looking for a problem, that there has been no abuse of this in the past. I was interested and pleased to hear the Senator from Wisconsin say we used to say PACs were a problem. I remember when the Senator from Kentucky and I were lonely voices here defending PACs as being a legitimate thing in the face of those who were attacking it in the name of campaign finance reform. So at least that debate is over and now PACs are good.

To the point the Senator from Michigan raised, would the Senator think this exception—I will call it an exception—could, in fact, become a major loophole in the future if McCain-Feingold passes, and that some clever lawyers could sit down and figure out a way to create something that came under this exemption that could raise

significant amounts of hard dollars, funding them with soft dollars that are totally undisclosed, unlike the other soft dollars to which they object—soft dollars that would be totally undisclosed, finding a way to turn this into the next monster that we hear about in campaign finance reform debates 5 to 10 years from now?

Mr. MCCONNELL. I say to my friend, he described the situation today. That is the situation today. We have unlimited and undisclosed soft dollars—we don't know how much—underwriting the PACs of corporations and unions. That is the situation today. All I believe the Senator from Utah is doing is trying to create a level playing field of hard dollars. If hard dollars are good for parties, why not for companies and labor unions?

Mr. BENNETT. It is my thought, I say to the Senator from Kentucky, that the reason we have not considered this as an abuse in the past is because there have been other things at which we have been looking. But if McCain-Feingold outlaws those other things, there is no reason to believe that this will not become the target of campaign finance reformers in the years ahead, and we will see at that point their thundering rhetoric about how terrible it is.

Today, they have no rhetoric and they say it is no problem. Of course, I say to the Senator from Kentucky, knowing how he feels, I think the thundering rhetoric is overheated as to the problem on the other side, but corruption becomes ultimately in the eye of the beholder.

Mr. MCCONNELL. I thank the Senator.

Mr. JEFFORDS. If the Senator from Utah will yield, I had an opportunity to listen to some of his comments about the Snowe-Jeffords provisions. They were amusing, but far from accurate.

Mr. BENNETT. I am happy to be corrected.

Mr. JEFFORDS. First of all, there is nothing in Snowe-Jeffords that prohibits or prevents ads to be purchased in newspapers. There is no problem there.

Mr. BENNETT. Is it only television?

Mr. JEFFORDS. Television and radio, probably.

Mr. BENNETT. So by choosing gentlemen who like the print media rather than the electronic media—I miss the point?

Mr. JEFFORDS. He misses the point that all that it requires is disclosure. We would like to know who it is making the ads on television. It is a simple disclosure provision that says people ought to know, if somebody is making accusations, who is doing it.

Mr. BENNETT. Is there no prohibition for ads 60 days prior to the election?

Mr. JEFFORDS. There is no prohibition 60 days prior to the election.

Mr. BENNETT. I stand corrected. It was my understanding that there was a prohibition 60 days prior to the election. Can the Senator from Kentucky help us out on this?

Mr. MCCONNELL. I say to my friend from Utah, we are looking up the language. I say to my friend, unless the Senator from—I thought the point of the Snowe-Jeffords language was to make it difficult for——

The PRESIDING OFFICER. All time has expired. Under the previous order, the question is on agreeing to the amendment of the Senator from Utah, Senator BENNETT.

Mr. DODD. I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BROWNBACK). Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 37, nays 63, as follows:

[Rollcall Vote No. 39 Leg.]

YEAS—37

Allard	Frist	Nickles
Bennett	Gramm	Roberts
Bond	Grassley	Santorum
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burns	Helms	Smith (NH)
Campbell	Hutchinson	Smith (OR)
Craig	Hutchison	Stevens
Crapo	Inhofe	Thomas
Domenici	Lott	Thurmond
Ensign	Lugar	Voinovich
Enzi	McConnell	
Fitzgerald	Murkowski	

NAYS—63

Akaka	DeWine	Lieberman
Allen	Dodd	Lincoln
Baucus	Dorgan	McCain
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Hagel	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Snowe
Clinton	Kennedy	Specter
Cochran	Kerry	Stabenow
Collins	Kohl	Thompson
Conrad	Kyl	Torricelli
Corzine	Landrieu	Warner
Daschle	Leahy	Wellstone
Dayton	Levin	Wyden

The amendment was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. FEINGOLD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who seeks recognition?

Mr. MCCONNELL. Mr. President, let me say briefly that the vote which just occurred is instructive in that I would predict that any amendment between now and the end of the debate that might have any adverse effect of any kind on organized labor is likely to be defeated.

Senator BENNETT can speak for himself, but my understanding of the purpose of that amendment was to point out the imbalance between taking all non-Federal dollars away from parties at the Federal level—the State and local level in the even-numbered years—making the parties operate 100 percent in hard dollars, and yet no one else who expressly advocates a candidate through a PAC is required to do that.

We have carved out an exception for corporations and unions so that they can continue to use millions of dollars in corporate and union soft money to underwrite the expenses of their political action committees.

Having said that, the next amendment will be offered by the Senator from Oregon, Mr. SMITH, who will be here momentarily. Senator DODD and I would like for that vote to occur at 6:15 or 6:30. We will lock it in, in a few moments. It is my understanding that that will be followed by an amendment by Senator TORRICELLI.

Mr. DODD. The idea would be I think at that point, depending on what leadership wants, to lay down the Torricelli amendment. I gather there is some event this evening that people believe they are obligated to attend. The Torricelli amendment will be laid down, and we will begin debate on that in the morning at whatever time the leader wants to come in. We might get a time agreement in the morning on that. I have several amendments I am lining up for tomorrow afternoon. So we will have a clear flow by tomorrow morning as to the amendments we will be proposing tomorrow during the day.

Mr. MURKOWSKI. Mr. President, point of inquiry: Did I understand from the floor managers that there would be a vote at 5:30?

Mr. MCCONNELL. No. It is probably at 6:15.

Mr. MURKOWSKI. Many of us are going to this March of Dimes event tonight. I think it starts at 6.

Mr. MCCONNELL. I think many Members are going to that event.

Mr. DODD. The March of Dimes event I know is very important. Maybe we can aim for 6 p.m.

It will obviously depend on what Senator GORDON SMITH wants to do.

Mr. MURKOWSKI. I certainly concur with that because many of us have to cook.

Mr. DODD. In that case, knowing that my colleague from Alaska may be doing the cooking, Members may want to stay until 10 tonight.

Mr. MCCONNELL. After listening to the persuasive speech of the junior Senator from Alaska, I ask unanimous consent that a vote occur at 6 p.m. on or in relation to the Smith amendment shortly to be laid down.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Reserving the right to object, Mr. President, without knowing what the subject matter of the amendment is, I object until we are able to determine that.

Mr. MCCONNELL. Senator SMITH will be here shortly. Hopefully, we can lock in the vote.

Mr. DODD. In the meantime, Mr. President, if I may, Members who want to be heard on the bill itself should take advantage of the time. I suspect the Smith amendment will not consume all of the hour and a half. We urge Members who want to make statements on the bill to please come to the floor.

I see now our colleague from Oregon is here. While he is getting organized, let me in response to my friend from Kentucky regarding the last amendment that it was not just about labor unions.

This last amendment also covered corporations and membership organizations, among a few others. The 1974 law made it very specific. We said that general treasury funds from those organizations could be used to establish, administrate, and solicit contributions to be used for political purposes, such as communicating only with their restricted class or membership. That makes them distinct and different from the other organizations which can communicate with the universe. But these organizations can only communicate with their members. For that reason, the 1974 law specifically wrote into the law that general treasury funds, if you will, could be used for the purposes of communication.

So it was not just about labor unions, it was also about corporations, membership organizations and other such entities that are confined to communications with their own members.

Mr. MCCAIN. Will the Senator yield?

Mr. DODD. I am happy to yield.

Mr. MCCAIN. It is my understanding the Senator from Oregon is prepared to go forward with his amendment. It is a pretty simple amendment. It is a fairly straightforward amendment. I think we could get a time agreement, if the Senator from Kentucky is agreeable, say, for a vote at 6 o'clock. After that vote we could lay down another amendment. So we will be ready to go on that, if that is agreeable.

Mr. DODD. That is agreeable. Yes.

Mr. MCCONNELL. I believe that is acceptable to the Senator from Oregon.

I, therefore, ask unanimous consent that the time between now and 6 p.m. be divided in the usual form, and at that time the Senate proceed to vote on or in relation to the amendment about to be sent forward by the Senator from Oregon, Mr. SMITH.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL. Therefore, the next vote will occur at 6 o'clock.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SMITH of Oregon addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 118

Mr. SMITH of Oregon. Mr. President, I have an amendment that I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. SMITH] proposes an amendment numbered 118.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit candidates and Members of Congress from accepting certain contributions while Congress is in session)

On page 37, between lines 14 and 15, insert the following:

SEC. 305. PROHIBITION ON ACCEPTANCE OF CERTAIN CONTRIBUTIONS WHILE CONGRESS IS IN SESSION.

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

''SEC. 324. PROHIBITION ON ACCEPTANCE OF CERTAIN CONTRIBUTIONS WHILE CONGRESS IS IN SESSION.

''(a) IN GENERAL.—During the period described in subsection (b), a candidate seeking nomination for election, or election, to the Senate or House of Representatives, any authorized committee of such a candidate, an individual who holds such office, or any political committee directly or indirectly established, financed, maintained, or controlled by such a candidate or individual shall not accept a contribution from—

''(1) any individual who, at any time during the period beginning on the first day of the calendar year preceding the contribution and ending on the date of the contribution, was required to be listed as a lobbyist on a registration or other report filed pursuant to the Lobbying Disclosure Act of 1995 (2 U.S.C. 1601 et seq.);

''(2) an officer, owner, or senior executive of any person that, at any time during the period described in paragraph (1), employed or retained an individual described in paragraph (1), in their capacity as a lobbyist;

''(3) a political committee directly or indirectly established, financed, maintained, or controlled by an individual described in paragraph (1) or (2); or

''(4) a separate segregated fund (described in section 316(b)(2)(C)).

