

anything about. All the rest of it is canned speeches that the staff gives you, and you come out and you talk about Kosovo, you talk about the defense budget, or you talk about the environment, and you read scientific statements and everything—but we know about money. Oh boy, do we know.

It is 2 o'clock.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Committee on the Judiciary is discharged from further consideration of S.J. Res. 4, which the clerk will report.

The senior assistant bill clerk read as follows:

A joint resolution (S.J. Res. 4) proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

The PRESIDING OFFICER. Under the previous order, there will now be 4 hours of debate equally divided between the Senator from South Carolina, Mr. HOLLINGS, and the Senator from Utah, Mr. HATCH.

The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I ask unanimous consent S.J. Res. 4 be printed in the RECORD at this particular point.

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

S.J. RES 4

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within 7 years after the date of final passage of this joint resolution:

“ARTICLE—

“SECTION 1. Congress shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, Federal office.

“SECTION 2. A State shall have power to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, State or local office.

“SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.”

Mr. HOLLINGS. Mr. President, as I was saying, we know about money. In fact, I had the small business appropriations subcommittee and I do not know 100 better small businessmen than the 100 Senators. You have to collect millions just in \$1,000 increments. You wouldn't incorporate at \$1,000-a-share of stock—you wouldn't get any-

where. You would have to work much longer than this, of course. But we do it.

Back in 1966, Senator Mansfield said we would start voting at 9 o'clock on Monday morning. I will never forget it. Then votes would ensue, and debates would ensue, and we would work until generally around 6 o'clock on Friday. It was a full workweek.

I see my colleague from Kentucky is back down on the floor I want to talk about corruption because that is the sensitivity he has, that there is nothing corrupted—ha-ha.

Monday is gone. And Fridays are gone. And Tuesday mornings are gone. And Wednesday evenings you have a window, and Thursday evening you have a window, and Wednesday at lunch you have a window, and Thursday at lunch you have a window—all for at least 20 to 25 percent of your time to collect money. Lunches, meetings with different groups downtown—I am part of it. I know. I struggle. I am from a Republican State, so I had to travel all around raising money during my last campaign. I am confident that people are ready and willing to vote for me. I have talked to them. But the contributions, incidentally, are listed in the newspaper and some people don't want to see their contributions appear, because when they go to the club on Saturday night, someone asks them, “Why did you give to that Democrat?”

I mean, heavens above.

So I travel the country, up to Minnesota, everywhere and anywhere I can, to collect money. That takes my time on weekends, weekdays, any nights that I can. So I am part of the corruption I am trying to cure.

Mind you me, they do not have any idea of stopping this corruption. They thoroughly enjoy it because they know the one way to really play the campaign finance game for keeps and not for play, not for fun, is to pass a constitutional amendment.

The constitutional amendment which was just printed in the RECORD does not endorse, it does not support, it does not oppose any bill or any initiative. It merely gives authority to the U.S. Congress to limit or regulate expenditures and contributions in Federal elections. And the state and municipal officials, as well as the state governors, have asked for a similar provision. So we have that provision in there for State elections as well.

We all know, out in the hinterland, beyond the beltway, what a corruptive influence this has been. It takes all the time in the world to collect that \$3,000 a day, every day, including Saturday and Sunday. We have gotten to the point that we have to collect more than a church on Sunday. It is a pitiful situation. But they know this is unconstitutional. It is unconstitutional, McCain-Feingold.

It might be appropriate at this point to say the unanimous consent agreement was supposedly at the termination or the disposition of McCain-

Feingold, because I did not want to interfere with the initiative of the Senator from Arizona and the Senator from Wisconsin in McCain-Feingold. I voted for it, I guess, about five times. I will vote for it again because it may be constitutional—you can't tell with this Supreme Court. They found that the States always regulate their own elections, except when it came to Florida and the Presidency. And the very crowd in the minority, always talking about the States having control, became the majority and took over the election. Given this reversal of opinion, you never can tell if the Court would change their opinion about *Buckley v. Valeo*. I will vote for the severability also.

I hope part of it is sustained by the Court. But we know good and well that they enjoy the wonderful charade and farce that has been going on in the Senate last week and this week, and particularly in the media. They don't have any idea of exposing this. If you can find in a newspaper that a constitutional amendment is to come up on Monday and be debated all day Monday, I will give the good government award to that particular newspaper. It is not even printed, they couldn't care less, because they know this thing should continue on, up, up, and away, millions upon millions, in order to hold a job, get elected.

So, as to its unconstitutionality, let me refer, first, to my friend, the Senator from Kentucky. I do not like to mention him when he is not present on the floor, but I will again, when he comes to the floor. S.J. Res. 166, in 1987, by Senator McCONNELL of Kentucky, of a constitutional amendment. He says:

The Congress may enact laws regulating the amounts of expenditures a candidate may make from personal funds or the personal funds of the candidate's immediate family, or may incur with personal loans, and Congress may enact laws regulating the amounts of independent expenditures by any person other than by a political committee of a political party, which can be made to expressly advocate the election or defeat of a clearly identified candidate for Federal office.

The Senator from Kentucky and I appeared, and we testified before the Subcommittee on the Constitution of the Judiciary Committee in the Senate back at that time. And I quote Senator McCONNELL:

I would not have any problem with amending the Constitution with regard to the millionaire's problem.

(Mr. AKAKA assumed the chair.)

The reason I emphasize that is because every time I have mentioned this since that time, I had Senator McCONNELL worried about buying the office. But he found out that is the best and easiest way for that crowd to do it. He has sort of left me. He pontificates about the idea and how it is just horrible having a constitutional amendment to amend freedom of speech.

Let me see exactly what he said at the particular time just by way of emphasis. He said on June 19, 1987, at page

S16817 of the CONGRESSIONAL RECORD, U.S. Senate:

I believe that this resolution, unlike most constitutional amendments, would zip through this body and zip through the State legislatures.

He didn't complain at that time about the time it took. But he says:

These are constitutional problems demanding constitutional answers. This Congress should not hesitate, nor do I believe it would hesitate, to directly address these imbalances of the campaign finance laws. I offer this constitutional amendment in the sincere hope that the Senate will begin to turn its attention to the real abuses in campaign finances, millionaire loopholes, independent expenditures, political action committee contributions, and soft money, and develop simple, straightforward solutions rather than strangle the election process with overall spending limits and a larger political bureaucracy.

The distinguished leader in opposition to McCain-Feingold, I used to stand with him because he was against soft money. He was against buying the office. But there you are.

Of course, he reiterated on the floor the other day that we had reached the nub of the problem. He recognizes it still as a constitutional question.

We go right to the long, hard task in March of trying to bring people to their senses once Buckley v. Valeo amended the first amendment. There isn't any question. They equated money with speech when Justice Stevens in the Nixon case said money is property. It was Kennedy who said that by the bifurcation and separating the contributions from the actual expenditures we had developed a new form of speech. Having money as speech is out of the whole cloth.

I don't go out and ask one dollar for one vote. It is one man-one vote; or one person-one vote. But under Buckley v. Valeo, it is one dollar-one vote.

By limiting the amount given but not the amount expended, they have taken away the freedom of speech of the Presiding Officer, and this particular Senator, because we don't have those millions to spend on elections such as we see being done this day and age. No questions are asked. The trend is more, more, and more.

There was an article in the newspaper last week on how the Democratic Party was looking for millionaire candidates so we don't have to raise the money. If we can find a bunch of millionaire candidates, it would be wonderful. We would be in the majority. But that is very enticing but very corruptive for the simple reason that Buckley v. Valeo took away our freedom of speech.

This constitutional amendment will reenact the freedom of speech for all Americans. What will happen is, of course, you can pass anything you want, I emphasize once more. This is not in support of McCain-Feingold, or in opposition to McCain-Feingold, or in support or opposition to any particular initiative that the Senate may take or the Congress may take.

But it frees us up—"Free at last," so to speak—in order to enact what we desire to enact with respect to campaign financing.

I refer to the article "Democracy or Plutocracy? The Case for a Constitutional Amendment to Overturn Buckley v. Valeo," by Jonathan Bingham.

Mr. President, former Congressman Bingham wrote about it with distinction. But there is a more recent article from the James Madison Center for Free Speech, and an analysis of McCain-Feingold by James Bopp, general counsel for the James Madison Center for Free Speech. It can be found at: www.jamesmadisoncenter.org.

Mr. President, an article entitled "Court Challenge Likely if McCain-Feingold Bill Passes" from the Washington Post of March 19 of this year by Charles Lane also points out the unconstitutionality of McCain-Feingold.

I ask unanimous consent it be printed in the RECORD.

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

**COURT CHALLENGE LIKELY IF MCCAIN-
FEINGOLD BILL PASSES**
FOES CITE FREE-SPEECH ISSUES AS DEBATE ON
CAMPAIGN FINANCE REFORM BEGINS

(By Charles Lane)

The debate over campaign finance reform that begins today in the Senate is just the start of a long journey that likely will end in the courtroom.

As even supporters of the bill sponsored by Sens. John McCain (R-Ariz.) and Russell Feingold (D-Wis.) concede, the measure poses fundamental free-speech questions and faces an inevitable court challenge by opponents if it becomes law. The questions are serious enough that they will probably have to be resolved by the Supreme Court.

"Everyone recognizes that there are constitutional issues in McCain-Feingold, and everyone assumes it will end up at the Supreme Court if it passes and is signed," said Lawrence Noble, a former general counsel of the Federal Election Commission who is executive director of the pro-reform Center for Responsive Politics.

The most vulnerable provision in the McCain-Feingold legislation is a section that bars unions and corporations from buying "issue advertising" on television and radio that mentions federal candidates during a specified period before elections. The same section also would subject other interest groups that buy ads to new funding disclosure rules.

McCain-Feingold's supporters say that under the law, the ads are a sham—that they are not intended merely to inform citizens about issues but rather to influence the outcome of elections. The provision in the reform law, they say, is necessary to close a loophole through which vast *de facto* campaign contributions pass unregulated each election year.

But the loophole exists largely because the Supreme Court has said issue ads are a form of political expression that must be left untouched by federal regulation. Opponents of the bill say that means the issue-ad provision would be overturned in the courts.

"It has no chance of being upheld," said James Bopp, general counsel of the James Madison Center for Free Speech, who has successfully challenged similar state issue-ad laws in lower courts.

Supporters of the McCain-Feingold bill say the provision was carefully written to take

into account the court's key precedent in campaign finance matters, the 1976 case *Buckley v. Valeo*.

The court ruled in that case that the Constitution permits the government to regulate the flow of money in politics to prevent actual or apparent corruption. But such regulations must be subjected to "strict scrutiny" by the court to ensure that they do not unduly impede the free expression of the political ideas that money pays for.

Applying that balancing test to a 1974 campaign reform law, the court upheld limits on contributions as well as disclosure requirements. But it struck down limitations on political communications "relative" to federal elections. The court concluded that part of the statute was so vague it could stifle too much political speech.

Since Buckley, only limits on "express advocacy"—political communications that specifically tell voters to cast their ballots for or against a candidate—have been upheld. So parties, unions, corporations and interest groups have been able to buy issue ads freely, as long as they don't urge a vote for a particular candidate.

But McCain-Feingold's issue-ad provision is based on the view that the court would accept an alternative to the "express advocacy" standard as long as it isn't as vague as the one the justices struck down in the Buckley case.

The bill seeks to provide such an alternative by creating a new category, "electioneering communications," defined as broadcast ads that refer to clearly identified candidates and appear within 30 days of a primary or 60 days of a general election.

Having redefined issue ads in a way that captures their true nature as campaign-related communications, McCain-Feingold backers say, Congress could subject those who pay for the ads to spending and disclosure regulations without running afoul of Buckley.

Under the bill, unions and corporations would be barred from spending their own funds on such ads. Interest groups would be allowed to air them but would have to use individual contributions to pay for them and disclose where the money came from.

"There will be questions about issue ads," McCain said in an interview, "but I also believe . . . Supreme Court justices . . . do read newspapers and watch TV. And it would be hard to argue from a logical standpoint that the sham ads are not intended to affect the election or nonelection of candidates."

But McCain-Feingold opponents say the justices won't buy this proposed revision of the "express advocacy" standard, which has survived repeated challenges in lower federal courts. No matter how McCain-Feingold defines the new regulations, they argue, the court would see it as curtailing a certain amount of political expression that has heretofore enjoyed constitutional protection.

"To the extent the bill would . . . make illegal or burdensome the funding of speech that has been protected up till now, it is vulnerable to challenge," said Joel Gora, a professor at Brooklyn Law School who represented the plaintiffs in Buckley and is working with the American Civil Liberties Union to defeat McCain-Feingold.

Gora said that under McCain-Feingold, a group that opposed that law but had no position on whether McCain should be a senator would be subject to regulations if it wanted to run an ad attacking the bill in Arizona within 60 days of a Senate election involving McCain.

The only alternative to the McCain-Feingold bill, a reform proposal by Sen. Chuck Hagel (R-Neb.), does not include restrictions on issue ads by corporations and unions, and would not raise the same kinds of constitutional questions.

The best-known provision of McCain-Feingold, a ban on "soft money," is a relatively open constitutional issue because there is little in case law to suggest how a majority of the court might view it.

Under the law, wealthy individuals, unions and corporations may give unlimited amounts of money to political parties for ostensibly general purposes such as educating voters about the issues and getting them to the polls on Election Day. This is in contrast to "hard money"—donations to specific candidates that are subject to limits and disclosure requirements.

Reformers argue, however, that soft money has evolved into a *de facto* campaign contribution because so much of it is used to finance issue advertising targeted at specific elections. They say it should be easy to persuade the court to uphold a ban, just as it upheld contribution limits in *Buckley*.

"The court will respect Congress's judgment that money is fungible and that soft money is really working on a national election," said Alan Morrison of the Public Citizen Litigation Group.

In a case decided last year, *Nixon v. Shrink Missouri Government PAC*, the court, by a vote of 6 to 3, reaffirmed *Buckley*'s holding that contribution limits may be imposed to combat political corruption or the appearance of corruption.

The six-member majority included the court's four liberal members and two conservatives, Chief Justice William H. Rehnquist and Justice Sandra Day O'Connor. The opinion by Justice David H. Souter cited "the broader threat from politicians too compliant with the wishes of large contributors."

Two justices, Stephen G. Breyer and Ruth Bader Ginsburg, said in a concurring opinion that a soft money limitation might well be constitutional under *Buckley*.

However, Justice Clarence Thomas, joined by Justice Antonin Scalia, published a dissenting opinion indicating that even existing campaign finance regulations suppressed too much speech and that *Buckley* should be overruled on that basis.

McCain-Feingold opponents say they would challenge the soft money ban as an attack on free association and a threat to the two-party system. Quite simply, they argue, soft money is not a sham. It is used not only for issue ads but also for general "party-building" activities and cannot be eliminated without crippling the parties.

As evidence of recent sympathy on the court for the special role of parties in American politics, they cite a 1996 case in which the court held that the government could not limit the spending of hard money by a political party on behalf of a candidate as long as the spending was "independent" of the candidate's campaign.

In reaching this conclusion, the court observed that it was "not aware of any special dangers of corruption associated with political parties" that would have warranted a different conclusion.

"If the court continues to view parties as they did in [that case] and other cases, I don't see how the soft money ban can survive," Bopp said. "There is no compelling government interest that would support the gut-ripping of political parties."

Mr. HOLLINGS. Mr. President, I harken to the memory of working with my distinguished colleague from Kentucky when he and I were on the same side. I also worked with the former counsel to the President, Lloyd Cutler, also the former Senator from Kansas, Mrs. Nancy Kassebaum, and others on the committee on the constitutional

system. They appeared and testified about the need for a constitutional amendment.

On every amendment, starting with the Domenici amendment last week, they are going to raise a constitutional question.

There it is. Everybody likes to adhere to the Constitution because they respond to the very solemn scare tactics of my friend from Kentucky.

The reason I described it as scare tactics—let me quote from last week, March 19 on page S2440 of the CONGRESSIONAL RECORD, I quote Senator McCONNELL:

You have to go right to the core of the problem. The junior Senator from South Carolina, Mr. Fritz Hollings, will offer that amendment at some point as he has periodically over the years. He deserves a lot of credit for understanding the nub of the problem. The nub of the problem is you can't do most of these things as long as the First Amendment remains as it is.

So Senator Hollings, at some point, I think under the consent agreement, will probably at the end of the debate offer a constitutional amendment . . . to regulate, restrict, and even prohibit any expenditures "by, in support of, or in opposition to a candidate for public office." It would carve and etch out of the First Amendment, for the first time since the founding of our country and the passage of the Bill of Rights, giving to the government at the Federal and State level the ability to control political speech in this country. It is worth noting that would also apply to the media.

Now you see the scare tactics. Wait a minute. After 230 years of history, and all of sudden we are going to monkey around, we are going to tamper with, and we are going to amend the first amendment for the first time since the founding of our country and the passage of the Bill of Rights—we are going to amend the first amendment.

I note the Senator from Kentucky is a brilliant individual. He knows better. But he knows the art of defamation and debate. If he can scare those who have not paid attention to the debate last week and this week, and those who will not pay attention, then he'll prevail. There is nobody here but us chickens for the simple reason that they said last week I had to go on Monday. I had other engagements already because I am like all the other Senators, I have things to do. I can plan ahead, knowing that I can get out and raise money on Monday. Then they said, if you can't get back on Monday, you just stay here on Friday. I also, like all the other Senators—we voted at 9 o'clock and, boy, we broke out of that door. If you stood there at those double doors after that vote at 9:15 to 9:30, you would have been run over because we had to go. We have to collect that \$3,000 that Friday, that \$22,000 that week, that \$7 million over the 6-year period. And so it is that he knows and I know they are not hearing this.

We all do revere the Constitution. And we all revere the first amendment. But the distinguished Senator from Kentucky, watching those Oscars last night, he ought to get an Oscar for this one. Here it is:

. . . I think under the consent agreement, will probably at the end of the debate offer a constitutional amendment so the Federal and all 50 State governments can have the unfettered latitude to regulate, restrict, and even prohibit any expenditures "by, in support of, or in opposition to a candidate for public office." It would carve and etch out of the First Amendment, for the first time since the founding of our country and the passage of the Bill of Rights, giving to the government at the Federal and State level the ability to control political speech in this country.

Now, Mr. President, not so. He gets the Oscar because those who not listening heard that last week, when I couldn't get the floor and award him that particular Oscar. Because he knows from the debate of 1907 of the Tillman Act, under President Teddy Roosevelt, where the Federal Government controls the speech of corporations. And then in 1947, Harry Truman, in the Taft-Hartley Act, that is another one of "the first time since the founding of our country and the passage of the Bill of Rights." That was the second time that I know of back in 1947 under Taft-Hartley.

Poor Harry did it. They want to give him awards now. Everybody is trying to mimic Teddy Roosevelt over there on the Republican side. But they forget that "for the first time" Teddy did it back in 1907. We know about the shouting of fire in the theater, the clear and present danger ruling; that is another time that the first amendment was amended. We know, with respect to the prohibition against fighting words, that is another time that the first amendment was amended.

Congress, since I have been here, gave the authority, in the Pacifica case that finally was determined. But we passed the enactment to tell the FCC to regulate obscenity over the airwaves. That deals with the first amendment. There were those seven dirty words in the Pacifica case.

So it is that we have, about seven or eight times since the founding of our country "etched out of the First Amendment." We took an exception with respect to slander. I cannot slander you; you cannot slander me. That is defamation. That is another time. There is false and deceptive advertising. Has the distinguished Senator never heard of the Federal Trade Commission? That is under the authority of the Federal Trade Commission: false and deceptive advertising. We regulate or amend, as he would say, carving and etching out, for the first time in our history since the founding of the Republic, an amendment to the first amendment.

We all go to classified briefings, particularly up on the fourth floor in the Capitol. That is another restriction we have on the first amendment.

Of course, we can go right on down to the 24th amendment—well, the Hatch Act. I do not want to leave that out. We amended it in 1993. But you still can't run for these partisan political offices. You can't solicit contributions

or receive contributions. You can't politic on a Federal facility. We would be forbidden under the Hatch Act to campaign in this Federal facility, except for us. All we do is campaign here. We have to take care of ourselves here. We understand what the game is. Nobody is here. But I am here. And we have a constitutional amendment.

And then, of course, the 24th amendment, the poll tax. Isn't that a wonderful thing? They said: Look, there should be no financial burden on the right to vote. Now, with *Buckley v. Valeo* there is a financial burden with respect to campaigning.

The distinguished senior Senator from my State says at the end of next year he is not going to run for reelection. They have already, in a sense, crowned a Republican nominee according to my local news. Everybody has come out for him. Two or three Democrats have been up to see me. Each time I said: Now, wait a minute. You have to get \$7 million. You have to be prepared. Because I can tell you, here and now, I spent \$5.5 million myself in 1998, and this will be 4 years hence by 2002. So you have to get that \$7 million. It has all but prohibited the poor from campaigning. It has all but prohibited the middle class from campaigning, or at least in relation to the Senate.

