I yield the floor.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask time be charged equally against both sides.

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

The legislative clerk proceeded to call the roll.

Mr. REID. 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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. REID. Mr. President, I ask unanimous consent that the senior Senator from West Virginia, Mr. BYRD, be recognized to speak as if in morning business for up to 30 minutes, and that the time be equally charged to both sides on the underlying amendment.

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

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the distinguished Democratic whip, Mr. REID, for his courtesy. He is always very courteous and attentive to the needs and wishes of his colleagues. I also thank the distinguished Senator from Kentucky, Mr. MCCONNELL, for his characteristic courtesy as well.

May I say I merely sought the floor because the Senate was in a quorum and had been in a quorum for quite a while; otherwise, I would not have come at this time.

Mr. President, I ask unanimous consent to speak out of order, if the time is being charged to both sides on the campaign finance legislation.

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

(The remarks of Mr. BYRD are located in Today's RECORD under ''Morning Business.'')

BIPARTISAN CAMPAIGN REFORM ACT OF 2001—Continued

Mr. LEVIN. Mr. President, I will be supporting the Nickles amendment because I think it is the wiser course to leave this issue at this time to the courts and to the NLRB.

I will say a few things about the Beck provision in the bill. I believe this is a different perspective than what we have heard from the Senator from Kentucky. However, we reached the same conclusion, that it is best to leave Beck to the courts and to the NLRB rather than to try to see if we can distill or characterize the Beck decision at this time.

Mr. President, it was said that the codification of Beck or the Beck provision in this bill is the opposite of a codification. But, Section 304 of McCain-Feingold goes to the heart of the Beck decision, that is, whether a nonunion member can opt out of paying dues for political activities. The Supreme Court says ''yes'' in Beck, and section 304 would make that right to opt out statutory law. That is the technical holding in Beck that a nonunion member in a bargaining unit can opt out. It is that holding which is at the heart of Beck which is also at the heart of the provision in section 304.

We don't believe section 304 would make it harder for nonunion members to exercise their Beck right; that, we believe, is not the case and we know it is not the intent.

The National Labor Relations Board has told unions how they can and should implement Beck. The NLRB said in the California Saw and Knife Works case, in 1995, the following: First, before a union can require a nonunion member to pay what is called an agency fee, which is similar to union dues for a union member, the union must tell the nonmember employee of his or her right to object to paying for activities ''not germane to the union's duties as bargaining agent,'' and his or her right to ''obtain a reduction in fees for such act.''

The nonmember employee can then file an objection, and the union must then charge the nonmember objecting employee an agency fee reflecting only that portion of the agency fee that represents the cost of activities related to collective bargaining.

The NLRB also requires that the nonmember objecting employee must also be given an explanation of the calculation made by the union, an opportunity to challenge the calculation, and an independent arbiter to determine the challenge.

These requirements have been in force since 1995 and have been vigorously enforced.

The McCain-Feingold bill incorporates both the Beck decision and that NLRB decision. The McCain-Feingold bill, first, makes it an unfair labor practice for a union not to provide the ''objection procedure'' laid out in the bill for nonmember employees. The objection procedure in the bill includes the same elements required by the NLRB, including annual notice to nonunion employees about the objection procedure; the persons eligible to invoke the procedure; and how, when, and where an objection can be filed. The bill provides an opportunity to file an objection to paying for union expenses ''supporting political activities unrelated to collective bargaining.'' One opportunity must include filing an objection by mail and, if an objection is filed, the reduction in the amount of the agency fee by an amount that ''reasonably reflects the ratio that the organization's expenditures supporting political activities unrelated to collective bargaining bears to such organization's total expenditure.''

The union must also provide, as the NLRB decisions have required, an explanation of the calculations made by the union, including calculating the amount of union expenditures supporting political activities unrelated to collective bargaining.

That is the provision in the McCain-Feingold bill.

Separate from the provision in the McCain-Feingold bill, any union employee who doesn't want to pay for a union's political activity through his or her membership dues can terminate his or her membership with the union and, like an objecting nonunion employee, seek a reduction in the agency fee of that sum which represents the amount spent on political activity.

So I wanted to clarify the provision in this bill. But our conclusion on the amendment of Senator NICKLES is really the same. It is best to leave this determination of the rights of nonunion members, and the meaning and fleshing out of the Beck decision relative to those rights, to the courts and to the NLRB. It doesn't belong on this bill.

So we reach the same conclusion. We don't have the same analysis of the wording of the bill and the meaning and the completeness of it or the accuracy of it, obviously. We have differences on that. But the conclusion is the same. The intent of the bill was to incorporate Beck, but, I think we will be better served if in fact the bill, then, is silent on this subject and we leave it up to the NLRB and the courts to make that determination, as to the meaning and implementation steps for Beck.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I believe after discussions with Senator DODD we are ready to announce that there will be a vote at 3:30. I ask unanimous consent that the time between now and 3:30 be equally divided and that a vote occur on the Nickles amendment at that time.

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

Mr. DODD. Mr. President, let me yield 4 minutes to my colleague from Wisconsin.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I also have no problem with the amendment proposed by the Senator from Oklahoma. I appreciate the opportunity to meet with him today. He made his case, and, in a spirit that I hope will continue to permeate this Chamber, we listened to what he had to say and agreed that perhaps the best course, as the Senator from Michigan suggested, is to delete this provision from the bill.

I also appreciate the fact the Senator from Oklahoma has indicated to me, at least in terms of his amendments on the bill, that this will conclude the so-called paycheck protection part of this debate on campaign finance reform. It is in recognition of the fact that the votes are not there to include a paycheck protection provision that would be directed only at labor or even ones that would include both labor and corporations. I appreciate that assurance from the Senator from Oklahoma because I know he feels very strongly about this. But this is the nature of the process. We do need to move on to other issues.

There really is no need to debate the question of whether section 304 does or does not codify the Beck decision. The only reason this language is in the bill is that the Senator from Kentucky and the majority leader in the past have insisted for years that campaign finance reform legislation was not complete without a provision to deal with the activity of organized labor.

Proponents of that view, of course, offered the so-called paycheck protection provision as their solution. In fact, I remember a few years ago when we reached an agreement to debate campaign finance reform, the majority leader introduced a base bill for that debate, and his entire bill was the paycheck protection provision that is not prevailing in this discussion today.

No changes to our current corrupt soft money system were proposed—just paycheck protection. Paycheck protection—or, as I like to call it, paycheck deception—has always been a poison pill for reform. It is an unfair and unnecessary attack on organized labor. But we were willing to include in the bill a provision that purported to reflect current law with respect to fees paid by nonunion members in lieu of dues. So we added section 304.

Even though this has been in the McCain-Feingold bill for 3½ years, we are told that from the point of view of those who favor paycheck protection, the current law is preferable to this section in our bill.

In light of that history, I have no problem with removing the provision because the issue really doesn't belong, and never really belonged, in the campaign finance legislation. The whole question of how labor unions collect and use dues money from their members is a matter of Federal labor law, really, not Federal election law.

I am pleased to support the amendment of the Senator from Oklahoma. I think and hope this will bring an end to the amendments we have seen for years and years that are aimed at interfering with the internal workings of labor unions and the relationship between a union and its membership.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I support the amendment. I think it is a good thing to happen. I think maybe we have taken way too much time on it since basically everybody is in agreement.

I point out to my colleagues again, we still have a lot of pending amendments. We would like to get through them. There are some of them that will not take a maximum of 3 hours. There are some we can complete in a relatively short period of time.

The worst of all worlds is for us to continue to make the steady progress we have been making but run out of time because there are various commitments next week that people have. So I hope we can not only move forward with the amending process—we have spent a heck of a lot of time in quorum calls, and also with, albeit important, speeches and comments that do not have anything to do with the bill, the legislation we are addressing.

Again, I urge my colleagues who have amendments, please let Senator MCCONNELL and Senator DODD know so we can try to set up an orderly process for completion of the legislation at the appropriate time next week.

I thank my colleagues.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to thank Senator MCCAIN and Senator FEINGOLD for their acceptance of this amendment. I think it is important to strike this language, that section 304 which purports to codify the Beck decision. I will just read a direct quote from the Beck decision. It says:

> The statutory question presented in this case, is whether this ''financial core'' includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.

We think it does not. In other words, what Beck says is the only thing somebody would have to pay for—have their dues taken away from them without their consent—is to pay for negotiation for contract collective bargaining, contract administration, and grievance procedures, if someone has a grievance. That is the only thing. They were very clear what the language was. And the reason I and Senator GREGG—who, I might mention, is a key sponsor—objected was because this language went much further.

I didn't want people to misunderstand and say, well, we are codifying Beck, or we are clarifying and codifying Supreme Court decisions where basically we would be rewriting the Supreme Court decision. That is the reason I raised it. I very much appreciate the comments of our colleagues who have said that wasn't the intent and we can drop this language.

My colleague from Wisconsin asked me how many more paycheck amendments there would be. I wrote the paycheck protection amendment originally because a union person came to me and said: I don't want my money taken away from me and used for political purposes for which I totally disagree.

It happens to be that 40 percent of union members vote Republican who don't agree with some of the national agenda of their party. This individual from Claremore, OK, brought it to my attention. That is the reason I sponsored the amendment.

Yesterday there was an amendment proposed that had a paycheck protection provision, and, according to the media, it was completely unworkable. As Senator KENNEDY pointed out, dealing with corporations and shareholders is not the same thing. Being a shareholder is not the same thing as being a wage earner having money—maybe $25 a month—taken away from their paycheck. It is not the same thing, whether you buy shares of General Electric or Cisco, which may not have been a good idea the last few months. But, anyway, there is a difference in being a shareholder.

I didn't think that amendment was workable. Regretfully, I voted against it. I didn't want to, but I felt compelled to because I didn't think it was workable.

I am trying to look at bite-size improvements that can be made in this bill. I think removing this one section is an improvement in the bill, and I very much appreciate the cooperation of my colleagues to support this amendment. It is not my intention to offer any other paycheck-related amendments on this bill.

Mr. KENNEDY. Mr. President, my colleague, Senator NICKLES, has proposed that we remove Section 304 from McCain-Feingold. Senator NICKLES has further committed that this will be the last amendment he will offer on questions relating to union use of dues or fees for political purposes.

Section 304 of McCain-Feingold, entitled ''Codification of Beck Decision,'' would require unions to establish procedures for workers to object to paying dues that would go toward political activity. Unions would be required to notify workers of their rights; to reduce the fees paid by any worker who makes an objection; and to provide an explanation of their calculations.

Some of my colleagues claim that Section 304 expands upon and does not, in fact, codify Beck. My colleague, Senator McConnell, for example, asserts that McCain-Feingold goes beyond Beck by authorizing unions to charge objecting non-members for things that Beck clearly prohibited, such as community service projects, charitable donations, lobbying activities, and union organizing. Beck, however, did nothing of the sort.

The precise holding of Beck, and I quote, is that the National Labor Relations Act ''authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.' '' That is it. Consistent with standard practice under Supreme Court labor law holdings, Beck left development of all the details including which expenses are related to the ''duties of an exclusive representative,'' or what procedures unions must develop to the National Labor Relations Board and the courts. It did not hold that a union's charitable contributions, organizing expenses and the like are not related to collective bargaining. Nor did it say that lobbying activities could not be related to collective bargaining. In fact, in a case called Lehnert v. Ferris Faculty Association, decided in 1991, the Supreme Court held precisely the opposite. It stated that, even under the strict first amendment standards that apply to Government employment, objectors

may be charged for ''lobbying activities relate[d] . . . to the ratification or implementation of'' a collective bargaining agreement. My Republican colleagues cannot codify their view of what the law should be by saying that Beck made it the law. That is simply not what Beck did.

Some of my colleagues across the aisle also claim that there is a difference between the Beck holding—that unions may require only those dues necessary to support collective bargaining—and the McCain-Feingold formulation—that unions may not require dues for political activities unrelated to collective bargaining. This is a distinction without a difference.

The effects of Beck and McCain-Feingold are exactly the same. The NLRB and the courts will interpret the requirements of the law—and their results will be the same—whether Section 304 is included in the bill or not. Thus, the NLRB and the courts will determine whether payments made by a union are related to collective bargaining or not. If they are, all employees must pay for them. If they are not, then employees who object may opt out of paying for those costs. Beck sets this rule and McCain-Feingold codifies it.

For these reasons, I do not believe that the Nickles amendment is necessary. Beck will be the law with or without Section 304 of McCain-Feingold. And since the Beck decision, close to 13 years ago, every union has created a procedure to ensure that dues-paying workers can opt out of a union's political expenditures. These procedures universally involve notice to workers of the opt-out rights provided under Beck; establishment of a means for workers to notify the union of their decision to exercise these rights; an accounting by the union of its spending so that it can calculate the appropriate fee reduction; and the right of access to an impartial decisionmaker if the worker who opts out disagrees with the union's accounting or calculations.

So why was Section 304 included in McCain-Feingold in the first place? It was included only because my Republican colleagues wanted additional insurance that unions would obey the law. But as the scores of court cases and NLRB decisions addressing Beck issues attest, there are ample means under existing law to ensure that unions follow the dictates of the Beck decision. These means will exist with or without McCain-Feingold. Unions will conduct themselves in precisely the same way whether or not Section 304 of McCain-Feingold is enacted. Whether we choose McCain-Feingold as written or Senator NICKLES' amendment to McCain-Feingold is irrelevant.

So what will happen if we remove this provision? Absolutely nothing. Nothing, that is, unless some of my Republican colleagues use this action as an excuse to introduce yet more amendments that would prevent unions from representing the voices of working families in the political process. Senator NICKLES has committed that he will introduce no such amendments, and I thank him for that. As my friend Senator FEINGOLD has stated, we have amply debated—and resoundingly rejected—any such paycheck deception amendments, and we should not waste this body's time by endlessly debating, and rejecting, similar bills.

So let me be clear. If the Senate votes for the Nickles amendment today, it will not in any way change the law that governs union collection of dues for political purposes. Paycheck deception supporters may claim that the Nickles amendment shows that supporters of McCain-Feingold have abandoned dissenting workers or shown their unwillingness to enforce Beck rights. This is patently false.