''(b) PERIOD CONGRESS IS IN SESSION.—The period described in this subsection is the period—

''(1) beginning on the first day of any session of the body of Congress in which the individual holds office or for which the candidate seeks nomination for election or election; and

''(2) ending on the date on which such session adjourns sine die.''.

Mr. SMITH of Oregon. Mr. President, this amendment is a very simple one but one that I believe will go a long way toward restoring public confidence in elected leaders and alleviating the perception that politicians are beholden to special interests.

My amendment simply prohibits Senate and House candidates from accepting campaign contributions from lobbyists when Congress is in session.

The amendment is fair and it is balanced. It applies to both incumbents and challengers. Since the danger of corruption or the appearance of corruption applies with equal force to challengers and incumbents, Congress has ample justification for imposing the same fundraising constraints on both incumbents and challengers.

This is not new. This is a law that currently operates in many States. In my own State of Oregon, we have long had just such a law on the books; one that I was proud to stand squarely behind as a State legislator. The Oregon law first enacted in 1974 has been in effect for 27 years and has been integral to ensuring Oregonians' confidence in the integrity of their political system at the State level.

The core tenet and assumption behind the McCain-Feingold legislation is that money in politics corrupts elected officials. Backers of the McCain-Feingold bill often use catch words and phrases, such as ''quid pro quo,'' to suggest that money can buy not only legislative action but legislators themselves.

This is not my view. It is my belief that the vast majority of the men and women with whom I serve in the public process and in this body possess the highest degree of professional and personal integrity. However, if the public perceives that campaigns are corrupt, that money talks, then I think we owe it to the public to allay those concerns.

Prohibiting contributions from registered lobbyists to candidates and Federal officeholders while Congress is in session will go a long way toward quelling the perception that we are bought and sold. My amendment addresses the public's fears directly by eliminating what they view as the disease rather than trying to just treat the symptoms.

We are not breaking new ground because we will be doing what other States have done. Oregon is joined by at least 10 other States with laws just like this that prohibit candidates and officeholders from soliciting or accepting contributions while their legislatures are in session

In 1999, the U.S. Court of Appeals for the Fourth Circuit, in North Carolina Right to Life v. Bartlett, upheld the constitutionality of North Carolina's law prohibiting lobbyist contributions and solicitations while its general assembly is in session, stating that the law ''serves to prevent corruption and the appearance of corruption.'' The Fourth Circuit concluded that ''in the end, North Carolina law does nothing more than recognize that lobbyists are paid to persuade legislators, not to purchase them.'' Last month the Supreme Court agreed by denying the petition for review of this very case.

So I am confident that my amendment will withstand judicial scrutiny. My amendment only restricts a candidate or officeholder from accepting contributions at a certain time and place, not if they can eventually. This is no different than time and place regulation of other first amendment issues.

Furthermore, I think it is important to point out that my amendment is narrowly crafted to prohibit candidates

and officeholders from accepting contributions from lobbyists and the political action committees that employ them.

My amendment does not place the burden on lobbyists offering contributions to candidates but, rather, squarely and more fittingly on the candidate. The onus, therefore, is on the candidate or officeholder, not the lobbyist.

In closing, let me emphasize that the touchstone issue is the appearance of influence pedaling and corruption and the role that money plays. If money in the system corrupts, then my amendment lessens its role. Diminishing the role of money is also one of the stated goals of the McCain-Feingold bill. But unlike the McCain-Feingold bill, my amendment does so, I believe, in a constitutional way.

Again, my amendment merely prohibits House and Senate candidates and officeholders from accepting political donations from lobbyists while Congress is in session.

My amendment is evenhanded, it is constitutional, and it addresses the perceived problem that politicians can be bought and sold, and my amendment does so in a way that does not shut down the entire universe of citizen participation in our political process.

I hope my colleagues will unanimously support my amendment, following Oregon's lead, and that of other States, to restore confidence in the integrity of our political system.

Finally, some of my colleagues will worry that this includes the public generally. It does not. It involves registered lobbyists, PACs, and all special interest groups. A citizen can send in a contribution to a candidate. That is fine. But what is disturbing to people is the nexus that exists between legislating in the morning and fundraising at night with the very same industries. This will prohibit that. We will separate these two activities and restore some confidence that people are entitled to have in their political process.

Some people will say this just isn't possible because the Congress is always in session. There may be an unintended but beneficial consequence. We may have shorter congressional sessions. We may get our work done more quickly, and we may be able to thereby provide the American people a little less rhetoric, a lot more action, a lot more voting, getting their job done and getting home to be with the folks and ultimately to meet with these interest groups. If they want to support you, fine, but they can't do it while you are about the people's business in making law.

I encourage a unanimous vote, and I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

Mr. SMITH of Oregon. I am happy to yield for a question.

Mr. MCCAIN. Inevitably, I would say to the Senator from Oregon, there is going to be a question of constitutionality. It is my understanding, from my informed staff, that there was a case in North Carolina that was upheld but it has never gone any higher than that.

Mr. SMITH of Oregon. The Supreme Court, I understand, denied certiorari, thereby upholding the fourth circuit decision that allows for this kind of prohibition of fundraising from special interest groups while the North Carolina legislature is in session.

Mr. MCCAIN. What about the fact that you are clearly saying to an individual that because you are in a certain line of work, you are not going to be able to do what other citizens do? How do you respond to that?

Mr. SMITH of Oregon. I respond to that by saying that this is not unlike other time-and-place regulation of speech issues. People come to this building all the time and would love to come in this Chamber and protest from the very seats above us. They are not allowed to. They are given a place to protest but not to disrupt the public's work.

What I am saying is, this is a time-and-place regulation of speech. I admit that. I am saying it passes the smell test far better than our current system.

Mr. MCCAIN. But the Senator does admit that there might be some question of the constitutionality of this issue raised.

Mr. SMITH of Oregon. Clearly, there will be, but ultimately the issue of constitutionality is for the Court across the street to decide. It does not prohibit them from making a contribution later. It just says there is a time to do it and there is a time not to do it.

I think what disturbs all of us is the notion of holding a hearing on an industry in the morning and then going to their fundraiser in the evening. That is the nexus that is wrong. That is what, I agree with the Senator from Arizona, we ought to do away with. This works in my State. It works in your State also. Arizona is one of those States that has this restriction. It works. It smells better. It doesn't violate constitutional rights, but it does vest us with more of a process of integrity.

Mr. MCCAIN. Clearly, Arizona has the finest State government of any of the 50, I am sure the Senator from Oregon would agree.

Again, I ask the Senator from Oregon: There is going to be some question in people's minds about the constitutionality of this amendment; you would agree?

Mr. SMITH of Oregon. Absolutely.

Mr. MCCAIN. Therefore, it would seem to me that the Senator from Oregon would understand that the whole issue of severability in this bill would then take on increased prominence. It is my understanding that the Senator from Oregon may be in support of nonseverability. I don't get the logic there. You are clearly supporting an amendment that has constitutional questions associated with it, and yet at the same time you would not understand that this bill may have portions of it, particularly during the amending process, that the U.S. Supreme Court would deem unconstitutional, including this one which, even if made unconstitutional, would not affect the thrust of the bill.

I am hopeful that the Senator from Oregon will see the logic here—I am dead serious—because it is going to be a big issue, the fact that there should be, as there have been in all but 12 bills passed by the Congress in the last 10 years, a severability clause in this legislation.

I would give a lot more credibility to the amendment of the Senator from Oregon if he believed, as he has stated, that there will be constitutional questions, that this bill should not rise or fall based on a decision concerning what a lobbyist does because there are much greater issues at stake. I certainly hope the Senator from Oregon understands my logic in that argument.

Mr. SMITH of Oregon. I do understand that logic. I would be happy to include this in any nonseverability amendment that I would propose. As a practical matter, as the Senator knows—and I have said this to him and Senator FEINGOLD—I have legitimate questions as to the constitutionality of McCain-Feingold. I am not a judge. We get really angry at judges who act as legislators. We are often acting as a bunch of judges. We have a responsibility to uphold the Constitution. It is their responsibility to interpret it.

I don't know how all this will cut. My concern about the severability clause or a nonseverability clause, which I will be happy to include this in, is that we will leave our country worse off rather than better off if we say to the political parties: You can't have a role any longer in elections, but the folks who will go into the smoke-filled rooms, who are not disclosable to the American people or accountable to the American people, will then be the ones who have the power because they will run campaigns about candidates.

Frankly, I have seen this happen with a campaign finance issue in Oregon. It was not pretty. It was an ugly situation because the citizen and the candidate were disenfranchised by it and were the victims, along with democracy in Oregon, because of a system that would empower those who are nondisclosable and unaccountable to the American people. They get all the power.

That is my concern, Senator. That is why I have believed a nonseverability clause is important in order that we not leave our country worse off.

With that, I am telling you and the whole world, I am prepared to vote for

your bill, but I think that that is an essential ingredient, as I have told you privately. I really believe without it we will leave our country worse off based on the experience of my State of Oregon.

Mr. MCCAIN. If the Senator will agree to one more question, I want to get back on the bill. First, I hope we will be able to convince the Senator from Oregon that any provision in this bill, if passed, would make us better off than we are today—any provision, including the Senator's. Any part of it that would stand would improve the present situation where, indeed, the case exists, and you have heard my argument about that before.

The amendment talks about registered lobbyists, but does it also add people who are in charge of political action committees and run PACs? Are there additional individuals covered by this amendment?

Mr. SMITH of Oregon. It does not.

Mr. MCCAIN. It is simply people who are registered lobbyists, who have voluntarily decided to register as a lobbyist under the law.

Mr. SMITH of Oregon. That is correct.

