challenger who ran in the last race if they would have accepted this kind of a deal. They could spend as much money as the incumbent in the campaign. I will bet you, you would find very few who would turn that offer down, if they could keep the incumbent down, keep them at the same level. That is why I say I think the reason flies in the face of the facts.

Mr. MCCONNELL. The challenger might accept it, but it would be good for second place. The point is, if in a typical race, if you are a challenger, your biggest problem, unless you are very wealthy, or a celebrity, or war hero, is that nobody knows who you are. The Senator set the spending limits at such a level that almost no incumbent would ever lose.

Mr. HARKIN. Let's take this analogy of the football field. You are right. Both of us have been on the same side. I have been a challenger running against a sitting Senator, and so have you. And we have run as incumbents. We have seen both sides of this. Now, I suppose all things being equal, I would rather be an incumbent, obviously. But there are certain advantages to not being an incumbent. As I remember, when I ran, I had an open field. I am on the 5-yard line, the incumbent Senator is on the 30-yard line. But guess what. I am out there every day. I am in that State every day getting my message out from town to town, community to community, newspaper to newspaper, radio show to radio show. The person sitting here has to be in the Senate all year long. So I had a great advantage. The challenger has a great advantage. That field is open. The Senator starting on the 30-yard line goes from one side, to the other side, to the other side before he gets down to the end of the field. That challenger is open.

So I have to tell you that even though the incumbent has some advantages of being an incumbent in the newspapers and elsewhere, a challenger has advantages from being out there all the time. You know that as well as I do. We have done that in the past.

Mr. MCCONNELL. It may be an advantage to be out there all the time, but if you don't have the money to be on TV, and the Government tells you how much you can advertise, it is not much of an advantage up against the incumbent who is getting all this free coverage—the advantage that any incumbent will have no matter how you structure the deal.

Mr. HARKIN. You are getting that anyway.

Mr. MCCONNELL. It is a great asset.

Mr. HARKIN. Not only are you getting all of this free press and stuff from being a Senator, you are getting the money, too.

Mr. MCCONNELL. Right.

Mr. HARKIN. There is nothing I can do about you getting publicity. That comes with the territory of being a Senator. I am saying you should not have it both ways; you should not have the money and all of the protections that incumbents have. You can't do anything about all the stuff—the stuff a Senator gets. We can set voluntary limits.

I say to my friend from Kentucky I know how strongly he feels about public financing. Perhaps my friend was right the other day when he said polls show that people don't want their tax dollars used for public spending for people such as Lyndon LaRouche. My friend is probably right there. That is why I think there is another hammer—and you are right, this is a hammer—because there is no public financing in my amendment unless and until someone exceeds the limits. It is that person who triggers, then, the financing that comes from a voluntary checkoff.

Now, my friend says, well, there probably won't be enough money there because the people are not checking off as much money as they used to. Is that right? I think the Senator said that is what is happening. Well, the fact is, I have talked to a lot of people about the checkoff. Do you know why they don't want to give money to the checkoff? We just spend it.

We buy more TV ads, we hire more ad agencies, and the price keeps going up and up. They say: Why should I check off money to give to a candidate and all I do is see more of these soap ads, selling them like soap to me?

Under my amendment, a person checking off the money is putting money into a reserve fund to prevent that from happening. There is another hammer there because the person who exceeds the limits is the one who triggers the public financing.

If my friend is right, that people do not like public financing, that is another reason why someone would not exceed the limits. That is another reason why I think people would be more prone to check off the money because the money would basically be used to prevent this unregulated, unlimited spending on ads.

I say to my friend from Kentucky, I do not know if he listened to my argument on that, but this will get people to check off more money because then it would be used not to just add to the coffers of spending and buying more TV ads, but it would be put into a reserve fund as a hammer to keep us from spending more and more money.

Mr. MCCONNELL. I say to my friend from Iowa, he is counting on people who do not contribute to candidates they know to contribute to candidates they do not know, to contribute their money to a nameless candidate and cause with which they might not agree.

The Senator from Iowa is correct; under his amendment there would be no taxpayer funding provided you complied with the Government speech limit. The problem is, if you do not, your complying opponent gets tax dollars from the Government to counter your excessive speech. That is the constitutional problem with the proposal of the Senator from Iowa.

I do not think that makes the spending limit voluntary if, when you encroach above the Government-prescribed speech limit, the Government subsidizes your opponent. That is more than a hammer, that is a sledgehammer.

Also, it is worthy to note that all of the challengers who won last year, as far as I can tell—and the Senator from Iowa can correct me if I am wrong—I believe all the challengers who won last year spent more than the spending limits in his amendment, further proving my point that a challenger needs the freedom to reach the audience. To the extent we are drawing the rules, crafting this in such a way that we make it very difficult for the challenger to compete, we are going to win even more of the time. Of course, incumbents do win most of the time, but we would win more of the time if we had a very low ceiling.

In any event, my view is this is clearly unconstitutional. It is taxpayer funding of elections, more unpopular than a congressional pay raise, widely voted against every April 15 by the taxpayers of this country.

We have had this vote in a slightly different way on two earlier occasions. The Wellstone amendment got 36 votes; the Kerry amendment got 30. I hope the amendment of the Senator from Iowa will be roundly defeated.

I do applaud him, however, for recognizing the importance of nonseverability clauses in campaign finance debates.

UNANIMOUS CONSENT REQUEST—AUTHORITY FOR COMMITTEES TO MEET

Mr. MCCONNELL. Mr. President, I have 10 unanimous consent requests for committees to meet during today's session of the Senate. They have all been approved by the majority and minority leaders. I ask that these requests be agreed to en bloc and printed in the RECORD.

Mr. DODD. Reserving the right to object, I ask my friend and colleague if he will withhold that request for a few minutes. I will share with him a message I am getting. I will let him know about it.

The PRESIDING OFFICER. Objection is heard.

Mr. DODD. At this juncture, at this particular moment.

BIPARTISAN CAMPAIGN REFORM ACT OF 2001—Continued

AMENDMENT NO. 155

Mr. DODD. Mr. President, I saw my colleague from Minnesota, but I guess he is not now on the floor. We have a couple minutes. My colleague from Kentucky and I talked about this the other day. He makes a very good point about the declining participation in the checkoff system. In fact, the dollar amounts have been raised. If my friend from Kentucky is correct, originally it was $1 for the checkoff. You are not

paying more in taxes. It is the money you send in. The checkoff of $1 of your tax returns would be used for the public financing of Presidential races. That number then went up to $3 because there were fewer and fewer people who were actually doing the voluntary checkoff.

His numbers, I believe, are correct. We have seen a decline in the number of people who are voluntarily checking off that $3 of their Federal taxes they are sending in or that are being withheld to be used for these Presidential races.

I am worried about that because I think there is an underlying cause for this. The debate we are having about campaign finance reform, while we are not going to adopt public financing for congressional races despite the fact there is a lot of merit going that route in terms of dealing with the constitutional problems that exist in the absence of having some public financing, there is an underlying reason that I think contributes to that declining statistic, and that is the people are disgusted with the whole process.

I do not think it is people's lack of patriotism or their lack of understanding how important it is to contribute to strengthening our democracy. People are getting fed up. Witness that last year despite the overwhelming amount of attention and advertising on a national Presidential race, a race that included Ralph Nader and the Green Party, there was Pat Buchanan and the Reform Party, the Democratic candidate, Al Gore, and his running mate from my home State, JOE LIEBERMAN; President Bush and RICHARD CHENEY. Out of 200 million eligible voters in this country, only 100 million participated. One out of every two eligible voters in this country decided they were not going to make a choice for President of the United States and Vice President, not to mention the congressional races, the Senate races, and gubernatorial races that occurred.