I can tell you right now, we ought to have an amendment restoring every mother's son's right. I can see Russell Long standing right here at this desk. He put in the checkoff system so every mother's son could run for President. So we had to check off on the income tax to bill up the money. With respect to *Buckley v. Valeo*, let's amend that particular amendment to the first amendment; namely, the restriction they put on political speech of the poor and middle class in America.

I have already had to discourage—I didn't mean to do it but you need to be realistic—and I am confident I have discouraged three candidates from running because unless and until they can get up in the political polls, our Democratic Senatorial Campaign Committee cannot afford to give them any financial assistance. So they have to prove themselves. And in order to prove themselves in this game, you have to have money.

Finally, of course, as I have already referred to, I would like to ask consent to have printed in the RECORD S.J. Res. 166 from the distinguished Senator from Kentucky. How could he stand in the well and say, "It would carve and etch out of the First Amendment, for the first time since the founding of our country and the passage of the Bill of Rights" wherein he, in S. Res. 166, tried that himself in 1987? I ask unanimous consent it be printed in the RECORD.

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

S.J. RES. 166

Resolved by the Senate and House of Representatives of the United States of America in

Congress assembled, That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

ARTICLE—

"SECTION 1. The Congress may enact laws regulating the amounts of expenditures a candidate may make from his personal funds or the personal funds of his immediate family or may incur with personal loans, and Congress may enact laws regulating the amounts of independent expenditures by any person, other than by a political committee of a political party, which can be made to expressly advocate the election or defeat of a clearly identified candidate for Federal office.

"SECTION 2. The several States may enact laws regulating the amounts of expenditures a candidate may make from his personal funds or the personal funds of his immediate family or may incur with personal loans, and such States may enact laws regulating the amounts of independent expenditures by any person, other than by a political committee of a political party, which can be made to expressly advocate the election or defeat of a clearly identified candidate for State and local offices."

Mr. HOLLINGS. Mr. President, there we are: Five of the last six amendments have dealt with just that, with elections. Certainly, the Hollings-Specter amendment—and I want to note at this time the wonderful support of the distinguished Senator. He not only co-sponsored it, he has been at the hearings and on the floor. He has given it warm support.

We have other cosponsors. I thank them also: Mr. REID of Nevada; Mr. BIDEN of Delaware; Mr. MILLER of Georgia, and several others; Mr. CLELAND; also the distinguished former majority leader, the Senator from West Virginia, Mr. BYRD, has been a stalwart with respect to the Constitution. The Senator from West Virginia understands better than any that this particular initiative is certainly as important as the poll tax, the 24th amendment. It is certainly as important as the 27th amendment, Senatorial pay. Come on. Here we have corrupted the entire process. We can't get any work done. We can't get regular Americans to run for public office. We can't give the people the time they deserve working at the job of being a U.S. Senator because we have to work at the job of staying a U.S. Senator. It certainly is just as important as Senatorial pay with respect to its significance and importance.

The last five or six amendments dealt with elections. This would be the 25th amendment and would be immediately, I am led to believe, ratified by the several States.

I have touched on the corruption. There are other points we want to make for the RECORD.

I yield the floor, retain the balance of my time, and grant our distinguished friend from West Virginia such time as he may consume.

Mr. BYRD. Mr. President, I thank the very distinguished Senator from

South Carolina, Mr. HOLLINGS, for yielding to me. I thank him for being the author and chief sponsor of this amendment. I thank him for his steadfast and clear-sighted approach to a very serious and growing problem facing our Republic. I thank him for allowing me to join him in cosponsoring this amendment.

Ralph Waldo Emerson, in an oration delivered on August 31, 1867, said:

This time, like all times, is a very good one, if we but know what to do with it.

As the Senate considers the proposed constitutional amendment offered by our distinguished colleague from South Carolina, Mr. HOLLINGS, it is my fervent hope that each of us will take heed of Emerson's apt words. We have the opportunity to take an important step in the direction of restoring the people's faith and in our ability to rise above partisanship and really do something about our present sorry system of financing Federal campaigns.

If 55 years ago, when I started out in politics, we had had the current system of funding campaigns, somebody else would be standing at this desk. It wouldn't be I. I came from the very bottom of the ladder. There were no lower rungs in my ladder. There weren't any bottom rungs in my ladder. I came out of a coal camp. What did I have?

If I might, for a moment, tinker with grammar, "I didn't have nothing," as they would say. "I ain't got nothing." All I had was myself and my belief in our system. I believed in a system, then, in which a person who didn't have anything, a person who was poor, a person who came from lowly beginnings but who could pay his filing fee, could run for office.

I graduated from high school in 1934 in the midst of the Depression. I married 64 years ago the month after next. I married a coal miner's daughter. We didn't have anything. We only had two rooms in which to live in the coal company house. I started out making \$50 a month. When I married I was making the huge sum of \$70 a month. All I had was a high school education. I didn't have a college education. That was all I had.

The man who raised me, my uncle, was not a banker. He was not a big politician. He was not a former judge. He was not a former officeholder. He was a coal miner, a lowly coal miner. He was honest.

What did I have? Who was I to run for office? Who was I to offer myself to the people with just a high school education. That was all. That coal miner was the only dad I ever knew so I felt good about being his son. I didn't have anything. There I was, a coal miner's son, starting to find my way up the ladder of a political career.

Could I do it today? I would go to Senator HOLLINGS and say: I would like to run for the House of Delegates in West Virginia. I would like to run for the House of Representatives in Washington. What advice do you have for

me? He would say to me today, as he said to others: Who are you? What is your background? That is not so important. But have you got any money? How much money are you willing to spend on this? I would have been out, if it had depended upon money. I would have been out at the beginning. I would never have gotten to first base.

The current system is rotten, it is putrid, it stinks. The people of this country ought really to know what this system is giving to them and what it is taking from them. This system corrupts political discourse. It makes us slaves, makes us beholden to the almighty dollar rather than be the servants of the people we all aspire to serve.

Unfortunately, the Supreme Court has given this kind of campaign system first amendment protection.

In *Buckley v. Valeo*, the Court made it extraordinarily difficult for the public to have what it wants: reasonable regulations of campaign expenditures which do not either directly or indirectly limit the ideas that may be expressed in the public realm. I submit that such regulations will actually broaden the public debate on a number of issues by freeing it from the narrow confines dictated by special interest money.

We may be able to fool ourselves, but the time is long past for all of us to stop trying to fool the American people. They are more than aware that both political parties—both political parties—abuse the current system and that both political parties fear to change that system. Each party wants to preserve its advantages under the system, but the insidious system of campaign fundraising will eventually undermine the very foundation of this Republic.

What I am saying is, that this system of funding our political campaigns is going to undermine the Republic. For our own sakes and for the sake of the people, we must find a way to stop this political minut. We must come to grips with the fact that the campaign finance system in its current form is simply, simply, simply unworthy of preservation.

I have spoken on this floor many times before about the exponential increase in campaign expenditures since I first ran for the Senate in 1958. Jennings Randolph and I ran for the Senate in 1958. There was a situation in West Virginia in which the late Senator M.M. Neely died and left 2 years of his Senate tenure open, which meant we had two Senate seats in West Virginia to fill in the same election. Senator Randolph ran for the 2-year term, I ran for the 6-year term, and we decided to team up and run together. There were several other Democrats running for both seats. But we teamed up and we ran that campaign—two Senators—for \$50,000. That is all we had, \$50,000. We didn't have television in those days. Oh, there were a few black and white sets around. But we

didn't have these expensive campaign consultants. We didn't know anything about these kinds of negative campaigns. We just went around from courthouse to courthouse and spoke in the courthouse yards. I played my fiddle—drew a good crowd. But we didn't have these expensive campaigns. Otherwise, we could not have run.

I was running against an incumbent Republican Senator, Senator Chapman Revercomb. We could not have done it. That was in 1958. We had \$50,000, two Senators.

I recently heard one of the richest men in America say that political access is “undervalued” in the campaign finance market. Campaign contributions will continue to increase until a “market valuation” is achieved, thus causing the cost of a reasonably effective campaign to continue to skyrocket. We haven't hit the top yet, by any means. It already costs tens of millions of dollars to run an effective campaign for the Senate in many States.

What do we tell a poor kid from the hollows? What do we tell a poor kid from the coal camps? Forget it. Yet, that person may have the capacity and the drive to be a good Senator. A campaign for the Senate will be beyond his or her personal means and beyond the means of friends and associates.

We must act to put the Senate, the House of Representatives, and the Presidency within the reach of anyone with the brains, with the spirit, with the spine, and with the desire to go for it. And the proposed constitutional amendment before us today is a necessary step on the way to accomplishing that goal. Yes, it amends the First Amendment.

One of the great ironies of the current campaign financing system is that it puts more distance between candidates and the people they hope to represent. Campaigns of today are technologically sophisticated. They rely increasingly on mass media. The whole point of current campaigns has become raising enough money to pay to more people, more times, over the airwaves.

There is no argument that there is an efficiency consideration here. People's lives today are complicated. They have to run from pillar to post, to work, to school, to the grocery store, to the dry cleaner, cook dinner, put the kids to bed, and so on and on and on, over and over again. Families do not have the time or the inclination to attend community functions as they used to years ago. Even if they did, there is this crazy “boob tube” in the home. I don't listen to it a great deal. I long ago learned that is almost a complete waste of time to listen. I so listen every Saturday night to that British show, “Keeping Up Appearances.” I recommend that anybody and everybody watch that show. You won't hear any profanity in it, you won't see any violence in it, and it is not a story about sex. So, listen to “Keeping Up Appearances” on Channel 26 and Channel 22, public television.

May I say to my friend from South Carolina and my equally good friend from Connecticut, I have been in Washington 49 years. I have been to one movie, and I did not stay through that one. Yul Brynner was playing in it. It bored me to death, and I left about halfway through. But I have seen some good movies on Channel 26, Channel 22—public television. I like Masterpiece Theater. It gives us some good, clean, wholesome movies to watch. Otherwise, do not waste your time watching TV.

I have had some recent campaign events in some of West Virginia's communities where people still come out to hear candidates, but in our Nation today, such events are the exception, not the rule. So to influence voters, we pay high-priced consultants, and many times, I say to my friend from South Carolina, we probably know a good bit more about politicking and what needs to be seen and said than they do, but they sure know how to spend your money; they sure know how to take your money. These TV people just rack it up.

I must say that TV is the greatest medium that was ever invented, I suppose. At least it will hold its own with the printed media. But I think it is helping to ruin these political campaigns.

To influence voters, we pay high-priced consultants to produce slick, high-priced ads and to buy high-priced television and radio time to air them. Our opponents do the same, which leads our expensive consultants to encourage us to tape more ads—tape more ads—and buy more advertising time. It is a vicious circle that requires candidates to spend more and more time raising money and less and less time listening to the people and working for the people, once they are elected, whom they wish to represent.

I have been majority leader in this Senate, and I have been minority leader, and I can tell Senators that this money chase is a real headache for the leaders in this Senate. It used to be, when I was the leader, I was continually being importuned by colleagues—Senators on my side of the aisle—to not have votes on this afternoon, not have votes on tomorrow, not have votes on Fridays, not have votes on Mondays, not have votes on Tuesdays until after the weekly conference luncheon.

When I first came to the Senate, we did not have weekly Democratic conferences. Mostly, the Republicans had conferences, but we did not necessarily have a conference every week. It was after I became leader that we started to have regular conferences every week. It was I, as the leader, who had the first so-called retreat with our Democratic colleagues. We went over to Canaan Valley in West Virginia, and we also went up to Shepherdstown on another occasion.

We did not have any retreats prior to my being leader. We did not have all

these campaign financing problems. We did not have to raise so much money for campaigns until, for the most part, I was leader for the second time in the 100th Congress.

It was in the 100th Congress that I offered a cloture motion eight times—eight times—to try to have the Senate act on campaign financing legislation—eight times. That is the highest number of cloture motions ever offered by a leader in this Senate on any matter; eight times, and I failed eight times. I was never able to get more than a half dozen members of the Republican Party to vote for cloture on campaign financing legislation.

The result of the campaign financing system we now have is that today there are fewer rallies, there is less knocking on doors, less face-to-face time with the voters, less handshaking by the candidate. No wonder the people think we are out of touch. We do not see the people.

For the most part, we go to those meetings that are held by special interest groups. They are good people to see—I am not saying that. We do not generally see the general run of people. Those old-time rallies and meetings do not occur so much anymore. Through the creative use of film and audiotape, we have made ourselves intangible.

While I am very reluctant to amend the Constitution, I am not opposed to amendments in all circumstances. The Constitution contains a provision, as we all know, for amendments, and it is there for a purpose. Whereas, as in *Buckley v. Valeo*, the Supreme Court creates a significant obstacle to democratic self-government, it is certainly appropriate for us to approve a constitutional amendment. Otherwise, I regard the prospects as slim for comprehensive reform legislation that would both free the Congress from the iron grip of the special interests and put Federal office within the reach of every able and willing American.

By equating campaign expenditures with free speech, the Supreme Court has made it all but impossible for us to control the ever-spiraling money chase. Under current constitutional jurisprudence, any legislation intended to control the cancerous effects of money in politics may necessarily be complicated and convoluted. The complications we are forced to resort to, in turn, may create new opportunities for abuse.

Some argue that money will find a way to control the process, regardless of what we do. I respond that a simple and straightforward limit on campaign expenditures is much more difficult to circumvent than the maze of regulations to which we have had to resort. I wonder, too, whether these opponents of campaign finance reform are willing to permit money to buy anything on the grounds that it is difficult to control.

Even without a constitutional amendment, we can, of course, tinker around the edges, but we cannot enact

comprehensive legislation that will get to the heart of the problem. I wish we could. But the fact is we cannot get the kind of legislation we really need unless we first adopt an amendment to the Constitution. I have come to that conclusion.

We see it every year. The money chase gets tighter, takes more and more money, and the love of money is the root of all evil. We learned that at our mother's knee and from the Bible. The love of money is the root of all evil. Just look at what it has done in politics, and one will see what it has meant.

Our campaign financing system clouds our judgments. Fear of losing advantage is what has driven both parties to be reluctant to enact meaningful expenditure reform.

I understand this is the system we are in. As long as this is the system, if I am running, I do what the system allows me, and I do what the system requires. I try to raise money. It is the most demeaning thing I as a Senator have to experience. Demeaning. I don't like going around asking for money. I abhor it. That is the way it is.

The fixation with maintaining advantage is blinding us to the dangers to our credibility. Credibility is a precious commodity. More important to a politician than—yes, more important—than money. When we lose our credibility, no amount of money will enable us to buy it back.

People out there who are watching: Do you know what campaign financing does to your interests as we, the legislators, pass laws, vote on amendments? Do you, the people, know that you, not organized, do not wield the influence, man for man and woman for woman, that is wielded by the special interest groups? This is not to say that they don't have the best interests of the country in mind. They have the best interests of the country in mind as they see those best interests. We are beholden, we in this body, and in the other body, and at the White House, are beholden to the people who help us to win by giving us contributions. You people who are not organized come in second.

When we lose our credibility, no amount of money will enable us to buy it back. Already, many of our citizens don't vote. They don't think their vote counts. They don't feel we are influenced by their votes, so they don't vote. Let us fear the further erosion of our Republic.

I am sorry that it has come to this. I am sorry that it has come to the point that, if we are going to deal with this Frankenstein monster that is in our midst—this campaign financing system—we have to amend the Constitution of the United States. I am sorry for that.

They say, well, this is the first time, this will be the first occasion in which we would amend the first amendment to the Constitution. What is worse? What is worse? Keeping the first

amendment intact or saving our country, saving our Republic, from its eventual complete destruction because the people in whom the power and the sovereignty resides are no longer the main focus of the attention of legislators and Presidents?

I think to continue down this road is to destroy this Republic and the things for which that flag stands. If there is only one way to save it, and that is to amend the first amendment to the Constitution, then let's amend it.

It is sad. To one who started out in politics with nothing—I didn't have, as I say, a father who could lift me up, who could go to the banks in the city and say, this is my son, help him; who could go to the civic clubs and say, invite my son to speak, help him; who could look to the lawyers in the community and say, I'm a lawyer, I'm a judge, I want you to help my son—I didn't have that kind of father to lift me up and help me in politics. I could hardly put two nickels together.

Now what do we see? We see a situation in which that coal miner's son could never come to the Senate. No coal miner's son could ever lift himself up by the ladder that has no rungs at the bottom and come to the Senate. That could not be one of his or her dreams.

I compliment the distinguished Senator from South Carolina who is a leader in this effort. This is a good time, as Ralph Waldo Emerson said, if only we know what to do with it. Let us not squander an opportunity to begin to fix this thoroughly rotten campaign finance system once and for all. Let us not continue to disappointment the American people.

Yes, I am ready to amend the first amendment to the Constitution. What good is it if we have a first amendment to the Constitution if we destroy the Republic in the meantime? I see this flawed campaign financing system as a real dagger at the heart of our constitutional Republic. What good is a Constitution without a Republic?

As I see it, take your choice: Keep the first amendment, unamended, or continue down this path of destruction of the Republic and everything it stands for.

Let us take a stand and support this proposed amendment to the Constitution.

In Atlanta, there is a monument to the memory of the late Benjamin Hill. Inscribed on that monument are these words:

Who saves his country saves himself, saves all things, and all things saved do bless him. Who lets his country die, lets all things die, dies himself ignobly, and all things, dying, curse him.

I say to Senators, let us save our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I hope everyone had an opportunity to hear that and those who did not have

an opportunity to see the speech of the distinguished Senator from West Virginia in the CONGRESSIONAL RECORD. He talks from a 50-year or more experience here in the Senate, and, assiduous as he is to protect the Constitution, to go with this particular amendment means that we are in the extreme, that it is absolutely necessary.

I feel the same way. I don't like to amend the Constitution. But I take the position that it was the Court itself, in *Buckley v. Valeo*, that amended the Constitution with this distorted bifurcation, equating money with speech and then controlling some but not other moneys. As a result, we end with this duplicitous situation of the money chase.

Let me yield, before I have some other comments, to our distinguished floor leader, Senator DODD.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I hope as well Members who are not here will read the remarks of our colleague from West Virginia. It is about as concise and thorough a description of the current status of affairs as anything you are going to hear or have heard over the last week or so as we have discussed campaign finance reform or, I suspect, that you are going to hear for the remainder of this week or into next week, if we have to take additional time to debate the McCain-Feingold legislation.

There is not a great deal I could add to it. He captures my thoughts, my sentiments, far more eloquently than anything I have ever said about the subject matter, and I have spoken on it on numerous occasions. His language is graphic in a couple of instances, but it is appropriate language to describe the current state of affairs, the current circumstances in which we find ourselves in this beloved Nation of ours.

There is nothing more fundamental. I know there are other subject matters this body wants to address, issues of budget and taxes and education, environment, health care. They are all very important subject matters. They certainly have a more contemporaneous appeal than the subject of campaign finance reform. Certainly every poll that is done in the country indicates that this subject matter ranks near the bottom of issues about which the public cares.

I think I understand why, at least in part. In part, it is because people have become so disgusted with it and have little hope things are going to change and are just so accepting, unfortunately, of the present state of circumstances with no likelihood it is going to change.

While I think these other subject matters have value and importance, in my view nothing we will debate or discuss in the coming Congress or coming Congresses will exceed in value or importance the subject matter which we will decide later today, and during the remainder of the week if the Hollings

proposal is rejected, as I suspect it will be based on earlier votes we have had. I say that with a deep sense of regret because he is addressing the issue in a way that, unfortunately, it can only be addressed.

I am very respectful of the U.S. Supreme Court. As someone who is a graduate of law school, an attorney, licensed in my State, I was trained to revere the Supreme Court of the United States and respect all of its decisions. But the decision in *Buckley v. Valeo*, reached more than a quarter of a century ago, that equates money with speech, could not be more flawed, in my view. That is to suggest that the microphone which I am using here today is equal to speech, or that the sound system in here is equal to speech, or some other form of currency that may exist is equal to speech. Nothing could be further from the truth. Justice Stevens had it right: Money is property, just as this microphone is property, just as the sound systems are property. It is not speech, it is merely a vehicle by which we enhance the volume of our voice.

A columnist and reporter in my State of Connecticut got it right. Only in American politics would we equate free speech with the present set of circumstances. It is an oxymoron, she said. There is nothing free about it. Speech only belongs, in American politics, to those who can afford to buy it. It is not speech at all. But because the Court arrived at that decision, we have found ourselves, over the last quarter of a century, grappling with how we can regulate to some degree this excessive—to put it mildly—explosion in the cost of running for public office. Not just the Senate; in the House of Representatives and local offices in our respective States, the cost has risen dramatically.