Mr. MCCAIN. I thank the Senator from Oregon. I have enjoyed this chance to pose questions to him. I appreciate the courtesy of his response and look forward to working with him on this legislation.

Mr. SMITH of Oregon. I thank the Senator also.

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

Mr. SMITH of Oregon. I am happy to yield to the Senator from Wisconsin.

Mr. FEINGOLD. First of all, I appreciate the spirit of the amendment. Our two States, Oregon and Wisconsin, are very similar in our pride and our reform history. Obviously, this amendment is offered in that spirit. I appreciate that.

My questions are similar to those of the Senator from Arizona, but I believe the Senator from Oregon indicated he would consider a severability provision with regard to this amendment.

Mr. SMITH of Oregon. I have so much confidence in its constitutionality based on its judicial history already, I would be happy to include it in a severability clause because I think everything we are doing here has a reasonable constitutional question. We ought to ask the Supreme Court to rule on it. This could be among them in terms of any nonseverability, as far as I am concerned.

Mr. FEINGOLD. I was interested in the Senator's remark that we shouldn't act as judges here; we should act as legislators. I agree. I ask the Senator if he is aware of how infrequently legislatures, in particular the U.S. Congress, have actually had a nonseverability provision. Does the Senator realize that it is incredibly rare, something that is rather unlikely for legislators to do?

Mr. SMITH of Oregon. I am aware of that, but I think what we are debating here is of so fundamental a nature to our liberty—that is, our speech; our most important speech being our political speech—that I have no doubt this would make it to the U.S. Supreme Court because this would fundamentally affect the future of our country.

Mr. FEINGOLD. One other question: Is the Senator completely opposed to the notion of having the entire bill be severable?

Mr. SMITH of Oregon. I am prepared to include the soft money ban to the regulation of the outside groups. And if we want to include this as well, I am comfortable with that.

Mr. FEINGOLD. The reason I am asking this question—the spirit of this amendment is very positive, as I have indicated. But what I am trying to determine is whether we would have a fair chance to send a bill over to the Supreme Court where, if for any reason you were right about the constitutionality about this, the rest of the bill could still stand. Is that something the Senator is open to?

Mr. SMITH of Oregon. I am open to discussing it with the Senators.

Mr. FEINGOLD. One other question. I want to follow up on the scope of this amendment. I have the amendment in front of me. Under section 324, there are several different paragraphs relating to who is covered. It refers to ''any individual who, at any time during the period beginning on the first day of the calendar year preceding the contribution and ending on the date of the contribution, was required to be listed as a lobbyist. . . .''

Under section (2), it refers to ''an officer, owner, or senior executive of any person that, at any time during the period described in paragraph (1). . .'' is a lobbyist.

And then in (3), it says, ''a political committee directly or indirectly established, financed, maintained, or controlled by an individual . . .''

And finally, (4), a separate segregated fund.

I ask the Senator how he can say it only refers to registered lobbyists when it has three other categories of people listed in the face of the amendment.

Mr. SMITH of Oregon. This is referring to a registered lobbyist or those who employ them.

Mr. FEINGOLD. What about a political committee?

Mr. SMITH of Oregon. If they employ them, they are covered by this amendment.

Mr. MCCAIN. If the Senator will yield for a question, it counts not only registered lobbyists, but it is a person who employs that lobbyist as well. In other words, I am the CEO of a company back in Arizona, or I am a president of a union back in Arizona, and I am not allowed to contribute while Congress is in session because I have employed that lobbyist?

Mr. SMITH of Oregon. Under that guide, that is correct. However, if you sent that person a solicitation in the mail asking for a maximum hard money contribution as a private citizen, they would be allowed to make that contribution. But what I am trying to do is stop us spending time, while we are lawmaking, down at the RSCC and the DSCC, spending hundreds, even thousands, of hours raising money.

Mr. MCCAIN. Well, if the Senator will yield further, I agree with what he is trying to get at. I think that, frankly, also during the campaign of President Bush, this was part of his campaign finance reform proposal, as I remember. But I think we have to worry about this language because if I am the senior executive of a company or corporation away from Washington that employs a lobbyist, and I am not allowed to contribute at that time, that could be a very large number of people. I wonder if we can work on language with the Senator from Oregon to achieve this goal, without throwing a pretty wide net here. If I am thinking through this legislation, which I am looking at for the first time——

Mr. SMITH of Oregon. I am happy to work with the Senator on an amendment to this amendment. I am not locked down. It is offered in the spirit of my experience as an Oregonian. I believe Wisconsin and Arizona have similar laws. It works. It will be more difficult for Congress, but it ought to be done in Congress.

Mr. FEINGOLD. If the Senator will yield for a further question, I will tell you one thing: This certainly will shorten legislative sessions, which is a wonderful aspect, as the Senator from Nevada pointed out. Under sub (4), it refers to a separate segregated fund. I am advised that this basically would include political action committees.

Mr. SMITH of Oregon. That is correct.

Mr. FEINGOLD. Is it the Senator's intention to prohibit the lobbyist from giving individual contributions, but also PACs during this period?

Mr. SMITH of Oregon. That is correct, during a legislative session. When we gavel the session in, you can't do it until you gavel sine die. If the world of special interests wants to evaluate what they think of your performance and help you in your election, fine. We are segregating the function of lawmaking and moneymaking. I think that goes a long way to fixing what you think and feel, rightfully, is broken in this country.

Mr. FEINGOLD. Does the Senator believe it could be unconstitutional to prohibit PAC contributions?

Mr. SMITH of Oregon. I don't believe so. It doesn't prohibit them. It regulates them in terms of time and place.

Mr. FEINGOLD. I suggest that the effect of this is to unconstitutionally prohibit PAC contributions, and I would be concerned about that.

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

The PRESIDING OFFICER. The Senator from Oregon has the floor.

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

Mr. SMITH of Oregon. Yes.

Mr. REID. There is nobody in this body for whom I have more respect. Would this amendment not give a tremendous advantage to wealthy people who are members of the national legislature?

Mr. SMITH of Oregon. I don't believe it would. They can give a hard money contribution of $1,000 per campaign.

Mr. REID. No. What I am saying is, if you are a Member of Congress, would you not have an advantage over everyone else if you were rich because it would limit so much of the time for people to do the fundraising?

Mr. SMITH of Oregon. There is no question but that this amendment will do more to drive money out of politics than anything that has been proposed yet. There is no question about that. But we have just passed an amendment that doesn't give a perfect playing field to the challenger against the multimillionaire, but it gives them a better playing field than we have had before.

Mr. REID. My friend has not answered the question. Would this not give an advantage to a Member of Congress who is rich, because during the period of time that Congress is in session, basically, there would be a tremendous inability to raise money, whereas if somebody finances their own campaign, it doesn't matter to them?

Mr. SMITH of Oregon. I would concede the point. But I would simply say that what this does is prohibit the challenger or the Member of Congress from being involved in this. I think it is a heavy restriction, but I think it is the right restriction, and I think if we can go to this kind of a standard, it is going to look better to the American people and, frankly, it is going to drive a lot of money out of politics and clean up our day by making us spend time lawmaking instead of fundraising. And at the end of the day, if somebody wants to spend their own money, they are going to have to comply with the law or the amendment we just passed, and it will equalize it somewhat.

Mr. REID. One more question. While the Senator's amendment bans contributions during the time we have talked about, it doesn't ban solicitations during that time; is that right?

Mr. SMITH of Oregon. It does.

Mr. REID. It does ban solicitations?

Mr. SMITH of Oregon. It bans accepting them.

Mr. REID. It would not ban solicitations. You could go to the NRA, or whoever gives money, and you could ask them for money at that time, and they would have to give it to you at a subsequent time when we were out of session?

Mr. SMITH of Oregon. It doesn't prohibit that. I don't know how to prohibit that constitutionally, but I do know how to constitutionally prohibit the time and place in which these activities are engaged. But the Senator, in his earlier point, said: What does this mean to a Member of Congress? You don't have to be a millionaire to have an advantage by being a Member of Congress. You probably have a large campaign war chest already carried over from your last campaign, if you are a safe incumbent. So these are just the facts of life. I don't know how I can make it perfect, but I know this amendment makes it better.

Mr. THOMPSON. If the Senator will yield, the Senator is doing an excellent job taking on these questions from all corners. But it is a very interesting amendment. I think my own State of Tennessee has a similar amendment. I think what happens is anybody comes to town a couple days sooner to collect the money.

Other than that, my concern, as we consider these amendments, has to do with constitutionality issues. I want to make a couple comments and then ask a question. Obviously, none of us is going to be able to tell what is constitutional or not. But if we have a nonseverability clause—and we don't know whether or not we will—after we have a vote, any amendments that turn out to be not constitutional bring the whole bill down. Some people think that is good. I think we will wind up with a hard money increase, which I think is good, and doing something about soft money, which I think is good. So I think that would be a bad result if that happened.

Personally, I think this so-called millionaire amendment we just passed is of very doubtful constitutionality. That is the reason I voted against it. I don't see how you make the kinds of distinctions that that amendment made when you have free speech protection with regard to his spending his own money, how you then favor one over the other, and what you do about the person who wants to make a contribution, and he can give up to, say, $5,000 to candidate X, but to candidate Y he can only give $1,000.

We already have an amendment that has been adopted with questions about its constitutionality.

With regard to your amendment, my question is this: Will the issue not be resolved on the basis of whether or not there is a compelling State interest? It seems to me that is the question, and if that is the question, if that is the issue, then I look at it to see whether or not what we are doing is of sufficient compelling State interest to overcome the first amendment problems.

Obviously, we are impinging on the first amendment. The Supreme Court has said in some cases we can impinge on the first amendment. That is what we are doing when we put hard money limits on people. We impinge on the first amendment, but the Supreme Court says there is a compelling interest to doing that, and that is the appearance of corruption.