On the Federal election for the leader of the oldest continuous democracy in the world, one out of every two adults in this country said they were not going to participate. I know some may have had legitimate excuses, but I suspect a significant majority of those who did not participate knew it was election day, did not have some overriding family matter that caused them to miss voting. I think they made a conscious decision not to vote. I think they decided they were not going to show up, and I cannot express in our native language adequately the deep, deep concern I have over that fact and what appears to be a growing number of people.

I hear it particularly among younger people. I visit a lot of high schools in my home State of Connecticut. I get a sense that too many of our younger people are embracing the notions held by one out of every two adult Americans in the last election, that they are not going to participate by showing up to choose the leader of our country. I suspect that a good part of the reason is that people are just disgusted by what they see and how elections are run when they see this mindless advertising, these 30-second spots, the attack ads that go after each other as if this was somehow an athletic contest rather than a debate of ideas where we are talking about the future of our country and what the priorities of a nation ought to be.

I, too, am very concerned with the declining statistics that my friend from Kentucky has identified, but I think it is more a poll not about public financing, I think it is a poll we ought to pay attention to, what the American people are saying, at least in the majority of cases, I believe: We think the system is not working very well. We think the system is out of control. We think there is too much money in politics; that our voices do not get heard; that we cannot afford to participate in these contests where contributions of $1,000, now $2,000 per individual, that people can write a check now for $37,500 if this McCain-Feingold bill is adopted.

Last year—I said this over and over in the past week and a half—there were only 1,200 people in this country who wrote the maximum check of $25,000; 1,200 people out of 280 million Americans. We now have raised that because this hasn't been enough. We are told you can't finance these campaigns with maximum contributions of $25,000 in Federal elections. We are raising it to $37,500. That is per individual, per year. Double that for a primary election. That gets you to $75,000. Of course, if it is a husband and wife, it is $150,000. We had to debate that. I commend my colleague from California who negotiated that number down.

Those who wanted that number higher wanted $100,000 per individual, $200,000 for a husband and wife. We are told the system is financially bankrupt. We don't have enough money in politics, we are told.

That has more to do with these declining numbers of people voluntarily checking off for some of their tax dollars to be used to publicly finance the Presidential races in America. I am hopeful the adoption of the McCain-Feingold bill, if it is adopted, will at least turn people's opinion in a direction that says at least we are beginning to do something about these elections.

For those reasons, I commend, again, the principal authors of this bill and those who are supporting it. But I don't think it is enough. People are still turned off, to put it mildly, on how the races are run and on how politics is conducted. There will always be some; I am not suggesting we will get 100-percent participation. I oppose any laws that require people to vote as some countries do. We better do a lot better job in convincing more than just one out of two adult Americans they ought to participate in choosing the leaders of our Nation than we presently are.

If those numbers continue to decline and we trail the rest of the world as we lecture them about democracy and the importance of participating, I will say again, you put this country in peril and these institutions that have survived for more than 200 years, and the public support for them will decline. That, more than anything else, is what ought to preoccupy the attention of each and every one of us, regardless of our views on the particular aspects of amendments. Every single one of us privileged to serve in this Chamber, who have a voice and vote on how we might conduct the political debate in this Nation, needs to take notice of what the American public is saying when they go to the polls or don't go to the polls on election day and exercise their right that people have spilled blood for, for over two centuries, not only in our first great revolution but in a civil war that threatened to divide and destroy this country, through two world wars, wars in the 20th century and other such contests in which Americans, in countless numbers, lost their lives to protect and defend.

We are not asked to put our lives on the line. We voluntarily seek these positions. If we are fortunate enough to be chosen by our constituents to be here, we bear a very high degree of responsibility during the brief amount of time the Good Lord gives us to represent the constituencies that have chosen us to do what is right, not only for our own time but that future generations will inherit, as we have inherited, from the sacrifices of those who came before us, the privilege of being here to see to it that this wonderful ideal and vision of democracy is perpetuated throughout this country for, hopefully, centuries to come.

For those reasons, I hope while this amendment may be rejected, we could find more common ground between Democrats and Republicans on how to restore the public's confidence in the electoral process in this country. That is at the heart of what McCain-Feingold is all about, despite all the debates about various minutiae in the bill or ideas to be added to it. Our solemn responsibility, in addition to dealing with the issues of the day, is to see to it the process by which we choose people to make those decisions enjoys the broad-based support of the American public. It is in jeopardy today. We better take it more seriously than we are.

I yield the floor, suggest the absence of a quorum, and ask that the time be charged against the bill.

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

The assistant bill clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I rise today in support of the amendment

being offered by my friend and colleague from Iowa, Senator HARKIN. Earlier this week, Senator KERRY and I offered a similar amendment that called for voluntary spending limits and partial public financing. Senator HARKIN's amendment differs in some respects to the proposal that we offered, but it still seeks to alleviate the same problem: How can we reduce the obscene amount of special interest money that is being spent in Senate campaigns today? And while I know that Senator HARKIN's amendment will not pass, I nevertheless believe that it is truly needed to reform our campaign finance system.

Since 1976, while the general cost of living has tripled, total spending on congressional campaigns has gone up eightfold. 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.

The FEC estimates that last year more than $1.8 billion in federally regulated money was spent on federal campaigns alone, and that doesn't even count the huge amount of soft money that went into attempts to influence federal elections. That has been roughly estimated to reach as high as nearly another $700 million.

I have been calling for public financing of congressional campaigns for a very long time: since 1973, my first year in this body. And, as my colleagues who have been here for a while know, I have taken to this floor again and again over the years to urge us to solve the public's crisis in confidence and do the right thing.

To be clear, I would prefer full public financing of campaigns that would reduce spending and completely eliminate the link between special interest money and candidates. I have long held that such a system is the only true, comprehensive reform that would help restore the American people's faith in our democracy and allow candidates to compete on an equal footing where the merits of their ideas outweigh the size of their pocketbook.

But as the problems in our system have escalated in recent years, so too has my despair over our failure to see real reforms enacted, not just debated. That is why I am here again to see that we take at least a step toward achieving these much needed reforms. Senator HARKIN's amendment is one such step, and urge my colleagues to support it.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 155. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii (Mr. AKAKA) would vote ''aye.''

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

The result was announced—yeas 32, nays 67, as follows:

[Rollcall Vote No. 58 Leg.]

YEAS—32

Bayh	Dayton	Levin
Biden	Dodd	Lieberman
Bingaman	Dorgan	Murray
Boxer	Durbin	Nelson (FL)
Byrd	Feingold	Reed
Cantwell	Graham	Reid
Carper	Harkin	Sarbanes
Clinton	Hollings	Stabenow
Conrad	Inouye	Torricelli
Corzine	Kennedy	Wellstone
Daschle	Leahy	

NAYS—67

Allard	Fitzgerald	Miller
Allen	Frist	Murkowski
Baucus	Gramm	Nelson (NE)
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Breaux	Hagel	Rockefeller
Brownback	Hatch	Santorum
Bunning	Helms	Schumer
Burns	Hutchinson	Sessions
Campbell	Hutchison	Shelby
Carnahan	Inhofe	Smith (NH)
Chafee	Jeffords	Smith (OR)
Cleland	Johnson	Snowe
Cochran	Kerry	Specter
Collins	Kohl	Stevens
Craig	Kyl	Thomas
Crapo	Landrieu	Thompson
DeWine	Lincoln	Thurmond
Domenici	Lott	Voinovich
Edwards	Lugar	Warner
Ensign	McCain	Wyden
Enzi	McConnell	
Feinstein	Mikulski	

NOT VOTING—1

Akaka

The amendment was rejected.

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

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

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I ask unanimous consent that the Senator from Delaware be added as a cosponsor of the Harkin amendment.

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

Mr. LOTT. Mr. President, we have been prepared for 2 months now to have this full debate and votes on amendments, and to actually get to a conclusion. Senator MCCAIN and I have talked, and Senator MCCONNELL and I have talked, and the agreement all along was that we would have amendments, full debate for 2 weeks, and then we would go to a conclusion.