I fear, as the Senator from West Virginia has so eloquently stated, if we do not do something meaningful about this, that we do put our democracy in peril. That is not an exaggeration. That is not hyperbole. When we have reached the situation in this country where the maximum contribution you can give is \$1,000—in effect, \$2,000—and we are about to raise that to possibly \$3,000 or \$6,000, for a couple to \$12,000—and an annual calendar year level of contributions by individuals to \$75,000 or a couple to \$150,000, and we are told that is barely enough to finance the campaign system in this country, that we are going to have to index it so we can have incremental increases as the cost-of-living goes up—I always thought cost-of-living adjustments were done for the poor, people on Social Security, people who could not make ends meet, buy groceries, pay the rent, clothe themselves, so we built in a cost-of-living adjustment to assist those people. A cost-of-living adjustment for less than 1 percent of the American public who can afford to write a \$1,000 check to finance a Federal office—they need a cost-of-living

adjustment so they can buy more influence? That is incredible to me, that we would even entertain such a thought as part of the campaign finance reform mechanisms.

I served for 2 years as the general chairman of the Democratic Party, a position I was proud to hold. I did not seek it. I was asked to do it. I filled a similar role to that held by the former majority leader of the Senate, Bob Dole, former colleague Paul Laxalt, and others over the years who had been asked to fill those roles, particularly during a national campaign. I got to see firsthand what could happen when the money chase gets out of hand. It got out of hand in both parties.

My great fear is that if we don't learn these lessons, if we don't understand how disgusted the American public is and how narrow the pool of likely candidates for public office is becoming, and how that jeopardizes the institutions which we are responsible for preserving for future generations to be able to inherit and sit at these desks and chairs, and debate the issues of their day, that we are naive at best and border on corruption at its worst. It is getting to that.

Two-hundred years ago in order to seek public office you had to be a white male who owned property. We changed the laws in this country. It is no longer the case. But we have established a de facto set of barriers that are almost as pernicious. That barrier has become money; unless you have wealth or access to it or are willing to make compromises, a coal miner's son or daughter, as the Senator from West Virginia said, or anyone else of modest means, for that matter, is going to be de facto excluded from seeking public office.

I noted this morning in the New York Times a story by John Cushman, entitled "After Silent Spring Industry Put Spin on All It Brewed." The subject matter of the article concerns the chemical industry and how it is particularly involved in this. But I suspect they are not unique, and that this happens across the board.

It is interesting to read one paragraph. I ask unanimous consent that the entire article be printed in the RECORD.

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

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

AFTER 'SILENT SPRING' INDUSTRY PUT SPIN ON ALL IT BREWED

(By John H. Cushman Jr.)

WASHINGTON, MARCH 25.—The year was 1963, the publication of Rachel Carson's "Silent Spring" had just opened the modern environmental movement, and the chemical industry reckoned it had a public relations emergency on its hands.

Already that year, the industry's trade association had spent \$75,000 scraped together for a "crash program" to counter the book's environmental message. It needed an additional \$66,000 to expand the public relations campaign. Several companies quickly pledged more money to challenge the book's

arguments, according to the association's internal documents.

That chain of events would be repeated time and again, at ever increasing expense, as the industry's lobbying arm in Washington, now known as the American Chemistry Council, confronted the environmental age in the corridors of power and in the arena of public opinion.

Now the industry's practices over the decades are facing unusual and unwanted exposure, as its documents, turned up by trial lawyers in lawsuits against the industry, are being published by environmental advocates on the Web and explored in a PBS documentary on Monday. Many of the documents were disclosed in 1998 in a series of articles in *The Houston Chronicle*, but until now they have not received much wider attention.

The adverse publicity is nothing new for the chemical industry.

"I seem, perhaps like Halley's comet, to float periodically into the orbit of your board," an industry lobbyist, Glen Perry, said to the chemical group's board in 1966, "generally with my hand outstretched in a plea for financial support of efforts to avert, or avoid the consequences of, some frightful catastrophe. Like Rachel Carson."

Or Bhopal. Or Love Canal. Or state ballot initiatives unfriendly to the industry, or legislation tightening regulations on toxic wastes. Or even the industry's growing perception that no matter how much money it spent on public relations—amounts that grew from a few thousand dollars a year to a few million a year as the decades passed—it was losing its war for public opinion.

The industry used many weapons in its campaigns to influence state and federal laws; public relations was just one of them.

Giving money to candidates, of course, played an important role in the industry's strategy, according to a 1980 document discussing "political muscle, how much we've got, and how we can get more."

Spending by political action committees helped its lobbyists gain access to members of Congress, the document said. "But over the long term, the more important function of the PAC's is to upgrade the Congress," it said.

Just as important, said a 1984 document, were carefully orchestrated "grass roots efforts" like the industry's establishment of a pressure group with the benign name Citizens for Effective Environmental Action Now.

The industry spent more than \$150,000 that year to make 25,000 phone calls and send 42,000 pieces of direct mail. Adopting new computer technology for the first time, the group documented more than 7,000 calls and telegrams to seven important Democrats on the House Ways and Means Committee, which was drafting the Superfund legislation governing toxic waste dumps.

"Grass roots delivered three congressmen who were ready to take action during committee writing of legislation," the document said. But the "industry lobby was unable to respond quickly to their offer of help," the industry association's assessment noted. "We must be prepared to provide the congressmen with a simple action plan and legislative language."

But Congress was responding to broader public concerns, and for decades the industry was painfully conscious of how hard it was to sway public opinion.

"The Public Relations Committee realizes that public fear of chemicals is a disease which will never be completely eradicated," a committee member, Cleveland Lane, reported in 1964. "It may lie dormant or appear from time to time as a minor rash, but it can flare up at any time as a major and debili-

tating fever for our industry as a result of a few, or even one instance, such as the Mississippi fish kill, or the publication by some highly readable alarmist, or as an issue seized upon by some politician in need of building a crusading image."

At the same time, Mr. Lane acknowledged that only deeds, not words, could salvage the industry's reputation—a credo that industry lobbyists repeat to this day.

"No public relations operation, no matter how effective, can cover up acts of carelessness or neglect which do harm to the citizens," said Mr. Lane, who worked for Goodrich-Gulf Chemicals Inc. "As long as we produce products or conduct operations which can cause health hazards, public discomfort or property damage, we must do all we can to prevent these situations."

In recent years, the industry has increasingly tailored its publicity campaigns to emphasize its efforts to follow strict safety standards, set forth in a voluntary effort it calls Responsible Care. The effort is intended to control the risks of chemical pollution and help convince a skeptical public that the industry is made up of good corporate citizens.

Among those not convinced of the industry's good faith is Bill Moyers, whose documentary for PBS focuses on the dangers of exposure to vinyl chloride, the subject of litigation by a chemical industry worker's widow that uncovered the documents. The report relies heavily on them to assert that the companies and their trade association covered up the dangers of the chemical, used for making plastic products.

Even before the documentary was broadcast, the industry group charged Mr. Moyers last week with "journalistic malpractice" for not including interviews with its spokesmen or allowing them to preview the program. Instead, Mr. Moyers has invited them to react to his documentary in a half-hour discussion to be broadcast immediately afterward.

"I consider myself in good company to be attacked by the industry that tried to smear Rachel Carson," Mr. Moyers said on Friday.

The Environmental Working Group, an advocacy organization in Washington, plans to publish on its Web site on Tuesday tens of thousands of pages of internal industry documents produced in lawsuits. The group plans to expand the Web site, www.ewg.org, into a wide-ranging archive of industry documents.

The documents cover not just vinyl chloride and public relations crusades but every facet of the industry association's work, from lobbying on taxes and price controls to transportation safety and the growing array of laws and regulations that have taken effect since the 1960's.

In 1979, the industry began a multi-million-dollar advertising effort to counter "growing evidence that the public image of the chemical industry is unfavorable, and this has negative results on sales and profits," one document explained.

Then in 1984, disaster struck with the explosion of a chemical plant in Bhopal, India, which killed and injured thousands of people.

The industry found in surveys later that "we are perceived as the No. 1 environmental risk to society," an industry association official told the group's board in 1986.

Despite continued spending to improve its image, little had changed by 1990, association officials fond.

"There is a rising tide of environmental awareness in the country," a document reported that year. "Favorable public opinion about the industry continues to decline." In a decade, the percentage of the public that considered the industry under-regulated grew to 74 percent from 56 percent.

So as the environmental groups, with membership expanding by hundreds of thou-

sands of people a year, laid plans for a 20th celebration of Earth Day, in 1990, the industry worked to make its voice heard, too.

For the first time, it began to advertise its Responsible Care program, setting aside a \$5 million, five-year budget to make its approach known to the public. "The public must see an entire industry on the move," one document said.

"The term 'public relations' is morally bankrupt," a memorandum cautioned, "and yet, done properly, is exactly what is needed to make Responsible Care work."

And in interviews last week, the group's lobbyists said that Responsible Care was steadily improving the industry's environmental performance—and that its latest polling suggested this approach now seemed to be winning over the public.

"The evolution of an industry is a journey," said Charles W. Van Vlack, the American Chemistry Council's chief operating officer. "It is a fascinating evolution in terms of attitude and in terms of performance. We went through the process of the public coming to terms with our industry before most, if not all, other industries. It was in our face—we had to deal with it."

Mr. DODD. As is my colleague from West Virginia, I am most reluctant to amend the Constitution. I have resisted almost every single effort except this one during my 20 years as a Member of the Senate. I cherish and carry with me every day a copy of the Constitution given to me by the Senator from West Virginia, my seatmate. In fact, it is inscribed by him to me. I cherish it.

To illustrate the point, I will bring it out of my pocket. I carry it every day—Senator BYRD carries his with him as well—to remind me of the important role we fill here as Members of this body, and how we should cherish and protect that document. But I know of no other means by which we can effectuate a fundamental change in these laws.

I think we have made some decent progress on the McCain-Feingold legislation. I am a supporter of it because it is the only means by which we are going to be able to bring some possible discipline to the process. It will slow down the exponential growth of the cost of these campaigns.

But the real answer is what the Senator from South Carolina has offered. That is the real answer. It is the only answer.

Someday we may adopt this, if the situation continues to run out of hand. The Senator from South Carolina, myself and the Senator from West Virginia may no longer be Members of this body. I am sorry to say that, but that may be the case.

Others may look back to this debate and the debate we had in 1997, or other debates over the years, in which the Senator from South Carolina has raised this proposal on the issue of campaign finance reform that came to the floor of the Senate, and rue that we did not in earlier times take the steps that the Senator has suggested as a way of providing us with a more simple and clear-cut manner by which to regulate the condition of our Federal elections.

As the Senator from South Carolina has pointed out, we have now run Presidential elections for 25 years with public financing. No less a conservative than Ronald Reagan accepted public money, as had George Bush. As a condition of accepting Federal dollars, of course, they were limited in the amount they could spend.

Public financing has even less of a chance of being adopted by this Congress than the proposal offered by the Senator from South Carolina. I am sorry that is the case as well—not because I particularly like the idea of public financing. But in the absence of that, and given the *Buckley v. Valeo* decision, it is very difficult for us to craft legislation that is going to survive constitutional scrutiny in light of the *Buckley v. Valeo* decision, hence the value of the importance of the amendment offered by the Senator from South Carolina.

I noted this morning that William Safire had a column called “Working Its Will,” in which he endorses the McCain-Feingold approach, as I read it. But I was struck by the story told at the outset of the column, which I will share with my colleague. He said:

The story is told of the corrupt Albany judge who called opposing trial lawyers into his chambers.

“You offered me a \$5,000 campaign contribution to throw this case to the plaintiff,” said the fair-minded judge, “and defendant’s lawyer here just offered me \$10,000 to find for his client. Now how about plaintiff giving me \$5,000 more, evening things up—and we try the case on the merits?”

It almost seems like that is what happened here. Money talks, but money is not speech. That is the essence of the offense and defense of campaign finance reform.

William Safire goes on in this column.

Mr. President, I ask unanimous consent that column be printed in the RECORD.

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

[From the Washington Post]

WORKING ITS WILL

(By William Safire)

The story is told of the corrupt Albany judge who called opposing trial lawyers into his chambers.

“You offered me a \$5,000 campaign contribution to throw this case to the plaintiff,” said the fair-minded judge, “and defendant’s lawyer here just offered me \$10,000 to find for his client. Now how about plaintiff giving me \$5,000 more, evening things up—and we try the case on the merits?”

Whether the bidding war that is now American politics will continue in this fashion is to be decided in the Senate this week. Every senator knows the subject cold and need not rely on staff expertise or party discipline for guidance. Rarely do voters see such a revealing free-for-all.

Money talks, but money is not speech. That, in essence, is the offense and defense of campaign finance reformers.

That heavy political contributions influence officeholders is beyond dispute. Money for “access” rarely qualifies as prosecutable bribery, but the biggest givers are usually

the biggest receivers. The pros know that a quo has a way of following a quid and the public is not stupid.

The purchase of a pardon by Marc Rich haunts the Senate this week. The stain spreads; now we learn that the fugitive billionaire, with \$250,000 to the Anti-Defamation League, induced its national director to lobby President Bill Clinton for forgiveness and thereby bring glee to the hearts of anti-Semites. (Abe Foxman should resign to demonstrate that ethical blindness has consequences.)

But the hurdle that Senators John McCain and Russell Feingold must jump is this: does the restriction of money in campaigns deny anyone freedom of speech?

Of course it does. But we abridge free speech all the time, in protecting copyright, in ensuring defendants’ rights to fair trials, in guarding privacy, in forbidding malicious defamation and incitement to riot. Because no single one of our rights is absolute, we restrain one when it treads too heavily on another.

That’s why our courts have held repeatedly in the past century that the Constitution permits restrictions on political contributions. Just as antitrust laws encouraged competition in business, anti-contribution laws have enhanced competition in politics. Freedom of speech is diminished when one voice who can afford to buy the time and space is allowed to drown out the other side.

Washington opponents of campaign finance reform offer less lofty arguments, too.

1. “Holding down the number of paid political spots will increase the power of the media at the expense of the political parties.” And what do my ideological soulmates fine so terrible about that? The wheezing liberal voices of the Bosnywash corridor are as often as not clobbered by the intellectual firepower of conservative columnists, Wall Street Journal editorialists and good-looking talking heads. Wake up and smell the right-wing cappuccino, fellas.

2. “If we close the soft-money loop-hole, money will soon find another way to reach politicians.” Fine; that will provide a campaign platform for the next generation’s great white hat. The tree of liberty must constantly be refreshed by the figurative blood of tyrannous fund-raisers, as Jefferson almost said.

3. “If this goo-goo abomination passes with all its amendments, and any one item is struck down by the courts, then the whole thing must go up in smoke.” Do Republicans really want to hold that unseverability gun to the head of the Rehnquist court? Why, if you’re so hot for freedom of speech, tempt the high court to weaken the First Amendment by letting a questionable part of an all-or-nothing law through?

Tomorrow the senators seeking to keep in place the Clinton-McAuliffe fund-raising abuses that so polluted the 90’s will offer the Hagel substitute for the McCain-Feingold bill. It’s sabotage, plain and simple, “limiting” soft-money gifts to a half-million dollars per fat-cat family per election cycle.

Senators, fresh from offending billionaire candidates and from thumbing the eye of the powerful broadcasters’ lobby, should cherry-pick a few items from the Hagel substitute, up the hard-money limit to \$2,500 and take their chances on a sore-loser filibuster by voting down the all-or-nothing trick.

If that’s the will the Senate works, I think President Bush would tut-tut and sign McCain-Feingold. That’s because I’m an optimist and believe in the two-party system.

Mr. DODD. Mr. President, there is a column that addresses a situation in my own State of Connecticut but also talks about the subject matter of cam-

paign financing across the country, written by Michele Jacklin of the Hartford Courant.

I ask unanimous consent that her column be printed in the RECORD.

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

[From the Courant, March 25, 2001]

CAMPAIGN FINANCE BILL LEVELS PLAYING FIELD

(By Michele Jacklin)

Warren Buffett, the third richest person in America and someone who could buy any politician he wants, weighed in on the campaign finance reform debate last Sunday.

Characterizing the existing fund-raising system as “a shakedown of sorts,” Buffett said politicians offer a product for sale “and the product is access and influence.”

“It’s not buying votes, but it’s getting in the door. And the people with the most money are going to get in the door the most frequently,” Buffett said on ABC’s “This Week.”

Mind you, Buffett is so rich he could walk through any door unimpeded. But the chairman of Berkshire Hathaway and a growing number of people in all walks of life have come to realize that the pay-to-play system is unfair. Thanks to outdated laws and wrong-headed judicial decisions, this nation has become a plutocracy in which only the voices of the wealthy are heard above the din.

The word “voices” is especially crucial in the debate about campaign finance reform that is raging in Washington and in Hartford. The U.S. Supreme Court has held that campaign spending is speech and cannot be constrained under the First Amendment. But do you think the nine jurists on the court, most of whom are millionaires themselves, intended that the voices of the rich should be louder and stronger than the voices of the less privileged?

To be sure, President Bush and a majority of Republican officeholders think so. They oppose congressional efforts to ban the use of unregulated, unlimited “soft money” in federal campaigns. Just the other day, with Democratic help, the Senate approved an amendment to the McCain-Feingold bill that would allow federal candidates to raise substantially larger amounts of money from individuals when they run against wealthy candidates who bankroll their own candidacies.

As a result, the National Voting Rights Institute switched from supporting the soft-money legislation to opposing it, saying: “For the vast majority of Americans who cannot afford to make a \$1,000 contribution, the amended McCain-Feingold bill now makes matters worse.”

And Doris Haddock, a 91-year-old woman who walked across America to raise awareness of the issue, said of the amendment: “It creates a fairer fight between the rich and the super-rich, but it still leaves out the man on the street. What’s the point of a level playing field when the field is on the moon?”

Here in Connecticut, Democratic legislators are wrestling with ways to not only make the playing field a little more even—at least in terms of statewide races—but to keep it on planet Earth.

You’ll hear two major complaints about the public financing bill passed Wednesday by the Government Administration and Elections Committee. First, that taxpayers shouldn’t be forced to pay for political campaigns and second, that the legislation isn’t perfect.

The first objection is absurd. In fact, taxpayers wouldn’t be forced to do anything;

they would be able to choose whether to contribute \$5 via checkoff on their state income tax forms. Also, an individual's taxes pay for many things that he or she might not like. I don't want my federal taxes used to build Osprey tilt-wing aircraft, whose only purpose I can figure is to kill American military personnel. Guess what? Tough noogies.

As for it not being a perfect bill, OK. It's not. Sen. Andrew W. Roraback of Goshen, using some contorted logic, urged his colleagues to vote for Gov. John G. Rowland's alternative plan "in the belief that doing something is better than doing nothing."

But if Rowland's minimalist—and constitutionally suspect—plan (which was rejected by the elections panel) is better than nothing, why not take the next step and rid the system, to as great an extent as possible, of special-interest money? But Roraback and his fellow Republicans, with the exception of freshman Rep. Diana S. Urban of North Stonington, opposed the public financing bill.

Under the proposal, candidates for governor and other statewide offices would be eligible for public financing if they first raised a set amount of money (90 percent of it from Connecticut residents) to establish their legitimacy and voluntarily agreed to spending limits. Candidates would be prohibited from accepting money from political committees.

The bill is a huge improvement over last year's version, which Rowland vetoed, in that it applies to the entire campaign cycle, not just to the months following the parties nominating conventions.

But there is an imperfect part. The bill doesn't go far enough in limiting the influence of special interests in legislative campaigns. The financing plan is modeled on one used in Nebraska: A candidate would voluntarily agree to spending limits. If his or her opponent violated those limits, the candidate would be eligible for some public money. PACs and lobbyists would face restrictions on what they could give.

Rep. Alex Knopp of Norwalk, the chief architect of the bill, acknowledged its flaws, but said there wouldn't be enough state money, at least not right away, to offer public financing to everyone.

Should the bill reach his desk, Rowland will probably strike it down again. In the name of free speech, special interests will be allowed to continue to unduly influence our elected leaders.

Make no mistake, those who hide behind the shield of free speech have turned it into an oxymoron. In the context of American politics, speech isn't free. It belongs only to those who can afford it.

Mr. DODD. Mr. President, she makes the point, and I will quote her. I should give her credit for this. She says:

Make no mistake, those who hide behind the shield of free speech have turned it into an oxymoron. In the context of American politics, speech isn't free. It belongs only to those who can afford it.

That says it about as well and as concisely as anything I have seen in print.

We will vote on this matter later today. We had 33 votes or thereabouts the last time, and I am hopeful we may get a few more of those who will want to join us in what I consider to be a noble cause.

I thank my colleague from South Carolina for his efforts. As he has pointed out on numerous occasions, there are other examples where we limit speech. Speech is not a right without its limitations. And there are

countless examples of where, in fact, we limit speech because of circumstances that we have discerned to be more valuable and more important than unfettered speech.

Certainly, in my view, nothing can be more serious than the debate about campaign finance reform and trying to put the brakes on slowing down the money chase, trying to make seeking public office more available to more people, people with good ideas and creativity and imagination and energy who serve in public life but who, because of the rising costs of these campaigns, will be excluded from that possibility.

The Senator from South Carolina has come up with the only workable solution that I can think of at this juncture. In the absence of it being adopted, of course, I will continue to support McCain-Feingold because I know of no other way in the absence of that than trying to do something about it.

A better way of dealing with this is to adopt the amendment being offered by the Senator from South Carolina. I am pleased to be a supporter of it. I thank him for doing so.