If it is adopted, the Nickles amendment will show that we acknowledge as all in this body must that unions are already bound by the same rules that would govern them if Section 304 were enacted. My colleagues should not allow paycheck deception supporters to twist this basic understanding into an excuse for advancing their pro-business, anti-worker agenda.

Mr. GREGG. Mr. President, I rise today in support of this amendment to strike Section 304 of this bill, which pretends to codify the Beck decision. It does not.

This section must be stricken for the following reasons. First, it eliminates the ability of nonunion workers to pursue their claims in court. Under Section 304 of this bill, the courthouse doors will be closed for nonunion members seeking relief from confiscation of their dues for purposes unrelated to collective bargaining, contract negotiation, and grievance adjustment. In order to seek recourse through the National Labor Relations Board, nonmembers would be required to navigate a tedious, complex, and often hostile process that takes years.

Second, it will legislatively overrule almost 40 years of decisions of the U.S. Supreme Court by diminishing the scope of the refund the Supreme Court directed for objecting nonmembers required to pay agency fees. Section 304 limits nonmembers to a reduction in their agency fees equal only to the activities that a union decides are unrelated to collective bargaining. In this case, a union could decide that all of its activities dealing with legislation at the State and Federal level, as well as executive and judicial appointments or State ballot initiatives, are related to collective bargaining. Under Section 304, unions could use nonmember dues for these purposes, which is forbidden under current law.

Finally, Section 304 would provide nonmembers with far less protection and information than under procedural safeguards that unions have been required to adopt by the Federal courts. In this case, Section 304 requires unions to provide financial information about its expenditures only to employees who file an objection. The courts have held that all nonmembers, not just objectors, must be provided adequate disclosure of the basis for the agency fee that they are required to pay before they object—not after as under this bill. The courts have also held that adequate disclosure includes verification by an independent auditor, a requirement that S. 27 omits.

This section may have been drafted with the best of intentions. Nevertheless, I believe it would do more harm than good. Striking it and keeping the status quo would be more beneficial to American workers than this section as written. Section 304 is not a true codification of the Beck decision, and this amendment should be adopted overwhelmingly.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank my colleague and friend from Oklahoma.

As the Senator from Michigan pointed out, this may be not unlike the amendment yesterday where we are arriving at the same result with maybe a slightly different rationale for doing so but the end result produces the same answer, and this is probably better out of the bill than in the bill.

Despite the good intentions of Senator FEINGOLD and Senator MCCAIN, in their view and in mine, there needs to be some clarification or codification of what the Beck decision said. But rather than debate that, that is what is going on at the NLRB.

The Supreme Court decisions are not unlike where we craft legislation and then usually have boilerplate language that leaves to the respective agencies the right to make decisions pursuant to legislative intent. Many times they do that and we object to what they do; that it goes beyond what the congressional intent was. That is how Supreme Court decisions are written, and then it is up to the NLRB, in this particular case, to deal with the myriad questions that come to it as to whether or not something is in order under the Beck decision.

The Beck decision says: supporting political activities unrelated to collective bargaining. I think that is the language of the Beck decision.

All of these various requests come to them as to whether or not something falls within that particular sentence. There is a rich history since the adoption of the Beck decision made by the NLRB when such questions have come to them. That is where it belongs.

I think that is what my colleague from Wisconsin is saying and my colleague from Oklahoma is saying—in effect, that we are not really the best venue for making those decisions. We best leave it to those who deal with these matters every day rather than trying to legislate it.

I agree with the proposal of the Senator from Oklahoma to take this section out of the bill. But I wouldn't want to characterize this as being either bogus Beck or absolutely Beck. I

think we have all come to the conclusion those decisions are best left to the NLRB.

Some might claim that McCain-Feingold is a bogus-Beck bill. It is not. McCain-Feingold codifies the Beck holding, which has been interpreted through scores of NLRB and court decisions. As Chief Judge Edwards of the District of Columbia Circuit has observed, this is appropriate, and precisely what the Beck court intended; in his words, ''[i]t is hard to think of a task more suitable for an administrative agency that specializes in labor relations.'' *Thomas* v. *NLRB*, 213 F.3d 651, 675 (D.C. Cir. 2000). NLRB decisions implementing Beck have generally been upheld in the courts.

Beck held that objecting nonmembers have the right to object to the payment of a portion of their contractually required agency fees. McCain-Feingold says the same thing. Whether they implement Beck or McCain-Feingold, therefore, the NLRB and the courts will be free to reach the same results. Nothing in our vote on the Nickles amendment today should change their analysis.

I wouldn't want the RECORD to show what I hope will be overwhelming support for the amendment of the Senator from Oklahoma as anything but that.

Lastly, let me say to my friend from Oklahoma that I appreciate his statement that we have come to an end, I hope, of the so-called paycheck protection amendments. I think we have had good debates on them. The Senator from Oklahoma and I agreed yesterday—I think he was right—as well that we are getting much too complicated in some of these efforts dealing with shareholders, and we felt the same on the second Hatch amendment where someone owns a stock for 15 minutes, and all of a sudden they are going to be deluged with information about the campaign's activities with that particular company going beyond what we intend to achieve in legislation.

With that, unless there are others who want to be heard on this amendment, I am prepared to yield back the couple of minutes we have. We said 3:30 we would start the vote. We have one other amendment we are going to consider this afternoon by Senator LANDRIEU, if that is appropriate with my friend from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, it is appropriate, as the Senator from Kentucky just discussed, for Senator LANDRIEU to come next.

I am perfectly prepared to yield back the time on this side, and we will go to a vote.

Mr. DODD. Do we want a recorded vote on this?

Mr. NICKLES. A recorded vote.

Mr. MCCONNELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

All time is yielded, and the question is on agreeing to the Nickles amendment No. 139.

The clerk will call the roll.

The senior assistant bill clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 45 Leg.]

YEAS—99

Akaka	Dorgan	Lugar
Allard	Durbin	McCain
Allen	Edwards	McConnell
Baucus	Ensign	Mikulski
Bayh	Enzi	Miller
Bennett	Feingold	Murkowski
Biden	Feinstein	Murray
Bingaman	Fitzgerald	Nelson (FL)
Bond	Frist	Nelson (NE)
Boxer	Graham	Nickles
Breaux	Gramm	Reed
Brownback	Grassley	Reid
Bunning	Gregg	Roberts
Burns	Hagel	Rockefeller
Byrd	Harkin	Santorum
Campbell	Hatch	Sarbanes
Cantwell	Helms	Schumer
Carnahan	Hollings	Sessions
Carper	Hutchinson	Shelby
Chafee	Hutchison	Smith (NH)
Cleland	Inhofe	Smith (OR)
Clinton	Inouye	Snowe
Cochran	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kerry	Stevens
Corzine	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Leahy	Torricelli
Dayton	Levin	Voinovich
DeWine	Lieberman	Warner
Dodd	Lincoln	Wellstone
Domenici	Lott	Wyden

NOT VOTING—1

Kennedy

The amendment (No. 139) was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, the next amendment will be on the Democratic side, offered by Senator LANDRIEU. We are in the process of looking at it now. We think it may well be accepted. Shortly, Senator LANDRIEU will send that amendment to the desk and make her statement about it.

Let me say that after that, Senator SPECTER will be recognized to offer an amendment, and Senator DODD and I are talking about the possibility of Senator SPECTER being followed by Senator HELMS. I believe the majority leader would like for us to vote a couple more times tonight. Senators may expect additional votes.

Mr. DODD. Mr. President, the Senator from Kentucky has described appropriately and properly that Senator LANDRIEU has an amendment. It might only take 10 minutes to explain the amendment. We might even hope for a voice vote rather than having a recorded vote on that amendment. I can tentatively tell my colleague from Kentucky that with respect to the Specter amendment, there has been some discussion about having an hour's worth of debate on that.

Mr. MCCONNELL. I have not yet spoken to Senator SPECTER about that. I will do that shortly.

Mr. DODD. There is an indication and perhaps a willingness to support that arrangement, along with the recommendation of having Senator HELMS propose an amendment and maybe debate it this evening and make it the first vote tomorrow. We are discussing it on this side. I am using the opportunity to let people know with what I am going to ask them to agree. It sounds like a good schedule to me. If Members have some objection, they ought to let us know. In the meantime, we can go to Senator LANDRIEU.

Ms. LANDRIEU. Mr. President, I really appreciate the leadership the Senator from Connecticut has brought to this issue. I thank him for providing time for me to offer this amendment.

AMENDMENT NO. 124

Ms. LANDRIEU. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] proposes an amendment numbered 124.

The amendment reads as follows:

(Purpose: To amend the Federal Election Campaign Act of 1971 to provide for weekly reporting by candidates and for prompt disclosure of contributions, and to make software for filing reports in electronic form available)

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

SEC. 305. ENHANCED REPORTING AND SOFTWARE FOR FILING REPORTS.

(a) ENHANCED REPORTING FOR CANDIDATES.—

(1) WEEKLY REPORTS.—Section 304(a)(2) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(2)) is amended to read as follows:

''(2) PRINCIPAL CAMPAIGN COMMITTEES.—If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate, the treasurer shall file a report for each week of the election cycle that shall be filed not later than the 5th day after the last day of the week and shall be complete as of the last day of the week.''.

(2) PROMPT DISCLOSURE OF CONTRIBUTIONS.—Section 304(a)(6)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)(6)(A)) is amended—

(A) by striking ''of $1,000 or more'';

(B) by striking ''after the 20th day, but more than 48 hours before any election'' and inserting ''during the election cycle''; and

(C) by striking ''within 48 hours'' and inserting ''within 24 hours''.

(b) SOFTWARE FOR FILING OF REPORTS.—Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following:

''(12) SOFTWARE FOR FILING OF REPORTS.—

''(A) IN GENERAL.—The Commission shall—

''(i) develop software for use to file a designation, statement, or report in electronic form under this Act; and

''(ii) make a copy of the software available to each person required to file a designation, statement, or report in electronic form under this Act.

''(B) REQUIRED USE.—Any person that maintains or files a designation, statement, or report in electronic form under paragraph (11) or subsection (d) shall use software developed under subparagraph (A) for such maintenance or filing.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 304(a)(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following:

''(C) The reports described in this subparagraph are as follows:

''(i) A pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election.

''(ii) A post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election.

''(iii) Additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year.''.

(2) Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended—

(A) in subsection (a)(3)(A)—

(i) in each of clauses (i) and (ii)—

(I) by striking ''paragraph (2)(A)(i)'' and inserting ''subparagraph (C)(i)''; and

(II) by striking ''paragraph (2)(A)(ii)'' and inserting ''subparagraph (C)(ii)''; and

(ii) in clause (ii), by striking ''paragraph (2)(A)(iii)'' and inserting ''subparagraph (C)(iii)'';

(B) in each of paragraphs (4)(B) and (5) of subsection (a), by striking ''paragraph (2)(A)(i)'' and inserting ''paragraph (3)(C)(i)''; and

(C) in subsection (a)(4)(B), by striking ''paragraph (2)(A)(ii)'' and inserting ''paragraph (3)(C)(ii)'';

(D) in subsection (a)(8), by striking ''paragraph (2)(A)(iii)'' and inserting ''paragraph (3)(C)(iii)'';

(E) in subsection (a)(9), by striking ''(2) or''; and

(F) in subsection (c)(2), by striking ''subsection (a)(2)'' and inserting ''subsection (a)(3)(C)''.

(3) Section 309(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(b)) is amended—

(A) by striking ''304(a)(2)(A)(iii)'' and inserting ''304(a)(3)(C)(iii)''; and

(B) by striking ''304(a)(2)(A)(i)'' and inserting ''304(a)(3)(C)(i)''.

Ms. LANDRIEU. Mr. President, the Members are going to be discussing the details of this amendment because there seems to be some confusion with the text. I want to take a few minutes to explain it as staff is working on it, and we may need a little bit more time.

Generally, there is broad consensus, both on the Republican side and the Democratic side, that one of the best things we could do to improve our current system is to try to provide for greater disclosure. One of the great tools we now have for disclosure is the electronic medium, the electronic opportunity, the tools the Internet and new technologies have provided.

My amendment really embraces this new technology. It is quite a simple amendment. It requires the FEC to develop a standardized software package that any Federal candidate running for Federal office would be required to use in our reporting requirements. The report would basically go on line. Instead of waiting a quarter, or 6 months, or a year, or 48 hours, whatever the current waiting period is, a candidate or a political committee that is required to report would basically enter the data as if he were making deposits—which we all do—into a bank account. Those deposits would become transparent. The report is like a report in progress, and people would have access to what contributions were being made to the candidate—in this case—or to a committee, basically instantaneously.

That is the essence of my amendment. There is no new reporting requirement. It will hopefully not be onerous on us because the FEC will be required to come up with this new software. We will allow them the time to develop it because we don't want to rush the process. We want them to do it correctly. They would give us the software, and we would download it onto our computer, and as checks came in, as expenses were released by the campaign, it would be available instantaneously on the Internet.

That is the essence of my amendment. We are having a few problems with the drafting of the amendment.

That is what I offer as an improvement to our current system. We have reports that we must file. They are quarterly or annually or, sometimes when one is close to an election, daily. This would be instantaneous reporting with no new work required of the candidate or the committees using software that will be developed.

That is what I submit for consideration. I am hoping we can voice vote this amendment as soon as the technical difficulties are worked out.

I yield back the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. 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. DODD. Mr. President, what is the pending business? I believe the pending business is the Landrieu amendment.

The PRESIDING OFFICER. The pending business is the Landrieu amendment.

Mr. DODD. Mr. President, I ask unanimous consent that the Landrieu amendment be temporarily laid aside. I say to my colleagues, there are efforts at crafting the language in such a way as to bring bipartisan support to this amendment. We think it is a very good proposal, and we are working on some of the specifics of it.

While we are doing that, we will go to the Specter amendment, which I think is the intention of the manager, the Senator from Kentucky.