I assure the Senate that we are going to do that. We can do it tonight at a reasonable hour, we can do it at midnight, or Friday, Saturday, or Sunday. But I think we have a responsibility to complete action on this bill.

I hope the concern I have now that maybe amendments are going to start multiplying when, in fact, there are no more than one or two amendments that really are still critical that are out there to be offered and debated and voted on—maybe there are more. And I don't want to demean any Senator's amendment, but we have been on this now for the agreed-to almost 2 weeks. Anybody who thinks that by just beginning to drag this out and coming up with more amendments, we will carry it over until next week, that is not going to be the case.

Everybody has labored—sometimes with difficulty—to be fair with each other and give this thing a full airing and get some results, and you can debate about whether they are good or bad as long as you want to. At some point, we have to vote and move on.

We have very serious problems in this country. We need to address them. We have to pass a budget resolution. We have to take into consideration the needs of the country in terms of funding for programs, whether it is education, agriculture, defense, health care. We need to take whatever actions we can to provide confidence and a boost in job security and the economy. We have an energy crisis that will not go away. We need to get on to those issues.

Again, not to demean this issue at all—it is very important—but we will have done what we promised to do, and now it is time we begin to look for the conclusion and be prepared to move on to other issues next week. I just wanted to remind Senators on both sides of our discussion and my commitment to follow up with the agreement.

Mr. MCCAIN. Will the majority leader yield?

Mr. LOTT. Yes.

Mr. MCCAIN. I thank the majority leader, and I thank Senator MCCONNELL and Senator DODD, who have managed this bill, I think, with efficiency and, I believe, in a total environment of cooperation.

But as we said all during last week, a couple times when we only had two or three amendments, we intended to be done by tonight or the end of this week. We have disposed of some. We will have an amendment that I think is very important that is about to be addressed soon. After that, there are not any major issues. We should finalize this bill so that we can move forward and none of us has to stay here over the weekend.

I want to say the majority leader is correct. We all agreed that we could get this thing done in 2 weeks if we allowed the 2 weeks. So there is no reason whatsoever that we should not enter into time agreements on specific amendments and a time for a final vote on this amendment.

Mr. LOTT. I thank Senator MCCAIN. That discussion was not just between Senator MCCAIN and me, but also with the Democratic leader, Senator FEINGOLD—we were all in the loop. We all had an understanding of how we would bring this to an eventual conclusion.

Mr. MCCONNELL. Will the leader yield?

Mr. LOTT. I am glad to yield to Senator MCCONNELL.

Mr. MCCONNELL. I say to the distinguished majority leader, nobody more

passionately opposes this bill than I do, but I am prepared to move to final passage today. There is one important amendment left on nonseverability, which is about to be the pending business before the Senate.

I say to my friend from Arizona, we may have a few sort of cats-and-dogs amendments, as Senator DOLE used to call them, but we are basically through on this side.

Mr. LOTT. Can I inquire of Senator DODD, does he have any idea what might be outstanding and when we can move to a conclusion on this legislation?

Mr. DODD. I will be happy to, Mr. President. First of all, the past week and a half has been a rather remarkable week and a half in the Senate. We have had very few quorum calls. I do not know the total number of amendments we have considered, but they have been extensive, back and forth.

I find it somewhat amusing that someone else's amendment is a cat or a dog, but if it is your amendment, it is a profoundly significant proposal.

We dealt yesterday with the opposition's efforts to raise the hard number limits, and now a severability amendment from the opposition. Those are fundamentally important amendments but amendments that may try to enhance and strengthen the bill from those who support the legislation are a cat or a dog.

Our list has not expanded, I say to the majority leader. The list of amendments is about the same as it has been. There are about 12 or 13 amendments. There is a list of 21, which has been the consistent number for the past week. We just dealt with one of them—Senator HARKIN's—this morning. It was laid down last night. Senator BINGAMAN, Senator DURBIN, Senator DORGAN, and Senator LEVIN come to mind immediately. I think Senator CLINTON as well. These do not require much time.

We are prepared to move forward, I say to the majority leader, and if it takes going into tonight, going into tomorrow to finish it up, Saturday, or Sunday, whatever it takes, because I know we want to finish the bill, we fully respect that. I support that.

I have an obligation—if I can complete this thought. There are those on this side who support McCain-Feingold, and have for years, who have ideas they think will enhance and strengthen this legislation. While this is an important amendment we are about to consider, there are other amendments that should be heard.

I hope my colleagues will respect the rights of Members to offer amendments and be heard on them. There certainly is no effort over here to delay this at all. We will stay here however long, I am told by the leadership. Unfortunately, the Democratic leader cannot be here at this moment, but I am told he takes the position that if it takes being here all weekend, we will be here all weekend to complete it.

Mr. LOTT. I want everybody to understand that I am prepared to do that, too. Instead of that being a threat, it is a promise, No. 1, but No. 2, it is to urge Senators to work with the managers to identify the amendments we are going to have to consider, and if it can be done by voice vote, let us get time agreements on them. We should be prepared to move to table, if that is what is required, too.

We have an opportunity to make progress and complete this bill. We are going to do that. I want to make sure everybody understands it, so everybody needs to start making plans, if we are going to have to stay here Friday and Saturday, and take actions to allow that to happen.

Mr. DODD. A point, if I can, Mr. President. I am informed that we have dealt with 24 amendments about equally divided; 24 left, I am sorry, both Democratic and Republican amendments.

I know, for instance, Senator LIEBERMAN and Senator THOMPSON have an amendment, one of the outstanding amendments. Maybe it can be worked out. Senator BINGAMAN has one that has been worked out. It is important to note there is a good-faith effort obviously to complete this work, but I do not want to see us put in a position now, having considered a lot of these amendments, that we are going to start telling people who have had amendments pending—Senator DURBIN has been on me and talking to me for the past 10 days about when can he bring his amendment up; also Senator HARKIN and Senator LEVIN.

I have been trying to orchestrate this the best I can, but I do not want them put in the position of all of a sudden because we completed the amendments the opponents of the legislation care the most about, that we are going to deny or curtail in some way the rights of other Senators who care just as deeply about their proposals and not provide adequate time for them to be heard.

We are prepared to go forward. I know the next amendment is from Senator FRIST on severability. I have a number of requests, I say to the majority leader, from people who want to be heard on this amendment. I know the proponents of the amendment do as well.

Mr. REID. Before the majority leader leaves the floor——

Mr. LOTT. I will be glad to yield to Senator REID.

Mr. REID. I said this morning, I have been working trying to help Senator DODD. One of my assignments has been to work with individual Senators. We have had people, as Senator DODD indicated, who have been waiting the entire 9 days we have been on this floor to offer amendments. They come to me and Senator DODD a couple times a day.

Looking at simple mathematics, I say to the majority leader, it is going to be really hard to do this. If we cut down the time by two-thirds, it is still going to get us into sometime tomorrow. If that is the case, that is the case.

Senator BINGAMAN, Senator DURBIN—these people want to offer their amendments.

Mr. LOTT. I say to Senator REID, he always does good work, not just with Senator DODD but with this side, too. He is an ombudsman for us all. We do not want to cut off anybody, but all I am saying is we are going to complete this bill this week and everybody needs to know that. If we go into Friday, Saturday, or Sunday, I only have one commitment, and I really did not want to do it anyway, so I will be delighted to stay here.

With that, I yield the floor.

Mr. DODD. Is there some particular constituency in Mississippi the Senator wants to inform?

Mr. LOTT. Actually, it is in a State other than my home State.

Mr. DODD. I thought the majority leader might want to make that clarification. I think we are prepared now to go to the Frist amendment.

AMENDMENT NO. 156

Mr. FRIST. Mr. President, I ask for immediate consideration of my amendment, which I believe is at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST], for himself and Mr. BREAUX, proposes an amendment numbered 156.