I regret there are not more Members here to engage in this debate today. I realize it is Monday. As the Senator from West Virginia said, people are probably out holding fundraisers all across the country. As one of our colleagues pointed out the other day, you have to raise \$100,000 a week now to compete effectively in one of the largest States in this country. In my State, one of the smallest States in the country, you have to raise over \$1,000 a day, every day; in fact, more than that in order to compete in a contested matter in the small State of Connecticut. I have watched a statewide race go from \$400,000 in the mid-1970s to \$5, \$6, \$7 million today in Connecticut.

That is obscene. There is no other way to describe it. It is obscene. And anyone who has looked at it agrees. The idea, as some have said, that the problem is not that there is too much money in politics but that there is too little really just runs smack into what most Americans, the overwhelming majority of Americans, believe. They understand it. I think we know that they understand it.

I think it is regrettable that we are not going to do something more about it, particularly the idea that is being suggested this afternoon by the Senator from South Carolina.

With that, Mr. President, I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Again, the distinguished Senator from Connecticut passionately speaks common sense. It is the most moving speech I have heard with respect to this particular initiative. I wish everyone could have been here to hear that. I hope they look at his remarks in the RECORD so they can understand just exactly what is behind this particular initiative.

Mr. President, Senator SPECTER and I have a constitutional amendment which states that Congress is hereby authorized to regulate or control expenditures in Federal elections. Senator SPECTER and I have been here before to argue for this same amendment and we are pleased to have this opportunity again, this time with the support of Senators BYRD, CLELAND, MILLER, BIDEN and REID. But Mr. President, this is perhaps the most timely debate for this Constitutional Amendment because critics here in this body and commentators have spent much time discussing the constitutionality of McCain-Feingold and the various proposed amendments to this bill.

I want to state clearly, here at the outset, that this amendment does not frustrate, oppose, support, or endorse any particular plan of reform. Rather, it is the first step toward meaningful reform, regardless of the approach. To that end, I hoped to debate this at the conclusion of McCain-Feingold so that it could not be used as a sword against that measure.

We had our first fit of conscience when we passed the 1974 Federal Election Campaign Act. This act came about due to the untoward activity in the 1967 and 1971 Presidential races. I want to remind everyone that this was a deliberate, bipartisan effort. It set spending limits on campaigns, limited candidates' personal spending, limited expenditures by independent persons or groups for or against candidates, set voluntary spending limits as a condition for receiving public funding, set disclosure requirements for campaign spending and receipts, set limits on contributions for individuals and political committees, and created the Federal Election Commission. This was a comprehensive proposal, with each part complementing the other.

However, the Supreme Court supplanted this regime with its views on campaign finance in the now infamous decision, *Buckley v. Valeo*. The resulting system put a premium on fund raising and encouraged covert money donations. Don't take my word for it, look at Justice Kennedy's dissenting opinion in the recent Court decision, *Nixon v. Shrink Missouri Government PAC*:

The plain fact is that the compromise the Court invented in *Buckley* set the stage for a new kind of speech to enter the political system. It is covert speech. The Court has forced a substantial amount of political speech underground, as contributors and candidates devise even more elaborate methods of avoiding contribution limits, limits which take no account of rising campaign costs. The preferred method has been to conceal the real purpose of the speech. Soft money may be contributed to political parties in unlimited amounts . . . Issue advocacy, like soft money, is unrestricted . . . while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public, is not. The current system would be unfortunate, and suspect under the First Amendment, had it evolved from a deliberate legislative choice; but its unhappy origins are in our earlier decree in

Buckley, which by accepting half of what Congress did (limiting contributions) but rejecting the other (limiting expenditures) created a missshapen system, one which distorts the meaning of speech.

Forgive me for the length of the above quote, but I feel Justice Kennedy hit the nail on the head. Now, we must excise this cancer from our political system. But it is an exercise in futility to address any particular campaign reform plan without first enacting a constitutional amendment because Buckley is still the law of the land.

One critical flaw in the Buckley decision is that the Court equated money with speech. Justice Stevens, however, correctly noted in his concurring opinion in *Nixon v. Shrink Missouri Government PAC*, "Money is property; it is not speech." Justice Stevens explains that while the Constitution protects an individual's decision about how to use his or her property, "[t]hese property rights, however, are not entitled to the same protection as the right to say what one pleases." An individual's right to get up on a stump and speak on behalf of or in opposition to a candidate is markedly different from "speaking" with money. Justice Kennedy, also in *Shrink*, observes that there is a difference between inspiring volunteers through speech and hiring volunteers with money. The first activity deserves the utmost protection. Unfortunately, those are minority views of the Court.

For the sake of argument, assume money is speech as my colleague from Kentucky asserts. At the start of the debate we heard the Senator from Kentucky provide me the compliment of saying that "I understand the nub of the issue." Of course after that fleeting moment he argues why we should not accept this measure. Of course there was a time when he saw the value of this approach. In 1987, my colleague offered a constitutional amendment to restrict the amount of money wealthy individuals could spend on their election. The important point is not that he once advocated that position, but rather, it recognizes that speech is not completely unfettered when there are significant interests that require its limitation. The following are a few examples of where speech is limited: If it creates a clear and present danger of imminent lawless action; if it constitutes fighting words; if it is obscene; [The Supreme Court ruled in 1978 in *FCC v. Pacifica* that the Federal Communications Commission could limit what they considered offensive language on the airwaves]; if it constitutes defamation; if it amounts to false and deceptive advertisement.

Let me also point out a couple of speech restrictions perhaps more closely related to the current debate. The Hatch Act limits federal employee involvement in campaigns. Admittedly, the "Hatch Act Amendments of 1993" removed most of the restrictions on voluntary, free-time activities by federal employees; however the following

are a sample of the restrictions that still apply:

Federal employees are generally restricted from soliciting, accepting or receiving political contributions from any person; they may not run for office in most partisan elections; they are generally prohibited from engaging in partisan campaign activity on federal property, on official duty time, while wearing a uniform or insignia identifying them as federal officials or employees, or while using a government vehicle.

Finally, as Justice Breyer, in *Nixon v. Shrink*, notes "The Constitution often permits restrictions on speech of some form in order to prevent a few from drowning out the many—in Congress, for example, where constitutionally protected debate, Art. I, §6, is limited to provide every Member an equal opportunity to express his or her views. Or in elections, where the Constitution tolerates numerous restrictions on ballot access, limiting the political rights of some so as to make effective the political rights of the entire electorate." This is an important point Mr. President. I have long maintained that it is ill-advised to allow one who possesses more money to drown out the speech of another with less money. Essentially what we are saying now is if you have money, speak, if you don't, you have the right to keep your mouth shut. It is from this line of arguments that I really draw my conclusion that I am the one promoting speech.

So there is precedent for limiting speech where there are equally important interests at stake. Our campaign system is of sufficient importance and has sufficient problems to warrant limited restrictions. Just consider the effect of the cost of running for office. The exorbitant costs of campaigns today are a real hurdle, preventing many people from throwing their hat into the arena. The average amount spent on a campaign for the United States Senate in the year 2000 was approximately \$7 million. Can you imagine that. That means you have to raise on average \$22,000 each week for the six years you are in the Senate in order to get ready for your next election. Or stated another way, you have to raise over \$3000.00 per day. Yes that's per day. Saturday and Sunday, you need to raise \$3000.00. Something is wrong when you have to raise more on Sunday than your church.

Sadly this has really become a money chase. Rampant fund raising threatens the very fabric of democracy because it causes people to lose faith in the political system. They see their candidates motivated by contributions and not by important issues in their community. It often seems to the voting public that its voice is being drowned out by the hum of cash registers. That of course was not always the case. When I first ran for office, much of my campaign work was accomplished through volunteers. It was more enjoyable to campaign because

you could really focus on the individual citizen rather than on raising money. You can't afford to go door to door anymore.

By extension, while politicians are out courting money they are obviously not in Washington addressing the concerns of their constituents. There is no doubt that our current campaign finance system has bred absenteeism in the Senate chamber. We no longer arrive to work at 9 o'clock in the morning on Monday and struggle to close shop by 5 o'clock in the afternoon on Friday like we once did. Now on Monday and on Tuesday morning, there is no real floor debate because so many people are out raising money. On Wednesdays and Thursdays, we request time windows so that we can do more fund raising. And then as soon as Friday rolls around, we bolt from the starting blocks for another leg in the money race. If curing this sickly system isn't in the governmental interest, then I don't know what is.

We realize these problems and are now faced with the present dilemma of deciding how to reform this broken system under the misguided framework laid out in Buckley. The Senator from Arizona and the Senator from Wisconsin are to be commended. They are dedicated and have successfully drawn attention to this issue. But their critics assert the same two arguments: 1. their proposal does not go far enough, or 2. their proposal goes too far and runs afoul to the Constitution. This will be the case with any serious proposal because of Buckley.

The unconstitutionality of the Snowe-Jeffords portion of the McCain-Feingold bill which addresses issue advocacy has been talked about, and written about. Recently, Charles Lane wrote an article for the Washington Post titled, "Court Challenge Likely if McCain-Feingold Bill Passes." The reason for this is that in Buckley, the Supreme Court held that campaign finance limitations apply only to express communications, such as "vote for," "elect," "support," "cast your ballot for," and "Smith for Congress," that advocate the election or defeat of a clearly identified candidate for federal office in express terms. If express words such as these are not present, then it is issue advocacy and cannot be regulated. The circuit courts, following the Buckley precedent, have drawn a bright line by requiring these express words and rejecting intermediate tests to determine whether something constitutes express advocacy or issue advocacy. Maine Right to Life Committee v. FEC, Oct. 6, 1997, the First Circuit affirmed the district court's opinion that the "reasonable person" standard in its definition of "express advocacy" infringed upon issue advocacy, an area protected by the First Amendment. The Fourth Circuit reached a similar conclusion in *FEC v. Christian Action Network*, 92 F.3d 1178, 4th Cir. 1997. The Second Circuit, in Vermont Right to Life Committee v.

Sorrell, determined state campaign regulations were unconstitutional because they regulated express and implicit advocacy. It is evident that when the government seeks to regulate anything more than express or explicit advocacy, which is what they try to do in McCain-Feingold, the courts strike it down.

Mr. President, the soft money ban of McCain-Feingold also faces constitutional challenges. The Supreme Court made it clear in Buckley that any restriction on First Amendment rights must be narrowly tailored to further a substantial governmental interest such as the prevention of corruption or the appearance of corruption. In *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, Colorado I., the Court raised doubts about the risk of corruption between parties and candidates. On remand to the district court, Colorado II, the court examined whether section 441a(d) of the FECA may constitutionally impose coordinated expenditure limits upon parties. The lower court found that “contributor-to-party-to-candidate pressure” is an “unlikely avenue of corruption” and that party pressure over candidates does not result in corruption. The court reasoned that political parties serve to promote political ideas and by deciding whether or not to support a candidate that subscribes to these ideas does not equal corrupting influence. This case was again appealed to the Tenth Circuit. In its May 5, 2000 decision, the circuit court affirmed the district court and echoed its reasoning. Allow me to read the following quotes from the circuit court’s decision:

“Political parties today represent a broad-based coalition of interests, and there is nothing pernicious about this coalition shaping the views of its candidates.”

“However, the premise of this theory, namely that, political parties can corrupt the electoral system by influencing their candidates’ positions, gravely misunderstands the role of political parties in our democracy,” and finally;

“The opportunity for corruption or its appearance of corruption is greatest when the political spending is motivated by economic gain. As discussed below, political parties are diverse entities, one step removed from the candidate, and they exist for noneconomic reasons.”

Based on these cases, the ban on soft money is unconstitutional as well. James Bopp is general counsel to the James Madison Center for Free Speech and served as counsel in more than 60 election-related cases, including the *Maine Right to Life v. FEC* and the *Vermont Right to Life v. FEC* cases mentioned earlier. Mr. Bopp is certainly an expert in this area. That is why I found his analysis of McCain-Feingold particularly persuasive. According to Bopp:

Because McCain-Feingold 2001 prohibits the raising of “soft money” by national po-

litical parties, they have no such money available for issue advocacy, legislative, and organizational activities. It treats political parties as if they were federal-candidate election machines . . . Yet these restrictions fail constitutional muster. Political parties enjoy the same unfettered right to issue advocacy as other entities, which is especially appropriate because advancing a broad range of issues is their *raison d’être*. “Reforms” banning political parties from receiving and spending so-called “soft money” cannot be justified as preventing corruption, since the Supreme Court has already held that interest insufficient for restricting issue advocacy in Buckley.

According to Bopp, if there is not the threat of corruption or the appearance of corruption when we speak of political parties, then you can’t restrict how they raise their money. Thus, the soft money regulations in McCain-Feingold are also likely to be found unconstitutional.

In light of the above, a constitutional amendment is a necessary first step to real reform. Until we do this we are merely trying to patch a leaky dam with Band-aids. Certainly, amending the constitution is not something we should do lightly. But, campaign finance goes right to the heart of our democracy. That is likely the reason that of the nine most recent amendments, seven relate to our electoral process: The 19th amendment gave women the right to vote; the 20th set the beginning of Presidential and Congressional terms and provided for succession of the President and Vice President, (i.e., this amendment established procedure to replace the President or Vice President elect upon their death or incapacitation); the 22nd amendment provided Presidential term limits; the 23rd amendment provided the D.C. electoral votes in Presidential elections; the 24th amendment eliminated the Poll tax; the 25th amendment established the procedure for Presidential succession whether by death or incapacitation; the 26th amendment changed the voting age to 18.

Surprisingly, the average length of time it took for passage of Amendments 20-26 was a little over 17 months. What’s even more compelling is the fact that the 24th amendment already recognizes the influence of money on the freedom of political speech. It says that it is unconstitutional to place a financial burden on voters in order for them to voice their political opinions at the polls. In other words, it gives us “one man, one vote.” The poorest of the poor can cancel out the richest of the rich. This is the same spirit that’s driving campaign finance reform today.

Mr. President, it isn’t that the people do not trust us. I think they are bored with us. When you talk about campaigns and everything else like that, today’s model is, you hire a consultant, and he gets the poll, and you get seven or eight hot-button items or issues, and you counsel: Do not take too strong a position pro or con—for or against—but, on the contrary, say you are concerned: “I’m troubled.” Every-

body who comes to this blooming place is troubled, and they are concerned. But I can’t find them taking a position on anything. And that goes for Republicans and for Democrats—all the candidates.

So unless you get a unique individual, such as the Senator from Arizona, Mr. MCCAIN, who had no poll, obviously, to get around to this campaign finance—and certainly it was not boring. He kept them on fire, and kept them going, and kept them interested—and keeps them interested. That is why we are having this debate. But the truth of the matter is that politics has been taken out of campaigning.

Let me emphasize what the Senator from West Virginia was talking about regarding campaigns. No. 1, we used to have nothing but volunteers. I ran for the State house of representatives for \$100 back in 1948—over 50 years ago. There were 24 candidates. I led the ticket. But I worked, and I saw people. I talked and listened to people. There weren’t fundraisers to go to.

Now, in contrast, there are only fundraisers to go to. In fact, on the recent campaign, I was going around not just thanking but talking to old friends, and many said: Why are you coming around now? You have already won a wonderful race by a good majority. Why are you coming around now?

I said: I didn’t get to see you. I didn’t get to talk to you. I could only go to fundraisers.

Mind you me, if you have run, as I have, for the legislature, for Lieutenant Governor, Governor, and the U.S. Senate—I have been elected seven times—at the country store at the crossroads outside of Honea Path on the way into Anderson, they want to know why I didn’t come by. So I go by that shift at a mill in Edmund, SC. If I don’t get to that 3 o’clock shift, I have “Potomac fever,” I have forgotten about the people.

So I know what it is to campaign without money. It is much better than this money chase and the TV squibs about how I am against crime, how I am for education. That crowd over there, they come out for education. They did their best to abolish the Department under President Reagan, under President Bush, under President Clinton. They had the Contract in the mid-1990s, a few years ago, and wanted to abolish the Department of Education. But that is canned now. They are all for education. They are not for it, but they have to identify with it because the company consultants have said so. That is what is going on.

So the people really are bored with all the campaigning because there is nothing to it. You can’t get them to take a stand other than they are just for this or that popular thing. They finally found out it was unpopular to try to veto, but they tried for 20 years to abolish the Department of Education. I can tell you because I was here and helped defend it over those 20 years.

But the people have been taken out of the campaign themselves. That is all

you have, time to go on the money chase. Obviously, those making the contributions have already made up their mind or they wouldn't have come to the event in the first instance. And you wouldn't have gone to the event except for the money involved.

So there it is. I think that at this particular time, other than citing a dozen variations of the first amendment—or you might say amendments to that first amendment—I think it ought to be emphasized just exactly what has occurred in the words of Justice Kennedy in the Nixon v. Shrink Missouri case. I quote from him:

The plain fact is that the compromise the Court invented in Buckley set the stage for a new kind of speech to enter the political system. It is covert speech. The Court has forced a substantial amount of political speech underground, as contributors and candidates devise even more elaborate methods of avoiding contribution limits, limits which take no account of rising campaign costs. The preferred method has been to conceal the real purpose of the speech. Soft money may be contributed to political parties in unlimited amounts. . . . Issue advocacy, like soft money, is unrestricted. . . . while straightforward speech in the form of financial contributions paid to a candidate, speech subject to full disclosure and prompt evaluation by the public is not. The current system would be unfortunate, and suspect under the First Amendment, had it evolved from a deliberate legislative choice; but its unhappy origins are in our earlier decree in Buckley, which by accepting half of what Congress did (limiting contributions) but rejecting the other (limiting expenditures) created a misshapen system, one which distorts the meaning of speech.

Let me add my comment: And distorts the freedom of speech.

The constitutional amendment will give the opportunity to the U.S. Congress to restore that freedom of speech to all Americans.

We have used over three-quarters of our time, Mr. President, and I have some speakers coming who want to speak when they arrive here at 5 o'clock. So let me suggest the absence of a quorum. I would like to speak to the distinguished leader on the other side to see if I could charge it to him, or certainly not just run the time out in a quorum call and then have 2 hours and no chance to respond. But I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. 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, I ask unanimous consent to speak as in morning business for about 10 minutes or less and that the time be counted against the opponents of the legislation. I am told, talking to staff, that is not objectionable.

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

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

The PRESIDING OFFICER. The Senator from Pennsylvania.

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

Mr. HOLLINGS. Mr. President, before we have the quorum, the Senator from Pennsylvania is the principal co-sponsor. We have 20 minutes remaining. We have some other speakers coming. I will try to borrow some time from Senator McCONNELL when he regains the floor. I ask unanimous consent that the quorum call then be charged to both sides.

Mr. SPECTER. Mr. President, I have just arrived from Pennsylvania. I am going to take about 3 minutes to prepare a statement. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. SPECTER. 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. SPECTER. Mr. President, again, I join my distinguished colleague from South Carolina, Senator HOLLINGS, in offering a constitutional amendment which, simply stated, would allow the Federal Government, through its Congress, signed by the President, or overriding the Presidential veto, and the State legislatures, in due form according to State law, to enact legislation to limit expenditures and contributions on campaign matters.

In so doing, I would not in any way suggest changing the language of the first amendment, which I consider sacrosanct and have personal reverence for. But in moving for a constitutional amendment on this issue to overturn Buckley v. Valeo, there is no reference here to changing any language of the first amendment, but only to changing the interpretation of the Supreme Court of the United States in Buckley v. Valeo. That decision was extraordinarily complicated. The main portion, which I hold in my hand, runs 145 pages. That is not considering the dissents which were brought. Chief Justice Burger concurred in part and dissented in part, and Justice White concurred in part and dissented in part. Justice Marshall dissented in part. Justice Rehnquist concurred in part and dissented in part. By the time you finish reading the opinion in Buckley v. Valeo, what you find is a constitutional quagmire—a constitutional quagmire which, in the past 25 years, has led to extraordinary litigation and some of the most absurd results in constitutional history.

For example, the controversy has arisen as to what is an advocacy ad and what is an issue ad. The Supreme Court of the United States, in one small paragraph in this lengthy opinion, said that in order to uphold the statute so that it would not be considered vague and therefore violative of the due process clause of the fifth amendment, uncon-

stitutional on grounds of vagueness, that the statute would require specific language, such as "vote for" or "vote against," "support," or "defeat." That has brought about the dichotomy on what is an advocacy ad, which the Supreme Court designed as "vote for," or "vote against," et cetera, or what is an issue ad.

Look at what has happened. In the 1996 campaign, President Clinton put on the following ad, which was deemed to be an issue ad, not an advocacy ad. What I am about to read to you has been interpreted to be just on issues and not urging the election of President Clinton or the defeat of Senator Dole. This is the ad:

America's values: Head Start, student loans, toxic cleanup, extra police, protected in the budget agreement. The President stood firm. Dole-Gingrich's latest plan includes tax hikes on working families, up to 18 million children facing health care cuts, Medicare slashed \$167 billion. Then Dole resigns, leaving behind him the gridlock he and Gingrich created. The President's plan: Politics must wait. Balance the budget. Reform welfare. Protect our values.