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

Mr. DODD. Mr. President, the Senator from Pennsylvania is unavoidably going to be absent from the floor for a few minutes, so I am going to suggest the absence of a quorum and we will proceed to the Specter amendment, I presume, in about 10 or 15 minutes. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 140

Mr. SPECTER. Mr. President, I send an amendment 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 Pennsylvania [Mr. SPECTER] proposes an amendment numbered 140.

Mr. SPECTER. 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 provide findings regarding the current state of campaign finance laws and to clarify the definition of electioneering communication)

On page 7, line 24, after ''and'', insert the following: ''which, when read as a whole, in the context of external events, is unmistakable, unambiguous and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

On page 15, line 20, insert the following:

''(iv) promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which, when read as a whole, and in the context of external events, is unmistakable, unambiguous and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

On page 2, after the matter preceding line 1, insert:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) In the twenty-five years since the 1976 Supreme Court decision in Buckley v. Valeo, the number and frequency of advertisements

increased dramatically which clearly advocate for or against a specific candidate for Federal office without magic words such as ''vote for'' or ''vote against'' as prescribed in the Buckley decision.

(2) The absence of the magic words from the Buckley decision has allowed these advertisements to be viewed as issue advertisements, despite their clear advocacy for or against the election of a specific candidate for Federal office.

(3) By avoiding the use of such terms as ''vote for'' and ''vote against,'' special interest groups promote their views and issue positions in reference to particular elected officials without triggering the disclosure and source restrictions of the Federal Election Campaign Act.

(4) In 1996, an estimated $135 million was spent on such issue advertisements; the estimate for 1998 ranged from $275–$340 million; and, for the 2000 election the estimate for spending on such advertisements exceeded $340 million.

(5) If left unchecked, the explosive growth in the number and frequency of advertisements that are clearly intended to influence the outcome of Federal elections yet are masquerading as issue advocacy has the potential to undermine the integrity of the electoral process.

(6) The Supreme Court in Buckley reviewed the legislative history and purpose of the Federal Election Campaign Act and found that the authorized or requested standard of the Federal Election Campaign Act operated to treat all expenditures placed in cooperation with or with the consent of a candidate, an agent of the candidate, or an authorized committee of the candidate as contributions subject to the limitations set forth in the Act.

(7) During the 1996 Presidential primary campaign the Clinton Committee and the Dole Committee both spent millions of dollars in excess of the overall Presidential primary spending limit that applied to each of their campaigns, and in doing so, used millions of dollars in soft money contributions that could not legally be used directly to support a Presidential campaign.

(8) The Clinton and Dole Committees made these campaign expenditures through their respective national political party committees, using these party committees as conduits to run multi-million dollar television ad campaigns to support their candidacies.

(9) These television ad campaigns were in each case prepared, directed, and controlled by the Clinton and Dole campaigns.

(10) Former Clinton adviser Dick Morris said in his book about the 1996 elections that President Clinton worked over every script, watched each advertisement, and decided which advertisements would run where and when.

(11) Then-President Clinton told supporters at a Democratic National Committee luncheon on December 7, 1995, that, ''We realized that we could run these ads through the Democratic Party, which meant that we could raise money in $20,000 and $50,000 blocks. So we didn't have to do it all in $1,000 and run down what I can spend, which is limited by law so that is what we've done.''

(12) Among the advertisements coordinated between the Clinton campaign and the Democratic National Committee, yet paid for by the DNC as an issue ad, was one which contained the following:

[Announcer] ''60,000 felons and fugitives tried to buy handguns but couldn't because President Clinton passed the Brady bill—five day waits, background checks. But Dole and Gingrich voted no. 100,000 new police—because President Clinton delivered. Dole and Gingrich? Vote no, want to repeal 'em. Strengthen school anti-drug programs. President Clinton did it. Dole and Gingrich? No again. Their old ways don't work. President Clinton's plan. The new way. Meeting our challenges, protecting our values.''

(13) Another advertisement coordinated between the Clinton campaign and the DNC contained the following:

[Announcer] ''America's values. Head start. Student loans. Toxic cleanup. Extra police. Protected in the budget agreement; the President stood firm. Dole, Gringrich's latest plan includes tax hikes on working families. Up to 18 million children face health care cuts. Medicare slashed $167 billion. Then Dole resigns, leaving behind gridlock he and Gringrich created. The President's plan: Politics must wait. Balance the budget, reform welfare, protect our values.''

(14) Among the advertisements coordinated between the Dole campaign and the Republican National Committee, yet paid for by the RNC as an issue ad, was one which contained the following:

[Announcer] ''Bill Clinton, he's really something. He's now trying to avoid a sexual harassment lawsuit claiming he is on active military duty. Active duty? Newspapers report that Mr. Clinton claims as commander-in-chief he is covered under the Soldiers and Sailors Relief Act of 1940, which grants automatic delays in lawsuits against military personnel until their active duty is over. Active duty? Bill Clinton, he's really something.''

(15) Another advertisement coordinated between the Dole campaign and the RNC contained the following:

[Announcer] ''Three years ago, Bill Clinton gave us the largest tax increase in history, including a 4 cent a gallon increase on gasoline. Bill Clinton said he felt bad about it.''

[Clinton] ''People in this room still get mad at me over the budget process because you think I raised your taxes too much. It might surprise you to know I think I raised them too much, too.''

[Announcer] ''OK, Mr. President, we are surprised. So now, surprise us again. Support Senator Dole's plan to repeal your gas tax. And learn that actions do speak louder than words.''

(16) Clinton and Dole Committee agents raised the money used to pay for these so-called issue ads supporting their respective candidacies.

(17) These television advertising campaigns, run in the guise of being DNC and RNC issue ad campaigns, were in fact Clinton and Dole ad campaigns, and accordingly should have been subject to the contribution and spending limits that apply to Presidential campaigns.

(18) After reviewing spending in the 1996 Presidential election campaign, auditors for the Federal Election Commission recommended that the 1996 Clinton and Dole campaigns repay $7 million and $17.7 million, respectively, because the national political parties had closely coordinated their soft money issue ads with the respective presidential candidates and accordingly, the expenditures would be counted against the candidates' spending limits. The repayment recommendation for the Dole campaign was subsequently reduced to $6.1 million.

(19) On December 10, 1998, in a 6–0 vote, the Federal Election Commission rejected its auditors' recommendation that the Clinton and Dole campaigns repay the money.

(20) The pattern of close coordination between candidates' campaign committees and national party committees continued in the 2000 Presidential election .

(21) An advertisement financed by the RNC contained the following:

[Announcer] ''Whose economic plan is best for you? Under George Bush's plan, a family earning under $35,000 a year pays no Federal income taxes—a 100 percent tax cut. Earn $35,000 to $50,000? A 55 percent tax cut. Tax relief for everyone. And Al Gore's plan: three times the new spending President Clinton proposed, so much it wipes out the entire surplus and creates a deficit again. Al Gore's deficit spending plan threatens America's prosperity.''

(22) Another advertisement financed by the RNC contained the following:

[Announcer] ''Under Clinton-Gore, prescription drug prices have skyrocketed, and nothing's been done. George Bush has a plan: add a prescription drug benefit to Medicare.''

[George Bush] ''Every senior will have access to prescription drug benefits.''

[Announcer] ''And Al Gore? Gore opposed bipartisan reform. He's pushing a big government plan that lets Washington bureaucrats interfere with what your doctors prescribe. The Gore prescription plan: bureaucrats decide. Bush prescription plan: seniors choose.''

(23) An advertisement paid for by the DNC contained the following:

[Announcer] ''When the national minimum wage was raised to $5.15 an hour, Bush did nothing and kept the Texas minimum wage at $3.35. Six times the legislature tried to raise the minimum wage and Bush's inaction helped kill it. Now Bush says he'd allow states to set a minimum wage lower than the Federal standard. Al Gore's plan: Make sure our current prosperity enriches not just a few, but all families. Increase the minimum wage, invest in education, middle-class tax cuts and a secure retirement.''

(24) Another advertisement paid for by the DNC contained the following:

[Announcer] ''George W. Bush chose Dick Cheney to help lead the Republican party. What does Cheney's record say about their plans? Cheney was one of only eight members of Congress to oppose the Clean Water Act * * * one of the few to vote against Head Start.

He even voted against the School Lunch Program * * * against health insurance for people who lost their jobs. Cheney, an oil company CEO, said it was good for OPEC to cut production so oil and gasoline prices could rise. What are their plans for working families?''

(25) On January 21, 2000, the Supreme Court in Nixon v. Shrink Missouri Government PAC noted, ''In speaking of 'improper influence' and 'opportunities for abuse' in addition to 'quid pro quo arrangements,' we recognized a concern to the broader threat from politicians too compliant with the wishes of large contributors.''

(26) The details of corruption and the public perception of the appearance of corruption have been documented in a flood of books, including:

(A) Backroom Politics: How Your Local Politicians Work, Why Your Government Doesn't, and What You Can Do About It, by Bill and Nancy Boyarsky (1974);

(B) The Pressure Boys: The Inside Story of Lobbying in America, by Kenneth Crawford (1974);

(C) The American Way of Graft: A Study of Corruption in State and Local Government, How it Happens and What Can Be Done About it, by George Amick (1976);

(D) Politics and Money: The New road to Corruption, by Elizabeth Drew (1983);

(E) The Threat From Within: Unethical Politics and Politicians, by Michael Kroenwetter (1986);

(F) The Best Congress Money Can Buy, by Philip M. Stern (1988);

(G) Combating Fraud and Corruption in the Public Sector, by Peter Jones (1993);

(H) The Decline and Fall of the American Empire: Corruption, Decadence, and the American Dream, by Tony Bouza (1996);

(I) The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective, by Frank Anechiarico and James B. Jacobs (1996);

(J) The Political Racket: Deceit, Self-Interest, and Corruption in American Politics, by Martin L. Gross (1996).

(K) Below the Beltway: Money, Power, and Sex in Bill Clinton's Washington, by John L. Jackley (1996);

(L) End Legalized Bribery: An Ex-Congressman's Proposal to Clean Up Congress, by Cecil Heftel (1998);

(M) Year of the Rat: How Bill Clinton Compromised U.S. Security for Chinese Cash, by Edward Timperlake and William C. Triplett, II (1998);

(N) The Corruption of American Politics: What Went Wrong and Why, by Elizabeth Drew (1999);

(O) Corruption, Public Finances, and the Unofficial Economy, by Simon Johnson, Daniel Kaufmann, and Pablo Zoido-Lobatoon (1999); and

(P) Party Finance and Political Corruption, edited by Robert Williams (2000);

(27) The Washington Post reported on September 15, 2000 that a group of Texas trial lawyers with whom former Vice President Gore met in 1995, contributed thousands of dollars to the Democrats after President Clinton vetoed legislation that would have strictly limited the amount of damages juries can award to plaintiffs in civil lawsuits.

(28) According to an article in the March 26, 2001 edition of U.S. News and World Report, labor-related groups—which count on their Democratic allies for support on issues such as the minimum wage that are important to unions—spent more than $83.5 million in the 2000 elections, with 94 percent going to Democrats, prompting some labor figures to brag that without labor's money, the election would not have been nearly as close.

(29) A New York Times editorial from March 16, 2001, observed that ''Business interests generously supported Republicans in the last election and are now reaping the rewards. President Bush and Republican Congressional leaders have moved to rescind new Labor Department ergonomics rules aimed at fostering a safer workplace, largely because business considered them too costly. Congress is also revising bankruptcy law in a way long sought by major financial institutions that gave Republicans $26 million in the last election cycle.''

(30) A New York Times article, from March 13, 2001, noted that ''A lobbying campaign led by credit card companies and banks that gave millions of dollars in political donations to members of Congress and contributed generously to President Bush's 2000 campaign is close to its long-sought goal of overhauling the nation's bankruptcy system.''

(31) According to a Washington Post article from March 11, 2001, when congressional GOP leaders took control of the final writing of the bankruptcy bill, they consulted closely with representatives of the American Financial Services Association and the Coalition for Responsible Bankruptcy, which represented dozens of corporations and trade groups. The 442-page bill contained hundreds of provisions written or backed by lobbyists for financial industry giants.

(32) It has become common practice to reward big campaign donors with ambassadorships, with an informal policy dating back to the 1960s allocating about 30 percent of the nation's ambassadorships to non-career appointees. According to a Knight Rider article from November 13, 1997, former President Nixon once told his White House Chief of Staff that ''Anybody who wants to be an ambassador must at leave give $250,000.''

Mr. SPECTER. Mr. President, this amendment does two things. It sets forth findings which I believe are indispensable in order to have legislation which will pass review by the Supreme Court of the United States. In recent years, the Supreme Court has stricken a great deal of congressional legislation starting with Lopez in 1995, upsetting 60 years of solid precedents for Federal legislation under the Commerce Clause, and has invalidated on constitutional grounds, substantial legislation—the Disabilities Act, the provision of the Violence Against Women Act—on the basis that there is insufficient factual foundation. This amendment seeks to provide findings to pass constitutional muster. I shall deal with them in detail in this floor statement. Second, this amendment deals with the definition of what is an advocacy ad contrasted with an issue ad.

The provision in the pending legislation, McCain-Feingold, says it is the purpose of this provision to try to establish a test which will pass constitutional muster under the decision of the Supreme Court in Buckley v. Valeo. It may be that this definition is sufficient to pass constitutional muster. It is arguable.

It may be that this definition is not sufficient to pass constitutional muster. That is also arguable.

The Supreme Court of the United States in Buckley, in 1976, said this:

> In order to preserve the provision against invalidation on vagueness grounds, section 601(e)(1) must be construed to apply only to expenditures for communications that, in express terms, advocate the election or defeat of a clearly identified candidate for Federal office.

Then the Supreme Court drops a footnote which says:

> This construction would restrict the application of 608(e)(1) to communications containing express words of advocacy of election or defeat such as ''vote for,'' ''elect,'' ''support,'' ''cast your ballot for,'' ''Smith for Congress,'' ''vote against,'' ''defeat,'' ''reject.''

On its face, it seems difficult to see how the language from McCain-Feingold, in and of itself, would satisfy the mandate articulated by the Supreme Court of having language such as ''vote for, elect, support,'' et cetera, which is straightforward and unequivocal in expressing a view for the election of a candidate or the defeat of a candidate.