Mr. FRIST. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To make certain provisions nonseverable, and to provide for expedited judicial review of any provision of, or amendment made by, this Act)

On page 37, strike lines 18 through 24 and insert the following:

(a) IN GENERAL.—Except as provided in subsection (b), if any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

(b) NONSEVERABILITY OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—If one of the provisions of, or amendments made by, this Act that is described in paragraph (2), or if the application of any such provision or amendment to any person or circumstance, is held to be unconstitutional, then all the provisions and amendments described in paragraph (2) shall be invalid.

(2) NONSEVERABLE PROVISIONS.—A provision or amendment described in this paragraph is a provision or amendment contained in any of the following sections:

(A) Section 101, except for section 323(d) of the Federal Election Campaign Act of 1971, as added by such section.

(B) Section 102.

(C) Section 103(b).

(D) Section 201.

(E) Section 203.

(c) JUDICIAL REVIEW.—

(1) EXPEDITED REVIEW.—Any Member of Congress, candidate, national committee of a political party, or any person adversely affected by any provision of, or amendment made by, this Act, or the application of such a provision or amendment to any person or circumstance, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that such provision or amendment violates the Constitution.

(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia granting or denying an injunction regarding, or finally disposing of, an action brought under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered.

(3) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under paragraph (1).

(4) APPLICABILITY.—This subsection shall apply only with respect to any action filed under paragraph (1) not later than 30 days after the effective date of this Act.

Mr. DODD. Mr. President, can I have a copy of the amendment? We have not seen the amendment.

The PRESIDING OFFICER. It is on its way. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to speak to the amendment which has been offered by myself and Senator BREAUX that I believe gives us the opportunity—and I encourage my colleagues to pay attention to the debate over the next 2 or 3 hours because it gives us the opportunity to assess where we are today in the bill, as amended, and to understand the implications for each of us, for people who are interested in participating in the political process both today and also for years to come.

I am going to refer back, again, to set the big picture and then update my colleagues, to a diagram that I believe is important. It is simple, but sometimes when we look at all these lines, it is confusing, and that is the nature of the whole campaign finance apparatus. This chart summarizes that when you pull or push in one area, it has effects throughout the system. It is very important because the issue we are addressing is what is called the nonseverability and the severability clause in the underlying McCain-Feingold bill.

Money flows into the system from the top of my chart down to the bottom. This is the political process. At the top of the chart is where money comes from, and it is all these blue lines. My colleagues do not need to focus on what these blue lines are right now, but I do want them to focus on the funnels, where this money is collected and where it goes.

As I said before, there are seven funnels, when one looks at all the political money that comes in and where it goes to affect free speech, political voice.

We have the individual candidate who can receive money from individuals, and we will talk about what we did yesterday in increasing what I call the contribution limits in terms of the hard dollars, the Federal dollars.

There have been changes to the underlying McCain-Feingold bill that are very positive. What angers people the most is that the individual candidate is losing his or her voice today. It might be a challenger; it might be an incumbent. Over time, because of the erosion from inflation on the one hand, without any adjustments in the Federal dollars of the hard dollars, but also the increasing influence, this is what angers the American people, the influence issue groups, special interest groups have on the system, all of which, if it grows too much, will overshadow and overwhelm the voice of the individual candidate.

They might be talking education, Medicare reform, military defense of the country, but the issue group, the unions, the corporations right now that have to disclose very little, because very little is regulated in this arena, have become increasingly powerful at the expense of the individual candidate who is out there doing his or her best, traveling across Tennessee or across any State in this country with a voice that no longer is being heard.

I say that because it is this relative balance that has gotten out of kilter. Members on both sides of the aisle have been doing their best to address this over the last 2 weeks.

Political action committees, we talked a little bit about that, as long as we understand that corporations, unions, issue groups can all channel money, political action groups, to the individual candidates.

The Democratic Party and the Republican Party are in this box on this chart, and we traditionally have been able to collect both Federal hard dollars and soft or non-Federal dollars. Again, it all has been disclosed. Everything in the green on the chart is fully disclosed. You can hold people accountable to that.

That is where the party system has worked. Our party system has traditionally worked to accentuate or amplify the voice of the individual candidate. You can see that the party hard money goes to the individual candidate, the soft money subsequently will be used to reinforce that voice of the individual candidate.

It is very important to understand this role of the party has real value in a system today which has changed radically, which, unfortunately, has pulled the power away from the individual candidate over to the corporations, unions, the special issue groups, groups created specifically around an issue used to overpower the voice of the individual candidate.

Again, this part of the chart—the party hard and party soft money, PACs, and individual candidates—has very little disclosure by corporations, unions, issue groups—very little in terms of accountability or regulation.

What have we done? This is where we are today having not passed the underlying bill as of yet. What have we done over the last 10 days of the discussion? We have had good amendments today that have been debated in a very thoughtful way. We saw the earlier chart with the funnels still on the chart.

With the underlying McCain-Feingold and the amendments that have passed, we have the following:

Yesterday, we increased the contribution limits. We already had contributions defined historically but we increased the hard dollar limits for the individual candidates. We argued yesterday. Some people were for, some were against, and a compromise was reached. We have to point out the fact that the value of the individual contributions, even in what we approved yesterday, is not the same value we gave it in 1974 because it does not meet a correction for inflation. That was increased yesterday. That helps a little bit. Again, it is not up to 1974 standards, but it helps to give more voice to the individual candidate. That is why that is important. That is why you had the people who feel strongest about reform coming forward saying, absolutely, on both sides of the aisle, we have to increase these limits that individual candidates can receive.

Second, the underlying McCain-Feingold bill does something very important. I am spending time with this because we have to see that the compromise achieved in McCain-Feingold has resulted in a balance. We have to be very careful not to disrupt. Not us in the Senate. We have spoken on it through an amendment earlier this morning, but we had the careful balance disrupted by the courts, resulting in a detrimental impact on the overall system, which does the opposite of what we as elected officials want or the American people want—making the system worse.

No. 2, McCain-Feingold, as amended today, increased contribution limits but takes out party soft money from individuals, through corporations, unions, issue groups through sponsorships. All the soft money that comes to the parties is gone. That just about wipes out 50 percent of what the Republican Party, say, of the Senate, has, along with the impact it can have. So it diminishes our voice perhaps 20 percent, perhaps 50 percent, perhaps 60 percent. Whatever our voice is now, which, again, is fully disclosed, highly regulated, where we can be held accountable, aimed at giving voice to the individual candidate, it, today, if McCain-Feingold passed, now is gone. Why? Because we have eliminated the soft party money.

The third key point applying to our amendment, you can see we are wiping out the party soft money which gives

voice to the individual candidate. The balancing act achieved in the underlying McCain-Feingold bill is that, since we restricted speech, or we rationed political discourse, or we have in some way put restrictions on the use of resources that affect speech, you sure better do it out here as well. If you don't, I guarantee the money will keep coming to the system, and the money instead of coming here will all flow to the area of least resistance. That is, the special interest groups, the unions, the corporations.

It is not any more complicated than that, but I am building up to be able to answer why you have the nonseverability.

Now I have dollar signs indicated on this chart and I will come back to that. They don't mean anything in terms of overall quantity. Qualitatively, you can see the individual candidate spends money, the party spends money, the party soft money is gone under McCain-Feingold. The restrictions put in for constitutional reasons are the Snowe-Jeffords amendment; we voted on it earlier today.

Put restrictions on speech party soft money here, and you counterbalance that with restricting speech or rationing speech or basically saying 60 days before an election you can't engage fully in political speech under the Jeffords-Snowe provision.

It attempts to limit the role and influence of special interest versus candidates and parties through the electioneering provision. It doesn't take care of direct mail, phone calls, or get out the vote. That money can come over and include that, but the electioneering, the broadcast provisions are of Snowe-Jeffords. I will come back to that.