It would be hard to conceive an advertisement which was any more emphatic to reelect President Clinton and to defeat Senator Dole. But the exact same pattern was followed by the other side, the Republican National Committee. Listen to the following ad:

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

Then there is a videotape of Clinton saying, "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 that I think I raised them too much." Then President Clinton's face fades out and the announcer comes back on and says, "OK, Mr. President, we are surprised. So now surprise us again. Support Senator Dole's plan to repeal your gasoline tax and learn that actions do speak louder than words." Now how that ad could possibly be interpreted as dealing only with issues and not with the advocacy of Senator Dole's election and the defeat of President Clinton's bid for reelection—I don't like the expression "boggles the mind," but it boggles the mind. But that is the consequence of Buckley v. Valeo.

And, then, referring to a single ad in the election for the year 2000 Presidential—this is a brief statement because of limited time. We could go into many advertisements that are the same, advocating the election of one candidate and the defeat of the other, but because of Buckley v. Valeo are held to be issue ads. This is an unusual one, even in the context of issue ads. This is in the election for the year 2000. This is an advertisement paid for by the Democratic National Committee:

George W. Bush chose Dick Cheney to help lead the Republican Party. What does Cheney's record say about their plans? Cheney was only one of eight Members of Congress to oppose the Clean Water Act, one of few to

vote against Head Start, and he voted against the school lunch program and against health insurance for people who lost their jobs. Cheney, an oil company CEO, said it was good for OPEC to cut production of oil and gas so prices can rise. What are their plans for working families?

It is obvious that the language just read urges defeat of the candidate, Vice President CHENEY. But how ludicrous is it to say that this could remotely be considered an issue ad when it takes up the Clean Water Act? There has been no debate about the Clean Water Act. It could not possibly be an issue on the American political scene. It talks about the Head Start Program, which has been accepted in America for more than a decade—hardly a matter that relates to an issue—or the school lunch program. Again, it is absolutely ludicrous to say that those matters relate to issue advertisements.

All of this has happened because of the progeny of *Buckley v. Valeo*. The decision in *Buckley* is inordinately complicated. As I say, there are 145 pages in the main text before coming to the dissents and concurrences by Chief Justice Burger, Justice White, Justice Marshall, and Justice Rehnquist. And then within the doctrines of their concurring and dissenting opinions, Mr. Justice White concurred in part and dissented in part. This is the start of his opinion:

I concur in the Court's answers to certified questions 1, 2, 3(b), 3(c), 3(e), 3(f), 3(h), 6, 7, 7(a), 7(b), 7(c), 7(d), 8, 8(a), 8(b), 8(c), 8(d), 8(f).

I dissent from the answers to certify questions 3(a), 3(d), 4(a), and I also join in part three of the court's opinion adding much of parts 1/B II and IV.

It takes a complicated crossword puzzle analysis to go through the opinions and to figure out who agrees with what and who dissents from what and what is the conclusion. If there ever was a constitutional quagmire, this is it.

Regrettably, Justice Stevens did not participate in the decision in *Buckley v. Valeo*. Justice Stevens has since participated in the decisions on the issue and has articulated the view that the Supreme Court was wrong in *Buckley* in equating money and speech.

It seems to me to be a non sequitur on its face, to be diplomatic and not to call it absurd, ridiculous, or preposterous, that money equals speech. Yet in a society which comprises democratic rule, one person one vote, where do you end up with the ability of people to spend unlimited sums of money to carry their political point of view? Freedom of speech means that someone can advocate, state, articulate, argue, but it hardly means, in my opinion, that somebody should be weightier in speech because his bank account is weightier. I come to this issue with a little bit of a personal bias, if I may state briefly my own personal experience with *Buckley v. Valeo*.

In January of 1976, when *Buckley v. Valeo* was decided, I was in a primary contest with Congressman John Heinz for the Republican nomination for the U.S. Senate. In late January 1976, the

Supreme Court of the United States said that Congressman Heinz could spend millions, which he did, and that my brother, Morton Specter—he could not have met the highest financing, but he could have done quite well—was limited to \$1,000. I petitioned for leave to intervene in *Buckley v. Valeo* and to file a brief in *Buckley v. Valeo*. So I am no Johnny-come-lately to this issue.

When Senator HOLLINGS said to me years ago: ARLEN, why don't we take on *Buckley v. Valeo*, I understood FRITZ, barely, and we have been fighting this constitutional amendment for years. Senator HOLLINGS, if he were understood totally, would have carried the day a long time ago when he ran for President in 1984. I am pretty sure I have the year right. When the campaign was over, Senator HOLLINGS approached me in the steam room one day and said: My Presidential campaign went nowhere. Everybody thought FRITZ HOLLINGS was a German moving company. FRITZ HOLLINGS.

We have been at this for a long time, and we have not gotten very far. We have not gotten very far because there is a coalition of people who articulate the sanctity of freedom of speech, and there are the people who would like to keep the current finance system in effect to benefit those who can raise the most money or those who have the most money.

While I do not like to repeat myself, it is worth repeating that I would not dream of changing the language of the first amendment, but I would actively argue that because a majority of Supreme Court Justices have interpreted the first amendment as they have in *Buckley v. Valeo*, their interpretations are not sacrosanct. There are many, many, many Supreme Court decisions which are 5-4. One vote decides some of the most important questions touching the lives of Americans every day. Those are interpretations of the Constitution. They are not holy writ. They do not come from Mount Olympus. They do not come from Mount Sinai. While their opinions may be better than mine, they are not better than Senator HOLLINGS, a very distinguished lawyer and constitutional scholar.

I think we have standing to say: Let's take another look at *Buckley v. Valeo*. Let's see where it leaves us.

We have had very extended debate during the course of the past week, and now we are starting the second week on campaign finance reform. Continually the issue is raised: What you are proposing is unconstitutional. No matter what it is, which side, the argument is raised that it is unconstitutional.

On Thursday afternoon we had an extensive debate with the Senator from Kentucky, Mr. McCONNELL, the Senator from Delaware, Mr. BIDEN, the Senator from Tennessee, Mr. THOMPSON, and I, and we were pontificating—I was pontificating; they were giving legal arguments—about what was constitutional and what was not constitu-

tional; what is a bright line to satisfy *Buckley v. Valeo*. We could all be right or we could all be wrong because the reality is you cannot figure out what *Buckley v. Valeo* means.

There have been a plethora of decisions I have gone through preparing for these discussions, and this is only a small part of it. It is beyond peradventure a constitutional quagmire.

The Supreme Court of the United States has said the obvious in *Buckley*, that there is the authority to regulate speech where you have corruption or the appearance of corruption. The appearance of corruption is rank in America today.

We passed a bankruptcy bill the week before last. I thought it was a good bill, and I voted for it. I voted for it because there are many people who are avoiding their debts who can afford to pay their debts. The bankruptcy law has sufficient flexibility so the bankruptcy judge can schedule payments that somebody can afford.

The Senate took a shellacking in the media because of contributions and what was characterized as the appearance of corruption, that Senators votes were bought.

A series of books are cited in the amendment which I offered last week: "The Best Congress Money Can Buy," "Party Finance and Political Corruption." I ask unanimous consent that this list be printed in the RECORD.

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

(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).

Mr. SPECTER. There is no doubt that the public is concerned about the appearance of corruption. It is my hope that there will be a close look at this issue by those who are interested in campaign finance reform. If someone is not interested in campaign finance reform, then I can understand a vote against this constitutional amendment.

Let's not clear the underbrush of *Buckley v. Valeo* if someone does not want to have campaign finance reform, but if someone wants to have campaign finance reform—and there are many people who oppose this constitutional amendment on the ground that it is a change of the first amendment—they are simply wrong.

There is no change in the first amendment. There is a change in a majority of the nine people on the Supreme Court who have interpreted the first amendment.

I thank the Chair. I thank my distinguished colleague from South Carolina, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, the proposal of the Senator from South Carolina to eviscerate the first amendment is as refreshing as it is frightful.

It is a blunt instrument, this proposed amendment to the Constitution. It consists of a simple paragraph repeated twice so that the State governments, as well as Congress, would be empowered to restrict the heretofore sacrosanct, all contributions and spending “by, in support of, or in opposition to candidates for public office.” The whole political ballgame: citizen groups, individuals, parties and the candidates.

Unlike the McCain-Feingold, the Hollings constitutional amendment does not include a special exemption for the news and entertainment media.

And unlike the McCain-Feingold debate, the casual observer will not be confused by the campaign finance vocabulary. “Issue advocacy,” “express advocacy,” “electioneering,” “soft money,” “hard money”—these terms of art in the McCain-Feingold debate are absent from the Hollings constitutional amendment, which reads simply: “by, in support of, or in opposition to.”

Plain English. These eight words in the Hollings constitutional amendment sum up the reformers’ agenda for the past quarter-century as they have sought to root out of American political life any speech or activity which could conceivably affect an election or be of value to a politician.

Except the media’s speech, of course. McCain-Feingold takes care of them with a special exemption on page 15 of their bill to foreclose prosecution of their “electioneering” in newspapers, on radio and television.

The Hollings amendment reaches right in and rips the heart right out of the First Amendment.

No pretense. No artifice. No question about it. If you believe that the government—federal and state—ought to be omnipotent in their power to restrict all contributions and spending “by, in support of, or in opposition to” candidates for public office . . . then the Hollings amendment is for you.

If you believe that the United States Supreme Court should be taken out of the campaign finance equation, then the Hollings constitutional amendment is for you.

If the Hollings amendment had been in place twenty-five years ago, there would have been no *Buckley v. Valeo* decision. Congress would have gotten its way in the 1970s: independent expenditures would be capped at \$1,000. Any issue advocacy that FEC bureaucrats deem capable of influencing an election would be capped at \$1,000.

Citizen groups would have to disclose to the government their donor lists. Sierra Club members who live in small towns out west where environmentalists are not universally revered—and whose need for anonymity has been cited by Sierra Club officials as the reason they keep donor names secret—would have their names publicly listed on a government database, probably the Internet.

All of us politicians’ campaigns would be constrained by mandatory spending limits. There would be no “millionaire’s loophole” because millionaires would be under the spending limits, too.

There would be no taxpayer financing. It would not be necessary, because spending limits would not have to be voluntary.

That’s why the American Civil Liberties Union counsel, Joel Gora, who was part of the legal team in the *Buckley* case has labeled the Hollings constitutional amendment: a “recipe for repression.”

The media—news and entertainment divisions—ought to take note. There is no exemption for them in the Hollings constitutional amendment. No media “loophole.” Under the Hollings constitutional amendment, the federal and state governments could regulate, restrict, even prohibit, the media’s own issue advocacy, independent expenditures and contributions. Just so long as the restrictions were deemed “reasonable.”

I commend the Senator from South Carolina for offering this amendment, insofar as he lays out on the table just what the stakes are in the campaign finance debate.

To do what the reformers say they want to do—limit “special interest” influence—requires limiting the United States Constitution which gives “special interest”—that is, all Americans—the freedom to speak, the freedom to associate with others in a cause, and the freedom to petition the government for a redress of grievances.

You have to gut the first amendment. You have to throw out on the trash heap that freedom which the U.S. Supreme Court said six decades ago, is “the matrix, the indispensable condition of nearly every other form of freedom.”

If you believe McCain-Feingold is constitutional, as its advocates claim it is, then you do not need the Hollings constitutional amendment. In fact, Senator FEINGOLD is against the constitutional amendment.

If you vote for the Hollings constitutional amendment, then you have affirmed what so many of us in and outside of the Senate have been saying: that to do what McCain Feingold’s proponents want to do—restrict all spending by, in support of and in opposition to candidates, then you need to get rid of the first amendment. That is the core of the problem.

If you really want to reduce special interest influence on American politics, you need to get rid of the first amendment.

Fortunately, Madam President, this amendment, which Senator HOLLINGS has certainly persevered in offering over the years, continues to lose support. The first time I was involved in this debate back in 1988, it actually passed—bearing in mind it requires 67, a majority, for this amendment—52–42. That rough majority persisted in a second vote in 1988 and then a sense of the Senate vote in 1993.

Then in 1995 the support for it dropped from 52 down to 45 and in 1997 from 45 down to 38, and last year, March 28, 2000, this proposal was defeated 67–33. Only 33 Senators a year ago believed it was appropriate to amend the Constitution for the first time in history to give the Government this kind of power.

One of the reasons this constitutional amendment is growing in unpopularity is that it has a lot of opponents. Common Cause is opposed to it. I ask unanimous consent two letters from Common Cause on the subject be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COMMON CAUSE,

Washington, DC, March 12, 1997.

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

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

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

The McCain-Feingold bill, S.25, provides for significant reform within the framework

of the Buckley decision. The legislation would:

Ban soft money;

Provide reduced postage rates and free or reduced cost television time as incentives for congressional candidates to agree to restrain their spending;

Close loopholes related to independent expenditures and campaign ads that masquerade as "issue advocacy";

Reduce the influence of special-interest political action committee (PAC) money;

Strengthen disclosure and enforcement.

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

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

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

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

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

Sincerely,

ANN MCBRIDE,
President.

—
COMMON CAUSE,
Washington, DC, March 23, 1988.

DEAR SENATOR: The Senate is expected to consider shortly S.J. Res. 21, a proposed amendment to the Constitution to give Congress the power to enact mandatory limits on expenditures in campaigns. Common Cause urges you not to support S.J. Res. 21.

The fundamental problems caused by the massive growth in spending for congressional elections and by special interest PAC giving demand effective and expeditious solution. The Senate recently came within a handful of votes of achieving this goal. For the first time since the Watergate period, a majority of Senators went on record in support of comprehensive campaign finance reform leg-

islation, including a system of spending limits for Senate races. It took an obstructionist filibuster by a minority of Senators to block the bill from going forward.

The Senate now stands within striking distance of enacting comprehensive legislation to deal with the urgent problems that confront the congressional campaign finance system. The Senate should not walk from or delay effort. But that is what will happen if the Senate chooses to pursue a constitutional amendment, an inherently lengthy and time-consuming process.

S.J. Res. 21, the proposed constitutional amendment, would not establish expenditure limits in campaigns; it would only empower the Congress to do so. Thus even if two-thirds of the Senate and the House should pass S.J. Res. 21 and three-quarters of the states were to ratify the amendment, it would then still be necessary for the Senate and the House to pass legislation to establish spending limits in congressional campaigns.

Yet it is this very issue of whether there should be spending limits in congressional campaigns that has been at the heart of the recent legislative battle in the Senate. Opponents of S. 2, the Senatorial Election Campaign Act, made very clear that their principal objection was the establishment of any spending limits in campaigns.

So even assuming a constitutional amendment were to be ratified, after years of delay the Senate would find itself right back where it is today—in a battle over whether there should be spending limits in congressional campaigns. In the interim, it is almost certain that nothing would have been done to deal with the scandalous congressional campaign finance system.

There are other serious questions that need to be considered and addressed by anyone who is presently considering supporting S.J. Res. 21.

For example, what are the implications if S.J. Res. 21 takes away from the federal courts any ability to determine that particular expenditure limits enacted by Congress discriminate against our otherwise violate the constitutional rights of challengers?

What are the implications, if any, of narrowing by constitutional amendment the First Amendment rights of individuals as interpreted by the Supreme Court?

We believe that campaign finance reform legislation must continue to be a top priority for the Senate as it has been in the 100th Congress. If legislation is not passed this year, it should be scheduled for early action in the Senate and the House in 1989.

In conclusion, Common Cause strongly urges the Senate to face up to its institutional responsibilities to reform the disgraceful congressional campaign finance system. The Senate should enact comprehensive legislation to establish a system of campaign spending limits and aggregate PAC limits, instead of pursuing a constitutional amendment that will delay solving this fundamental problem for years and then still leave Congress faced with the need to pass legislation to limit campaign spending.

Sincerely,

FRED WERTHEIMER,
President.

Mr. McCONNELL. The Washington Post is against it, and I ask unanimous consent their editorial opposing it be printed in the RECORD.

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

[From the Washington Post, Apr. 6, 1988]

CAMPAIGN SPINACH

Sen. Ernest Hollings was not an admirer of S. 2, the sturdy bill his fellow Democrats

tried to pass to limit congressional campaign spending by setting up a system of partial public finance. He agreed to vote for cloture, to break a Republican filibuster, only after Majority Leader Robert Byrd agreed to bring up a Hollings constitutional amendment if cloture failed. Mr. Byrd, having lost on S. 2, is now about to do that.

Right now Congress can't just limit spending and be done with it; the Supreme Court says such legislation would violate the First Amendment. Limits can only be imposed indirectly—for example, as a condition for receipt of public campaign funds. The Hollings amendment would cut through this thick spinach by authorizing Congress to impose limits straightforwardly. The limits are enticing, but the constitutional amendment is a bad idea. It would be an exception to the free speech clause, and once that clause is breached for one purpose, who is to say how many others may follow? As the American Civil Liberties Union observed in opposing the measure, about the last thing the country needs is "a second First Amendment."

The free speech issue arises in almost any effort to regulate campaigns, the fundamental area of free expression on which all others depend. There has long been the feeling in and out of Congress—which we emphatically share—that congressional campaign spending is out of hand. Congress tried in one of the Watergate reforms to limit both the giving and the spending of campaign funds. The Supreme Court in its *Buckley v. Valeo* decision in 1976 drew a rather strained distinction between these two sides of the campaign ledger. In a decision that let it keep a foot in both camps—civil liberties and reform—it said Congress could limit giving but not spending (except in the context of a system of public finance). In the first case the court found that "the governmental interest in preventing corruption and the appearance of corruption" outweighed the free speech considerations, while in the second case it did not.

Mr. Hollings would simplify the matter, but at considerable cost. His amendment said, in a recent formulation: "The Congress may enact laws regulating the amounts of contributions and expenditures intended to affect elections to federal offices." But that's much too vague, and so are rival amendments that have been proposed. Ask yourself what expenditures of a certain kind in an election year are not "intended to affect" the outcome? At a certain point in the process, just about any public utterance is.

Nor would the Hollings amendment be a political solution to the problem. Congress would still have to vote the limits, and that is what the Senate balked at this time around.

As *Buckley v. Valeo* demonstrates, this is a messy area of law. The competing values are important; they require a balancing act. The Hollings amendment, in trying instead to brush the problem aside, is less a solution than a dangerous show. The Senate should vote it down.

Mr. McCONNELL. No surprisingly, George Will is opposed to it, and I ask unanimous consent two editorials be printed in the RECORD.

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

[From the Washington Post, Feb. 13, 1997]

GOVERNMENT GAG

(By George F. Will)

"To promote the fair and effective functioning of the democratic process, Congress, with respect to elections for federal office, and States, for all other elections, including initiatives and referenda, may adopt reasonable regulations of funds expended, including

contributions, to influence the outcome of elections, provided that such regulations do not impair the right of the public to a full and free discussion of all issues and do not prevent any candidate for elected office from amassing the resources necessary for effective advocacy.

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

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

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

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

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

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

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

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

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

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

The reformers’ problem is the Supreme Court, which has affirmed the obvious: Restrictions on the means of making speech heard, including spending for the dissemination of political advocacy, are restrictions

on speech. It would be absurd to say, for example: “Congress shall make no law abridging the right to place one’s views before the public in advertisements or on billboards but Congress can abridge—reasonably, of course—the right to spend for such things.

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

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

[From the Washington Post, Apr. 2, 2000]

IMPROVING THE BILL OF RIGHTS

(By George F. Will)

Last week Washington was a sight to behold. Two sights, actually, both involving hardy perennials. The city was a riot of cherry blossoms. And senators were again attacking the First Amendment.

Thirty-three senators—30 Democrats and three Republicans—voted to amend the First Amendment to vitiate its core function, which is to prevent government regulation of political communication. The media generally ignored this: Evidently assaults on the First Amendment are now too routine to be newsworthy. Besides, most of the media favor what last week’s attack was intended to facilitate, the empowerment of government to regulate political advocacy by every individual and group except the media.

The attempt to improve Mr. Madison’s Bill of Rights came from Fritz Hollings, the South Carolina Democrat, who proposed amending the First Amendment to say Congress or any state “shall have power to set reasonable limits on the amount of contributions that may be accepted, and the amount of expenditures that may be made by, in support of, or in opposition to, a candidate for nomination for election to, or for election to, federal office.”

So, this license for politicians to set limits on communication about politicians requires that the limits be, in the judgment of the politicians, “reasonable.” Are you reassured? Hollings, whose candor is as refreshing as his amendment is ominous, says, correctly, that unless the First Amendment is hollowed out as he proposes, the McCain-Feingold speech-regulation bill is unconstitutional.

Fuss Feingold, the Wisconsin Democrat who is John McCain’s co-perpetrator, voted against Hollings in order to avoid affirming that McCain-Feingold is unconstitutional. McCain voted with Hollings.

The standard rationale for regulating the giving and spending that is indispensable for political communication is to avoid “corruption” or the appearance thereof. Hollings, who has been a senator for 33 years, offered a novel notion of corruption. He said the Senate under Montana’s Mike Mansfield (who was majority leader 1961–76) used to work five days a week. But now, says Hollings, because of the imperatives of fund-raising, “Mondays and Fridays are gone”

and “we start on the half day on Tuesdays,” and there are more and longer recesses. All of which, says Hollings, constitutes corruption.