Constitutional interpretation is complicated because different members of the nine-person Supreme Court see the issues differently, and especially at different times. A great deal has happened in the electoral process, with hard money and soft money and so-called issue ads, so that it is possible that a court, looking at this language in a different era and in a different context, might say that it is constitutional.

From my view of the Constitution, it is hard to see that that would happen just on the face of the language which I have read.

There is one opinion in a court of appeals, ninth circuit. Of course, the courts of appeals are right under the Supreme Court. It is a case which has articulated a different definition. The case is the Furgatch case, and that case said that the ad is an advocacy ad if the ''message is unmistakable, unambiguous, suggestive of only one plausible meaning.''

This is a very complicated field and unless you have read the cases and/or followed this debate very closely, it is hard to put all the pieces in place to understand the statutory and constitutional structure. But the rule has been if you have an advocacy ad, then it can be regulated by legislation. But if you have an issue ad, it cannot be regulated by legislation. Even with some advocacy ads—according to the Supreme Court decision in F.E.C. v Massachusetts Citizens For Life Committee—regulation doesn't pass constitutional muster because it is too much of an infringement on freedom of speech. The Court has set the ground rules to say that there must be corruption or the appearance of corruption which would warrant an infringement on first amendment rights of freedom of speech. And the Court has equated money with speech.

To my thinking, that is a far stretch. I agree with Justice Stevens that the conclusion that money is speech is unreasonable because it so elevates money and what money can do in the electoral process.

But, in any event, unless you have express advocacy under the Buckley decision, you cannot have any regulation at all.

The amendment which I am offering today would take the Furgatch language and add it as an additional definition of what constitutes an advocacy ad. This language builds upon and does not in any way change the provisions of McCain-Feingold. And we do not address any other issue in this amendment as to who is covered or what the circumstances are, so that we have all the controversy about individuals, corporations, labor unions, or whatever—McCain-Feingold is left untouched. All we are doing is adding to the definition of an electioneering message to provide a solid basis for Supreme Court review to conclude that this legislation would deal with advocacy ads.

The language in the amendment traces the language of Furgatch, and provides that there is an electioneering message which ''promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against the candidate.)''

The language I just read is existing in McCain-Feingold. The additional language is ''and which, when read as a whole, and in the context of external events''—that means what is happening in an election—''is unmistakable, unambiguous, and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

What does that mean in the context of what has happened in the Presidential elections of 1996 and the year 2000?

In 1996, the Democratic National Committee—I am going to come to Republican ads because this amendment is balanced between what Republicans have done and what Democrats have done in a way which is critical on all sides.

I start first with the President Clinton advertisements run by Democratic National Committee. The announcer comes on and says:

60,000 felons and fugitives tried to buy handguns but couldn't because President Clinton passed the Brady bill—five day waits, background checks. But Dole and Gingrich voted no. 100,000 new police—because President Clinton delivered. Dole and Gingrich? Vote no, want to repeal 'em. Strengthen school anti-drug programs. President Clinton did it. Dole and Gingrich? No again. Their old ways don't work. President Clinton's plan . . .

As that advertisement is being read, any person listening would say that is an ad which advocates the election of President Clinton and advocates the defeat of Robert Dole.

But under the interpretations of Buckley v. Valeo, because the magic words ''vote for'' or ''vote against'' are not used, that is deemed to be an issue ad and is not subject to the limitations of the Federal election campaign laws.

Then turning to one of the advertisements coordinated between Senator Dole and the Republican National Committee, the announcer comes on:

''Three years ago, Bill Clinton gave us the largest tax increase in history, including a 4 cent a gallon increase on gasoline. Bill Clinton said he felt bad about it.''

[Clinton] ''People in this room still get mad at me over the budget process because you think I raised your taxes too much. It might surprise you to know I think I raised them too much, too.''

[Announcer] ''OK, Mr. President, we are surprised. So now, surprise us again. Support Senator Dole's plan to repeal your gas tax. And learn that actions do speak louder than words.''

Obviously, anybody listening to that advertisement would say it advocates the election of Senator Dole and it advocates the defeat of President Clinton. But that is not the result.

The result under Buckley is that it is an issue ad, even though coordinated between the Clinton campaign and the Democratic National Committee; and then the other ad coordinated between Senator Dole's campaign and the Republican National Committee. They are issue ads and not subject to Federal regulation.

Then the same pattern emerges in the election in the year 2000. An advertisement paid for by the Democratic National Committee said the following:

George W. Bush chose Dick Cheney to help lead the Republican party. What does Cheney's record say about their plans? Cheney was one of only eight members of Congress to oppose the Clean Water Act . . . one of the few to vote against Head Start. He even voted against the School Lunch Program . . . against health insurance for people who lost their jobs. Cheney, an oil company CEO, said it was good for OPEC to cut production so oil and gasoline prices could rise. What are their plans for working families?

Anybody listening to that television ad would say conclusively that the purpose of the ad was to defeat Mr. CHENEY, and to elect the Gore-Lieberman ticket. But, under the Supreme Court decision in Buckley, that is considered to be an issue ad and not subject to regulation.

How in the world can there be issue advocacy in advertisements which take up the Clean Water Act passed many years ago, or the Head Start Program, which is no longer in issue, or the school lunch program, or health insurance for people who lost their jobs? Those matters long since ceased to be issues. But, notwithstanding that, they are categorized as issue ads and not advocacy ads where the only purpose would be to advocate the defeat of DICK CHENEY for Vice President and the defeat of the Bush-Cheney ticket.

Under my amendment and the language of Furgatch, there would be no doubt that that message is ''unmistakable, unambiguous, and suggestive of only one plausible meaning.''

The ads of the Republican National Committee were similarly directed to defeat the Gore-Lieberman ticket.

This is an illustrative ad by the Republican National Committee.

[Announcer] ''Under Clinton-Gore, prescription drug prices have skyrocketed, and nothing's been done. George Bush has a plan: add a prescription drug benefit to Medicare.''

[George Bush] ''Every senior will have access to prescription drug benefits.''

[Announcer] ''And Al Gore? Gore opposed bipartisan reform. He's pushing a big government plan that lets Washington bureaucrats interfere with what your doctors prescribe. The Gore prescription plan: bureaucrats decide. Bush prescription plan: seniors choose.''

Obviously, that is an ad which advocates the election of George Bush and advocates the defeat of Vice President Gore. But under the Buckley decision, that would be an issue ad and not subject to Federal regulation.

The findings set forth in my amendment recite the essential facts of how the candidates coordinated these advertisements with their parties.

Findings 7, 8, and 9, starting on page 2, line 29, recites:

During the 1996 Presidential primary campaign the Clinton Committee and the Dole Committee both spent millions of dollars in excess of the overall Presidential primary spending limit that applied to each of their campaigns, and in doing so, used millions of dollars in soft money contributions that could not legally be used directly to support a Presidential campaign.

The Clinton and Dole Committees made these campaign expenditures through their respective national political party committees, using these party committees as conduits to run multi-million dollar television ad campaigns to support their candidacies.

These television ad campaigns were in each case prepared, directed, and controlled by the Clinton and Dole campaigns.

And finding 10, page 3, line 13:

Former Clinton adviser Dick Morris said in his book about the 1996 elections that President Clinton worked over every script, watched each advertisement, and decided which advertisements would run where and when.

Finding 11, page 3, line 17:

Then-President Clinton told supporters at a Democratic National Committee luncheon on December 7, 1995, that, ''We realized that we could run these ads through the Democratic Party, which meant that we could raise money in $20,000 and $50,000 blocks. So we didn't have to do it all in $1,000 and run down what I can spend, which is limited by law so that is what we've done.''

There is no doubt about the fact of coordination when it comes from the mouth of the Presidential candidate, President Clinton, running for reelection and from Dick Morris, his campaign manager.

Findings 18, 19, and 20, starting on page 5, line 9, recites:

After reviewing spending in the 1996 Presidential election campaign, auditors for the Federal Election Commission recommended that the 1996 Clinton and Dole campaigns repay $7 million and $17.7 million, respectively, because the national political parties had closely coordinated their soft money issue ads with the respective presidential candidates and, accordingly, the expenditures would be counted against the candidates' spending limits. The repayment recommendation for the Dole campaign was subsequently reduced to $6.1 million.

On December 10, 1998, on a 6–0 vote, the Federal Election Commission rejected its auditors' recommendation that the Clinton and Dole campaigns repay the money.

The pattern of close coordination between candidates' campaign committees and national party committees continued in the 2000 Presidential election.

The Supreme Court of the United States, in Buckley v. Valeo, made a conclusive finding that such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act.

But notwithstanding that clear-cut statement of law, when the Federal Election Commission picked up the issue and had a decision to make, the Federal Election Commission said that there was not a violation of the Federal election law.

The findings go into some detail about the experience of the 25 years since the 1976 decision of Buckley v. Valeo on the number and frequency of advertisements which avoid being advocacy ads because they leave out the magic words.

We recite the finding that in 1996 there was an estimated $135 million spent on these so-called issue advertisements. The estimate for 1998 ranged from $275 to $340 million. And for the 2000 election, the estimate for spending on such advertisements exceeded $340 million.

In Buckley v. Valeo, the Supreme Court of the United States said that legislation affecting campaign contributions would be based on corruption or the appearance of corruption. Since the Buckley decision was decided, there have been many books written documenting the details of corruption and the public perception of the appearance of corruption. It is not

a cottage industry; it is a major national industry.

Last year, the year 2000, a book was edited by Robert Williams entitled ''Party Finance and Political Corruption.''

In 1999, a book was published ''Corruption, Public Finances, and the Unofficial Economy,'' by Johnson, Kaufmann and Zoido-Lobatoon.

In 1999, an incisive book entitled ''The Corruption of American Politics: What Went Wrong and Why'' was written by Elizabeth Drew, tracing the Governmental Affairs hearings in 1997.

In 1998, a book was written by Timperlake and Triplett entitled, ''Year of the Rat: How Bill Clinton Compromised U.S. Security for Chinese Cash.''

In 1998, a book was written by Cecil Heftel, entitled, ''End Legalized Bribery: An Ex-Congressman's Proposal to Clean Up Congress.''

The findings recite a great many books, including Philip Stern's 1988 book, trenchantly entitled, ''The Best Congress Money Can Buy.''

There is an unmistakable basis for this kind of legislation and the tightening of legislation that reaches these issue ads.

The reports on the appearance of corruption are as fresh as yesterday's newspaper. The New York Times reported on March 13—finding No. 30—

A lobbying campaign led by credit card companies and banks that gave millions of dollars in political donations to members of Congress and contributed generously to President Bush's 2000 campaign is close to its long-sought goal of overhauling the nation's bankruptcy system.

On March 16, a New York Times editorial observed:

Business interests generously supported Republicans in the last election and are now reaping the rewards.

On a bipartisan basis—the Washington Post, on September 15, 2000, criticized the Democrats, noting that—finding number 27, at page 8 of this amendment—

A group of Texas trial lawyers with whom former Vice President Gore met in 1995, contributed thousands of dollars to the Democrats after President Clinton vetoed legislation that would have strictly limited the amount of damages juries can award to plaintiffs in civil lawsuits.

Finding 28, page 8, line 21:

According to an article in the March 26, 2001 edition of U.S. News and World Report, labor-related groups—which count on their Democratic allies for support on issues such as the minimum wage that are important to unions—spent more than $83.5 million in the 2000 elections, with 94 percent going to Democrats, prompting some labor figures to brag that without labor's money, the election would not have been nearly as close.

Finding 32, page 9, line 19:

It has become common practice to reward big campaign donors with ambassadorships, with an informal policy dating back to the 1960s allocating about 30 percent of the nation's ambassadorships to non-career appointees. According to a Knight Ridder article from November 13, 1997, former President Nixon once told his White House Chief of Staff that ''Anybody who wants to be an ambassador must at least give $250,000.''

That, in essence, sets forth findings which, in my legal opinion, warrant the legislation being considered today, although, candidly, it may be wise to add even more findings in the face of what the U.S. Supreme Court has done recently in invalidating congressional legislation on constitutional grounds, notwithstanding very strong findings, as I believe these findings are.

The essence of the legislation goes to a standard which would satisfy the U.S. Supreme Court, although, realistically, the language of McCain-Feingold and even the language of Furgatch does not come directly in line with what the Supreme Court said in Buckley when they talked about a ''vote for'' or ''vote against.'' I believe that in the context of what has happened with money and elections, with the language of Furgatch supplementing the language of McCain-Feingold, this bill would definitely pass constitutional muster.

I refer to an extensively quoted bit of language from the opinion of Justice Robert Jackson in a case captioned United States v. Five Gambling Devices, decided in 1953, where Justice Jackson said the following at page 449 of volume 346 of U.S. Reports:

This court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power. The rational and practical force of the presumption is at its maximum only when it appears that the precise point in issue here has been considered by Congress and has been explicitly and deliberately resolved.

What we are doing in this bill is seeking to overturn the direct holding in Buckley v. Valeo which has required the magic words ''vote for'' or ''vote against.'' But as Justice Jackson has noted and as constitutional doctrine has evolved, the court will give special consideration to what the Congress does in a specific context where it appears that ''the precise point in issue has been considered by Congress and has been explicitly and deliberately resolved.''

I submit that if you take the underlying language of McCain-Feingold on the definition of an electioneering communication and add to it the language of Furgatch, that Congress is coming to grips explicitly and deliberately with what the court has done and that, building upon the strong presumption which Justice Jackson notes is present, the strong presumption of constitutionality to Acts of Congress, and then looking to Buckley itself, which said their concern arose that there not be constitutional invalidity because of vagueness, I do not believe there is any realistic way it can be said that there is anything vague about a standard which is ''unmistakable, unambiguous, and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

That certainly satisfies the court's requirement that the legislation not be vague. With this language, we will end the charade of having these extraordinary ads which, on their face and in the context of their substance, urge the election of a candidate and the defeat of another but, because of the absence of the magic Buckley words, are held to be issue ads and outside the purview of Federal control.