The careful balance, achieved by a compromise, no question. As we have gone through this process and as McCain-Feingold was developed in negotiation, it is a compromise, trying to achieve balance. The underlying bill tried to achieve balance and the two provisions we are talking about today are underlying provisions. They are not amendments added on, a poison pill, but two existing provisions we will link together in this narrow, highly targeted nonseverability clause. Those are linking party soft money with the Snowe-Jeffords provision.

McCain-Feingold has attempted to achieve balance by eliminating party soft money and having the Snowe-Jeffords provision. That balance has been achieved as crafted by the authors in the original bill and not altered by amendments. That is very important because people will say what about the Wellstone amendment. That is not part of this. It is the underlying provisions. McCain-Feingold is built on that basic understanding I have just outlined.

I argue that the last thing we want to do is upset that balance for the reasons I said. We have the potential for opening the floodgates if we allow party money to be eliminated and all of a sudden we remove, for constitutional reasons or a court does later, the Snowe-Jeffords amendment.

The next chart will show what would happen if all of a sudden we took the restrictions off here and said Snowe-Jeffords is unconstitutional, that is what the courts decided would happen. This is what, potentially, might happen if our amendment does not happen.

Again, this side of the chart is basically the same as McCain-Feingold. We have eliminated the party. As I have said, if you take the restriction on speech, the Snowe-Jeffords restriction on speech, off, the money is going to still come into the system and it can't go this way. It can't go to individual candidates because we have limits there, the hard money limits. It has nowhere to go but to flow to the area of least resistance, and the area of least resistance is corporations, unions, issue groups that all of a sudden have unregulated, no-limits, no-caps—for good constitutional reasons, I argue—and you can see the dollar signs. Ultimately, we do exactly what we don't want to do. We increase the interest and the role and the power of the special interests versus the individual candidates and the parties.

That is the impact. That is the big picture. I think that linkage is critically important.

As to the specifics of the amendment, first of all, it addresses this balance. Second, it is narrow, it is targeted, and it is focused. The media has been saying this is a poison pill because if you strike down one part of McCain-Feingold the whole bill falls. That is wrong. That is false. This is narrow and targeted. It does not apply to the whole bill. It links just the two provisions, the Snowe-Jeffords provision with the ban on soft money—nothing else. The linkage is for a good reason. It is because the impact on one has an impact on the other. They are complementary; they are intertwined. That is why that nonseverability is absolutely critical to prevent the possibility of this happening.

The nonseverability clause ties together just those two provisions and nothing else. When I say it is narrowly tailored, a narrowly tailored nonseverability clause, it is basically because everything else will stand. If the Snowe-Jeffords provision is ruled to be unconstitutional and therefore the cap is released, the party soft money elimination will be invalid; again, coming back to the original balance. Other provisions in the bill stand. It is just those two. The other provisions, which will not be affected by this nonseverability clause, are provisions such as the increased disclosure for party committees, the provision clarifying that the ban on foreign contributions includes soft money, the clarification of the ban on raising political money on Federal Government property. All of that stands. We are talking about just these two provisions to which I have spoken.

The provisions on independent versus coordinated expenditures by political parties are unaffected by this amendment. The coordination provisions of the bill, the portions of the bill such as tightening the definition of independent expenditures, the provisions providing increased reporting of independent expenditures—again, all of these provisions of the McCain-Feingold bill are not excluded as a part of our amendment today. It has to be one of the two provisions to which I have spoken.

Another point I want to mention, and it will probably be talked about over the next couple of hours, is the fact that this narrowly targeted nonseverability clause also provides a process for expedited judicial review of any court challenges to these two provisions. The purpose of that clearly is that challenges—we don't want to be held up in court with a lot of indecision over the years.

All this does, as part of this nonseverability clause, its purpose, is to provide that if the provisions of this legislation that restrict the ever-louder voice of the issue ads—which, again, are poorly disclosed and poorly regulated—are declared unconstitutional, just the Snowe-Jeffords provisions, then the provision that weakens the voice of the individual candidate and of the party would not be enforceable.

Simply put, sort of boiling it down: The person running for public office will not be left out here defenseless, without any voice, if our effort in McCain-Feingold as the Snowe-Jeffords provision falls, if the courts say no, we are going to take this cap off here—which clearly, just looking at the dollar signs, would put the individual candidates again at a point where they are almost helpless as they are trying to make their point.

The history of severability legislation I am sure we will go to. I will not address that.

Let me answer one question because we were talking as if this were a poison pill because people bring in editorials saying this is a poison pill. It is clear, a poison pill, to me, is if you give somebody a pill and they drop dead and they are gone. We are not adding a new entity or provision to the bill. All we are doing is linking two provisions that are already in the bill. They are in the underlying McCain-Feingold bill. They are not amendments that have been added that are trying to poison the bill.

The only thing we are doing is working with two underlying provisions that are already in the bill, saying they are inextricably linked and have an impact one on the other.

Proponents of the bill—we heard it a lot this morning—told us time and time again that this is constitutional, Snowe-Jeffords is constitutional, the ban on party soft money is constitutional. If people really believe that, I think proponents of the bill have nothing to fear by this linkage in our nonseverability proposal.

As we look at what I have presented, we should take this opportunity to look realistically at what is happening in campaigns and campaign finance reform: The sources of money, how it is being spent, whether or not it is disclosed, and where the money is going. In all this we need to make absolutely sure we do not muffle the voices and diminish that role of the individual candidates out there while increasing the role of the special interests or the unions or the corporations.

I hope all my colleagues will study this particular amendment, will carefully consider this balanced and narrowly tailored amendment that addresses what I believe is a critical, critical issue.

Mr. DODD. Mr. President, I yield 15 minutes to the senior Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 15 minutes.

Mr. THOMPSON. Mr. President, I thank my colleague from Tennessee, Senator FRIST, who has done his usual excellent job in laying out his case. I think the concern that is being expressed is a valid concern, in that we need to keep in mind the totality of the system as we are addressing this issue. That is one of the things that makes me feel good about what happened yesterday, because I think that is exactly what we were doing.

If we, for example, had lost Snowe-Jeffords somewhere along the way and just had a soft money ban without any increases in the hard money limit, I think the potential problem that my colleague expressed would really have been a significant one. I do not think that practical problem exists nearly as much as we feared, because even under a worst case scenario, if the disclosure and other provisions of the Snowe-Jeffords even were to fall and we lost soft money in the system—which I think would be a good happening—we have increases in the hard money limit. We have now doubled, under the original bill—we have doubled the amount of money the candidate can have for his own campaign, $1,000 to $2,000; $4,000 in a primary, $4,000 in a general election. We have also increased the amount of money that can go to parties.

We did not increase it as much as I would like, but we increased it. We also increased the aggregate amount. We also increased and doubled the amount that parties can give to the candidates. We indexed all of it.

It is not that we are not in the same position we were when McCain-Feingold started. We have taken some significant steps in order to get some legitimate, controlled, limited, hard money into the hands of candidates and into the hands of parties that they didn't have when this debate began.

The problem that is being addressed today is one of the very kinds of things we were trying to address yesterday. I think this body effectively and overwhelmingly addressed it in the compromise amendment that we have. The proponents of the current amendment for nonseverability, however, make the case that we shouldn't risk the situation where the soft money limitations or abolitions and the Snowe-Jeffords requirements with regard to unions, corporations, and others would be struck down; that there would be an imbalance. My first point is that we corrected and I think significantly corrected that imbalance yesterday.

My second point would be that it is not exactly as if Snowe-Jeffords were some kind of a major happening in terms of the overall picture of any given campaign. In the first place, none of it kicks in 60 days before an election. So anything goes up until 60 days. Part of Snowe-Jeffords is simply a disclosure requirement. It doesn't have anything to do with money. A part of Snowe-Jeffords has to do with corporations and unions within the last 60 days and their expenditures, and that is a money situation.