Well. The 94th Congress (1975–76), Mansfield’s last as leader, was in session 320 days and passed 1,038 bills. The 105th Congress (1997–98) was in session 296 days and passed 586 bills. The fact that 22 years after Mansfield’s departure there was a 7.5 percent reduction in the length of the session but a 43.5 percent reduction in legislative output is interesting. But it is peculiar to think that passing 586 bills in two years—almost two bills every day in session—is insufficient. Is the decline in output deplorable, let alone a form of corruption, and hence a reason for erecting a speech-rationing regime?

The Framers of the First Amendment were not concerned with preventing government from abridging their freedom to speak about crops and cockfighting, or with protecting the expressive activity of topless dancers, which of late has found some shelter under the First Amendment. Rather, the Framers cherished unabridged freedom of political communication. Last week’s 33 votes in favor of letting government slip Mr. Madison’s leash and regulate political talk were 34 fewer than the required two-thirds, and five fewer than Hollings’s amendment got in 1997. Still, every time at least one-third of the Senate stands up against Mr. Madison, it is, you might think, newsworthy.

Last week’s campaign reform follies included a proposal so bizarre it could have come only from a normal person in jest, or from Al Gore in earnest. He proposes to finance all congressional and Senate races from an “endowment” funded with \$7.1 billion (the .1 is an exquisite Gore flourish) in tax deductible contributions from individuals and corporations.

An unintended consequence of Gore’s brainstorm would be to produce, in congressional races across the country, spectacles like that in the Reform Party today—federal money up for grabs, and the likes of Pat Buchanan rushing to grab it. But would money flow into the endowment?

With the scary serenity of a liberal orbiting reality, Gore says: “The views of the donor will have absolutely no influence on the views of the recipient.” Indeed, but the views of particular recipients also would be unknown to particular donors because all money pour into and out of one pool. So what would be the motive to contribute?

Still, Gore has dreamt up a new entitlement (for politicians) to be administered by a new bureaucracy—a good day’s work for Gore.

MR. McCONNELL. The ACLU, of course, is opposed to it. I ask their letter in opposition be printed in the RECORD.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, March 24, 2000.

DEAR SENATOR: The American Civil Liberties Union strongly opposes S.J. Res. 6, the proposed constitutional amendment that permits Congress and the states to enact laws regulating federal campaign expenditures and contributions.

Whatever one’s position may be on campaign finance reform and how best to achieve it, a constitutional amendment of the kind here proposed is not the solution. Amending the First Amendment for the first time in our history in the way that S.J. Res. 6 proposes would challenge all pre-existing First Amendment jurisprudence and would give to Congress and the states unprecedented,

sweeping and undefined authority to restrict speech protected by the First Amendment since 1791.

Because it is vague and over-broad, S.J. Res. 6 would give Congress a virtual “blank check” to enact any legislation that may abridge a vast array of free speech and free association rights that we now enjoy. In addition, this measure should be opposed because it provides no guarantee that Congress or the states will have the political will, after the amendment’s adoption, to enact legislation that will correct the problems in our current electoral system. This amendment misleads the American people because it tells them that only if they sacrifice their First Amendment rights, will Congress correct the problems in our system. Not only is this too high a price to demand in the name of reform, it is unwise to promise the American people such an unlikely outcome.

Rather than assuring that the electoral processes will be improved, a constitutional amendment merely places new state and federal campaign finance law beyond the reach of First Amendment jurisprudence. All Congress and the states would have to demonstrate is that its laws were “reasonable.” “Reasonable” laws do not necessarily solve the problems of those who are harmed by or locked out of the electoral process on the basis of their third party status, lack of wealth or non-incumbency. The First Amendment properly prevents the government from being arbitrary when making these distinctions, but S.J. Res. 6 would enable the Congress to set limitations on expenditures and contributions notwithstanding current constitutional understandings.

Once S.J. Res. 6 is adopted, Congress and local governments could easily further distort the political process in numerous ways. Congress and state governments could pass new laws that operate to the detriment of dark horse and third party candidates. For example, with the intention of creating a “level playing field” Congress could establish equal contribution and expenditure limits that would ultimately operate to the benefit of incumbents who generally have higher name recognition, greater access to their party apparatus and more funds than their opponents. Thus, rather than assure fair and free elections, the proposal would enable those in power to perpetuate their own power and incumbency advantage to the disadvantage of those who would challenge the status quo.

S.J. Res. 6 would also give Congress and every state legislature the power, heretofore denied by the First Amendment, to regulate the most protected function of the press—editorializing. Print outlets such as newspapers and magazines, broadcasters, Internet publishers and cable operators would be vulnerable to severe regulation of editorial content by the government. A candidate-centered editorial, as well as op-ed articles or commentary printed at the publisher’s expense are most certainly expenditures in support of or in opposition to particular political candidates. The amendment, as its words make apparent, would authorize Congress to set reasonable limits on the expenditures by the media during campaigns, when not strictly reporting the news. Such a result would be intolerable in a society that cherishes the free press.

Even if the Congress exempted the press from the amendment, what rational basis would it use to distinguish between certain kinds of speech? For example, why would it be justified for Congress to allow a newspaper publisher to run unlimited editorials on behalf of a candidate, but to make it unlawful for a wealthy individual to purchase a unlimited number of billboards for the same

candidate? Likewise, why would it be permissible for a major weekly newsmagazine to run an unlimited number of editorials opposing a candidate, but impermissible for the candidate or his supporters to raise or spend enough money to purchase advertisements in the same publication? At what point is a journal or magazine that is published by an advocacy group different from a major daily newspaper, when it comes to the endorsement of candidates for federal office? Should one type of media outlet be given broader free expression privileges than the other? Should national media outlets have to abide for fifty different state and local standards for expenditures? These are questions that Congress has not adequately addressed or answered.

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

If Congress or the states want to change our campaign finance system, then it need not throw out the First Amendment in order to do so. Congress can adopt meaningful federal campaign finance reform measures without abrogating the First Amendment and without contravening the Supreme Court’s decision in *Buckley v. Valeo*. Some of these reform measures include:

Public financing for all legally qualified candidates—financing that serves as a floor, not a ceiling for campaign expenditures;

Extending the franking privilege to all legally qualified candidates;

Providing assistance to candidates for broadcasting advertising;

Improving the resources for the FEC so that it can provide timely disclosure of contributions and expenditures;

Providing resources for candidate travel.

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

The ACLU urges Senators to oppose S.J. Res. 6. As Joel Gora, Professor of Law of the Brooklyn Law School recently stated, “This constitutional amendment is a recipe for repression.”

Sincerely,

LAURA W. MURPHY.

Mr. McCONNELL. The Cato Institute is opposed. I ask unanimous consent its letter be printed in the RECORD.

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

THE CATO INSTITUTE,
Washington, DC, March 24, 2000.

Hon. MITCH McCONNELL,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN McCONNELL: Your office has invited my brief thoughts on S.J. Res. 6, offered by Senator Hollings for himself and Senators Specter, McCain, and Bryan, which proposes an amendment to the Constitution of the United States that would grant power to the Congress and the States “to set reasonable limits on the amount of contributions that may be accepted by, and the amount of expenditures that may be made by, in support of, or in opposition to, a can-

didate for nomination for election to, or for election to,” any federal, state, or local office.

It is my understanding that on Monday next, Senator Hollings is planning to offer this resolution as an amendment to the flag-burning amendment now before the Senate. For my thoughts on the proposed flag-burning amendment, please see the testimony I have given on the issue, as posted at the website of the American Civil Liberties Union, and the op-ed I wrote for the Washington Post, copies of which are attached.

Regarding the proposed campaign finance amendment, I am heartened to learn that those who want to “reform” our campaign finance law are admitting that a constitutional amendment is necessary. But that very admission speaks volumes about the present unconstitutionality of most of the proposals now in the air. It is not for nothing that the Founders of this nation provided explicitly for unrestrained freedom of political expression and association—which includes, the Court has said, the right to make political contributions and expenditures. They realized that governments and government officials tend to serve their own interests, for which the natural antidote is unfettered political opposition—in speech and in the electoral process.

In the name of countering that tendency this amendment would restrict its antidote. It is a ruse—an unvarnished, transparent effort to restrict our political freedom and, by implication, the further freedoms that freedom ensures. That it is dressed in the gossamer clothing of “reform” only compounds the evil—even as it exposes its true character. If the true aim of this amendment is incumbency protection, then let those who propose it come clean. Otherwise, they must be challenged to show why the experience of previous “reforms” will not be repeated in this case too. Given the evidence, that will not be an enviable task.

Fortunately, candor is still possible in this nation. This is an occasion for it. I urge you to resist this amendment with the forces that candor commands.

Yours truly,

ROGER PILON.

Mr. McCONNELL. Other countries tried to do what the distinguished Senator from South Carolina seeks to do, other countries unfettered by the first amendment. They don’t have the problem we have in trying to restrict the speech of their citizens. A quick glance around the world makes clear that more government control of speech in the places where it is allowed is not the answer.

The first amendment distinguishes us from the rest of the world. The first amendment allows the citizens—not the government; the citizens, not the government—to control speech. Consequently, much of the rest of the world has restricted political speech far more than we have in the United States. Reformers abroad, as those at home, seek to reduce cynicism about the government and increase voter participation. With no first amendment in these other countries to get in the way, the reformers have been able to enact sweeping reforms.

Let me share with my colleagues some of the other countries’ experience. Canada, our neighbor to the north, has passed many of the types of regulations supported by those supporting McCain/Feingold. Canada has

adopted the following regulations of political speech: A spending limit that all national candidates must abide by to be eligible to receive taxpayer matching funds. Candidates can spend \$2 per voter for the first 15,000 votes they get, and \$1 per voter for all the votes up to 25,000, and 50 cents per voter beyond 25,000 voters.

There are spending limits on parties that restrict parties to spending a product of a multiple used to account for the cost of living times the number of registered voters in each electoral district in which the party has a candidate running for office. It comes out now to about \$1 a voter.

The Canadian Government requires that radio and television stations provide all parties with a specified amount of free time during the month prior to the election. The Government also provides subsidies to defray the cost of political publishing and gives tax credits to individuals and corporations which donate to candidates and/or parties.

The most recent political science studies of Canada demonstrate, despite all of this regulation of political speech by candidates and parties, the number of Canadians who believe the Government doesn't care what people such as I think has grown from roughly 45 percent to approximately 67 percent. Confidence in the national legislature has declined from 49 percent to 21 percent, and the number of Canadians satisfied with their system of government has declined from 51 percent to 34 percent.

If you think the Canadians have gotten a handle on speech, let me tell you about the Japanese. In order to try to squeeze all that opinion out of politics, the Japanese Government limits the number of days you can campaign, the number of speeches you can give, the types of places you can speak, the number of handbills and bumper stickers you can print, and even the number of megaphones you can buy. They allow each candidate to have one megaphone. So I think we can pretty safely say that over in Japan, unfettered buying, anything like the first amendment, they have squeezed all that money right out of politics.

What has been the result? The number of Japanese citizens who have "no confidence in legislators" has risen to 70 percent and voter turnout has continued to decline.

Let's take a look at another country that has passed these kinds of sweeping restraints on citizens' speech—France. In France, they have government funding of candidates, government funding of parties, free radio and television time, reimbursement for printing posters and for campaign-related transportation. They ban contributions to candidates by any entity except parties and political action committees. Individual contributions to parties are limited, and there are strict expenditure limits set for each electoral district and frequent candidate auditing.

Despite these regulations, the latest political science studies in France indi-

cate that the French people's confidence in their government and political institutions has continued to decline and voter turnout has continued to decline.

Let's take a look at Sweden. Sweden has imposed the following regulations on political speech. In Sweden, there is no fundraising or spending at all for individual candidates. Citizens merely vote for parties which assign seats on the proportion of the votes they receive. The government subsidizes print ads by parties. Despite the fact that Sweden has no fundraising or spending for individual candidates since these requirements have been in force, the number of Swedes disagreeing with the statement that "parties are only interested in people's votes, not in their opinions" has declined from 51 percent to 28 percent. The number of people expressing confidence in the Swedish Parliament has declined from 51 percent to 19 percent.

So my point is this: There are some countries that are unfettered, unburdened, if you will, by the free speech requirements of the first amendment, and they have gone right at the heart of this problem in a way that would warm the heart of the most aggressive reformer. They have squeezed all this money and all this speech right out of the system. All it has done is driven the cynicism up and the turnout down.

Even if all of these restrictions had been a good idea someplace in the world, they clearly are not a good idea here. I hope the trend on the Hollings constitutional amendment will continue. It is a downward trend. Last March only 33 Members of the Senate supported this constitutional amendment, and I hope that will be the high-water mark.

I believe Senator HATCH is here. He is controlling the time on this issue. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

Mr. HATCH. Madam President, I rise this afternoon to address, as I have in prior years, the Constitutional Amendment to limit campaign contributions and expenditures that my colleague from South Carolina has once again brought to the Senate floor.

Two election cycles have come and gone since this amendment was first debated in this chamber. And, unfortunately, these last two elections have shown that money remains as big—or an even bigger—part of our campaigns as it was when this Amendment was first introduced.

I know that most in this body deplore the role of money in the electoral process. And, Mr. President, I believe that the debate in this chamber over the last week has plainly shown that each of us would vote in favor of a solution that would, in a fair, even-handed, and constitutional way, reduce the role of money in campaigns.

But as I noted in the debate over this same amendment in 1997, there is a

right way of reforming our system of campaign finance. And, there are wrong ways.

While I certainly sympathize with the sentiments that have motivated my colleagues to introduce this proposal, I submit that circumscribing the First Amendment of our Constitution is simply the wrong way to address campaign finance reform. I also think the McCain-Feingold bill in fringes upon the First Amendment, and that is what the distinguished Senator from South Carolina is trying to resolve with his amendment, which would be the only way, it seems to me, of resolving this matter in a way that ultimately the people who are supporting the McCain-Feingold bill would like to do.

The proposal we are debating today would amend the Constitution to allow Congress and the States to set any "reasonable" limits on (1) campaign contributions made to a candidate and (2) expenditures in support or opposition to a candidate made by the candidate or on behalf of the candidate.

Why do I oppose this amendment?

For the first time in the history of this Republic this amendment would put an express limitation on one of the bulwark protections that has defined and strengthened this great nation for over two centuries—the First Amendment of the United States Constitution.

And perversely, we would not be seeking to limit this important safeguard of our liberty in order to eliminate speech that is on the margin of the First Amendment protection.

We would not be seeking to eliminate speech that deeply offends the majority of our citizens, such as the so-called speech involved in the desecration of our national symbols.

We would not be seeking to eliminate speech that malevolently capitalizes on the unhealthy historical divisions within our society, such as racially motivated "hate speech."

We would not be seeking to eliminate speech that insidiously corrupts the morals of our children, such as pornography.

No. Ironically, the first category of speech singled out for regulation by this proposal is the category of speech that is universally recognized as being at the core of the First Amendment protection: the right to engage in unfettered debate about political issues.

What the supporters of today's proposal often fail to emphasize is that the money involved in electoral campaigns does not end up in the pockets of the candidates. And it is not thrown into some black hole.

The money spent by campaigns, or by third parties in an effort to influence campaigns, is directed toward one simple aim: to express a particular message.

Money may be spent by a candidate to take out a newspaper advertisement setting forth his or her positions on the issues.

Money may be spent by an interest group on a television advertisement to publicize the voting record of an incumbent.

Money may be spent by a concerned individual to fund a study on how certain legislation would affect similarly situated people. In each case, the goal is the same: to educate and/or influence the electorate with respect to political issues.

Supporters of today's proposal believe that there is too much of this political debate. As a result, supporters of this proposal would curtail the First Amendment to allow Congress and the state legislatures to place limits on the amount of political debate that will be allowed in connection with an election.

If this amendment passes, will a person still be allowed to say, "Vote against Senator X"? Yes, they will.

Will that person be able to print a handbill that says "Vote against Senator X"? Only if the government decides that such an expenditure is "reasonable."

Will that person be able to take out an advertisement in a local newspaper that says, "Vote against Senator X"? Only if the Government decides that such an expenditure is reasonable.

How is Congress to decide whether such expenditures are reasonable? The proposal we are debating today is silent on that subject. I would note, however, that Senator X would be one of the lawmakers responsible for deciding whether, and under what circumstances, such expenditures would be allowed.

In effect, today's proposal would allow Congress and the state legislatures to censor speech for just about any reason, as long as they could establish that their censorship was "reasonable." The free speech rights of all Americans would be subject to the vagaries and passions of fleeting majorities. If there was anything our Founding Fathers really were concerned about and alarmed about, that is a pure majoritarian type of rule in the country.

The Hollings Amendment would change the very nature of our constitutional democratic form of government. By limiting robust political debate, the amendment would tilt the scales sharply in favor of incumbents, who benefit from limitations on debate because of their higher name recognition and their ability to direct governmental benefits to their home districts. Such advantages would only be magnified by permitting incumbents to decide what type of political speech is "reasonable" in connection with the efforts by challengers to unseat them.

I would like to take a couple of minutes to explain in greater depth what the dangers of this Constitutional amendment are:

Let me start with the importance of the first amendment to free elections.

The very purpose of the First Amendment's free speech clause is to ensure that the people's elected officials effec-

tively and genuinely represent the public. The Founders of our country certainly understood the link between free elections and liberty. Representative government—with the consent of the people registered in periodic elections—was—to these leaders of our new nation—the primary protection of natural or fundamental rights. As Thomas Jefferson put it in the Declaration of Independence, to secure rights "Governments are instituted among Men" and must derive "their just Powers from the Consent of the Governed."

The nexus between free elections and free speech was equally understood. As Jefferson said:

Were it left to me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate a moment to prefer the latter.

[Letter from Thomas Jefferson to Edward Carrington (January 16, 1787), reprinted in 5 *The Founder's Constitution* 122 (P. Kurland & R. Lerner ed., 1987)].

Without free speech, there can be no government based on consent because such consent can never be truly informed. Obviously, we would have no democracy at all if the government were allowed to silence people's voices during an election. It is especially important to our democracy that we protect a person's right to speak freely during an electoral campaign—because it is through elections that the fundamental issues of our democracy are most thoroughly debated, and it is through our elections that the leaders of our democracy are put in place to carry out the people's will.

No. 2, the amendment will overturn the Buckley case.

The Supreme Court of the United States recognized this fundamental principle of democracy in the 1976 case of *Buckley v. Valeo*. In that case, the Court held:

Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order to assure the unfettered interchange of ideas. . . . [Buckley v. Valeo, 424 U.S. at 14].

Moreover, the Court in Buckley recognized that free speech is meaningless unless it is effective. During a campaign, not only does a person have the right to speak out on candidates and issues, a person also has the right to speak out in a manner that will be heard. The right to speak would have little meaning if the government could place crippling controls on the means by which a person was permitted to communicate his message. For instance, the right to speak would have little meaning if a person was required to speak in an empty room with no one listening.

And in today's society, the right to speak would have little meaning if a person were required to forego television, radio, and other forms of mass media, and was instead forced to go

door to door to impart his message solely by word of mouth. Accordingly, the Supreme Court in *Buckley v. Valeo*, and in a string of subsequent cases, has consistently ruled that campaign contributions and expenditures are constitutionally protected forms of speech, and that regulation of campaign contributions and expenditures must be restrained by the prohibitions of the First Amendment.

The Buckley Court made a distinction between campaign contributions and campaign expenditures. The Court found that the free speech concerns inherent in campaign contributions are less than in campaign expenditures because contributions convey only a generalized expression of support. But expenditures are another matter. These are given higher First Amendment protection because they are direct expressions of speech.

In the words of the Buckley Court:

A restriction on the amount of money a person or group can spend necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating in today's mass society requires the expenditure of money. [424 U.S. at 19-20].

The Hollings Amendment's allowance of restrictions on expenditures by Congress and state legislatures would impose direct and substantial restraints on the quantity of political speech. It would permit significant limitations on both individuals and groups from spending money to disseminate their own ideas as to which candidate should be supported and what cause is just. The Supreme Court noted that such restrictions on expenditures, even if "neutral as to the ideas expressed, limit political expression at the core of our electoral process and of the First Amendment freedoms." [Buckley at 39].

Indeed, under the Hollings proposal, even candidates could be restricted from engaging in protected First Amendment expression. Justice Brandeis observed, in *Whitney v. California*, [274 U.S. 357, 375 (1927)], that in our public, "public discussion is a political duty," and that duty will be circumscribed where a candidate is prevented from spending his or her own money to spread the electoral message. That a candidate has a First Amendment right to engage in public issues and advocate particular positions was considered by the Buckley Court to be of:

particular importance . . . candidates [must] have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. 424 U.S. at 53.

Campaign finance reform should not be at the expense of free speech. This amendment—in trying to reduce the costs of political campaigns—could cost us so much more. It could cost us our heritage of political liberty.

Groups as diverse as the ACLU and the Heritage Foundation have united in their opposition to this constitutional amendment. The ACLU calls the amendment a "recipe for repression" and the Heritage Foundation characterizes it as an abridgement of our "fundamental liberty."