This language will end that charade, will end the trauma caused by soft money in enormous sums, and put some sense back into the campaign finance laws.

I inquire how much time is left of the 3 hours allocated to the sponsor of the amendment.

The PRESIDING OFFICER. The Senator has 54 minutes remaining.

Mr. SPECTER. I thank the Chair and yield the floor.

Mr. MCCONNELL. Mr. President, I find myself in the curious position of opposing the amendment of the Senator from Pennsylvania but controlling the time on this side. How much time is left?

The PRESIDING OFFICER. The opponents have 90 minutes.

Mr. MCCONNELL. Mr. President, I commend my friend from Pennsylvania for his understanding of the dilemma in which we find ourselves. The underlying bill, in the opinion of this Senator, will dramatically weaken the parties' ability to get their message out. By definition, this will only increase the power of third party groups who already outspend the parties by a factor of two to one.

I commend the Senator from Pennsylvania for his efforts to create a fair and balanced approach by restricting outside groups as well as parties. A year and a half or so ago, when this issue was last on the floor, the Senator from Pennsylvania cast, in my view, a very principled vote by joining me in opposition to cloture on McCain-Feingold at that time because McCain-Feingold at that particular year was only a party soft money ban. The Senator from Pennsylvania expressed his concern that by not passing anything that impacted outside groups, we would put the parties at a particular disadvantage. What he is doing today is entirely consistent with the vote he cast back in 1999 on a party soft money ban only.

The problem with the solution my friend from Pennsylvania proposed is that it can't be accomplished without violating the First Amendment. This is clear from case law. Senator SPECTER's amendment would allow the Government to regulate the speech of citizens groups far beyond the constitutionally permissible express advocacy by including speech which a person believes is candidate advocacy.

In the first place, this formulation seems fine. But the problem is that reasonable people can, and often do,

disagree on a speaker's intent. When it comes to political speech—the core of the First Amendment—we can't tolerate such uncertainty.

Indeed, the Supreme Court, in Buckley versus Valeo, recognized this fact and therefore rejected a test for speech regulation that went beyond express advocacy. Specifically, in Buckley, it was noted that:

> Whether words intended and designed to fall short of invitation would miss that ''mark,'' [and by that ''mark'', Mr. President, the court meant some form of candidate advocacy] is a question of both intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation [to vote for or against a candidate]. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever influence may be drawn as to his intent and meaning. Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

Mr. President, an illustration might be helpful. In 1996, the National Right to Life Committee ran an ad strongly criticizing President Clinton for vetoing Congress's ban on partial-birth abortion. Senator SPECTER might very reasonably conclude that this was a form of candidate opposition. Knowing the passion that Right to Life has on this issue, I, however, might just as reasonably conclude that these efforts were an ad by a citizens group to rally public and/or official opinion about an issue of the utmost concern to it in order to convince Congress to override the veto.

The reason why this very reasonable difference of opinion between my friend and me on this ad is so critical is that if I am the Government regulator, Right to Life gets to speak. But if my friend from Pennsylvania is the speech regulator, Right to Life doesn't get to speak. And because National Right to Life or the Sierra Club, or the ACLU or whomever, knows that speech, like beauty, is in the eye of the beholder, it will be chilled from speaking. This is a result that we don't want in a democracy. We don't want the ''marketplace of ideas'' to be bereft of commodities.

I commend my friend for his understanding of the dilemma and for his good intentions; but I strongly disagree with him, however, on the proposed solution.

The problem with relying on Furgatch, the case to which Senator SPECTER referred, besides the fact that it is at odds with about two dozen other cases, is that the Ninth Circuit in Furgatch failed to cite the Supreme Court's decision in Federal Election Commission v. Massachusetts Citizens For Life, which was decided a mere 3 weeks before Furgatch. In Massachusetts Citizens For Life, the Supreme Court squarely affirmed its express advocacy test from the Buckley case. It seems that a law clerk in Furgatch was asleep on the job, and we should not ignore Supreme Court precedent simply because of that. In fact, the Ninth Circuit cited the First Circuit's opinion in Massachusetts Citizens For Life, not the Supreme Court's opinion in that case.

Furthermore, the amendment of the Senator from Pennsylvania would allow the Government to regulate the speech of its citizens based on ''external events.'' The Fourth Circuit not only ruled against the FEC when it tried to do this, but it actually awarded attorneys fees against the Federal Government for taking a legal position that was not ''substantially justified,'' meaning that it did not have a good-faith basis in the law.

If this amendment, coupled with the underlying bill, passes, the Secretary of the Treasury better get out his checkbook.

I understand what the Senator from Pennsylvania is trying to do. He is frustrated that the parties will be reduced and influenced under the underlying bill and concerned that the outside groups will simply fill the vacuum. I understand that and share that concern. Unfortunately, there is simply no case law that will lead us to believe that such restrictions are likely to be upheld. Therefore, it is with considerable reluctance that I have to say I will oppose the amendment of the Senator from Pennsylvania.

How much time does the Senator from Tennessee wish to have?

Mr. THOMPSON. Ten minutes.

Mr. MCCONNELL. I yield 10 minutes to the Senator from Tennessee.

Mr. THOMPSON. I thank my friend.

I want to make a couple comments, partly in the nature of inquiring of my friend from Pennsylvania to make sure I understand his remarks. We had an opportunity to talk briefly about this. I tried to listen to his explanation.

First of all, I commend him for his good lawyering in recognizing that findings of fact are certainly official in a situation such as this in helping to create a record. From my perusal, I think that is certainly well done. I do have a concern with regard to the other provision of the amendment.

Buckley pretty clearly established that we could only regulate express advocacy under certain conditions or in certain ways. Buckley set forth the so-called magic words. In other words, if you have words in there saying ''vote for'' or ''vote against'' somebody, that is an express ad, and you can require people to have contribution limits, or notice, or disclosure, and whatnot, with regard to those kinds of ads.

Clearly, time has proven that to be inadequate in many respects, and what Snowe-Jeffords does—and we will debate that later on—is it comes along and says, in addition to those magic words, we think that also, if within 60 days of an election —and you know an election is around the corner—you use the likeness of a candidate, that that also, in effect—and these are my words—is express advocacy. In other words, it applied its own bright-line test.

The Court in Buckley was concerned that people know what the rules of the game were before they started speaking and that they not inadvertently get caught up in something not of their own making which would penalize them in some way. They said you will certainly know if the rule is words such as ''vote for'' or ''vote against.'' Anybody can understand that. Those are the rules. You know what you can and cannot do.

I think the same thing applies to Snowe-Jeffords. You certainly know if you are running an ad within so many days, and if you are running the likeness of someone. In either of those cases, I think you have a bright-line test. The average person can look at those situations and decide whether or not to put themselves in the middle of that or not.

My concern is the language that is used. I understand that what I would refer to as the unmistakable and unambiguous language of the current amendment would be in addition to the Snowe-Jeffords requirement. In other words, you would still have the likeness and 60-day requirement and, in addition to that, under this amendment, you would have this:

> . . .when read as a whole, and in the context of external events, is unmistakable, unambiguous and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. . . .

And so forth. That is my understanding. I think that is done in addition to tightening up Snowe-Jeffords, perhaps, in some way, to lay an additional requirement on Snowe-Jeffords to make it even tighter in some ways.

That is a laudable goal, if it can be done. The only problem is that this language being used to do that in and of itself is pretty clearly unconstitutional, it seems to me. We have a vagueness problem because when you ask yourself, do you have the bright line that you had in Buckley, such as ''vote for'' or ''vote against,'' or do you have the bright line, as in Snowe-Jeffords, such as you must use the likeness within 60 days, the answer must be no. The line here is unambiguous and suggestive of no other meaning.

I think the Senator from Pennsylvania and I could agree probably on just about any ad as to whether or not it fit this bill, but certainly it is not definite enough, it seems to me, so that there could be no reasonable disagreement as to whether something was really a campaign ad or not.

I sympathize with the effort, and I discussed this matter with my friend and we jointly discussed what might and might not be done about it.

As I understand the explanation, and as I look at it, it seems to me this misses the mark substantially in trying to apply some bright-line test so the Supreme Court might arguably or

possibly uphold this as being, in effect, express advocacy and, therefore, subject to regulation.

Obviously, I am going to listen with great care to my friend from Pennsylvania, but those are my concerns.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the Senator from Tennessee for his analysis and observations and the question he raises. I respond by noting that where you have the likeness issue or requirement in Snowe-Jeffords, that does not deal with the Buckley requirement of the magic words ''vote for'' or ''vote against,'' and the likeness factor of Snowe-Jeffords is very similar to the language of McCain-Feingold which has ''refers to a clearly identified candidate for Federal office.''

Buckley has said you have to do something more, and what you have to do is be more explicit on voting for or against.

Furgatch comes to grips with that issue on the language of its holding by the Ninth Circuit that it meets the Buckley test, although it does not use the magic words because it refers to a message being unmistakable, unambiguous, and suggestive of no plausible meaning.

The ads which I read saying Clinton was wonderful and Dole was terrible were viewed as being issue ads—you have a clearly identified candidate, which is McCain-Feingold, and you could have a likeness, which would satisfy Snowe-Jeffords, but that does not meet the Buckley test.

I argue as strenuously as I can that if the standard is ''unmistakable, unambiguous, and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate,'' that comes to grips directly—directly—with the issue of vagueness.

Let's discuss it for a minute or two, I say to Senator THOMPSON. How can the Senator say there is anything vague about a standard which is unmistakable?

Mr. THOMPSON. May I respond to my friend? I think the difference here is the difference between something being unambiguous and something being called unambiguous.

In Buckley and in Snowe-Jeffords, standards are set out that one can look at and conclude they are ambiguous or unambiguous. I do not believe we can in a statute just say that it must be unambiguous. In the eyes of whom? In the eyes of a judge ultimately, I assume. That is like saying your behavior will be legal and you will be punished, in a criminal statute, behavior that is not legal. That begs the question. What behavior is allowed, and what behavior is disallowed? In this case, it seems to me under the Supreme Court you have to have a bright line in the statute itself. You have to have something that you can look at and conclude that it is unambiguous. You cannot just write in the statute that this is unambiguous or it must be unambiguous to pass muster in the eyes of a judge later. That is the distinction I make.

Mr. SPECTER. Mr. President, I disagree forcibly with my colleague from Tennessee. I do not think you have a bright line, you have a dull line. You have a definition which does not come to grips with what Buckley has said.

When the Senator from Tennessee makes an argument that it begs the question to say something is legal or not, that is a fact that turns on a great many considerations as to whether something is legal or not. It involves a judgment and inferences.

When you are talking about a factual matter, about ''no plausible meaning other than an exhortation to vote for or against a specific candidate,'' I again direct a question to the Senator from Tennessee: In dealing with the standard of vagueness, how can you have language which is more definitive on its face?

Obviously, it is going to have to be applied. There is no question about that. I read at some length, if the Senator from Tennessee had an opportunity to listen to the Dole ads, the Clinton ads, the Bush ads, or the Gore ads—let me start with that question.

Mr. THOMPSON. And a good deal of them would come under Snowe-Jeffords, I believe, for starters.

Mr. SPECTER. Why would they come under Snowe-Jeffords?

Mr. THOMPSON. They mentioned the name of the candidate and came within 60 days of the election. Some of them can.

Let me get back, if I may, to the original issue. My question is, when the statute says that the words must be unambiguous, I ask: Unambiguous in whose eyes? Unambiguous to whom?

Mr. SPECTER. If I may respond, that is always going to be a matter of application, no matter what legal standard you have. However specific it is, it has to be applied.

When you refer, if I may direct this question to the Senator from Tennessee, to Snowe-Jeffords covering the Dole ads, the Clinton ads, the Gore ads, or the Bush ads, I think Snowe-Jeffords would cover the clearly identified candidate within a time limit, but it would not satisfy Buckley. Those are viewed as issue ads. They do not satisfy Buckley.

With Furgatch, you advance the definition very substantially. You advance the definition with as much precision as the English language can give you. If you want to stick in ''vote for'' or ''vote against,'' OK, that is the language of Buckley.

My own legal judgment—and this is a legal issue which is susceptible to different interpretations; it is not like being unambiguous or susceptible to no other interpretation—my view is that the language of a specified candidate and a time limit and a likeness has not come to grips with the specificity that Buckley looks for. They want something which is not vague.

Perhaps the challenge is to come up with language which satisfies the Senator from Tennessee that it is not vague. I am open to suggestions, but I think we are not coming to grips with that clear-cut core issue on avoiding vagueness with what you have absent a definition such as Furgatch.

Mr. THOMPSON. If my friend would yield for a moment.

Mr. SPECTER. I do.

Mr. THOMPSON. I suppose my thinking is that the Snowe-Jeffords language is much closer to the bright line requirement than this language would be.

Mr. SPECTER. May I ask my friend from Tennessee what language he refers to specifically?

Mr. THOMPSON. The language requiring the likeness of candidate used within 60 days of an election. That is an objective standard.

The Supreme Court in Buckley didn't say you must have an ad that is unambiguously a campaign ad. They said in that case, words such as ''vote for'' or words such as ''vote against.'' Anybody can look at that, even the Members of this body would have to all agree whether or not that was in a particular ad.

That is a bright line.

Now Snowe-Jeffords comes along and provides its own bright line. We will be debating that, as to whether or not it is sufficient, whether or not it complies with Buckley, or whether or not the Supreme Court might take a look at it again and say it was unconstitutional in light of other circumstances.

Again, one can objectively look at an ad and tell whether or not it has a likeness of a candidate. But you can't look at an ad and tell whether or not it is unambiguous unless you get to court.

Mr. SPECTER. If I may direct this question to my colleague from Tennessee, if the Clinton ads don't have the likeness but simply talk about Gore, then would that satisfy the Snowe-Jeffords test?

Mr. THOMPSON. I think it would—no, it would not. It requires the likeness, as I recall—or does it require both?

It says ''refers to a clearly identified candidate.''

The answer is yes. I was wrong.

Mr. SPECTER. If I may reclaim the floor for the argument, if it refers to a clearly identified candidate, it does not advance the issue beyond the face of McCain-Feingold, which has ''refer to a clearly identified candidate for Federal office.''