Let's say that was knocked out, hypothetically. We are all talking hypothetically because obviously none of us knows what a court will do. We have argued the constitutionality of Snowe-Jeffords in the past. For the moment, let's hypothetically say that a 60-day restriction with regard to what corporations and unions could do, and nobody else—no individuals, as Senator WELLSTONE pointed out, for example—is a part of this. I compliment my friend for narrowly tailoring this legislation so we didn't have to deal with all of that. But that is knocked out.

Then we are knocking out some corporate and union money in the last 60 days of the campaign. That is not insignificant. But I am not sure, in the total context of things, that it is all that important. It certainly doesn't justify doing what we may be doing here in terms of nonseverability.

The first thing we need to understand about nonseverability and Congress passing a bill with a nonseverability provision in this is that it is extremely rare. It is rarely done. We asked the Congressional Research Service about it. Their information is that there have been 10 bills introduced or considered in the last 12 years that have had a nonseverability provision in them. They further say that there has only been one bill in the last 12 years where we have passed legislation that contained a nonseverability clause. It is extremely rare in the thousands of bills that passed during that period of time of 12 years. I said: How many public laws were there? They said 12,962. Out of 12,962 pieces of legislation, only 1 of them contained a nonseverability clause.

That is some indication of the rarity and the significance of what we are doing here today, or what is being suggested that we do.

There was a principle established a long time ago in this country that is honored by Congress and is recognized by the judiciary—that in a piece of legislation, which more likely than not will contain several provisions, you can have some parts of it that are constitutional and maybe one part that is not. Strike the unconstitutional part, says the Court, and leave the rest intact.

That is the normal way we have handled things in this country. It is based upon a concept that I think all of us honor and adhere and we talk a lot about. That is the concept of judicial restraint. We have recognized in this country for a long time—and our courts have recognized for a long time—that they should exercise judicial restraint and make constitutional rulings only when necessary. The courts have adopted their own rulings that militate in that direction and cause them not to go off and even consider constitutional issues unless they really have to. It is for the reasons that I explained: Because of the concept of restraint and the benefit we get as a country and that the judiciary gets for adopting judicial restraint, not reaching out to take on more than it should and look for opportunities to strike down laws when they are not even really directly presented to them, and so forth.

I think the Court said it very well in the case of Regan v. Time, Inc., with the Supreme Court plurality decision in 1984. This is a little long, but I think it is important because it gets to the heart of what I am saying.

The Court said:

> In exercising its power to review the constitutionality of a legislative act, a Federal court should act cautiously. A ruling of unconstitutionality frustrates the intent of the elected representatives of people. Therefore, a court should refrain from invalidating more of the statute than is necessary. As this court has observed, whenever an act of Congress contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of this court to so declare and maintain the act insofar as it is valid. Thus, this court has upheld the constitutionality of some provisions of a statute even though other provisions of a statute were unconstitutional. For the same reasons, we have often refused to resolve the constitutionality of a particular provision of a statute when the constitutionality of a separate controlling provision has been upheld.

I think that states it very well. In summary, I think it has been the law and the practice of the United States for many years. It is a valid one. I think we would all agree that it is a valid one.

Those are the circumstances. No. 1, the extreme rarity of the situation; No. 2, these longstanding principles that our judiciary has. Those are the foundation blocks as we approach this issue this time as a Congress.

What will be the legal effects of a nonseverability clause? Not only has Congress not legislated a nonseverability clause once in the last 12 years, but there are no cases ever in the history of the country where Federal courts have been called upon to construe a nonseverability clause.

We really are in uncharted waters here in terms of how such a clause

might be interpreted. I fear we are getting into an area of unknown consequences, and potential perversive results that we don't fully appreciate.

What will be the probable result? As you think it through, you can see situations very readily that are going to produce perplexities, shall we say, that maybe we can resolve here on the floor—I don't know—and determine what intent the proponents have with regard to this amendment.

Article III of our Constitution says there must be a case in controversy before a person can bring a lawsuit, have it upheld. Any law professors out there, forgive me for my shorthand as I go through this. I want to touch on the general principles, and I hope I get them right.

If you are a litigant, someone challenging this act, you have to have standing. There is a criminal aspect to this statute; if you are a criminal and you are convicted, you have standing. As far as the civil aspects of it are concerned, in any kind of a situation, you have to have a case in controversy, and you have to have standing.

That means you have to be injured directly by the provision you are dealing with or have been convicted of. If the statute is in force, you will be injured, if you sustained injury or you face imminent injury, something like that, not just a general public kind of a potential injury. There was a case back in 1974 where some concerned citizens got together and sued the CIA because they were not disclosing their budget. The courts held that your interests are not any different from any other citizen. You have no standing in this lawsuit.

That little background has relevance because someone challenging these two provisions will refer to them as the soft money provision and the Snowe-Jeffords provision of the McCain-Feingold bill.

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

Mr. THOMPSON. I request an additional 10 minutes.

Mr. FEINGOLD. Mr. President, I yield an additional 10 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator is recognized for an additional 10 minutes.

Mr. THOMPSON. It has to do with how the cases would come up. If someone, let's say, was convicted under the soft money provision—in other words, somebody sent some soft money to somebody they weren't supposed to after this law was passed, and they got caught doing that and they got charged with and got convicted of it, if you had severability, then that person would clearly have standing with regard to the soft money provision they were convicted of. That is all that would be at issue.

Presumably, if you had nonseverability the way that the proponents of this amendment would suggest, that person who is affected by the soft money provision that he is convicted of, presumably he could also challenge the Snowe-Jeffords part of the bill that has no relevance to him. If so, are we telling the Court, by means of this amendment, to give standing to this person to challenge Snowe-Jeffords when they are not affected by Snowe-Jeffords? If so, we are running afoul of article III because the Congress cannot give people substantive jurisdiction or grant constitutional standing for anyone such as that. If we were trying to do that, we certainly would not be exercising judicial restraint.

During the course of this debate, I hope we can agree on what we are trying to do by means of this amendment. Do we want to be able to allow someone who is affected by one provision to be able to challenge the other provision? That is the question. If the answer to that is, yes, then we can talk about the constitutional implications of that. If the answer to that is, no, that they can only challenge the provision they are affected by, then what about a fellow who is convicted under the soft money provisions, which is held to be constitutional? He goes to jail. Another person comes along, he is sued under the Snowe-Jeffords provision. That is held to be unconstitutional, which wipes out the entire legislation, under this amendment.

So you have the first individual sitting in jail for a period of time under an act that has been declared unconstitutional. Is that what we desire to do?

It is not as easy as it seems. That is one of the reasons Congress has never passed such a law as is being suggested that would allow this particular result. There has never been a Federal case on this subject. There have been a few lower court Federal cases deciding State law. Surprisingly, in some of those cases, in interpreting nonseverability provisions, they have ignored them.

I say to my friends, even if this nonseverability provision passes, which I hope it does not, there is a good chance the Court would ignore it. And, if not a good chance, depending on how it is interpreted as to what Congress' intent is, that it will be declared unconstitutional.

For reasons set forth in Lujan v. Defenders of Wildlife, a 1992 Supreme Court case, the Court made this statement:

> Whether the courts were to act on their own or at the invitation of Congress in ignoring the concrete injury requirement described in our cases, they would be discarding a principal fundamental to the separate and distinct constitutional role of the third branch. One of the essential elements that identifies these cases in controversy is that they are the business of the courts rather than the political branches.

In other words, Congress, you can't tell us what is a case in controversy. You can't tell us that there is a case in controversy out there or that a person has standing in a case when he really doesn't. That is for us to decide. If you are attempting to intrude, you are violating the doctrine of separation of powers.

I hope my colleagues will not view this amendment favorably. It would be not only a reflection on us, but it wouldn't do the judiciary any good. We are in danger, if we pass this amendment, in one fell swoop, of doing something that would be hurtful to two branches of our Government: the legislative branch and the judicial branch—the legislative branch, us, because after all these years, after 25 years we finally get around to addressing this issue, after going through and agreeing or disagreeing, but let's say agreeing on some fundamental principles that we believe ought to be passed, at the same time, in some cases supporting amendments which, in my estimation, pretty clearly have constitutional problems. I don't think that reflects well on us in what we ought to be doing and how we ought to be doing it. It doesn't reflect well on us when we threaten judicial independence or judicial restraint.