The question is, it seems to me, are we doing enough? Is there sufficient, compelling State interest for us to do this? Is it really helping the system that much in this time-place-manner amendment in order to impinge on the admitted free speech rights of a potential contributor?

I take it the Senator thinks we would be doing enough to help the system, to help the Nation by placing these kinds of limitations on people to overcome an impingement on their first amendment rights. Does my colleague agree that is the issue with which we are dealing?

Mr. SMITH of Oregon. I agree with the Senator. Let me read the exact wording of the Fourth Circuit's response to that very question.

A unanimous Fourth Circuit found the restriction was narrowly tailored and served the compelling interest.

The restrictions are limited to lobbyists and the political committees that employ them, the two most ubiquitous and powerful players in the political arena.

They found the restrictions cover only that period during which the risk of an actual quid pro quo or the appearance of one runs the highest risk.

Again, it is a time-and-place regulation. I suspect people in North Carolina, just as the people of Oregon, have a lot more confidence in hearings going on in the morning and know there is not a fundraiser going on in the evening.

Mr. THOMPSON. I say to my colleague, that does carry a certain amount of logic to it, but we all know that some of these bills carry on for a long period of time, and these big issues where people are greatly interested and their businesses are greatly affected sometimes go on for a period of years and we have fundraisers interspersed with them.

I do not know that I agree the greatest danger has to do with the time proximity of the contribution, but I ask my friend if the rest of his bill tracks what they were doing in that Fourth Circuit situation in terms of the people involved, in terms of the places limited, in terms of the time restriction?

Mr. SMITH of Oregon. We have tailored this amendment after the North Carolina one in order to make sure it passes judicial muster. I believe it does. I am willing to put it as part of a nonseverability clause.

I say to the Senator, my concern about the absence of nonseverability is not to every component of this bill. It is the banning of soft money, whereas I would limit it, as the Hagel proposal. It is the banning of soft money if you do not also include these outside groups.

The Senator knows firsthand, I am sure, as a Republican, when it comes time that you are under attack, you have some very powerful and effective groups against you. You have the Sierra Club; you have the trial lawyers; you have labor unions, and on and on. They are very good at what they do. They hit and they run and are accountable to no one. They do not even have to tell the truth. But the only rescue for a Republican is the Republican Senate Campaign Committee.

Just in fairness, if you are going to empower such groups, if you are not going to include them, then, frankly, I think we do great damage. To Democrats who may say this is to our advantage, let me say what will happen.

The day this is enacted and soft money is banned and held constitutional, every Republican dollar flowing to that Senate committee is going to find its way immediately into a Republican Sierra Club, and all of this will not be disclosable, it will not be accountable, and we will have dumbed down America's democracy.

That is the point I am trying to make. That is why those two components, soft money versus regulating outside groups, have to be tied together if we are to make our country better instead of worse.

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

Mr. SMITH of Oregon. I will be happy to yield.

Mr. REID. The Senator said there would not be fundraisers held. There would be nothing wrong. You could have fundraisers and solicit the money. You just could not collect it; is that right?

Mr. SMITH of Oregon. If you wanted to tighten up the bill even more on that account, I would be happy with an amendment you might offer to that effect. I am trying to go as far as I can constitutionally and say there can be no exchange of cash when you are in a legislative session because it does not look good. It does not smell good. We ought to change it, and a lot of States are cleaning up their State governments with this very kind of law. We should do no less in this Congress.

Mr. REID. I appreciate the point. I wanted to make sure the record reflected, in response to a question from the Senator from Tennessee, that there would not be any fundraisers. There may not be as many, but certainly you could have as many fundraisers as you wanted and solicit the money at the fundraisers. You just could not collect the money that night or that day.

Mr. SMITH of Oregon. I guess my question is, Would the Senator like to amend the amendment to include the prohibition of these kinds of solicitations?

Mr. REID. Of course, we cannot amend anything the way the unanimous consent agreement is in place. I think the Senator from Arizona wishes to discuss possible amendments with the Senator, and that would be something.

Mr. SMITH of Oregon. Would it be appropriate to call for a quorum call to work it out?

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

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

Mr. MCCAIN. Mr. President, I realize there is a time constraint here because, under the UC, we have a vote at 6 o'clock. We have been trying to work out an agreement on this amendment. We have been unable to do so. We will go ahead and have the vote at 6. I will make a tabling motion, but I am committed to working with Senator SMITH to see if there is a way that we can work it out to his and everyone's satisfaction. It is overly broad in its language at this time, but we have not been able to reach a conclusion.

I regret that because I agree with Senator SMITH's intent, and I think he is trying to do something that would cure a very bad perception that persists in Washington.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is out of time.

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

The PRESIDING OFFICER. The Senator from Connecticut controls the remainder of the time, 16 minutes 40 seconds.

Mr. DODD. I am glad to yield to my colleague for a couple minutes.

Mr. SMITH of Oregon. That would be all I would need.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I thank Senator DODD. I know this is not easy. I know Congress meets for a long time. I know State legislatures are different just in terms of time. In every other respect, this law is as valid here as it is other places, in my view. If we are worried about appearance, if we want to move soft money, if we want to move money out of politics, nothing will do that better than this amendment. Nothing will shorten congressional sessions more than this amendment.

In my opinion, we ought to vote on it. We ought to pass it. I will pledge my best efforts to work with Senator MCCAIN to get it in a shape that wins his support as well. It is consistent with the spirit of McCain-Feingold.

I thank my colleague for the time.

Mr. DODD. Mr. President, I am happy to yield 4 minutes to my colleague from Tennessee.

Mr. THOMPSON. I thank the Senator.

Mr. President, following up on my earlier comments, I am concerned about this amendment because I fear it may very well be unconstitutional. If one of these amendments is unconstitutional and the reform side does not win on the severability issue, the whole thing falls. Obviously, the question of constitutionality is always important, but it is even more important now.

My concern is this: We have to clearly have a compelling governmental interest to override the first amendment rights of people to give money to candidates. They clearly have that right here. We are clearly overriding it. The question is whether or not there is a sufficient governmental interest.

The case that was cited from the Fourth Circuit—and that case was in North Carolina—pointed out that it only covered a narrow area and that the Legislature of North Carolina only met for a few months out of the year.

This body sometimes meets the entire year. There is no way a person could raise any money at any time during the year under those circumstances. Clearly, the Fourth Circuit is not authority for the constitutionality of this bill. It might be wrong. The Fourth Circuit might be incorrect in its analysis that it should be narrowly tailored. But that causes me a great deal of concern and difficulty. As well meaning as this amendment is, and in many ways as much as I would like to see it, it causes me great concern to vote for an amendment with what I believe raises pretty serious constitutionality questions.

Mr. DODD. Mr. President, I yield 5 minutes to my colleague from Wisconsin.

Mr. FEINGOLD. Mr. President, it is not pleasant to oppose this amendment. The Senator from Oregon is a wonderful Senator. We have worked together on a lot of issues, in the Foreign Relations Committee, the Budget Committee, and the like. We do share a great progressive tradition in our two States of Wisconsin and Oregon. That is the spirit of this amendment.

I have to agree with the distinguished Senator from Tennessee. This does raise some real questions because it doesn't apply to State legislatures. It applies to this Congress. It may make sense for State legislatures that convene for a few months every year, but it doesn't make sense for this Congress. In the year 2000, this Congress went into session in January and, as we painfully remember, did not adjourn until December. There was even a possibility that we were going to go up to New Year's Eve. So it is not realistic to have this kind of limitation that we have in States such as Wisconsin and Oregon at the Federal level.

The cost of campaigns is regrettably high. Obviously, future reforms should address this problem. As has been said by other speakers, this amendment is overly broad in its attempt to prohibit congressional candidates from accepting contributions while the Congress is in session from all the following individuals or entities. It is not just registered lobbyists, as some thought when the amendment was first described. It is much more than that. It is registered lobbyists that are affected, PACs, senior executives, officers, or owners of any organization that employed or retained a registered lobbyist during a calendar year preceding the contribution.

It would prohibit not just contributions from lobbyists but, as the Senator from Arizona has pointed out, contributions from executives of any company that employs a lobbyist—the executives of General Motors, of Federal

Express, and every other company. It would prohibit all union and corporate PACs from contributing basically almost all year-round because, as I pointed out, we are in session so much of the year.

I am afraid this amendment also gives a huge advantage to wealthy incumbents or any incumbents who have a substantial war chest. Under the Smith amendment, while challengers are unable to raise funds from those listed above throughout this very extensive time period in a year, the incumbents who have a lot of resources would be able to rely on their existing war chests or personal wealth. That concerns me as well.

Finally, as the Senator from Tennessee has focused on, there is a serious question of the constitutionality of this amendment. This is one of the reasons I asked the Senator from Oregon at the beginning about whether this affected PACs. He conceded that banning PAC contributions does raise constitutional questions. It calls into question the whole bill.

Of course, if the Senator from Oregon, as we proceed with this bill, is willing to work with us on making sure this entire bill is severable so that each provision can stand on its own and the Court can determine each one, that could be a different story with regard to that argument, but that is the kind of discussion we need to have.

I want him to know I am eager to have those discussions. I appreciate his attitude toward reform, and I hope that in the end perhaps we can work something out relating to this, but even more importantly, he can be part of our efforts. In light of these concerns, I will urge that all those supporting the McCain-Feingold bill should oppose the Smith amendment.

Mr. DODD. Mr. President, I don't know if others want to be heard on this. If my colleague would like to rebut, I will be willing to yield some time to him.

Mr. SMITH of Oregon. I thank the Senator from Connecticut. I recommit to work with Senator MCCAIN and Senator FEINGOLD and see if we can narrow this down. We worked on this a long time. It is hard to do. We are intruding upon speech, there is no question about it. The question is whether this is a permissible time-and-place regulation and is there a legitimate State interest. Absolutely, because you are separating the fundraising from lawmaking. That not only will drive money out of politics, it will help us to focus more on lawmaking and less on fundraising.