You have all of these ads which extol Clinton and defame Dole or vice versa, or extol Gore and defame Bush, which are held to be issue ads. But you have a clearly identified candidate.

So I ask my friend, the Senator from Tennessee, how does that meet the Buckley test, which was not met by these horrendous ads on both sides which, in any event, advocated the

election of Clinton and the defeat of Dole? How does this language of Snowe-Jeffords, with a clearly identified candidate—which is the same as McCain-Feingold—advance to any extent the ads in the 1996 or 2000 election which were viewed as issue ads?

Mr. THOMPSON. If I may respond to my friend, I am not suggesting they advance those ads. What I am suggesting is in McCain-Feingold, in the Snowe-Jeffords provisions of McCain-Feingold, it requires clear reference to mention of a fact that would be undisputable; that is, whether or not a fellow's name, a person's name, is mentioned.

I believe that is closer to the Buckley standard, which says you have to have something objective. That is closer to the Buckley standard than language which says ''in the context of external events, is unmistakable, unambiguous, and suggestive of no plausible meaning, other than an exhortation to vote.''

Again, that begs the question. Here is something that is unambiguous. Here is something you call unambiguous. That is the difference to me.

Mr. SPECTER. If I may refocus to the Senator from Tennessee: Put aside the language of Furgatch, assume you are right about the language of Furgatch—and maybe we need some other language—how does Snowe-Jeffords or language of a clearly identified candidate for Federal office satisfy Buckley when the ads extolling Clinton and defaming Dole, where there was a clearly identified candidate and you were within the time-frame and they were issue ads—would Snowe-Jeffords cover the Clinton ads in 1996?

Mr. THOMPSON. I see what the Senator is getting at.

I think if this were passed and this were considered in the light of a similar ad, this would catch it. Yes, I do. Because they would be referring to a clearly identified candidate. If and when the Court considers the Snowe-Jeffords language, I think there is a reasonably good chance they will uphold it as constitutional. If that becomes the operative language, or some operative language, along with the language they had in Buckley—if all of that now is permissible and such an ad is run which mentions a clearly identified candidate, then it will be applicable at that time.

Mr. SPECTER. If I may further pinpoint the question, does the Senator say if Snowe-Jeffords had been in the Act, that the advertisement extolling Clinton and defaming Dole would have been held an advocacy ad in 1996?

Mr. THOMPSON. I think so.

Mr. SPECTER. Mr. President, that draws the issue.

My own view is that it is conclusive that Snowe-Jeffords would not satisfy Buckley, that we are looking for an avoidance of a vagueness standard, that simply having a clearly identified candidate for Federal office and a time parameter would not meet the requirement of Buckley which talks about ''vote for'' or ''vote against,'' that in the long history of many cases since 1976, over a 25-year-period, the best language which has come forward is the Furgatch language. I believe that, on its face, it passes constitutional muster.

There are a lot of decisions by the courts throwing out legislation on the ground that the legislation is vague and, if legislation is vague, it doesn't satisfy requirements of due process of law. Many courts have struggled mightily for 25 years, and the only court which has come up with language is the Supreme Court of the United States. And as I say that, I know the Hornbook rule is you are supposed to not be able to tell anybody if the Supreme Court denies cert. But it is always mentioned the Supreme Court did not cert, and it is mentioned the Supreme Court does not cert because of the impossible inference, because if the Supreme Court did not like Furgatch, it would have taken cert.

I know there is a contrary doctrine that says the Supreme Court is so busy one cannot draw an inference, but I think in a practical sense you can. So in 25 years of litigation and a lot of cases, the best that has evolved is this language which I submit to my colleagues is not vague when it says ''no plausible meaning other than an exhortation to vote for or against a specific candidate.'' That is not vague. But if we stand pat and pass this bill, there is a big risk of unconstitutionality. And if somebody has a way to eliminate vagueness more precisely, I am open.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I stand in support of the amendment of the Senator from Pennsylvania.

The PRESIDING OFFICER. Will the Senator from Delaware withhold? Who yields time to the Senator from Delaware?

Mr. BIDEN. I am on the side of the Senator from Pennsylvania.

Mr. SPECTER. How much time would the Senator from Delaware like?

Mr. BIDEN. How much time does the Senator have? If he only has a few minutes—

Mr. DODD. How much time does my colleague need?

Mr. BIDEN. Five minutes.

Mr. DODD. I am happy to yield.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 5 minutes.

Mr. BIDEN. Mr. President, I am a supporter of McCain-Feingold, so I am not inclined to be supportive of anything that is going to make the effort that is underway less effective in controlling these kinds of ads. The distinguished Senator from Wisconsin indicated to me while the Senator from Pennsylvania was speaking—and I apologize; I did not catch the intervention of the Senator from Tennessee because I was not on the floor, so I may be being redundant, but it was indicated to me that at least some who support this legislation, McCain-Feingold, fear that if the standard being proposed by the Senator from Pennsylvania, which I support, is adopted, we will have inadvertently put in a two-test hurdle.

I see the distinguished Senator from Maine. Maybe she can be helpful—that it would require, not only that you reach the Snowe-Jeffords standard but that you then have to meet a second standard, thereby making it even more difficult to control the kinds of ads we are trying to get at here.

I wonder if the Senator from Maine or the Senator from Wisconsin—or anyone—could tell me why they think the Snowe-Jeffords standard would, in fact, capture the kinds of ads that the Senator from Pennsylvania has been speaking to, which do not mention the name by name, or they mention by name but do not advocate whether to vote for or against that candidate. Why would such ads be captured by the language of the Snowe-Jeffords amendment? Would anybody wish to respond to that for me?

Mr. THOMPSON. If I may, while the Senator from Maine has just arrived, my own view is that Snowe-Jeffords captures all that it can, constitutionally.

Mr. BIDEN. I ask the Senator, it would not capture an ad that said:

> This is the NRA. The distinguished Senator from Tennessee wishes to take away your shotgun. We think you have a right to keep your shotgun. I hope you will consider this when you vote.

It would not capture such an ad, would it?

Mr. THOMPSON. If they make specific reference to me as a candidate, and I am running and they do it within 60 days of the election, Snowe-Jeffords would capture that to the extent of requiring disclosure.

Mr. BIDEN. Even if they do not suggest whether to vote for or against that Senator?

Mr. THOMPSON. Yes. Yes.

Mr. BIDEN. So if a name is mentioned—it is the assertion of the sponsors and supporters of Snowe-Jeffords that if the name is mentioned in an ad, 60 days before election, by an advocacy group, that that would be subject to regulation under this legislation?

Mr. THOMPSON. Yes.

Mr. BIDEN. Can my colleague explain to me why is that?

Mr. THOMPSON. It is in the bill. It is in the statute. It reads that way.

Why I think it is constitutional is that the Supreme Court for some time now has said you can regulate express ads, express advocacy. What the Court did in Buckley is define express advocacy—words such as ''vote for, vote against.'' And it said the reason we are setting this out, in effect, is because you need a bright line. A person needs to be able to tell whether or not they are going to run afoul of the statute.

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

Mr. THOMPSON. That is what you get for asking me a question.

Mr. DODD. This is an important debate. I certainly yield 10 minutes or so, whatever.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. I will continue. Maybe the Senator moves on his time. It doesn't matter. Continue, if the Chair will allow it.

The PRESIDING OFFICER. The time is under the control of the Senator from Kentucky.

Mr. MCCONNELL. How much time does the Senator from Delaware require? Five minutes?

Mr. BIDEN. I really don't know.

Mr. MCCONNELL. I yield 5 minutes to the Senator from Delaware.

Mr. BIDEN. And I will yield to the Senator from Tennessee to continue his answer.

Let me back up. If I can say to my friend from Tennessee, the language in the McCain-Feingold bill on page 15 says:

IN GENERAL.—The term ''electioneering communication'' means any broadcast, cable, or satellite communication which—[subsection] (i) refers to a clearly identified candidate for elective office[.]

Is the interpretation of those who put that language in that it must mention the candidate by name?

Mr. THOMPSON. I am going to defer to the Senator from Maine for that. I intruded on the time of the author of that provision enough on this. I will refer that question to her, if I may.

Ms. SNOWE. Thank you. I thank the Senator from Tennessee and I will be glad to respond to the Senator from Delaware.

In drafting this language, we attempted, obviously, to draw a very bright line, building upon the Buckley v Valeo decision back in 1976, that was issued by the Supreme Court.

At that time, the Supreme Court was obviously responding to the law that was on the books that was passed by Congress in 1974. And it used as examples the words, ''vote for or against'' as ways in which to define express advocacy.

Obviously that decision, nor their suggestions for examples, weren't limited and Congress since that time has not passed legislation with respect to campaign finance. So, therefore, there is nothing for the Supreme Court to react to.

So we looked at the various Court decisions and decided that the way in which we can carefully calibrate legislation that would allow for disclosure and would require disclosure—and banning advertisements by unions and corporations within that 60-day period before a general election, 30-day period before the primary—would be a way of avoiding any constitutional questions. And that bright line is referring to a clearly identified candidate for Federal office, that this communication is done 60 days before the general, 30 days before the primary.

Mr. BIDEN. If the Senator will yield, because I don't have much time, I understand how it comes in. What I don't understand, on whatever time I have remaining, and I thank the Senator for her response—I do not understand why that standard, A, would require redundancy, to have two standards to be met—if the language was added by the Senator from Pennsylvania which says—which when read as a whole in the context of external events is ''unmistakably unambiguous and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

Granted three other circuits or four other circuits ruled differently than the ninth circuit, but it seems to me the most damaging decision—the most damaging thing that has happened to the electoral process has been Buckley. The single most damaging thing that has occurred in our effort to clean up the glut of money and the hemorrhaging of influence in the electoral process has been the Buckley decision.

Things were going relatively well until that decision occurred and then the dam broke.

So I just want to say I think it is more appropriate to err on the side of being more specific and more inclusive, so that everyone understands that if it says ''vote against the Republican candidate'' but doesn't mention the Republican candidate for the Senate, that in fact it is covered. If it says vote against the person who said the following but doesn't name the person who said the following—if those ways are used to get around what is now the attempt of having a prohibition on such activity and the hemorrhaging of money, it seems to me that is well captured by the ninth circuit language.

I would rather run the risk of seeing that happen because this is the most damaging thing I have seen happen.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I wonder if I can direct a question to the Senator from Wisconsin. We were discussing this issue.

Is it the intent of this amendment to make it easier to identify an advocacy ad, and to see to it that what has been seen as an issue ad, which clearly urges the election of a candidate and the defeat of an opponent, is classified as an advocacy ad?

I believe the language of Snowe-Jeffords would be consistent, and this language would supplement. But if there is any doubt, the thought occurs to me that we might turn to page 15 where we find electioneering communications. It is i.ii.iii put into the disjunctive ''or'', and pick up Furgatch, so that if you satisfy either standard you have an advocacy ad.

Mr. FEINGOLD. That clearly would be a very different amendment. That is why I engaged in the conversation with the Senator from Delaware.

The relative process of this amendment is we have been looking at this as clearly a conjunctive setup where you first have to meet the standards of Snowe-Jeffords, and then you would have to meet the standards of the Furgatch-like test.

There would be two obstacles to get over in order to be able to catch one of these ads, which we like to call ''phony issue ads.''

I would be happy to consider it. The theory will not be how we work if it said ''or'', but this clearly says ''and''.

The Senator from Tennessee expressed it absolutely correctly.

The result will be that it will actually end up perhaps inadvertently causing more of these phony issue ads to be unavailable for our desire to try to make them honest for what they are, which is electioneering ads.

Mr. SPECTER. I don't know if the Senator from Tennessee made that point.

Mr. FEINGOLD. I think the Senator from Tennessee would agree with that.

Mr. SPECTER. But in any event, Mr. President, I can modify the amendment—we haven't asked for the yeas and nays yet—to put in the ''or'', the disjunctive instead of ''and'', the conjunctive so that there is severability. And where one is decided to be inefficient to satisfy the vagueness standards of Buckley, the other might be sufficient—picking up on what the Senator from Delaware said, having the safeguard.

I am glad to yield to the Senator from Tennessee.

Mr. THOMPSON. Mr. President, I was wondering if we would not be really worse off in that situation because under the Senator's original amendment the language would be added to the Snowe-Jeffords language. So we would still have the Snowe-Jeffords clearly identified candidate language, which I think is going in the right direction. We would be adding that to that language.

Under the Senator's latest suggestion—if it was either/or—you might have a situation where you would not have the Snowe-Jeffords language but only the new language ''unmistakable, unambiguous,'' et cetera, which we have been discussing.

If I am correct this is a constitutional problem in terms of vagueness, then we would be less likely to have that upheld than if it were coupled with what I believe is constitutionally permissible language under Snowe-Jeffords.

Mr. SPECTER. If I may respond, if you have an ''or'', and you have severability, then, if the Senator from Tennessee is correct, the statute would be upheld under the Snowe-Jeffords language.

If the Senator from Pennsylvania is correct, and either is possible, if Snowe-Jeffords were stricken as being insufficient under a Buckley case, but Furgatch and ''or'' was sufficient, and they are severable, and one was satisfactory to pass constitutional muster, we would be able to have the one which survived constitutional challenge.

Mr. THOMPSON. If my friend will yield for a question.

Mr. SPECTER. I do.

Mr. THOMPSON. Could it be severable at that level? When we are talking about severability, we are usually talking about provisions, or sections, and so forth. I don't have the answer to this. The Senator from Pennsylvania might have the answer to this. The answer may be yes. But I wonder whether or not within this very specific provision we could actually have a provision where that would be severed so that either/or language would come under the severability provision.

Mr. SPECTER. If I may respond, I believe that is exactly what severability means. That is when the Congress tries to figure out what the Court is going to do. It is pretty hard to do. We really can't tell. We just had an extensive debate as to whether Snowe-Jeffords language is constitutional, and whether Furgatch is constitutional. If we put both of them in, and we make a legislative record that we are looking for one or the other to be satisfactory, I believe that the language of severability means just that.