There are some broader principles involved. Those principles are involved here. So while I appreciate the concern that has been expressed in terms of balance, in terms of the need for balance—and we saw part of that yesterday—the portion of Snowe-Jeffords that deals with money is a fairly limited segment: Never done this before; treading in uncharted waters; trying to accomplish things we probably cannot, in the end, do.

For all those reasons, I will respectfully urge defeat of the amendment.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, I will turn to my colleague from Utah in a minute. First, I will take a moment to respond on our time to at least two of the comments made. It will take just a second.

I appreciate the comments that have been made. The first statement made was about the relative importance of the Snowe-Jeffords amendment. I think it is important because my whole argument is based on this balance of the linkage, the tie between the two. How important is Snowe-Jeffords—the significance of not being able to go on the air 60 days prior to an election. We should not underestimate that because, really, it is the balance between giving the candidate voice and the special interest voice.

Our whole argument is if you are going to take voice away from one, you ought to take voice away from the other. If you are going to give one voice, give the other voice. I point out that Snowe-Jeffords is very important, and that is why we are targeting it in this narrowly targeted amendment. If you just look at special interests, which is in red on this chart, versus party ads, the issue ads, I think, disturb a lot of people. I can't say that all of these ads were in the last 60 days, but anybody who has watched campaigns knows it is really in the last 2

weeks of most of these campaigns, not 3 weeks, 4 weeks, 6 weeks, 8 weeks. The Snowe-Jeffords provision is 60 days. This is just to show that Snowe-Jeffords is critically important, and if we disrupt Snowe-Jeffords, get rid of that limitation on free speech, there will be an infusion of money even greater than today. The special interest ads—again, the ads that Snowe-Jeffords is directed at—amounted to about $347 million in the campaigns we just finished.

The party ad money, which is predominantly soft money, non-Federal money, was only $162 million. What we are basically saying is that if you are going to take off the restriction of Snowe-Jeffords and you are going to allow this money to come flowing into the system, the least we can do for the candidate out there is to allow the party to participate without unilaterally being challenged and overrun by special interests. So Snowe-Jeffords is critical.

No. 2—and other people will comment on this—nonseverability may be rare, I guess, in the big scheme of things, but it has been done a lot—in fact, three times on campaign finance reform, where you do bring people together and you have this rich interaction. Three times we voted for nonseverability clauses on this floor.

Mr. MCCONNELL. Will the Senator yield for an observation?

Mr. FRIST. Yes.

Mr. MCCONNELL. Not only is the Senator correct that the last three campaign finance reform bills that cleared the Senate had nonseverability clauses in them, the amendment we voted on a few moments ago—the Harkin amendment, which was supported by 31 colleagues on the other side of the aisle—had a nonseverability clause in it. In fact, the Senator from Tennessee is entirely correct.

When the subject turns to the first amendment and to the constitutional rights of Americans in these kinds of bills, it is the exception not to have a nonseverability clause in it. I am sure the other Senator from Tennessee was not suggesting that nobody would have standing to bring a case affecting so many different people's constitutional rights. I am confident, I say to my friend, the junior Senator from Tennessee, there will be some Americans who will have a standing to bring a suit against this case. I will be leading them. I thank the Senator from Tennessee.

Mr. FRIST. I thank the distinguished Senator from Kentucky for his comments.

I yield 15 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I was interested to hear Senator THOMPSON say we are in uncharted waters, facing unknown results that we don't fully appreciate. That is the theme of my comments.

I go back to another philosopher, Mark Twain. I can't quote him exactly, but he has been quoted as saying something to the effect that ''prophecy is a very iffy profession, particularly with respect to the future.'' That is where we are. We are all trying to divine what is going to happen in the future if McCain-Feingold passes, as I expect it will, and if it should be signed and upheld by the Supreme Court. What would we face?

Well, I read in the popular press that on the Democratic side, one of their leading campaign attorneys is telling them if McCain-Feingold passes, the Democrats can kiss goodbye any chance of gaining control in the Senate in the 2002 election. That should cause everybody on this side of the aisle to stampede and vote for it. However, there is an equally qualified observer who has spoken to our Members and has said if McCain-Feingold passes, the Republican Party will go into the minority and stay there for 25 years.

Now, obviously, one or the other of these has to be wrong in terms of what is going to happen at the election. But neither one of these observers is an unqualified observer. The reason they have come to these two differing conclusions is that each one is looking at this issue through the prism of his own self-interest. If the Democratic campaign lawyer sees the destruction of the Democratic Party and the Republican campaign consultant sees the destruction of the Republican Party, I submit to you, as murky as our crystal ball may be, the chances are that they are both right—that we are going to see, as a result of the passage of this bill, not the destruction of the party—I won't go to that extent, but certainly a dramatic diminution of party influence in politics in this country.

One very practical example that we can expect is the scaling down, if not the elimination, of party conventions because party conventions now are financed entirely with soft money which, under this bill, would become illegal. So we may see party conventions disappear altogether, or we may see them become very truncated affairs, which the media may decide is not worth covering. This would be good news for an incumbent President. This would be bad news for a challenger trying to prevent a President from seeking a second term. He would be denied the opportunity of exposure that comes from a party convention.

One of the things we will not see as a result of the passage of McCain-Feingold is the elimination of corruption in politics. Corruption comes from the heart of the receiver, not the wallet of the giver. If an individual is corrupt, he is going to stay corrupt, whether or not the ''speech police'' are watching him. He is going to find some way to remain corrupt and to game the system to his advantage. The person of integrity is going to remain a person of integrity, regardless of how many people come waving bills at him to try to get him to change his position solely on the basis of money.

Integrity and corruption does not come as a result of participation in the political process. Integrity and corruption come from the way you were raised, from the way you make your decisions, from the hard commitments you make along the way in life.

There are corrupt people in entertainment and there are people of integrity in entertainment. There are corrupt people in the media and there are people of integrity in the media. There are corrupt people in politics and there are people of integrity in politics, and they will not change on either side just because we pass a bill. So that is the one prediction of which I can be confident. On these others, we are guessing.

I let my imagination run. If the political conventions disappear or become seriously truncated as a result of the passage of this bill, and if I were a special interest group with an unlimited wallet, I would anticipate holding a major convention of my own and invite certain favored speakers. I would gear it in such a way as to get maximum media attention, and those speakers could then get media attention that would come out of attending that convention.

I do believe that we are going to see an increase in political spending of soft dollars on the part of special interest groups in different and inventive ways that we at the moment cannot anticipate. Once again, in the newspaper there is a story of a fundraiser. He signed it himself. He said: Those of us on K Street are already figuring out ways to get around McCain-Feingold and use our soft dollars in a fashion to influence the political situation.

We are going to see, I am sure, an increase in Harry and Louise kind of advertising. Those of us who were on the floor through the debate on President Clinton's health care plan know how powerful those soft dollars were. We know how many those soft dollars were, and we know how totally outside the ambit of McCain-Feingold those soft dollars were. If McCain-Feingold says you cannot give those soft dollars to a party to pay its light bill, well, OK, we will give the soft dollars to Madison Avenue to influence politics in other ways.

One of the other ways the parties are going to be seriously disadvantaged by this bill is in candidate recruitment. Senator FRIST is the chairman of the Republican Senatorial Campaign Committee. When he goes out and tries to convince a reluctant candidate to challenge a Democratic incumbent, one of the first things that candidate says is: If I do this, will you be there for me? Senator FRIST can say now: Yes, we will commit X amount of activity in your behalf. Please, come do this. Do this for the party. Do this for your country. Come do it, and we will be behind you.