There is a time and a season for everything. That season is after we do our business. Everybody can have their say and make their contribution. You just can't do it when we are doing the people's business.

Mr. DODD. Mr. President, if I may, I will take a couple minutes to conclude. I have great respect for my friend from Oregon. We serve on committees together, and I enjoy working with him on numerous issues. There has been a lot described as to why the amendment is troublesome. There is one element not included in the language that I find appealing, and the public might be attracted to the fact that this may have the net effect of abbreviating sessions of Congress. That may have some appeal to a certain number of Americans. If you can only fundraise when Congress is not in session, we might be through with business in April or May. Seriously—I am not being facetious in those comments—this is a provision that concerned me a little bit. It goes back to the debate we had earlier in the day about the nonincumbent. I understand the effort may be to modify this amendment and bring it back at a later time as a modified amendment. But it also affects the nonincumbent.

As I understand the last provision of the bill, ''beginning on the first day of any session of the body of Congress to which the individual holds office, or for which the candidate seeks nomination for election or election,'' and it could be, of course, that someone in a larger State would begin to challenge one of us as incumbents 2 or 3 years out, which is not uncommon today in larger States, and if we are in session in those years, obviously, a challenger who wants to be heard, where you have a State such as California, or Texas, or Illinois, or New York, you may want to begin that process earlier and they would be restrained from raising any money if this amendment were adopted as presently crafted.

So I, too, respect immensely my colleague's motivations. We talked over the last 2 days about the fact that under present circumstances in an average Senate race of $6 or $7 million—that is what an individual has to raise in a contested race—a Member would literally have to raise thousands of dollars every day, 7 days a week, 52 weeks a year, for the entire 6-year term. Somebody pointed out that in the State of California that number is more like $10,000 a day every day when you start talking about $20 million or $30 million. Obviously, for any Member of this body who is raising $10,000 a day every day for 6 years, there is a portion of your responsibilities, to put it mildly, as a Member of this body that is suffering.

It goes to the very heart of what Senators MCCAIN and FEINGOLD are trying to achieve in this legislation. I don't subscribe to the notion that it is an inevitability that campaigns should increase in cost exponentially as they have been. I think you can put on the brakes. And what Senators MCCAIN and FEINGOLD are doing is trying to put the brakes on a bit in the area of soft money. Our colleague from Oregon is also trying to put on some brakes, and I respect that.

For the reasons articulated by Senators MCCAIN, FEINGOLD, THOMPSON of Tennessee, and others, I reluctantly oppose this amendment, and I will look for an opportunity when a modified version may come back. I thank our colleague for raising the subject matter. I urge rejection of the amendment.

I don't know if any more time is being sought. We can yield back the time left. I think our colleague from Arizona may want to make an appropriate motion. We are prepared to yield back time on our side.

Mr. MCCAIN. Would the Senator yield me 1 minute?

Mr. DODD. I am happy to yield.

Mr. MCCAIN. I say to Senator GORDON SMITH what I said to him before. We have our staffs working. I believe I will be able to table this amendment, but if not, he wins. If it is tabled, we want to work together with him. It is the unseemly appearances the American people don't like. We ought to try to fix it. I think there should be both time and effort in the consideration of this legislation to narrow this amendment so it does meet constitutional concerns expressed by Senator THOMPSON and others.

I thank Senator SMITH not only for his involvement in this issue but in the entire issue of campaign finance reform. I know he comes from a State where there is a lot of interest in this issue, as there is in mine—the ''clean campaign'' State referendum. I think he is representing his constituents when he is heavily involved in this issue. I look forward to working with him not only on this one, but as we approach some of the more important issues in the coming days. I thank him for his efforts.

Mr. President, if it is an appropriate time, I move to table the Smith amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) is necessarily absent.

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

The result was announced—yeas 74, nays 25, as follows:

[Rollcall Vote No. 40 Leg.]

YEAS—74

Akaka	Cochran	Hagel
Allard	Conrad	Harkin
Allen	Corzine	Hatch
Baucus	Craig	Hollings
Bayh	Crapo	Inouye
Bennett	Dayton	Jeffords
Biden	DeWine	Johnson
Bingaman	Dodd	Kennedy
Bond	Dorgan	Kerry
Boxer	Durbin	Kohl
Breaux	Enzi	Kyl
Byrd	Feingold	Landrieu
Cantwell	Feinstein	Leahy
Carnahan	Fitzgerald	Levin
Carper	Frist	Lieberman
Chafee	Graham	Lincoln
Cleland	Gramm	Lott
Clinton	Grassley	McCain

Mikulski	Reid	Stabenow
Miller	Roberts	Thomas
Murray	Rockefeller	Thompson
Nelson (FL)	Sarbanes	Torricelli
Nelson (NE)	Schumer	Voinovich
Nickles	Shelby	Wellstone
Reed	Specter	

NAYS—25

Brownback	Helms	Smith (NH)
Bunning	Hutchinson	Smith (OR)
Burns	Hutchison	Snowe
Campbell	Inhofe	Stevens
Collins	Lugar	Thurmond
Domenici	McConnell	Warner
Edwards	Murkowski	Wyden
Ensign	Santorum	
Gregg	Sessions	

NOT VOTING—1

Daschle

The motion was agreed to.

Mr. SMITH of Oregon. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Connecticut.

Mr. DODD. Mr. President, as I understand it now there will be no more votes today. The intention is to lay down an amendment to be offered by my colleague from New Jersey, and that debate tomorrow will begin at whatever time the majority leader brings us into session. Hopefully, we might even complete the debate in less than 3 hours.

I ask my colleague from New Jersey if that were possible. In which case, the very latest would be somewhere around 12:30, if we follow today's pattern at all. After that, I understand our colleague from Mississippi has an amendment, and after that I think Senator KERRY of Massachusetts has an amendment, as do Senator WYDEN and Senator WELLSTONE. We have not worked that out yet, but it will be one of those three amendments to be offered.

Mr. MCCONNELL. I say to my friend from Connecticut, since Senator COCHRAN is aligned with your side on this issue, we may want to talk about who comes after Senator TORRICELLI.

Mr. DODD. OK.

Mr. MCCONNELL. We will discuss that and get the lineup set.

I have been told the majority leader would like us to come in at 9:30, so we can anticipate a vote on the Torricelli amendment at 12:30 or before, depending on what time is yielded back.

Mr. DODD. I yield whatever time the Senator from New Jersey would care to take for the purpose of introducing his amendment.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 122

Mr. TORRICELLI. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. TORRICELLI] for himself, Mr. DURBIN, Mr. CORZINE, and Mr. DORGAN, proposes an amendment numbered 122.

Mr. TORRICELLI. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Communications Act of 1934 to require television broadcast stations, and providers of cable or satellite television service, to provide lowest unit rate to committees of political parties purchasing time on behalf of candidates)

On page 37, between lines 14 and 15, insert the following:

SEC. 305. TELEVISION MEDIA RATES.

(a) LOWEST UNIT CHARGE.—Subsection (b) of section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended—

(1) by striking ''(b) The charges'' and inserting the following:

''(b) CHARGES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the charges'';

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(3) by adding at the end the following:

''(2) TELEVISION.—The charges made for the use of any television broadcast station, or a provider of cable or satellite television service, by any person who is a legally qualified candidate for any public office in connection with the campaign of such candidate for nomination for election, or election, to such office shall not exceed the lowest charge of the station (at any time during the 365-day period preceding the date of the use) for the same amount of time for the same period.''.

(b) RATE AVAILABLE FOR NATIONAL PARTIES.—Section 315(b)(2) of such Act (47 U.S.C. 315(b)(2)), as added by subsection (a), is amended by inserting '', or by a national committee of a political party on behalf of such candidate in connection with such campaign,'' after ''such office''.

(c) PREEMPTION.—Section 315 of such Act (47 U.S.C. 315) is amended—

(1) by redesignating subsections (c) and (d) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (c) the following new subsection:

''(d) PREEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a licensee shall not preempt the use of a television broadcast station, or a provider of cable or satellite television service, by an eligible candidate or political committee of a political party who has purchased and paid for such use pursuant to subsection (b)(2).

''(2) CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.—If a program to be broadcast by a television broadcast station, or a provider of cable or satellite television service, is preempted because of circumstances beyond the control of the station, any candidate or party advertising spot scheduled to be broadcast during that program may also be preempted.''.

(d) RANDOM AUDITS.—Section 315 of such Act (47 U.S.C. 315), as amended by subsection (d), is amended by inserting after subsection (d) the following new subsection:

''(e) RANDOM AUDITS.—

''(1) IN GENERAL.—During the 45-day period preceding a primary election and the 60-day period preceding a general election, the Commission shall conduct random audits of designated market areas to ensure that each television broadcast station, and provider of cable or satellite television service, in those markets is allocating television broadcast advertising time in accordance with this section and section 312.

''(2) MARKETS.—The random audits conducted under paragraph (1) shall cover the following markets:

''(A) At least 6 of the top 50 largest designated market areas (as defined in section 122(j)(2)(C) of title 17, United States Code).

''(B) At least 3 of the 51–100 largest designated market areas (as so defined).

''(C) At least 3 of the 101–150 largest designated market areas (as so defined).

''(D) At least 3 of the 151–210 largest designated market areas (as so defined).

''(3) BROADCAST STATIONS.—Each random audit shall include each of the 3 largest television broadcast networks, 1 independent network, and 1 cable network.''.

(e) DEFINITION OF BROADCASTING STATION.—Subsection (f) of section 315 of such Act (47 U.S.C. 315(f)), as redesignated by subsection (c)(1) of this section, is amended by inserting '', a television broadcast station, and a provider of cable or satellite television service'' before the semicolon.