Mr. President, there are some who may believe that the First Amendment is inconsistent with campaign finance reform. I strongly disagree.

In fact, just the opposite is true. It is impossible to have healthy campaigns in a healthy democracy without freedom of speech as it is currently protected by our First Amendment. That is why I oppose the Hollings Amendment.

No. 3, the amendment will blur the distinction between express and issue advocacy.

This proposed constitutional amendment is so broad that it would also blur the distinction between express advocacy and issue advocacy.

The Supreme Court in Buckley held that any campaign finance limitations apply only to "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." [Buckley, 424 U.S. at 44]. Communications without these electoral advocacy terms have subsequently been classified by courts as "issue advocacy" entitled to full First Amendment strict scrutiny protection.

This constitutional amendment is drafted in a such a manner that pure issue advocacy will be swept up in regulation. In fact, the Amendment is so broad that it would allow regulation of political speech, even if such speech doesn't refer to a particular candidate. If a statement implies that a candidate is for or against an issue, that speech could fall under expenditure limits authorized by this provision.

This is a compete reversal of the "bright line" test established by the Supreme Court that protects issue advocacy from regulation unless it uses words that expressly advocate the election or defeat of a clearly identified candidate. It is also a complete reversal of the view now encompassed in law that government has no real interest in restricting the free flow of speech and ideas.

Now, supporters of this constitutional amendment may tell us that they are all for ending the distinction imposed by Buckley between express advocacy and issue advocacy and that it is in practice unworkable. Well, they are in part right. Sometimes it is a hard line to draw. But this "bright line" test does have the great benefit that if error exists, it falls on the side of free speech.

Look, nothing in this world is perfect, particularly in the world of campaigns and politics. So if we err, if we make mistakes, doesn't make sense to create a system where the mistake results in the over-protection of a fundamental constitutional right?

If we believe that the distinction between issue and express advocacy is un-

workable, then the solution is to protect both under the strictest of safeguards. Each, in my view, should have the highest First Amendment protection—and I believe that this is the direction that the Supreme Court will eventually take.

I believe the adoption of this constitutional amendment is wrong.

Amending the Constitution should not be done lightly. And amending the First Amendment should only be done for the most compelling, exigent reasons. These reasons are not present.

If S.J. Res. 4 were ratified, pre-existing first amendment jurisprudence would be overturned and Congress and the States would have unprecedented, sweeping and undefined authority to restrict speech currently protected by the first amendment.

This constitutional amendment places State and Federal campaign finance law beyond the reach of first amendment jurisprudence. All that Congress and the States would have to demonstrate to the Court is that their laws restricting political speech were "reasonable." No longer would Congress have to demonstrate a "compelling interest" in order to infringe on our citizens first amendment liberties.

If S.J. Res. 4 is adopted, Congress and State legislatures could easily distort the political process. Indeed, the ACLU, not an institution that I always agree with, in reflecting on a nearly identical proposed constitutional amendment in 1997, noted that incumbents could pass laws virtually guaranteeing their reelection. I quote:

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

Moreover, ratification of this constitutional amendment could very well destroy the freedom of the press. Let me quote the ACLU again:

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

Let me point out again that the proposed amendment appears to reach not only expenditures by candidates but also independent expenditures by individual citizens and groups. These independent expenditures are the very type of speech that the first amendment was designed to protect.

Madam President, I am sure the authors of this amendment are very sincere and that they mean well by the amendment. I have no doubt about that. I know my colleague from South Carolina, and he is a good man and a fine Senator. I think he probably believes that no Congress of the United States would go beyond certain reasonable limits and neither would any State legislature.

But what guarantees do we have, should this amendment pass, that a bunch of radicals would not be able to take control of the House and Senate or respective State legislatures? And if they do, how are we going to be assured that the Supreme Court will set things right if this amendment passes and becomes part of the Constitution?

I would hope that people elected to the Congress would never act inappropriately. I would hope that people elected to State legislatures would never act inappropriately or that they would not act so as to take away basic fundamental rights of people. But if this amendment passes, there is no guarantee that we will not someday have that type of radicalness that will take over in some States first and then ultimately perhaps even in the Congress.

There is a wide disparity of beliefs sometimes between the far left and the far right over what are fundamental rights. I have to tell you, if either of them really got control, under this amendment it could be a real mess.

Plus, this amendment basically, it seems to me, makes it very difficult for those who are challenging incumbents to be able to make a challenge that really the first amendment anticipates they should be permitted to make.

I have talked long enough. For reasons I have set forth this afternoon, it is my view that adoption and ratification of this amendment would fundamentally change our constitutional Republic. The censorship power of government would inalterably be enlarged. Free speech and free elections would be endangered. As sincerely brought as this amendment is, I still believe it is a very dangerous amendment in the overall scope of things. Perhaps if we had 100 people exactly like the distinguished Senator from South Carolina, this amendment would work just as well as could be. But I do not think we can always rely on that. I am concerned about that. Plus, I do not think that you should take away rights that really are speech rights when it comes to elections.

In contrast, of course, I am the author of the constitutional amendment to permit Congress to ban the physical desecration of our flag. A number of

times this Congress has passed legislation, with overwhelming support, to stop that, but each time it has been declared unconstitutional.

Frankly, I do not believe that urinating on our flag or desecrating our flag by somebody defecating on it or by burning it, that that is what you would call speech, but that is what the Supreme Court has said. In that case, we do need a constitutional amendment.

Unlike the Hollings amendment, the flag amendment would not affect the first amendment.

Some have suggested that my opposition to the Hollings amendment is inconsistent with my strong support for the flag protection amendment. Nothing could be further from the truth.

Unlike the Hollings amendment, the flag protection amendment simply restores the first amendment to what it meant before two recent 5-to-4 Supreme Court decisions. Before the 1989 *Texas v. Johnson* case and the 1990 *United States v. Eichman* decision, the U.S. Supreme Court and numerous state supreme courts had upheld laws punishing flag desecration as compatible with both the letter and the spirit of the first amendment. Such laws had been on the books for most of this country's 200-year history.

The flag protection amendment respects the difference between pure political speech and physical acts. It is extremely narrow, allowing Congress only the power "to prohibit the physical desecration of the flag of the United States." Any law passed pursuant to the amendment could extend no further than a ban on acts of physical desecration, and would not affect anyone's ability to participate in the political process.

Unlike political contributions, the physical ruination of a flag adds nothing to political discourse. Whether good or bad, the reality of modern American politics is that money is essential to advocacy. Broadcasting a message—whether in print, on television or radio, or even over the Internet—costs money. A constitutional amendment prohibiting political donations would undeniably restrict people's ability to convince others of their point of view. But lighting fire to the flag is different. It is not an essential part of any message. In fact, often the audience for such demonstrations does not understand what policy or idea that motivated the burner to burn. The flag protection amendment leaves untouched everyone's right to articulate—and advocate publicly for—their point of view.

In sum, passage of the flag amendment would overturn two Supreme Court decisions: *Johnson* and *Eichman*. It would leave the Constitution exactly intact as it was understood prior to 1989. It would do nothing else. In contrast, the Hollings amendment would be a radical alteration of Americans' fundamental right to participate in the democratic process.

Let me end with this. The McCain-Feingold bill is defective inasmuch as

it does provide a means whereby you can limit the free speech rights of people with regard to soft money. I do think probably the Supreme Court would uphold the Hagel approach to it, although I question whether even a cap on soft money to the tune of \$60,000 per individual would be upheld by the Supreme Court; but it could be.

Probably my friend from South Carolina feels the same way, that without a constitutional amendment change, it is just a matter of time until McCain-Feingold will be overturned. I believe it will be overturned, should it pass in its current form. And one reason it will be overturned is because of the limitation of real speech rights.

Frankly, *Buckley v. Valeo*, I don't think is wrong. With that, I hope my colleagues will vote against this amendment, as well intentioned as it is.

I yield the floor.

Mr. SESSIONS addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. HATCH. I yield whatever time the Senator needs.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. SESSIONS. Madam President, I thank the distinguished chairman of the Judiciary Committee. Once again, he has gone right to the heart of the matter. I hope the people were listening to his comments at the conclusion of his remarks in which he summed up, very succinctly, the issues with which we are wrestling.

Yes, we wish money were not such a significant part of being able to get out your message in America. I do not have any personal wealth I can put into getting out my message, but it is a way to get out that message. As Senator HATCH said, this deals with real speech.

This proposed constitutional amendment is breathtaking in its reach. It flat out says that Congress and State legislatures—incumbent politicians—can pass laws that would limit their opposition's right to raise money and to speak out during an election cycle. That is what we are talking about. That is what McCain-Feingold does without proposing a constitutional amendment.

What Senator HOLLINGS has wrestled with over the years is a constitutional amendment that he believes would allow the Congress constitutionally to be able to restrict the right of people to come together to assemble, to print out press beliefs that they have, or to project them and amplify them over radio and television. They say this is not an infringement on the most historic freedom, the cornerstone of American freedoms: the right to speak out.

I think this, if passed, would be a colossal blunder of historic proportions. I think this proposed amendment, if passed, would reflect the greatest constitutionally proposed threat to liberty and freedom that I have known in my lifetime, maybe since the founding of

this country, of speech and the press and assembly.

We should not do this. If we say this Congress can stop the current constitutional right of free Americans to come together, raise money, and buy and amplify their speech on radio or TV, Internet, and so forth, to advocate their views, we will have made a major move away from freedom in this country.

Senator HATCH said in his remarks that without a doubt the censorship power of the Government will have been enlarged. I remain stunned, really, that persons whom I admire as champions of liberty, such as the distinguished Senator from South Carolina, can miss this. Maybe I am missing it. I don't know. I can't see that I am missing it. I don't think I am missing it. Maybe I am. I don't think this is an itty-bitty issue. I think it is a historic and defining issue.

I am wondering: Where are our liberal friends? Where is the free speech crowd? What about our law school deans and professors, are they reading this? The ACLU has picked it up. They call it a recipe for repression. They see it for what it is. I respect them for that. They generally can be fully counted on in free speech issues. They believe depiction of child pornography is free speech and should be protected. I don't know that that is speech.

I know the Founding Fathers fundamentally wanted to protect political speech. This amendment sets up a construction that would allow the constraint of political speech during an election of all times.

I didn't want to be too involved in all this debate. I try not to get involved in everything that goes on on the floor. This is an issue in which I am interested, but I have spoken once already on a particular issue. I just want to be on record, I want it recorded on this floor for my constituents and my children, that I was standing here and being counted on this one. I want it on the record that this Senator will not support a constitutional amendment to restrict the right of people to assemble, raise money, and speak out during an election cycle. That is just fundamental to what America is about. It is important. I believe it is an issue on which I have an obligation to speak.

It has been suggested, that this is not an amendment to the first amendment. Well, I suggest it is an amendment to the first amendment. They say: Well, it is going to be amendment No. 20 something; it is not going to be written right up there on the first amendment. You are not going to strike out any words in the first amendment. Well, it is going to be in the Constitution. It is going to be given equal play with the first amendment. And since it passed subsequent to it, it will be defined by the courts that if it is in any way contrary to the first amendment, then the Hollings amendment will be given precedence because it was designed to modify the problems that have arisen

which courts have concluded that certain campaign finance laws people are so determined to pass infringe on the first amendment.

That is what Buckley says. Buckley was based on the first amendment. That is why the Court ruled the way they did. They didn't conjure it out of thin air.

It is not just the Buckley case that would be reversed. There are a plethora of cases, Buckley progeny, that have upheld Buckley and gone further than Buckley. All of them would be undermined or overruled by this law if it were to become a part of our Constitution.

They say that rich people have more rights because they can afford to buy time and they have special interests. Let's be frank about it; everybody has a special interest. That is what we all are. As human beings, we have interests; we have beliefs. We want to see those made law. Whether it is dealing with low taxes, or abortion, or gun ownership, or redistribution of wealth, or the military, or drug laws, or health care, or education, we all have beliefs for which we want to fight. Everything is a special interest of a sort.

I note in passing that some elite groups, some wealthy entities, apparently will not be covered—at least it is said they will not be, although the ACLU thinks they might. I suggest that some of those groups, such as NBC, CBS, ABC, Fox, New York Times, Washington Post, the Los Angeles Times, all the Gannett chain, all the big newspaper chains, they can go on and run full-page ads day after day, full-page editorials slamming the Senator from Alabama and saying he is a terrible person. Apparently, if your money wasn't consistent with the way the Congress says, a group of people couldn't go into that newspaper and buy a full-page ad to respond to their full-page editorial.

Throughout the history of this country, newspapers have gone off on tangents for one thing or another they steadily believed in, biased their news articles, editorialized every day on things in which they believed. It has been protected by the first amendment. These wealthy groups of elite intellectuals and power interests have a right to propagate, I suppose, right up to election day. Surely, under this proposed amendment, they wouldn't say they couldn't do that, their newspaper couldn't run an editorial on the day of the election to say who to vote for, but they apparently are saying that another corporation, no less noble or no less venal than the New York Times, can't publish an editorial or buy an ad in the newspaper to rebut that article.

This freedom to speak out is particularly valuable in times of persecution or oppression and discrimination against an unpopular minority. Is not the ability of a minority group that might be subjected to oppression sometime in the future—isn't their ability to defend themselves, to get their mes-

sage out, undermined if they can't assemble and raise money and speak out against a candidate they believe threatens their very existence?

I have mentioned that when I ran for office, my opponent was a skilled trial lawyer. One of my lawyer friends said: JEFF, I think you threaten our business. You don't believe in lawsuits like we do.

I said: Well, I guess I don't.

They spent over \$1 million raising money to beat up on me. What is wrong with that? They thought I threatened the way they wanted to do business as lawyers. They thought changes on tort reform that I might favor threatened their business, and they wanted to defend themselves. Apparently, under this rule, they could be constricted substantially in their ability to complain during an election cycle about a politician who threatens them. That is just a group. That didn't deal with actual repression, but it could be a matter in the future of actual repression.

We ought not to pass a constitutional amendment that would limit the rights of persons in the future to defend themselves against actual oppression. It constrains not only the ability to raise money but the expenditures of money. It says the legislature and the Congress can pass reasonable laws that would control expenditures “in support of or in opposition to a candidate.” That is a serious matter, saying independent, free Americans cannot come together and assemble and speak out during an election in opposition to or in favor of a candidate. That is really a change. It does affect the first amendment because the first amendment has constrained Congress from doing that, and that is why this amendment has been placed here, to allow Congress to do that very thing.

I know the Senator from Utah, Mr. HATCH, the Judiciary Committee chairman, mentioned the flag burning amendment. We have Members of this body who believe the physical act of burning a flag or desecrating a flag is speech. They object to any amendment that would protect the flag. I will just say that I think Chief Justice Rehnquist is right that if it is speech to burn or desecrate a flag, it is at best a grunt or a roar.

But the amendment before us today and, in fact, in large part the McCain-Feingold bill is a bill that goes to the heart of political speech. And when do they want to control it? During the election cycle. That is when they want to control it. Oh, it is all right to have violent, pornographic videos and images. They say that is speech and it must be defended to the death. But you can't have a group of people get together in this country and propose that the Senator from Alabama is dead wrong and ought to be thrown out of office. If Richard Nixon proposed a law and Congress passed the law, when we were having protests during the Vietnam war, when I was in college and law school and all these professors, the

great constitutional scholars that they were—I wonder what they would have said if Nixon had proposed an amendment that would keep people from raising money and speaking out. I think they would have been upset. I wonder where they are today.

I was shocked that, in 1997, 38 Senators in this body voted for this amendment. Last year, I was pleased to note that the number had dropped to 33. I hope that number will continue to fall.

Madam President, freedom is scary. It allows things to get a bit out of control, when people are free to just go and say what they want to. And you can't quite manage it as we in Congress like to manage things, because we want to have it just right so there will be no spoilage, and we don't want any corruption here or any unfair threat to us. We just want to control this thing. But we are a nation of freedom, of liberty, of independence, free to speak out and say what we want, especially in an election cycle.

But over the long haul of our Nation, this free debate, this challenging of everybody's positions and issues, and debate has been healthy for us. It strengthens us as a nation. We must not turn back the clock by adopting an amendment, or some of the language in McCain-Feingold, that I believe likewise constrains freedom unjustifiably.

So the censorship power of our Government would be greatly enlarged if this amendment were to pass. It would allow the constriction of debate on the core issues of America, political, philosophical issues of intellectual power and breadth that affect the future of our country. That debate would be restricted significantly.

I think it would be wrong to pass the Hollings constitutional amendment. As written, McCain-Feingold, without this amendment, has a slim chance of being sustained. I think it will have to be either defeated or amended.

I thank the Chair for the time and yield the floor.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. FITZGERALD). There are 55 minutes under the control of the Senator from Utah, 24 seconds for the Senator from South Carolina.

Mr. HATCH. Senator BIDEN would like to speak in favor of the amendment. As a courtesy, I am certainly going to yield some time to the Senator. Senator REED, who also wants to speak in favor, I will yield him 5 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. HATCH. I ask unanimous consent that following that, Senator FEINGOLD be given the floor and I will give him 5 minutes as well.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I would like to begin today by praising my distinguished colleague from South Carolina for the leadership and determination that he has brought to this debate.

I would also like to apologize to him. Apologize that he has to come to this floor yet again to cut through all the rhetoric, and high-minded talk, to get to the single most important fact in this debate. And that is, nothing will change in our campaign finance system until we have the Constitutional ability to limit spending in congressional campaigns.

And the only way that we can do that other than through voluntary limits is by standing with Senator HOLLINGS to pass this Constitutional amendment.

We've been down this road many times, Mr. President. As the Senator from South Carolina will tell you, he and I have stood on this floor urging the Senate to take this first fundamental step by passing his amendment. We have recited fact after fact to illustrate how the spending in last election cycle was far worse than the previous cycle. And each time that we stand here, the story gets worse and worse.

The truth is, unless we adopt Senator HOLLINGS' amendment and pass the McCain-Feingold bill, we will back here in 2 years—reciting a new round of statistics to illustrate how bad the system got in 2002.

Mr. President, our system is spiraling out of control. And it will continue this spiral, unabated, until we pass needed reforms. But nothing can fundamentally change the way in which our process works until we have the ability under the law to limit the amount of money that is spent on campaigns.

Twenty-five years ago, the Supreme Court ruled that spending money was the same thing as speech. The Court said that writing a check for a candidate was speech, but writing a check to a candidate is not speech.

The Supreme Court made a supremely bad and, I believe, supremely wrong decision. By saying that Congress shall make no law abridging the freedom to write a check, the Court is saying that Congress cannot take the responsible step of limiting how much money politicians can spend in trying to get elected. We have to start putting limits on spending, Mr. President, because money is beginning to overtake the system.

In the twenty-five years since the Supreme Court's ruling, the general cost of living has tripled, but the total spending on Congressional campaigns has gone up eightfold. Think about it: eight times!

For the winning candidates, the average House race went from \$87,000 to \$816,000 in 2000. And here on the Senate side, winners spent an average of \$609,000 in 1976, but last year that average shot up to \$7 million.

And the Federal Election Commission estimates that last year more than \$1.8 billion dollars in federally

regulated money was spent on federal campaigns alone, and that doesn't even count the huge amount of soft money that was used in an attempt to influence federal elections.

Yes, these numbers are staggering. But even more so, is the thought that they will continue rise unless something is done. And I believe that the single most important thing that we can do from a purely practical sense is to amend the Constitution and give us the right to limit the amount of money that candidates are able to spend.

I don't approach this lightly, Mr. President. Amending our Constitution is not a trivial matter. We have seldom done it in our history, and we have only done so when it was truly needed. Reluctantly, I have reached the conclusion that it is needed, now. For if we do not take this opportunity to seize control of our system, we will be right back here merely debating the problem, instead of solving it. And when we return 2, 4, maybe 6 years from now, the problem will be even worse than it is today, and as a result, much harder to solve.

Mr. President, the sooner we take action, the sooner we will be able to restore the public's faith in our democracy. I urge all of my colleagues to stand with the distinguished Senator from South Carolina and adopt this Constitutional amendment as a first, and fundamental, step toward reclaiming our political system for the American people.

Mr. President, let's get something straight here. The first amendment is not absolute. No amendment is absolute. When there is a Government interest, in this case of curbing corruption, there is a Government rationale to be able to deal with what the Court refers to as speech. I think Justice Stevens got it right in a case decided 24 years after *Buckley v. Valeo*, I say to my friend from Alabama. He said money is not speech, money is property. Money is property. We are talking about speech.

All the folks sitting up here in the gallery are in fact interested in free speech. But it does not go unnoticed that their ability to speak freely and be listened to depends upon how much money they have. You can be as free-speaking as you want. You can stand in a corner or in a park with a megaphone and go on and on about what you think should be done. You can seek free press. But you are unable to go into the Philadelphia media market and pay \$30,000 for a 30-second ad to say my good friend from Alabama is a chicken thief or is a war hero. You are not able to do that. That takes money. Money talks. Money talks. Money is property. Money is not speech, money is property.