If you have a long statute, and the Court strikes down one part of it saying it is wrong, it leaves the rest of it. If the rest of it passes constitutional muster, then it is constitutional. The severability issue really turns on constitutional doctrine as to whether the legislation makes sense if it is severed. The Court will strike it down if by striking down a certain clause the rest of it doesn't carry out congressional intent.

Congress tries to avoid that by the severability clause. But putting in a severability clause isn't an absolute guarantee that the Court might not say it is non-severable, notwithstanding the severability clause, because a part was stricken leaving the rest of it as unintelligible, or insufficient, or not really meaningful.

But in this context if we say in this legislation we have Snowe-Jeffords, or Furgatch, and if one of them measures up, then the statute survives.

Mr. THOMPSON. Assuming for a moment that the Senator is correct—and he may be—is my colleague going in this direction?

Knowing that we are going to have a severability vote a little bit later on, knowing that as of this moment we don't know how that vote is going to turn out, would it be wise or appropriate to put this amendment off until after that vote?

Mr. SPECTER. I am willing to do that.

Ms. SNOWE. Will the Senator yield?

Mr. SPECTER. I do.

Ms. SNOWE. I appreciate what the Senator is trying to do with respect to the language. I hope we can defer in terms of the impact and what effect it would have on the overall language in Snowe-Jeffords. We are concerned about being substantially too broad and too overreaching. The concern that I have is it may have a chilling effect. The idea is that people are designing ads, and they need to know with some certainty without inviting the constitutional question that we have been discussing today as to whether or not that language would affect them as to whether or not they air those ads.

That is why we became cautious and prudent in the Senate language that we included and did not include the Furgatch for that reason because it invites ambiguity and vagueness as to whether or not these ads ultimately would be aired or whether somebody would be willing to air them because they are not sure how it would be viewed in terms of being unmistakable and unambiguous. That is the concern that I have.

In terms of severability, again, I would like to know whether or not, in the Senator's view, the Court would consider that idea of having layers of criteria, and if you do and say it is severable, in the meantime there may have been an impact or a deterrent to individuals or groups airing ads that are considered to be legitimate, but weren't certain because of the ambiguity of the language that you are seeking to insert in McCain-Feingold.

Mr. SPECTER. Let me respond very briefly.

The thrust of Buckley is to require that there be a strong statement for or against. You may have a sufficient standard when you have identified a candidate within a given period of time. Or you may not because that may not be sufficiently forceful to meet what Buckley is looking for as not being vague on ''for or against,'' for somebody or against somebody.

Then you pick up an alternative standard, which Furgatch had, where the circuit court thought that was a sufficient statement: That you are for a candidate or against a candidate. Then I think you have both lines.

When the Senator from Tennessee suggests deferring the vote, I am agreeable to that. It may lend more weight to having severability adopted if it has been to some specific reason in the statute.

I yield to the Senator from Connecticut.

Mr. DODD. First of all, this has been a very valuable discussion. While I think initially there was some concern about the Senator's amendment, for the reasons articulated by the Senator from Tennessee, the Senator from Kentucky, the Senator from Maine, the Senator from Wisconsin, and others, the suggestion that the Senator from Pennsylvania has made is a valuable one. The debate has been valuable.

There are some very serious issues that need to be thought through. The Senator from Maine has raised a very worthwhile question. I would strongly suggest that we lay this aside until the severability debate occurs. I think the Senator from Delaware agrees with that as well.

In the meantime, we can see if we can work on some language as well. Some of us may have some additional suggestions with the findings of fact. I say to my colleague, I could talk about some of those. I appreciate the need for findings of fact, but there may be a way of doing this a little less graphically than he has in some instances. We can see if we can reach an agreement on this, pending the outcome of the severability debate. That is a very good suggestion.

But the Senator from Pennsylvania has made a very valuable contribution to this debate this afternoon.

Mr. SPECTER. I thank my friend from Connecticut.

Mr. President, I am prepared to accede to the suggestion made by the Senate from Tennessee.

Mr. MCCONNELL. Will the Senator yield?

Mr. DODD. The Senator from North Carolina has an amendment.

Why don't you make that motion then, ask unanimous consent to lay it aside?

Mr. SPECTER. I ask unanimous consent that this amendment be laid aside until the vote has occurred on the severability amendment, and that at that time the motion recur for debate. Should we set a time limit at that time?

Mr. DODD. Why not just lay it aside.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Reserving the right to object, I am wondering if it would be more appropriate to simply withdraw the amendment and offer it again later.

Mr. SPECTER. I prefer to have it set aside. It has a certain status value. I will not object to any request to set it aside to offer other amendments.

Mr. FEINGOLD. That is satisfactory.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, this has been a very valuable debate, as others have suggested. It demonstrates the complexity of regulating issue advocacy. I thank everyone who participated in this very enlightening amendment.

AMENDMENT NO. 124

Now, we have Senator LANDRIEU on the floor with an amendment that has been cleared on both sides. And if she will call that amendment back up——

Mr. DODD. Might I inquire of my colleague, is there going to be a requirement for a recorded vote on this amendment?

Ms. LANDRIEU. No. I am prepared to have a voice vote.

Mr. DODD. We might be able to inform our colleagues——

Mr. MCCONNELL. If I may, Senator HELMS is here and prepared to offer an amendment. We would like to lock in Senator HELMS' vote. We can't say ''no more votes tonight'' unless we lock in Senator HELMS' vote. He is prepared to

offer his amendment at the conclusion of the Landrieu amendment.

Mr. DODD. If I might make a unanimous consent request, I ask unanimous consent that when the Senate convenes at 9 a.m. tomorrow, there be up to 15 minutes of debate on the pending Helms amendment, equally divided in the usual form, with a vote on or in relation to the amendment to occur at the use or yielding back of that time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Then we can debate that amendment tonight. I understand there will be no further rollcall votes tonight; is that correct?

Ms. LANDRIEU addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Would I be in order to ask unanimous consent that for this amendment there be a voice vote tonight? Of course, I will abide by the wishes of the chairman and ranking member. I believe this amendment has been cleared.

Mr. MCCONNELL. My understanding is there is no requirement for a rollcall vote on this side. So if the Senator would call up her amendment, and tell us what it is, it is my understanding it will be cleared, and a voice vote would be appropriate.

Ms. LANDRIEU. I am resubmitting the amendment. The staff has been working on it. Basically, as I described earlier, this amendment would not require any additional recording, no additional work on behalf of the candidates. It would simply direct the FEC to come up with standards for software so that our recording would basically be done electronically, totally transparent and basically almost instantaneous.

There would be no changes of reports, no requirements for new reports, no requirements for new work, just basically instantaneous transparency.

I think both sides have argued—and I definitely agree—that full disclosure is one of the things we could do to improve it. That is what this amendment does.

I offer it at this time.

Mr. DODD. Is this a modification?

Ms. LANDRIEU. Yes.

Mr. DODD. It is a modification?

Ms. LANDRIEU. It is a modification of the original amendment. Senator MCCONNELL had some excellent points that were incorporated. We wanted to leave adequate time for the FEC to develop these new rules and procedures. There is no deadline basically. It does not mandate the FEC to develop the software, but it allows them, I say to the Senator, to develop the standards. Industry develops the software and then makes it available to us.

So for our constituents, for interested parties, and for journalists, our reporting will basically be as if you were accessing a Web site.

Mr. DODD. The Senator earlier temporarily laid aside the amendment. I think the Senator needs to ask unanimous consent to modify her amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. And that would be the amendment under consideration.

Ms. LANDRIEU. I thank the Senator.

AMENDMENT NO. 124, AS MODIFIED

Mr. President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The amendment is modified.

The amendment (No. 124), as modified, is as follows:

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

SEC. 305. SOFTWARE FOR FILING REPORTS AND PROMPT DISCLOSURE OF CONTRIBUTIONS.

Section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a)) is amended by adding at the end the following:

''(12) SOFTWARE FOR FILING OF REPORTS.—

''(A) IN GENERAL.—The Commission shall—

''(i) promulgate standards to be used by vendors to develop software that—

''(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

''(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

''(III) allows the Commission to post the information on the Internet immediately upon receipt; and

''(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

''(B) ADDITIONAL INFORMATION.—To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act to be filed in electronic form.

''(C) REQUIRED USE.—Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

''(D) REQUIRED POSTING.—The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.''.

Mr. DODD. I commend our colleague from Louisiana. She worked very hard on this issue. I think it is very timely. I believe it is going to be of great assistance to Members as well as the expediting of the information that will contribute significantly to the McCain-Feingold bill. She has made a significant and worthwhile contribution to this process. I commend her for it.

Ms. LANDRIEU. I thank the Senator.

Mr. MCCONNELL. As I indicated, we have reviewed the amendment with the Senator from Louisiana. It has been approved by us. There is no need for a rollcall vote. We would be happy to have the amendment adopted on a voice vote.

The PRESIDING OFFICER. Do the Senators yield back their time?

Ms. LANDRIEU. I yield back whatever time I have remaining.

Mr. FEINGOLD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. 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. MCCONNELL. I believe we are now ready for a vote.

The PRESIDING OFFICER. Has all time been yielded back?

Mr. DODD. The time is yielded back.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 124, as modified.

The amendment (No. 124), as modified, was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, the Senator from North Carolina is here, and before yielding the floor so he may offer an amendment, I want to make a couple of observations about what he is trying to do, very briefly.

With regard to union members' rights, we have had a vote on getting the consent of members with regard to their dues and how it may be spent. That has been called a poison pill. That has been voted down. We have had a vote on consent.

We have had a vote on disclosure, trying to get the unions to disclose how they spend their money, the biggest player in American politics. There was an effort made on the floor of the Senate to get simple disclosure of how the money is spent. That was described as a poison pill. That went down.

The Senator from North Carolina is now, I am told, going to offer an amendment regarding notification. If union members are denied the right to consent, they are denied the opportunity to learn from disclosure, now the Senator from North Carolina is going to give the Senate an opportunity to see whether at least they can be notified when something is going to happen with their money.

Before he offers the amendment and takes the floor, I appreciate the good work of the Senator from North Carolina and I look forward to supporting his amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to make my remarks seated at my desk

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

Mr. HELMS. I thank the Chair.

AMENDMENT NO. 141

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 141.

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

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

The amendment is as follows:

(Purpose: To require labor organizations to provide notice to members concerning their rights with respect to the expenditure of funds for activities unrelated to collective bargaining)

At the appropriate place, insert the following:

SEC. ___. DISCLOSURE OF EXPENDITURES BY LABOR ORGANIZATIONS.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

''(i) NOTICE TO MEMBERS AND EMPLOYEES.—A labor organization shall, on an annual basis, provide (by mail) to each employee who, during the year involved, pays dues, initiation fees, assessments, or other payments as a condition of membership in the labor organization or as a condition of employment (as provided for in subsection (a)(3)), a notice that includes the following statement: 'You have the right to withhold the portion of your dues that is used for purposes unrelated to collective bargaining. The United States Supreme Court has ruled that labor organizations cannot force dues-paying or fees-paying non-members to pay for activities that are unrelated to collective bargaining. You have the right to resign from the labor organization and, after such resignation, to pay reduced dues or fees in accordance with the decision of the Supreme Court.' ''.

Mr. HELMS. Mr. President, I certainly thank the distinguished Senator from Kentucky. He is doing a masterful job under rather difficult circumstances. I congratulate him.

Mr. President, a healthy and meaningful political system must rest upon two obvious democratic principles: (1) the political freedom guaranteed by the first amendment must be premised on the notion of voluntary participation and free association, and (2) the only constitutional restraint the federal government should place upon political discourse is full disclosure of donations to assure political accountability of and by candidates for contributions they receive.

The McCain-Feingold bill before the Senate, with all due respect to both Senators—and I admire both of them—fails to uphold either of those essential ideals.

In regards to the new restraints placed upon both candidates and their supporting interest groups, the able Senator from Kentucky, Mr. MCCONNELL, and others are making the case that the McCain-Feingold bill fails to pass constitutional muster.

I certainly agree that the limitations on free speech in the McCain-Feingold bill are antithetical to any reasonable notion of political freedom, and further, they make mockery of our time-honored tradition of free political discourse. I add only that limitations on the opportunity for citizens to participate in political debates, especially during federal elections, serves only to enhance the power of the major news media, which consistently demonstrates their built-in bias against conservative candidates.

However, my purpose today is to focus the Senate's attention on, arguably, a more pernicious violation of democratic principles countenanced—and, in fact, in some ways, exacerbated, by the well-intentioned McCain-Feingold legislation before us. The problem I shall address is this: the unapologetic practice by labor unions in using dues taken from their members as a condition of employment and the use of those dues for political purposes without approval of those working people—indeed, without their knowledge.

In the context of campaign-finance reform debate, we've heard many times the words of Thomas Jefferson, who declared, ''To compel a man to furnish contributions for the propagation of opinions which he disbelieves is sinful and tyrannical.'' But Mr. Jefferson's declaration cries out for repeated repetition, less we forget it has continued to happen year after year, election after election, as labor union bosses continue to spend the membership dues paid by union workers—spent on political causes bearing absolutely no relation to the collective bargaining process for which the union exists.

The amendment I propose makes certain that union members have full access to their rights regarding political spending by union bosses. This amendment will end the disgraceful attempt by the union bosses to hide the Supreme Court-guaranteed rights of union workers, making sure they have clear notice of their right to object to expenditures not related to collective bargaining.

The workers who are forced to pay the dues to get their jobs are entitled to this information, Mr. President. They are also entitled to know that national labor unions are pouring money into the political system at enormously unprecedented rates.

In fact, the unions have extensive involvement in political affairs. Testifying before the Senate Rules Committee, Laurence Gold, a representative of the AFL–CIO said this about union activities:

Specifically, the AFL–CIO, its 68 national and international union affiliates, and their tens of thousands of local union affiliates engage in substantial legislative and issue advocacy at the federal, state and local levels on matters of particular concern to working families, such as Social Security, Medicare, education, labor standards, health care, retirement plans, workplace safety and health, trade immigration, the right to organize, regulation of union governance and the role of unions and corporations in electoral politics.