(f) STYLISTIC AMENDMENTS.—Section 315 of such Act (47 U.S.C. 315) is amended—

(1) in subsection (a), by inserting ''IN GENERAL.—'' before ''If any'';

(2) in subsection (f), as redesignated by subsection (c)(1) of this section, by inserting ''DEFINITIONS.—'' before ''For purposes''; and

(3) in subsection (g), as so redesignated, by inserting ''REGULATIONS.—'' before ''The Commission''.

Mr. TORRICELLI. Mr. President, tomorrow I will join my colleagues, Senators DURBIN, CORZINE and DORGAN, to support an amendment designed to reduce broadcast rates for political candidates and parties. This will be discussed at length tomorrow. For this evening's purposes, it is probably best to introduce the amendment with the words of David Broder today in the Washington Post who writes the current campaign finance debate:

. . .focuses too much on the people who write the checks. It's time to question, as well, where the money goes.

There remains no greater factor in the astronomical expense in political campaigns than the rising cost of televised political advertising. Nearly $1 billion was spent on political advertising in the 2000 Federal campaign, a 76 percent increase since 1996. As demand for advertising time rose, advertising rates have risen as well.

In Philadelphia and in New York City, the cost of some political ads increased 50 percent between Labor Day and Election Day. Political candidates were held hostage by the calendar and the television networks took full advantage. By law, candidates are supposed to pay the lowest unit rate for a station's most favored commercial advertisers.

That is the law.

The problem is that to ensure their advertisements do not get displaced, candidates often end up paying the highest rates available.

This Congress had an intent, and it wrote a law that Members of the Congress have available the lowest unit rate available by station. But it isn't happening. That is the purpose of this amendment.

In Detroit, 88 percent of the advertisements at one television station were sold above the lowest rate. In Minneapolis, 95 percent of all the advertising sold was above that minimum rate. The lowest unit rate has become

a fiction. Political candidates are competing with General Motors, Procter & Gamble, Ford, and the greatest advertisers in the Nation. We are in a bidding war against commercial interests in order to communicate public policy issues with the American people.

There is no greater hypocrisy in our time than the television networks that have maintained the need for a change of a campaign finance system at the same time they are increasing rates during the fall campaigns and gouging political candidates for more and more money. Indeed, political advertising is now the third greatest source of revenue for the television networks behind retailers and the automobile companies.

The Torricelli-Durbin-Corzine amendment prevents broadcasters from gouging candidates and parties into paying the highest rates for fixed time by:

One, requiring stations to charge candidates and parties the lowest rate available throughout the year;

Two, ensuring that candidates and party ads are not bumped by other advertisers willing to pay more for the time in the bidding war in which we are now engaged with commercial parties;

Three, requiring the FCC to conduct random checks during the preelection period to ensure compliance with the law.

Candidates in markets of all sizes would benefit. A candidate in Alabama could save at least 400 percent on one station alone. We have calculated that a candidate in Los Angeles could save 75 percent at one station by having this lower rate available.

This amendment does not require broadcasters to allocate candidates free time, as indeed is done in almost every other industrial democracy in the world. Many of my colleagues believe such free time is the answer. We are not requiring that in this amendment.

We are not altering the content of their programming nor charging a fee for use of the public spectrum. All we are doing is requiring what we required so long ago, but now enforcing it —now ensuring that it happens in practice; that is, that the lowest unit rate be made available.

This will be discussed in length tomorrow. But it is eminently reasonable that in a public policy debate, in choosing leaders of this country, the public airwaves provided on license to the television networks not be a financial opportunity for the networks to get candidates in a bidding war against commercial advertisers, and not taking advantage of those weeks before an election when advertisers, by necessity, must be placed and, therefore, an opportunity for the networks to increase their rates to take advantage of the calendar.

This simply assures fair access at a fair price. It is a necessary component of campaign finance reform. If we are to reduce the amount of money that is available as part of the effort to perform, reduce the amount of political money in this system in order to ensure the integrity of our Government and increase public confidence, and if we are to reduce these expenditures without reducing the cost of advertising, there is only one possible result: Less campaign fundraising will result in less communication, less informed voters, and candidates unable to bring their message to the people.

There is only one way to avoid this eventuality: Reduce the amount of campaign money by reducing campaign costs. That is at the heart of the Torricelli - Corzine - Dorgan - Durbin amendment.

I will return tomorrow morning with my colleagues. We will present our case at length and I think make a real and lasting contribution to the fight for reform.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. TORRICELLI. 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. TORRICELLI. Mr. President, I yield to Senator ENSIGN of Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I have been in four very tough campaigns in the last 8 years. I have a lot of experience buying television time. Being a small State, the State of Nevada, in which we only have two media markets, it is a lot less expensive than in the State of my good friend from New Jersey.

In 1994, our television time was a lot less expensive. Just in the last 8 years, television has literally at least tripled in price in my State. At election time, when the Senator was talking about the gouging—whatever term you want to use—by the station, there are so many independent expenditures and so many candidates advertising on television that the price goes up. As a matter of fact, at the beginning when you are doing your budgeting for your campaign and you are trying to get the lowest unit rate, it is supposedly going to be at the end of the campaign so that you can determine how much money you will be able to spend on television and how much you will be able to put your message out to the voters.

I remember asking my people: What about this lowest unit rate we heard about? I always hear about that in every campaign. My campaign people say that is really a farce, because the lowest unit rate is something that is preemptible time, so we don't recommend that you ever buy the lowest unit rate. I think we bought a few spots at the lowest unit rate. But other than that, we had to buy nonpreemptible time so we would make sure we had the slots and our message would get to the people to whom we wanted to get.

Mr. TORRICELLI. If I could interrupt the Senator, on tomorrow we will present to the Senate correspondence illustrating exactly the phenomenon to which the Senator from Nevada was speaking. Political candidates will place an ad for $20,000 in compliance with Federal law at the lowest unit rate, and the television station will write back and say: You have an advertisement placed at $20,000, and you should know there is a commercial buyer for that time. If you do not send us another $20,000, you will lose the slot. We will move your ad where we intend to move it, which means the middle of the night.

In fact, they take a candidate's time trying to communicate to the American people in accordance with Federal law at the lowest unit rate, and then you get into a bidding war with the commercial interests because the station is trying to take advantage of the time. They know you advertise in October and September.

Tomorrow we are going to have a complete example of what the Senator is discussing.

Mr. ENSIGN. If the Senator will yield again, my personal experience with this has gone on. We just had the broadcasters from Neveda in our office last week. I don't blame them for wanting to make a profit. That is their business. I don't blame them at all. But we have to spend a lot more time and effort raising money. And this drives up the cost of all of our campaigns simply because of what has happened in the last few election cycles. This phenomenon we are seeing has really happened in the last three or four election cycles—this bidding up of the prices right before election day.

As a matter of fact, when I first got into this in 1994, the television stations didn't like the political season because it was the time when they lost money because they used to give out a lot of low unit rates. But today they love the election cycles. It is one of their highest profit margin times—at least that is what they tell me—simply because there are so many people trying to get on the air to advertise. Candidates cannot get the lowest unit rate. They don't choose to do it anymore. And they have to bid up this time.

So I applaud the three Senators for bringing this amendment up. I think it is the right thing to do. I do not know whether the amendment is going to be adopted, but I certainly think it is the right thing to do. I will be joining with you tomorrow in voting for this.

Mr. TORRICELLI. I thank the Senator for his help. I believe we will succeed tomorrow on a bipartisan basis. I think people recognize the purpose of campaign finance reform is not that the United States have less political debate, not that the American people will be less informed, but that there will be less money in the system. If we

are to achieve both—and that is, to have people to be well informed but have less money in the system, and build confidence—we have to lower the cost of campaigns. This is the way to do it—on the public airways.

Unfortunately, we are not doing what is done in Britain or France or England, which is providing this time free because they are public airwaves. We are taking a very modest step. Indeed, we are only putting into law what really, in fact, was in the law but now is being evaded, and that is this requirement of lowest unit rate.

Indeed, the Senator's experience in Las Vegas is not unusual. He has seen a 300-percent increase during this decade. As I pointed out, the national average, in just 4 years, is 76 percent. There is no cost of business for any industry I know of that is rising faster than the cost of advertising for a political candidate. But what is unbelievable is, in the entire national debate on campaign finance reform, this has largely been absent.

It is as if candidates are raising money because they enjoy it, that somehow people like to raise money because it is entertaining. People are raising these phenomenal amounts of money for one purpose: to feed the television networks that are demanding it, and holding the political system hostage.

So I suggest that tomorrow Mr. Brokaw and Mr. Jennings and Mr. Rather, who have led this campaign for campaign finance reform—we are joining them and going to make the point that rather than being a critic of it, you can make a contribution. This is their way of making a contribution. We are going to lead them to do so tomorrow.

Would the Senator like to add a point?

Mr. ENSIGN. If the Senator will further yield, to just give the American people a little bit of insight into how campaigns work, when you are setting up your budget, in the beginning you set up your TV target market and how much you want to advertise—not how many dollars you want to put into it but what level of penetration into the market you want to get, something called the gross rating point. And we determine each week from election day backward approximately how many points we would like to get in the market. That will determine how much of our message gets to the voters. Then we try to figure out, after we do that, approximately how much the stations are going to charge us for each one of those commercials we put on television.

In the last few years, because of the huge increases, obviously, we have had to adjust our budgets. From that point we go forward and determine how much money we need to raise in our campaigns. That is why the cost of campaigns has continued to go up and up and up and up. From 1995 to 1998, we spent about $3.5 million in our first Senate race. In our second Senate race, just 2 years later, we spent almost $5 million. That is the reality. Mail costs about the same, and radio has gone up a little bit but not too badly, and almost all of the increase has been because of the cost of television.