The fact of the matter is, in this context, if you look at my friend from Alabama, and others, the Court, in the progeny of *Buckley*, has allowed us to regulate campaign contributions under certain circumstances. So this notion

that it is absolute is absolutely inaccurate. I will not go into further detail because of the time constraints here.

Let me say again that I thank my friend from South Carolina because, when all is said and done, this is the only deal in town. It is fascinating. If you look at what happened here, we can pass the McCain-Feingold bill—and I am for it—but I promise you, we are going to be back here in a year or two, or three, on a simple proposition. The simple proposition is that the cost of campaigning has gone up eightfold in the same time that we have been in a system where the cost of inflation has gone up significantly less than that. Since 25 years ago, at the time of the Supreme Court ruling, the general cost of living has tripled, the cost of running a campaign has gone up eightfold. Now, for a winning candidate, the average of a House race 25 years ago was \$87,000. This time around, it is \$816,000, average.

Let me tell you, if you have a lot of money, you can speak a lot louder, your voice is heard more. If you don't have a lot of money, you are not heard. I didn't think that is what the founders had in mind when they talked about speech. They didn't sit down and say, by the way, landowners with a lot of money should be able to be heard more than the guy who is the shoemaker in the village, or the village cobbler. They didn't say that. Money is property. Money is property. It is not speech.

On the Senate side, let's take a look at what happened. When I ran in 1972—and I won't even go back that far—I spent \$286,000 in the election. The Senate race in Delaware combined cost over \$13 million—not my race; I am not up until this time.

Let's get something else straight. One of the reasons our friends aren't so crazy about this amendment is all of us who hold public office now are in pretty good shape without this amendment.

It is not merely what the other guy can do to you. You sit there and say: That interest does not like me, so they will spend a lot of money. If you are popular enough in your home State, guess what. They are worried what you will do to them.

I am not going to have any trouble raising money as long as I stay relatively popular. Right now I am relatively popular. Guess what. I would hate to be getting starting now to try to run in Delaware. I do not know how they do it. How do they do it? How do they raise a minimum of 2 million bucks or probably, if it is a race, \$5 million, in a little State with only 400,000 registered voters? Heck, we could go out and pay everybody. We could go out and give them all a bonus, increase their standard of living if we took that \$13 million and spread it among 400,000 voters.

This is getting obscene. What is going to control? What is the deal here? I know this amendment is not going to pass this time, but I want to

be on the side of right on this one, like I have from the very beginning when my friend from South Carolina proposed this. If, in fact, the average cost of a Senate election—catch this—in 1976, the average cost of a State election was \$609,000. Do you know what it was this last cycle? Seven million dollars. Did you hear what I said? Seven million dollars. Give me a break—free speech, whoa.

You better have won the genetic pool, as the distinguished financier from the great State of Nebraska says. You better have won the genetic pool and inherited a whole lot of money, or you better have an awful lot of very rich friends, people with a lot of money, otherwise how do you get in the game? How could I possibly—maybe this is a good reason not to have the amendment—but how could I as a 29-year-old guy, coming from a family with no money—I am the first U.S. Senator I ever knew in effect—how could I have gotten elected? How could I do it now? I have been here now for 28 years. Obviously, the people of Delaware do not think I have done a real bad job. How could I have gotten here if, in fact, I had to go out and raise \$2 million, \$3 million, \$4 million, \$5 million, or \$9 million? I will tell you what happens.

You engage in an incredible exercise of rationalization. You go out there and say: I am going to stick to my principles. I will give a specific example.

When I ran the first time, at the very end—and my friend from South Carolina knows because he headed up the campaign committee and he is more responsible for my being here than anyone in the Senate because he helped me. We narrowed the race down to a percentage point with 10, 11 days to go. My brother Jim, 24 years old, was raising my money and said: JOE—we had no TV ads—the radio station called and the ads come off the air on Friday—this is 10 days before the election and my ads were working. You need \$20,000. We have no money.

He set up a meeting with a bunch of good people, decent, honorable men my age, maybe a little older, very wealthy people in my State who were, like me, opposed to the war in Vietnam, pro-environmental movement, and thought women's rights should be expanded. They were basically Republicans, but they were moderate Republicans.

I drove out to a place called Greenville, DE. I walked in to this investment banking operation in a beautiful area, one of the wealthiest areas in America. My friend knows it well. I sat down with six or eight fine men. They offered me a drink. I sat there and had a Coke. We talked about my position on promoting the rights of women, the equal rights amendment because they were for it. I talked about the environmental questions. I talked about the war in Vietnam, et cetera. Then one guy said: JOE, what is your position on capital gains? No one here will remem-

ber except my friend from South Carolina, but at that time it was a big issue in the 1972 campaign. Nixon either wanted to eliminate it or drastically reduce it, I cannot remember.

Guess what. I knew all I had to say was: You know, gentlemen, I really think we should have a cut in capital gains. But because I was young enough and stupid enough not to think, I immediately said: No, I oppose a cut in the capital gains tax.

No one said anything except: JOE, lots of luck in your senior year. Good talking to you. So long.

I will never forget riding down the pike with my brother Jim. My brother turned to me and said: I hope you really feel strongly about capital gains because you just blew an election.

I truly believed—and only someone who has run for office can really understand this—I truly believed everything I had worked for I had just blown by telling the truth. I almost wanted to turn the car around and go back.

I think of myself as a principled man, but I started to rationalize. I started to say: Isn't it better for me to get elected with 95 percent of my values intact, a guy who will fight to stop the war, promote the rights of women, fight for civil rights, a guy who will blah, blah, blah? Capital gains is not that big a deal.

That is how insidious this process is. No one buys us. No one goes out and pays and says: If you do this, I will pay you. But it is insidious. It is insidious, and the only people who have a lot of money to be involved in campaigns, whether they are people I support such as labor unions or big business are people who have an interest.

I ask unanimous consent to proceed for 2 more minutes. My friend is not here.

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

Mr. BIDEN. Mr. President, I conclude by pointing out the following: Last year, we spent \$1.8 billion—\$1.8 billion—on the elections. You tell me, take soft money, hard money, no money, up money, down money, any money—if you take it out, you take a piece of it out and you do not limit the amount we can spend, I promise you—I will bet my career—2 years from now, we are going to be standing here, and I am going to say: We just spent \$1.9 billion, and the average cost of an election has gone to \$7.1 million.

Average people have no shot of getting in the deal. They have no shot of getting in the deal.

Money is property. Money is not speech. I cannot believe the Founders sat there and said: You know, if I win the genetic pool, I am entitled to have a greater influence in my country and in the electoral process than if I am not in that genetic pool; I was born into land wealth or mercantile wealth. I cannot believe they believed that. I cannot believe that was the case.

I conclude by saying we have the ability under a controlling government

interest to deal with corruption in our electoral process. I defy anyone to look me straight in the eye and say they believe all this additional money in the electoral process is not polluting and corrupting the process. It puts honorable young women and men in the Republican and Democratic Parties who are getting into the process in the position of shaving their views very nicely before they get there. No one is going to pay them off, but they are not stupid. I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Under the previous order, the Senator from Rhode Island is recognized for 5 minutes.

Mr. REED. I thank the Chair. Mr. President, I thank the Senator from Utah for graciously yielding me this time.

I rise in strong support of the Hollings amendment. Senator HOLLINGS recognizes that in the early seventies, in the wake of Watergate, this Congress passed what they thought was a comprehensive system of campaign finance reform. The two principal pillars of that reform were a limit on contributions by individuals to candidates and a limit on expenditures in the campaign by candidates. Just before the system even started, the Supreme Court struck down a major pillar in that structure, and this system has collapsed and has been falling apart since then.

The evidence is clear. Every election we see a huge explosion in spending because there are no limits on campaign expenditures. For candidates, it is almost akin to the nuclear arms race: You can never have enough money. You can never have enough because your opponent might get a little more, and unless we stop this race for dollars, we will not have true campaign finance reform in this country. We will not have a system of campaign finance reform.

Every time we pass legislation—and I commend wholeheartedly Senator McCAIN and Senator FEINGOLD for their effort, and their effort is important, but we need this amendment to ensure we can create a system of campaign finance reform that will truly work.

As I said, and my colleague pointed out, there has been a huge explosion in spending. What has this done? Again, as Senator BIDEN pointed out, it certainly has put out of reach for so many Americans the idea of actually running for public office, at not just the Federal level but all levels.

It has done something else, something insidious: Questioning, in the minds of the American public, the legitimacy of what we do and for whom we do it. The idea of our Government is that we are servants of the people. Yet in the minds of so many Americans they see us as servants of special interests.

I was particularly struck by a poll taken by Princeton Survey Research Associates immediately after the election in 1996. Special interest groups in

politics were rated a major threat to the future of this country. It was second only to international terrorism. In the minds of so many Americans, special interest politics is just as threatening to the future of this country as international terrorism.

We have to do something. We have to, I believe, support Senator HOLLINGS in this amendment. He recognized that until we have the ability to truly create a system of campaign finance, we will always have this escalation of spending, this escalation of continued distrust by the American public of their political system.

The Court, in *Buckley v. Valeo*, made the presumption or the assumption that speech equals money or money equals speech. Frankly, that is not always the strain of constitutional theory that the Court has presented. For example, in 1966, in *Harper v. Virginia Board of Elections*, the Court struck down a poll tax of \$1.50 in Virginia, declaring, “Voter qualifications have no relation to wealth. . . .”

Later, in 1972, in *Bullock v. Carter*, they struck down candidate filing fees ranging from \$150 to \$8,900 for local office in Texas because the theory was that one should not have to pay to be a candidate, one should not have to have his or her test of qualification, even to vote or to run, based upon money.

The reality today is that to be a candidate, you have to have money. We spend a great deal of time trying to get that money.

The Court in *Buckley v. Valeo* erred dramatically. I do not think—and I am shared in this view by my colleague from Delaware—that money equals speech. In fact, I am a bit confused on constitutional theory why a contribution to a candidate can be limited, even though I might be making that my form of speech, yet we cannot limit the overall spending of a candidate in an election.

The Court in *Buckley v. Valeo* was wrong. The only way we get out is to pass the Hollings amendment and give them a way clear so they will, under the Constitution, recognize that not only should we but we can craft a comprehensive system of campaign finance reform.

This view is not particularly radical. In the 25 years since *Buckley*, more and more people have come to the conclusion that it was wrongly decided and that, in fact, we can and should impose limits on expenditures. Constitutional scholars, public officials at every level, State attorneys general, secretaries of state, all have suggested we can and should put a limit on expenditures. The States have acted. They have created legislatively a limit on expenditures. It was challenged in court, but for the first time a judge looked seriously at the record, a district court judge, and conditioned that perhaps there was a justification for this limit but, being a district court judge bound by the opinion in *Buckley v. Valeo*, struck down the provision.

Similar provisions are being litigated and have been litigated in Ohio, and they are being litigated today in the context of an Albuquerque, NM, city ordinance which provides for a limit.

We can give our colleagues and the Court the benefit of this amendment. We can give them the rationale to go ahead and do what I think should be done, to be able to limit expenditures so that every candidate has the right to spend a certain amount, but the spending will not overwhelm the true test of a race, which is the quality of their ideas and positions.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for 5 minutes.

Mr. FEINGOLD. Mr. President, I know we are not debating the bankruptcy bill when I am in agreement with the Senator from Utah and the Senator from Alabama. We clearly moved not only to campaign finance reform but today to a very worthy discussion about the advisability of adopting an amendment to the U.S. Constitution concerning campaign financing.

I oppose Senate Joint Resolution 4, but I do so with some reluctance, given the tremendous respect I have for the Senator from South Carolina. I appreciate the sincerity in which he offers this resolution. But more importantly, he has been passionate on the issue of campaign finance reform for a very long time—long before I came to this body—and I have always looked up to him on this issue.

I understand the frustration and realities he is looking at that lead him to propose a constitutional amendment, and I know both the Senator from South Carolina and the Senator from Pennsylvania, who also supports this resolution, are strong supporters of campaign finance reform. I thank them for that, and I thank them specifically for their help on this bill, and I appreciate the comments of the Senator from South Carolina, who, of course, is concerned about what the U.S. Supreme Court will do with the McCain-Feingold bill if they get it but who at least left open the possibility that they may look upon it favorably.

There are just two reasons I am uncomfortable voting for this constitutional amendment. The first has to do with my belief that it does actually amend the Bill of Rights for the first time in our Nation's history. I understand the arguments that this is such a serious problem it is justified. When I first came to the Senate, I actually voted for the Hollings amendment the first time. Then in 1994, a group of Congressmen and Senators were elected in what was known as the Contract With America Congress, and they proposed so many amendments to the U.S. Constitution, it made your head spin. In fact, a lot of them were going to amend the Bill of Rights.

I disagree with the distinguished chairman of the Judiciary Committee

who says the flag amendment does not amend the first amendment but this does. Both of them do. Both would be the first changes to our fundamental doctrine of the Bill of Rights in our Nation's history. I am uncomfortable with this approach. I understand how people get to the point where they don't believe we can ever deal with the problems of our campaign financing system and they want to do it. My belief is that it is better not to tamper with the Bill of Rights and to solve the problem legislatively.

That leads to my second point. I am more optimistic, more sanguine about the possibility that we will prevail; that McCain-Feingold, if it gets to the U.S. Supreme Court, will be held constitutional. In fact, I can't really believe anyone on the floor is seriously arguing anymore that the most important provision of the McCain-Feingold bill, the ban on party soft money, will be held unconstitutional. It is not credible.

In the Missouri Shrink PAC case in January of 2000, the Court ruled 6-3 that even a \$1,000 contribution in Missouri today is a sufficient figure to justify the possibility of the appearance of corruption. Surely a \$100,000, \$200,000, \$500,000, or \$1 million contribution would be regarded the same by that very strong, 6-3 majority in that Court.

I believe, although certainly our bill doesn't solve a lot of the problems that have been discussed today, at least regarding the abuse of soft money in our society, that the U.S. Supreme Court—this U.S. Supreme Court—would see it our way. I believe this bill can solve some of the problems that have been identified in the system. For those reasons, I will oppose this constitutional amendment. I do not think we need to amend the Constitution in order to have effective campaign finance reform.

Our colleague Senator HOLLINGS has been calling for meaningful campaign finance reform but perhaps longer than any other Member of the Senate. I disagree with this particular approach. But I want to pay tribute to his sincerity and commitment to reform.

This resolution was a constitutional amendment is a serious proposal, not casually offered, and not offered in hopes of sabotaging our bill, as some amendments have been. But I must oppose it.

Back in 1993, Senator HOLLINGS offered a sense-of-the-Senate amendment to take up a constitutional amendment similar to the one before us today. After a short debate, I voted with the Senator from South Carolina on that day. I did so because I believed that other than balancing the Federal budget, there was no more fundamental issue facing our country than the need to reform our campaign finance laws.

And I was frustrated at that time with the failure of the Congress to pass meaningful campaign finance reform.

But I immediately realized, even as I was walking back to my office after

voting, that I had made a mistake. I started rethinking right away whether I really wanted the Senate to consider amending the first amendment.

Later, I was privileged to join the Senate Judiciary Committee, and then the 104th Congress became a teeming petri dish of proposed amendments to the Constitution. On the Judiciary Committee, I had a good seat to witness first hand the radical surgery that some wanted to perform on the basic governing document of our country, the U.S. Constitution.

It started with a balanced budget constitutional amendment, and soon a term limits constitutional amendment, a flag desecration amendment, a school prayer amendment, a super majority tax increase amendment, and a victims rights amendment, and on it went. In all, over 100 constitutional amendments were introduced in the 104th Congress. This casual proliferation of amendments has tapered off somewhat, but persists to this day.

As I saw Members of Congress suggest that all sorts of social, economic, and political problems, great and small, be solved with a simple constitutional amendment, I chose to oppose this serious and earnestly considered constitutional amendment from Senator HOLLINGS, along with others that have casually and sometimes recklessly threatened to undermine our most treasured founding principles.

The Constitution of this country was not a rough draft. We have sometimes lately been treating it as such, and Senator HOLLINGS' worthy effort appears in that context, so I believe we should oppose it, lest we encourage less serious efforts.

Even if we were to adopt this constitutional amendment, and the states were to ratify it, which we all know is not going to happen, it will not deliver effective campaign finance reform. It would empower the Congress to set mandatory spending limits on congressional candidates that were struck down in the landmark *Buckley v. Valeo* decision.

And if this constitutional amendment were to pass the Congress and be ratified by the States, would campaign finance reformers have the necessary 51 votes—or more likely the necessary 60 votes—to pass legislation that includes mandatory spending limits?

Probably not—let's remember that it took us years to get to 60 votes on the McCain-Feingold bill.

But this week we have before us a bipartisan campaign finance proposal that has been meticulously drafted within the guidelines established by the Supreme Court. We are confident that the McCain-Feingold bill is constitutional and will be upheld by the courts.

Our original proposal, unlike the law that was considered in *Buckley v. Valeo*, included voluntary spending limits, but the centerpiece of our bill is a ban on soft money, the unlimited contributions from corporations,

unions and wealthy individuals to the political parties. There is near unanimity among constitutional scholars that the Constitution allows us to ban soft money. The Supreme Court's decision in the *Shrink Missouri* case makes it abundantly clear that the Court will uphold a soft money ban. We don't need to amend the Constitution to do what needs to be done.

Until this year, the desire of a majority of Senators to bring a campaign finance reform bill to a final vote has been frustrated by a filibuster. So the notion that this constitutional amendment will pave the way for legislation that includes mandatory spending limits simply ignores the reality of the opposition that campaign finance reformers would face here in the Senate if they tried to enact those limits.

This proposed constitutional amendment would change the scope of the first amendment. I find nothing more sacred and treasured in our Nation's history than the first amendment. It is the bedrock of the Bill of Rights. It has as its underpinning the notion that every citizen has a fundamental right to disagree with his or her government. I want to leave the first amendment undisturbed.

Nothing in this constitutional amendment before the Senate today would prevent the sort of abuses we have witnessed in recent elections. Allegations of illegality and improprieties, accusations of abuse, and charges of selling access to high-ranking Government officials would continue no matter what the outcome of the vote on this constitutional amendment. Only the enactment of legislation that bans soft money contributions will make a meaningful difference.

The Senate will have another opportunity to address this issue. We have had many debates on campaign finance reform, and if we pass the McCain-Feingold bill, the general issue of campaign finance will reappear from time to time. But, today, in March 2001, the way to address the campaign finance problem is to pass constitutional legislation, not a constitutional amendment. We are poised to give the people real reform this year, not seven or more years from now.

I urge the Members of the Senate to vote against the resolution for a constitutional amendment of the Senator from South Carolina. It is not necessary to amend the Constitution to accomplish campaign finance reform. I greatly admire the sincerity and commitment of the Senator from South Carolina, but ultimately I do not think his amendment will bring us any closer to achieving viable, real reform in the way that political campaigns are financed in the United States.

I conclude by thanking the Senator from South Carolina for his leadership and knowledge on this subject.

Mr. HATCH. I yield 15 minutes to the Senator from Kentucky.

BIPARTISAN CAMPAIGN REFORM ACT

Mr. BUNNING. Mr. President, for a week now we have been debating campaign finance reform. It has been a healthy debate, and a debate I am glad we are having. Some want dramatic changes by overhauling the whole system. Others want simple reforms around the edges. Some want to limit soft money. Some want to ban it. Some want full disclosure. Others want none. Some want to raise the ceiling on hard money given by individuals. Others want to leave hard money limits alone. Some want to protect paychecks of union members from having their dues used for political activities. Some do not want to ensure that protection at all.

But let's all agree on one thing. We all think our present campaign finance system needs reforming. However, the underlying McCain-Feingold bill, S. 27, is an attack on the rights of average citizens to participate in the democratic process. Attacking these rights only enhances the power of wealthy individuals, millionaire candidates, and large news corporations.

McCain-Feingold hurts the average citizen's participation in the process because it targets and imposes restrictions on two key citizen groups: issue advocacy groups and political parties. These two groups serve as the only effective way through which average citizens across America can pool their \$10, \$20, \$100 donations to express themselves effectively. One individual alone in the public arena can accomplish little with his or her small donation. But the small donations of thousands of like-minded individuals can accomplish a lot when they work together.

The right to associate is fundamental in our democratic Republic, and the ability of the average citizen across America to effect public policy is very important. It is so important that the U.S. Supreme Court has recognized it as a fundamental right with constitutional protections. If McCain-Feingold succeeds as it is now, the influence of average citizens would be drastically reduced. Associations with like-minded individuals is essential to engaging in the debate of public policy, but under McCain-Feingold the average citizen would be buried in the tomb of non-participation and the rich and powerful would run politics.

Under McCain-Feingold, the power of the giant news media corporations is not eliminated. Their editorial content and news coverage are protected by the first amendment. And the wealthy multimillionaires will not be prohibited from spending their money to self-finance their campaigns or express their views on public policy issues. The media and the wealthy have all the power and money they need to pay for communications about issues. Therefore, the campaign finance reform as proposed by McCain-Feingold strips power from the average citizen and allows the wealthy and powerful to retain their influence.