That's a broad range of issues, Mr. President, and the union presumes to speak for its membership on each and every one.

But that's just the tip of the iceberg. Labor union activity in the realm of politics goes far beyond the advocacy mentioned by Mr. Gold. According to the Americans for Tax Reform, Big Labor has mobilized for an array of left-wing causes, including opposition to the balanced budget amendment, opposition to ending racial preferences, opposition to tax relief, and opposition to welfare reform. In fact, Mr. President, the Teamsters union spent almost $200,000 lobbying for a ballot initiative in the State of California to legalize marijuana.

It turned out, Mr. President, that one of the reasons that the Teamsters had given money in support of that particular ballot initiative was to further a money laundering scheme to pay for the re-election of Teamsters President Ron Carey.

And these examples don't begin to describe the daily activities that union bosses can engage in to further its political agenda. So-called ''in-kind'' contributions, including get-out-the-vote phone banks; communications with union members; assignment of workers to precincts; distribution of literature; and other unregulated union expenditures make up the vast majority of union political activity.

Small wonder, then, that many employees forced to pay union dues as a condition of employment are unhappy that they are forced to finance the political activities of the union.

These union workers who object to the blatant use of coerced dues being used for political speech were finally given a ray of hope in a series of Supreme Court decisions that began to clarify the constitutional and statutory problems with such a scheme.

The constitutional problem with using forced dues for political speech was addressed directly in 1977, when the Supreme Court decided Abood v. Detroit Board of Education. The Supreme Court held in this case that the first amendment guaranteed an individual ''the freedom to associate for the purpose of advancing beliefs and ideas'' as well as a corresponding right ''to refrain from doing so, as he sees fit.''

Mr. President, Abood is a landmark case debunking the notion that compelled political speech is consistent with constitutional rights. The Court had developed the right of freedom from coerced speech in a number of cases, the most prominent of which is Communications Workers of America v. Beck. In that case, a group of telephone workers petitioned to withhold the amount of their union dues that supported activities outside the collective bargaining context.

The Supreme Court decided in favor of the workers, holding that an employee who is compelled to join a union in order to get a job, under a union security clause, could lawfully withhold

the portion of his or her dues supporting activities not germane to collective bargaining, contract administration or grievance adjustment. The Court also held that if unions ignored an employee's objection to the use of agency fees for such purposes, the union was in violation of its duty of fair representation.

Unfortunately, the Beck case applies only to employees who pay so-called ''agency fees,'' and a worker hoping to exercise his constitutional right to free speech must first resign from a union to petition for the return of dues used for union activities unrelated to collective bargaining.

This places the worker in the unenviable position of having to decide whether retaining his political integrity is worth giving up any voice in the union decision-making process.

I deeply admire the courage of employees who seek to exercise their political freedom in the face of union hostility, and I believe they deserve honest, timely information about the rights guaranteed to them by the Supreme Court. But all too often, workers may be unaware that they even have such rights. Because, Mr. President, unions continue to hide the rights guaranteed by Beck despite clear direction from the NLRB that both agency-fee paying nonmembers and union members alike were entitled to notification.

What's worse, the NLRB often acts as a collaborator with union bosses, issuing a line of decisions making it easier for unions to hide Beck rights. In California Saw and Knife Works—the main administrative decision implementing the Beck case—the Board gave unions broad leeway to (1) bury notification of Beck rights in the back pages of monthly newsletters; (2) pool its expenses in such a way as to hide costs to local bargaining units; and (3) rely on internal auditors instead of independent examiners.

To understand how far the union is willing to go in order to hide union worker rights from its members, one has to look no farther than the case of Keith Thomas. v. Grand Lodge of International Association of Machinists and Aerospace Workers. Here's what happened in that case: In 1959, Congress passed the Labor-Management Reporting and Disclosure Act of 1959 LMRDA. At that time, the IAM notified its members of their rights under the new law.

And that's it. During the next forty years, the union bosses at the IAM never lifted another finger to provide notice of rights guaranteed by Congress under LMRDA. As the Court put it, ''The union argues that Congress was only interested in informing 1959 union members of their LMRDA rights, but was perfectly willing to let ignorance reign for the next forty years.'' The Court rightly noted that such a proposition was absurd and went on to hold that this one-time notice was insufficient to guarantee worker rights.

So my amendment, Mr. President, proposes that what happened to Keith Thomas and his fellow union workers not be allowed to happen to any union member in regards to their rights under the Beck case. It simply provides that unions be required to provide annual notice, by mail, of the rights guaranteed to them by the Supreme Court.

Specifically, the notice states the following:

> You have the right to withhold the portion of your dues that is used for purposes unrelated to collective bargaining. The U.S. Supreme Court has ruled that labor organizations cannot force dues-paying or fees-paying non-members to pay for activities that are unrelated to collective bargaining. You have the right to resign from the labor organization and, after such resignation, to pay reduced dues or fees in accordance with the decision of the Supreme Court.

The Senate has already voted to deny workers financial information about the activities of the union. But even if the Senate is unwilling to provide reasonable disclosure of union expenditures, it can at least allow workers to know the rights guaranteed them by the Supreme Court.

Mr. President, I am absolutely convinced that adoption of this amendment is the only way to make sure that union members know the rights guaranteed by the Supreme Court. I hope the Senate will go on record as supporting full and fair access to information for American workers.

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

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is not a sufficient second.

Mr. HELMS. I understand. I will try again later.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New Mexico.

(The remarks of Mr. DOMENICI are located in today's RECORD under ''Morning Business.'')

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 602 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. Mr. President, many of us have advanced or supported campaign finance reform legislation for many years, but without having the votes to prevail or even to obtain a full debate. Successful legislation to reform campaign finance laws usually has had to follow on the heels of particular campaign finance scandals, such as the Watergate affair.

It is different this time. The reason that campaign finance reform has been given a prominent and early place on the Senate's calendar is that sufficient support has risen up from the grassroots to ensure that this debate takes place. Hundreds of thousands of Americans have signed petitions or called their representatives in Congress. Rallies have been mounted in cities and towns from coast to coast. And Senators MCCAIN and FEINGOLD have built enough political capital for this bill that, in a very real sense, on this issue they have become the public's messengers to the Congress.

I commend our Senate leaders, as well as Senators MCCAIN and FEINGOLD, for creating a framework for this debate that has contributed to its constructiveness. This is the kind of open debate that was usual when I joined the Senate 26 years ago but that has become rarer in recent years. The Senate tends to be at its best in open debate like this.

Washington has spent much of the first 3 months of this year fulfilling President Bush's perceived mandate to make the Nation safer for huge corporations. Let us count some of the ways. First, Congress rushed to make its first order of business the repeal of the Department of Labor's 10-year quest to refine and implement ergonomics regulations to make workplaces safer for the American people. Next Congress spent weeks on a bankruptcy bill that lobbyists had convinced us to skew so that it would further increase the record profits of credit card companies. And now, in rapid-fire succession, the White House is rolling back one environmental protection after another, affecting the very air we breathe and the water we drink.

At last, with this debate, we are finally tackling one of the true priorities of the American people: the mandate that Senator MCCAIN earned with his extraordinary grassroots campaign to reform the way we finance our elections. We all owe Senators MCCAIN and FEINGOLD a debt for their dedicated and persistent support of such an important and necessary improvement to our election process, and I am proud to be a cosponsor of their bill.

The main component of the McCain-Feingold bill is a giant step toward eliminating soft money from the electoral process. The raising and spending of soft money proliferated tremendously since we last amended the Federal Election Campaign Act in 1979. In 1984, both political parties raised $22 million in soft money. In the 2000 election cycle, they raised $463 million in soft money alone. The political parties raised more than 20 times as much in soft money last year than they did in 1984. The hundreds of millions of dollars that flow into campaigns without any accountability increase the likelihood that money will have a corrupting influence on our electoral system.

The American people are being bombarded with television advertisements, mailings and newspaper ads funded by soft money. Often, the

amount of money being spent by candidates themselves is dwarfed by the amount of soft money spent by others in their own races.

The ban on soft money that the McCain-Feingold bill demands is an essential step to diminish the tremendous amount of money pouring into campaigns. Some opponents of the bill claim that banning soft money is unconstitutional. Senators MCCAIN and FEINGOLD have taken extra measures to ensure that the provisions in this bill comply with the Supreme Court's 1976 decision in Buckley v. Valeo. The court ruled that the Constitution permits the Government to regulate the flow of money in politics to prevent corruption or the appearance of corruption.

Political service remains a worthy calling, but anyone who enters it these days encounters a campaign fundraising system that is debilitating and demeaning and distasteful. The fact that we so clearly have ineffective checks on the spiraling cost of campaigns and on the way campaigns are financed has tarnished our institutions of Government as well as the people we elect to those institutions.

It is important to bring our election process and Government back to the time when elected officials felt accountable to all of the people they represent, not disproportionately to the wealthy few. Our present system gives the wealthy a huge megaphone for expressing their views, while other Americans—the ''financially inarticulate''—are left without an effective voice. That is why I have felt it important to take steps on my own to increase Vermonters trust in how I conduct my campaigns. Though not required by law I have disclosed every nickel in contributions I have ever received since I first ran for the Senate in 1974, and I used no political action committee money in my last two election campaigns. Passing the McCain-Feingold bill—without any amendments designed to weaken it or destroy it—is a fundamental step all of us can take to fix a system that is in dire need of repair. Vermonters and all Americans want to have faith in the campaign and election process. They want to believe that their Government is working in the public's interest, not on behalf of the special interests. Eliminating unregulated soft money will help to give elections and the Government back to the people.

I hope the Senate will not let this opportunity for reform slip away. I hope the Senate will approve this important and long-awaited bill and will refrain from adding any amendments that would jeopardize or kill this important effort.

UNANIMOUS CONSENT AGREEMENT—S.J. RES. 4

Mr. MCCONNELL. Mr. President, pursuant to the agreement of February 7 with respect to S.J. Res. 4, I ask unanimous consent that the Senate proceed to the resolution on Monday, March 26, at 2 p.m. and the time between 2 p.m. and 6 p.m. be equally divided between Senators HOLLINGS and HATCH. I further ask unanimous consent that at 6 p.m. on Monday, the resolution be advanced to third reading and a vote occur on passage without any intervening action or debate, notwithstanding paragraph 4 of rule XII.

This is the Hollings constitutional amendment.

Mr. DODD. Reserving the right to object, this is on Monday?

Mr. MCCONNELL. Right. It is my understanding this had been cleared. This is a vote on the Hollings constitutional amendment. The debate would occur from 2 to 6 on Monday.

Mr. DODD. With a vote at 6 p.m.

Mr. MCCONNELL. At 6 p.m.

Mr. MCCAIN. Is it also the understanding that there will be debate on the amendment starting at noon?

Mr. MCCONNELL. Correct. There would probably be more than one vote at 6 o'clock. It would be a vote on the Hollings amendment and other votes—vote or votes, as well.

Mr. DODD. That is not part of the unanimous consent request.

Mr. MCCONNELL. No. It is the intention of the managers to have more than one vote at 6 o'clock.

Mr. REID. Reserving the right to object, the Senator from Wisconsin had a question.

Mr. FEINGOLD. Mr. President, is the Hollings amendment being handled as an amendment to this legislation or as a separate piece of legislation?

Mr. MCCONNELL. A separate piece of legislation.

Mr. FEINGOLD. I thank the Senator from Kentucky.

Mr. MCCONNELL. An issue upon which the Senator from Wisconsin and I are in agreement.

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

MORNING BUSINESS

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

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

BUDGET COMMITTEE MARKUP OF BUDGET RESOLUTION

Mr. BYRD. Mr. President, I am a product of the West Virginia coal fields. I remember my heritage, and I am proud that it has served me well throughout my political career. I remember the legendary president of the United Mine Workers of America, John L. Lewis, who was a great student of Shakespeare, as I recall him in those days. And he once advised union coal miners of the adage:

when ye be an anvil,
lie very still,
when ye be a hammer,
strike with all thy will.

Mr. President, I am not an anvil—not an anvil—which explains, in part, why I joined the Senate Budget Committee this year. First, I am very concerned about Congress approving permanent tax cuts based on highly uncertain surplus estimates, which threaten to put us back in the deficit ditch. Second, I strenuously oppose the use of the reconciliation process—now, Mr. President, that is the way I have pronounced that word for years. I was called to order a little earlier today because I did not pronounce it ''reconciliation,'' which is all right with me, just so it is understood what we are talking about—to ram a $2 trillion tax-cut package through the Senate. Such a misuse of the reconciliation process abuses the rights of every Senator to debate this significant legislation. That is an important thing. Third, in recent years, I have become increasingly concerned about the unrealistically low spending levels established by the annual budget resolutions for programs under the jurisdiction of the Appropriations Committee, on which I serve as the ranking member and which is chaired by the most able and distinguished Senator from Alaska, Mr. STEVENS, who recently won the award ''Alaskan of the Century.'' And I would say at this point, I think he is the Alaskan of the Century. He deserves that award.

These unrealistically low funding levels in recent budget resolutions have forced the Appropriations Committee to resort to all manner of gimmicks and creative bookkeeping to ensure that we could adequately fund the 13 annual appropriations bills, despite not having sufficient resources to address the ongoing infrastructure needs of the Nation, much less begin to address the funding backlog in those funding needs in many critical areas.

So as a member of the Budget Committee, my hope was that this year I would be able to assist in crafting a budget resolution that would more accurately determine the spending levels that will be necessary to produce the FY 2002 appropriations bills. I wanted to actively participate in that committee in a markup of the budgetary blueprint that will guide the Nation's fiscal policy, not only for FY 2002, but for the next decade. This year's budget resolution will address not only the discretionary funding needs to which I have alluded, but also will involve efforts to allow for perhaps a massive tax cut of $2 trillion or more, over the next 10 years. That is a big—$2 trillion is just something that is beyond my comprehension, and probably that of most Members of this body.

I might say to the distinguished Senator who presently presides over the Senate that, much to his surprise, perhaps, it would take 32,000 years to count $1 trillion at the rate of $1 per second. At the rate of $1 per second, it