Mr. TORRICELLI. If I could share one of my own experiences: In 1996, in my own Senate race, we tried to buy the advertising in advance. We knew, as did the Senator, how many points we wanted to buy. We offered to send the money to television. They would not take it because they wanted to increase the rates. They told us in advance: These rates will not hold. We will not take your money. The more they see the demand from political candidates, the more they increase the cost.

Now, to the point, if we are to have a $1,000 limit on all expenditures under McCain-Feingold—no soft money—only $1,000 contributions, in the city of New York an ad covering much of the State of New Jersey can be $60,000 or $70,000. So it will take 70 people writing $1,000 contributions to pay for one ad—one.

The point becomes, how many people do you need? How much do you have to raise to run a television campaign? Effectively, for a candidate in New York today, we will never see another Senate campaign that costs less than $25 million. At that rate, how many thousands and thousands and thousands of people have to write $1,000 contributions? There is no escaping this addiction of money until we lower these costs.

I am very grateful the Senator from Nevada has joined this cause. I am very grateful on a bipartisan basis it seems overwhelmingly the Senate is prepared now to have the second leg on the chair of campaign finance reform—control the money, control the costs, and then we have a balanced program for genuine reform.

I thank the Senator. I look forward to being with him in the debate tomorrow.

I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I commend our colleagues from New Jersey and Nevada. This exchange between these two fine Senators represents the quality of the debate the Senate is now experiencing on this important issue of campaign finance reform.

Mr. MCCONNELL. Mr. President, I would like to read into the RECORD the following article by Stanford law professor Kathleen Sullivan, entitled ''Paying Up Is Speaking Up.'' In it, she notes that politics and political campaigns are far cleaner today than they were in the days of Tammany Hall. She also notes that in Bucklay v. Valeo the Supreme Court made things worse by striking down expenditure limits while upholding contribution units, resulting in a situation where government may limit the supply of political money but not the demand.

Professor Sullivan says:

Those who claim that our political system is awash in money, corruption and influence peddling were predictably upset that the Senate again defeated the campaign finance restriction proposed by Senators Russell Feingold and John McCain. The Senate's failure to ban ''soft money''—large contributions to political parties that are made to avoid tight restrictions on donations to candidates—drew laments from editorial pages to corporate boardrooms, where some business executives now plead, ''Stop us before we spend again.''

The advocates of new, improved campaign finance reform are well-intentioned but misguided. Of course none of us wishes to live in a plutocracy, where wealth alone determines political clout. But as Senator Mitch McConnell noted in a heated exchange with Senator McCain, American politics today is far from ''corrupt'' in the traditional sense. And the most troubling features of political fundraising today are the unintended consequences of earlier efforts at campaign finance reform.

Begin with the allegations of ''corruption.'' Contributions to candidates and parties today do not line anybody's pockets, as they did in the heyday of machines like Tammany Hall. Vigilant media and law enforcement now nip improper personal enrichment in the bud, as politicians involved in the savings and loan scandals found out to their detriment.

Political money today instead goes directly into political advertising, a quintessential form of political speech. Our large electoral districts and weak political parties force candidates to communicate directly with large groups of voters. This depends on the use of the privately owned mass media. Thus getting the candidate's message out is expensive.

Reformers sometimes decry today's political advertising as repetitious and reductive. But it is not clear what golden age of high-minded debate they hark back to; the antecedents of the spot ad are, after all, the bumper sticker and slogans like ''Tippecanoe and Tyler, Too.''

Nor is there any doubt that restrictions on political money amount to restrictions on political speech. Reformers sometimes say they merely seek to limit money, not speech. But a law, say, barring newspapers from accepting paid political advertisements or limiting the prices of political books would also limit only the exchange of money. Yet no one would question that it would inhibit political speech—as do restrictions on campaign finance.

Unfortunately, the Supreme Court only half recognized this point when, in 1976, it struck down limits on political expenditures while upholding limits on political gifts. Expenditures, the Court reasoned, may not be limited in order to level the playing field, but political contributions may be limited to prevent the reality or appearance that big contributors will have disproportionate influence. So we still have in place the 1974 law limiting individual contributions to a Federal candidate to $1,000 per election—the equivalent of about $383 in 1999 dollars—and, perversely, candidates must spend ever more time chasing an ever larger number of donors.

The Court's noble but flawed attempt at compromise leaves us in the worst of all possible worlds: government may limit the supply of political money but not the demand. This is a situation that in a commercial setting would produce a black or gray market, and politics is no different. Instead of money flowing directly to candidates, it flows to parties as soft money, or to independent advocacy organizations for issue ads that often

imply support for or opposition to specific candidates.

Political spending and speech thus have been shifted away from the candidates, who are accountable to the voters, to organizations that are much harder for the voters to monitor and discipline—a result that turns democracy on its head.

Reform proposals such as McCain-Feingold proceed on the assumption that the answer is to keep on shutting down ''loopholes'' in the system. But in a system of private ownership and free expression, we can never shut all the loopholes down. If the wealthy cannot bankroll campaigns, they can buy newspapers or set up lobbying organizations that will draft legislation rather than campaign ads. When the cure has been worse than the disease, the solution is not more doses of the same medicine.

Does this mean we should eliminate all campaign finance regulation? Certainly not. Even if we give up on contribution limits, we should retain and enhance mandatory disclosure and public subsidies—two kinds of government intervention that are consistent with both democracy and the Constitution.

Mandatory disclosure of the amounts and sources of political contributions enables the voters themselves, aided by the press, to follow the money and hold their representatives accountable if they smell the foul aroma of undue influence. Such disclosure is an extraordinarily powerful and accessible tool in the age of the Internet.

And more widespread public subsidies, like those now given in presidential and some state races, could, if given early in campaigns, help political challengers reach the critical threshold amounts they need to get their messages out.

In ongoing debates about campaign finance reform, it is worth remembering that free speech principles bar the creation of ceilings on political money, but they do not bar the raising of floors.

Mr. President, I would also like to read into the RECORD a recent article by Stuart Taylor Jr. of the National Journal entitled ''How McCain-Feingold Would Constrict Speech.'' It explains how McCain-Feingold would make our political system worse, not better. It notes that each new step down the road of restricting political speech and political spending actually creates new problems.

Mr. Taylor's article says:

It all sounds so clean, so wholesome, so righteous: close the loopholes in our campaign finance laws. End what Sen. John McCain, R-Ariz., calls the ''corrupting chase for 'soft money.' '' Curb the influence of corporations and labor unions. Stop special interests from polluting our politics with ''sham issue ads.'' Mandate greater public disclosure of political spending.

But in reality, the McCain-Feingold-Cochran campaign finance bill would make our politics worse, not better, by further entrenching incumbents against challengers, by weakening our political parties, by increasing the influence of wealthy individuals and huge media corporations, by stifling political debate, and by attacking the First Amendment's premise that political speech should be free and uninhibited, not hobbled by a maze of prohibitions and regulations.

We might be able to make our politics cleaner and fairer by supplementing private campaign funding with some form of public financing to help give voice to candidates and causes with scant financial resources. (More on that next week.) We will not achieve this by piling onerous new restrictions on privately funded speech.

Our experience with the current curbs on campaign contributions, which were enacted in the early 1970s, should be sobering. Spread through hundreds of pages of almost indecipherable legalese understood only by specialists, these curbs are filled with traps, technicalities, and opportunities for selective enforcement by politically appointed bureaucrats and judges. Their main impact has been to force federally elected officials and their challengers to spend a huge percentage of their waking hours soliciting ever-smaller (after inflation) contributions from ever-larger numbers of people. Meanwhile, incumbents have become harder to defeat, the influence of special interests has grown, voter turnout has declined, and public confidence in our political system has plunged.

The solution, say McCain and other ''reformers,'' is to plug loopholes in the current laws—first and foremost, by ending the ability of wealthy individuals, corporations, and unions to circumvent the limits on ''hard-money'' contributions to candidates by giving their political parties unlimited sums of soft money to be spent promoting the candidates. This would make it harder for politicians to extort money from those who would prefer not to give. That is good. But it would also weaken the parties' ability to finance indisputably healthy grass-roots activities such as voter education, registration, and turnout drives, while spurring the many companies, unions, and individuals who want to be active in politics to take their money elsewhere. That is very bad.

The most obvious outlet for private money would be to fund so-called issue advertisements praising their preferred candidates and attacking their adversaries, either directly or by giving to one or more of the interest groups that buy such ads. These groups range from the Chamber of Commerce, the National Right to Life Committee, and the National Rifle Association on the right to labor unions, Planned Parenthood, and the Sierra Club on the left. Such a governmentally engineered shift of money and power from the parties—our most broad-based vehicles for citizen participation in politics—to single-issue groups and other ideologically driven organizations would warp our political discourse.

Not to worry, McCain and his allies say, we also have a plan to curb the financial clout of corporations, unions, and independent interest groups. This proposal (Title II of the bill) would severely restrict such organizations' spending on issue ads and other activities designed to disparage or promote federal candidates. Indeed, for some incumbents facing re-election battles, these provisions are the main attraction of the McCain-Feingold-Cochran bill. ''We're totally defenseless against the juggernaut of huge, unregulated, undisclosed expenditures'' by independent groups, Sen. Thad Cochran, R-Miss., who faces an election next year, told the Wall Street Journal.

This part of the bill would, in the words of Brooklyn Law School professor Joel M. Gora, who has long worked with the American Civil Liberties Union on campaign finance issues, ''effectively silence a great deal of issue speech and advocacy by nonpartisan citizen groups, organizations, labor unions, corporations, and individuals.'' It would altogether bar for-profit corporations and unions from buying television or radio ads, or giving independent groups money to buy ads, that so much as mention—let alone criticize or praise—a federal candidate during the critical 60 days before an election and the 30 days before any primary. These are precisely the periods during which the public is most attentive to debate about political issues and candidates. The bill would also prohibit independent groups from buying such pre-election issue ads unless they set up unwieldy separate, segregated funds that shun corporate and union money and publicly disclose all individual contributions above $1,000.

An even more radical provision would expose such groups to possible legal sanctions if they do anything, at any time, that might help any candidate with whom they have ''coordinated''—a term defined so broadly and vaguely as to encompass almost any contacts with candidates or their aides—in working on issues of mutual interest. So restrictive are these ''coordination'' rules that some of McCain-Feingold-Cochran's biggest champions might have run afoul of them had they been in effect during the 1999–2000 election cycle. Common Cause, for example, worked closely (''coordinated'') with McCain in late 1999 on strategies for promoting his bill, while spending lots of its own soft money touting the bill (and McCain) to the public, at a time when McCain himself was putting campaign finance reform at the center of his presidential candidacy. Under his own bill, such routine political activities involving Common Cause and McCain might be deemed illegal corporate campaign contributions.

Nor is McCain-Feingold-Cochran's requirement that independent groups disclose the names of all donors of more than $1,000 for pre-election issue ads as innocuous as it may seem. It is, some independent groups argue, mainly for the benefit not of the public, but of powerful incumbents and other politicians who might use pressure and intimidation to deter people from funding issue ads the politicians don't like. Thus could a bill that purports to curb the influence of Big Money in politics have the effect of increasing the power of politicians to silence critics both big and small.

Fortunately, McCain-Feingold-Cochran's proposed restrictions on issue ads and independent groups will have trouble getting through Congress now that the AFL–CIO is opposing them—a major break with its usual Democratic allies. And even if enacted, these restrictions have little chance of surviving judicial review. They fly in the face of rules laid down by the Supreme Court in a long line of First Amendment decisions that guarantee that issue advocacy by independent groups, corporations, and unions will enjoy broad protection from all forms of official regulation, including public disclosure requirements.

In any event, any portion of McCain-Feingold-Cochran that manages to get through Congress and past the courts would not take Big Money out of politics. The bill would, rather, increase the relative power of those moneyed interests that remain unregulated. These would include individuals rich enough to finance their own campaigns, such as Ross Perot, Steve Forbes, and the four Senate candidates (all Democrats) who each spent more than $5 million of their own money to win their races. This group was topped by Jon Corzine's $60 million purchase of a seat to represent New Jersey. Power would also flow to the national news media, which are owned by huge corporations such as AOL-Time Warner and General Electric, are staffed by journalists with their own biases, and are busily clamoring for restrictions on the campaign-related spending and First Amendment rights of everybody else.

Those reformers who are most serious about driving Big Money out of politics see McCain-Feingold-Cochran as only a first, tiny step. They would also cap campaign spending by wealthy candidates—a step that would require overruling the Supreme Court's landmark 1976 decision in Buckley vs. Valeo. And a few reformers have asserted that, in the words of associate professor

Richard L. Hazen of Loyola University Law School in Los Angeles: ''The principle of political equality means that the press, too, should be regulated when it editorializes for or against candidates.''

Each new step down this road of restricting political spending and speech creates new problems and new inequities, fueling new demands to close ''loopholes'' by adding ever-more-sweeping restrictions. How far might campaign finance reformers go if they could have their way? Was McCain serious when he said on Dec. 21, 1999. ''If I could think of a way constitutionally, I would ban negative ads''? Shades of the Alien and Sedition Acts.

Politics will always be a messy business. Money will always talk. And the cure of legislating political purity and purging private money will always be worse than the disease.

Finally, Mr. President, I would like to read into the RECORD an article by Judge James Buckley entitled ''Campaign Finance: Why I Sued in 1974.'' Judge Buckley was the lead plaintiff in the landmark campaign finance case of *Buckley* v. *Valeo*. This article provides an important historical context to the current debate over restricting Campaign finances further.

It says:

Twenty-five years ago, I was a member of the Senate majority that voted against the legislation that gave us the present limitations on campaign contributions. Having lost the debate on the floor, I did what any red-blooded American does these days: I took the fight to the courts as lead plaintiff in Buckley v. Valeo. This is the case in which the Supreme Court held that the 1974 act's restrictions on campaign spending were unconstitutional but that its limits on contributions were permissible in light of Congress's concern over the appearance of impropriety.

The issue of campaign finance is again before the Senate. Unfortunately, today's reformers are apt to make a badly flawed system even worse.

To understand why, it is instructive to take a look at the Buckley plaintiffs. I had squeaked into office as the candidate of New York's Conservative Party. My co-plaintiffs included Sen. Eugene McCarthy, whose primary challenge caused President Lyndon Johnson to withdraw his bid for re-election; the very conservative American Conservative Union; the equally liberal New York Civil Liberties Union; the Libertarian Party; and Stewart Mott, a wealthy backer of liberal causes who had contributed $200,000 to the McCarthy presidential campaign. We were a group of political underdogs and independents; and although we spanned the ideological spectrum, we shared a deep concern that the 1974 act would dramatically increase the difficulties already faced by those challenging incumbents and the political status quo.

Incumbents enjoy formidable advantages, including name recognition, access to the media, and the goodwill gained from handling constituent problems. A challenger, on the other hand, must persuade both the media and potential contributors that his candidacy is credible. This can require a substantial amount of seed money. As we testified, Sen. McCarthy could not have launched a serious challenge to a sitting president and I could not have won election as a third-party candidate under the present law. Large contributions from a few early supporters established us as viable candidates. Once the media took us seriously, we were able to reach out to our natural constituencies for financial support and to attract the cadres of volunteers that characterized our campaigns.

Although we won a number of the arguments we presented in Buckley, we lost the critical one when the court held that the limits on contributions were constitutional. Experience, however, has vindicated our worries over the practical consequences of these and other provisions of the 1974 act.

The legislation was supposed to de-emphasize the role of money in federal elections and encourage broader participation in the political process. Instead, by limiting the size of individual contributions, it has made fund raising the central preoccupation of incumbents and challengers alike; and it created a bureaucracy, the Federal Election Commission, that has issued regulations governing independent spending that are so complex and have made the costs of a misstep so great that grassroots action has virtually disappeared from the political scene. Today, anyone intrepid enough to engage in such activities is well advised to hire a lawyer; and even then, he must be prepared to engage in protracted litigation to prove his independence.

Legislation that was supposed to democratize the political process has served instead to reinforce the influence of the political establishment. By compounding the difficulties faced by challengers, it has consolidated the advantages of incumbency and increased the power of the two major parties. By limiting individual contributions to $1,000, it has enhanced the political clout of both business and union political action committees—the notorious PACs.

Moreover, if today's reformers succeed in their efforts to restrict ''issue advocacy,'' the net effect will be to increase the already formidable power of the media. The New York Times or The Wall Street Journal will be free to throw their enormous influence behind a particular candidate or cause through Election Day. But public interest groups would be denied the right to advertise their disagreement with the Times or the Journal during the final weeks of a campaign.

What is needed is not more restrictions on speech but a re-examination of the premises underlying the existing ones. Recent races have exploded the myth that money can ''buy'' an election. Ask Michael Huffington, who lost his Senate bid in California after spending $28 million. The voters always have the final say. What money can buy is the exposure challengers need to have a chance. And while large contributions can corrupt, studies of voting patterns confirm that that concern in vastly overstated. The overwhelming majority of wealthy donors back candidates with whom they already agree, and they are far more tolerant of differences on this point or that than are the PACs to which a candidate will otherwise turn.

An alternative safeguard against corruption is readily available—the daily posting of contributions on the Internet. This would enable voters to judge whether a particular contributions might corrupt its recipient. What makes no sense is to retain a set of rules that make it impossible for a Stewart Mott to provide a Eugene McCarthy with the seed money for a challenge to a sitting president, or that make elective politics the playground of the super rich.

The problem today is not that too much money is spent on elections. Proctor & Gamble spends more in advertising than do all political campaigns and parties in an election cycle. The problem is that the electoral process is saddled by a tangle of laws and regulations that restrict the ability of citizens to make themselves heard and that rig the political game in favor of the most privileged players. And because congressional incumbents are the beneficiaries of the titled playing field, it is fanciful to believe that Congress will re-write the rule book to give outsiders an even break.

We have nothing to fear from unfettered political debate and everything to gain. American democracy can ill afford government control of the political marketplace; but that is where today's reformers would lead us.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

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

DIRECTED ENERGY AND NON-LETHAL USE OF FORCE

Mr. DOMENICI. Mr. President, I rise today to discuss a serious and effective use of new technologies in our military operations. While I will focus on a specific directed energy technology, the Joint Non-Lethal Weapons Program Office is involved in many other research areas that provide innovative solutions to our military men and women in their daily missions.

Recently, the Marines unveiled a device known as Active Denial Technology, ADT. This is a non-lethal weapons system based on a microwave source. This device, mounted on a humvee or other mobile platform, could serve as a riot control method in our peacekeeping operations or in other situations involving civilians. This project and technology was kept classified until very recently.

The Pentagon noted that further testing, both on humans and, evidently, goats will be done to ensure that it truly is a non-lethal method of crowd control or a means to disperse potentially hostile mobs. The notion that the Pentagon is using ''microwaves'' on humans, and especially on animals, has inflamed some human and animal rights groups. Among others it has simply sparked fear that a new weapon exists that will fry people.

This is not the case. And, unfortunately, few of the media reports offer sufficient detail or comparisons to clarify the value of such a system or put its use in perspective. While ADT is ''tunable,'' the energy cannot be ''tuned up'' to a level that would immediately cause permanent damage to human subjects.

The technology does not cause injury due to the low energy levels used. ADT does cause heat-induced pain that is nearly identical to briefly touching a lightbulb that has been on for a while. However, unlike a hot lightbulb, the energy propagated at this level does not cause rapid burning. Within a few seconds the pain induced by this energy beam is intended to cause the subject to run away rather than to continue to experience pain.

Such technologies have never before been used in a military or peacekeeping endeavor. Therefore, there is