Senator MCCONNELL has already laid out the financial implications of McCain-Feingold in terms of the

amount of money that would be available to the senatorial committee if we had nothing but hard dollars based on actual experience. As Senator FRIST goes out to recruit candidates, or as Senator MURRAY goes out to recruit candidates on the other side, she is going to find her ability to attract candidates into this situation will be severely reduced.

The ultimate answer is: We want you to run, but when it comes to financial support, you are on your own; you are not going to get any significant help from the national party in any way because we simply cannot do it. We have to use our hard dollars for things for which we used to use soft money. We simply are not going to have the resources that we would like to have to help you. We will see many outstanding candidates decide they do not want to run under those circumstances.

Make no mistake about it, those in the press gallery who have been talking about the present system being an incumbent protection act, wait until we pass McCain-Feingold and I guarantee you an incumbent will really have to foul his nest in order to lose. This virtually guarantees that no challenger of any consequence will be able to raise the money and produce the organization to take on an entrenched incumbent because the restrictions are so severe that they will not be able to do that.

What does this have to do with the amendment? Simply this: At least as a result of the Wellstone amendment for which I voted, there is a degree of equal damage to the special interest groups. With the Wellstone amendment in the bill, the bill does not unilaterally damage parties and leave special interest groups totally free. Oh, it does leave special interest groups huge loopholes, but it at least, on the advertising phase, says the special interest groups have the same kinds of problems as the parties.

People said to me: Why in the world did you vote for the Wellstone amendment when it is clearly unconstitutional? I voted for it with my eyes wide open. I believe it is unconstitutional. I believe the other parts of the bill that it seeks equality for are equally unconstitutional. But I thought if the time should come, through some dark miracle, that McCain-Feingold survives the White House, the Supreme Court, and gets into the public stream, I do not want the loophole that the Wellstone amendment closed to stay open. If they are going to find some of it unconstitutional, I want them to find all of it unconstitutional. I want that loophole plugged.

If, indeed, we have the circumstance before the Court where the Court says the Wellstone amendment is unconstitutional, so the special interest groups are off the hook, but all of the corresponding pressures on parties are constitutional so that parties are under this kind of restriction, we are going to see a distortion in the political world that none of us is going to like.

I am supporting this amendment that says if the Supreme Court says, OK, we are going to strike down the Wellstone amendment as unconstitutional, as I hope they do, then we are going to strike down all the rest of it as unconstitutional because it all goes together, it fits together; it is a legitimate pattern.

I happen to think it is a total pattern of the violation of the first amendment. I have said before I think if James Madison were alive, he would be appalled at the debate, let alone the outcome. I have been ridiculed for that by members of the press who somehow think it is kind of funny to talk about the Founding Fathers, but I still believe the Federalist Papers are the best guide we can have as to how we make public policies around here.

As we look into our crystal balls, murky as they may be, we have to try to understand what the consequences will be if this bill passes and becomes law. I think the consequences are as I have stated: Parties will be seriously disadvantaged, special interest groups will be advantaged. But I do not want that to be done by the Supreme Court. I want the Supreme Court to tell us, all or nothing.

If the Supreme Court says an intrusion on first amendment rights is legitimate when you are dealing with political parties, then that intrusion ought to be legitimate when you are dealing with special interest groups. If, on the other hand, they say, no, the first amendment is so precious that we are going to leave it alone as far as special interest groups are concerned, why should they not then be required to say, we will leave it alone with respect to political parties?

Since when did the Constitution make a difference between the way people assemble themselves in their right of assembly and their right to petition and say: If you assemble yourselves in your right of assembly and right to petition in a political party, we are going to treat you one way, but if you assemble yourselves in your right to assemble and right to petition in a special interest group, we are going to treat you a different way?

The possibility exists that might happen if this amendment is adopted. If this amendment is adopted, then the Supreme Court will have to make the fundamental decision: Are they going to amend the first amendment by upholding McCain-Feingold, or are they not?

If they decide they are not, then they are not across the board. They cannot do it selectively. To me, that is the kind of outcome with which Hamilton, Madison, and John Jay would all agree. I make no apologies for calling them to this argument because I think this argument fundamentally is about the preservation of their handiwork which all of us in this Chamber have taken an oath to uphold and defend.

I do not take that oath lightly. I know my fellow Senators do not take that oath lightly. We should talk about it in those terms. I plead with my colleagues to think in those terms and, therefore, to support this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I yield 15 minutes to the Senator from Illinois, Mr. DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

Mr. President, the American people have had an incredible civics lesson these past few months. No novelist, no playwright, no movie director—not even the creator of the X-Files—could have dreamed up a more intricate, a more convoluted, or more fantastic plot than the one played out in our national political arena in last year's Presidential election.

For weeks on end, it seemed there was only one topic of conversation: Who won the election? And that conversation focused on some of the most arcane aspects of constitutional law.

What if Florida cannot send a slate of electors to the electoral college? What if they send two slates? Are contested elections a State or a national issue? Or for that matter, a county by county issue? Who ultimately decides the results of a disputed election? Congress? The Florida Supreme Court? Federal district court? The Supreme Court? What about the vote of the people? Doesn't that count?

Woven through every one of these questions is a crucial feature of our American style of democracy—the separation of powers. This is perhaps our Nation's most critical feature, our backbone, if you will.

For without a clear cut separation of powers—a separation between the Federal branches of Government, and between the Federal Government and the States—our system of Government founders and fails.

Prior to the creation of the Federal courts, Alexander Hamilton envisioned in Federalist No. 78 that ''the judiciary is beyond comparison the weakest of the three departments of power.'' Given the recent role the Supreme Court played in last November's Presidential election, Alexander Hamilton's vision was wrong.

Our delicate balance of power has tipped in favor of nine justices that have the power to legislate from the bench and have now elevated the Court as the most powerful of the three ''departments of power.''

Commenting on the Supreme Court's role in picking the President, Laurence Tribe noted that the Justices were ''driven by something other than what was visible on the face of the opinions.''

We will continue to ponder whether the Court's decision was derived from established legal and constitutional principles. Or whether the Court was ''results oriented'' and searched for a

rationale to substantiate a decision more political than legal.

In our Government this question of the separation of powers never goes away. It is here before us today, in this bill, with this amendment, with the issue of campaign finance reform. Specifically, it confronts us with the issues of severability and nonseverability.

When the Congress of the United States creates a new law of the land, how difficult should it be for another branch of Government to strike it down?

For the executive branch of Government, the answer has always been clear. The President can veto any law we pass. Congress can override a Presidential veto with a two-thirds majority in each house. The balance of power between Congress and the executive branch is part of our national strength.

But what of the balance of power between Congress and the Judiciary?

Federal courts have the authority to decide on the constitutional legitimacy of the laws passed by Congress, and to dispose of any provisions of the law they find unconstitutional. It is an ultimate authority dating back to Marbury v. Madison. If the Supreme Court declares a provision of law to be unconstitutional, it is conclusive.

Short of changing the Constitution itself, a step we have taken only 17 times since the passage of the Bill of Rights, there are no options. A finding of unconstitutionality by the Supreme Court effectively voids congressional and Presidential action. This, too, is a vital part of the balance of powers. And I respect it.

The nonseverability amendment would alter, even if only slightly, the balance of power between the legislature and the judiciary. Is this a wise change to make?

I have been grappling with this question these past few days. And grappling, as well, with some of the profound and, I must say, unsettling changes that have occurred at the Supreme Court in recent years.

My perception and I confess this is my own, of where the Court is today, and the direction in which it is heading, will carry great weight in my ultimate decision about the nonseverability issue.

A law professor at New York University wrote an interesting article on this very topic a few weeks back in the New York Times. The author's name is Larry Kramer, and his article, which could hardly be more to the point, was titled ''The Supreme Court v. Balance of Powers.''

His main point, which I think he makes quite convincingly, is that:

> the current Supreme Court has a definite political agenda—one devoted chiefly to reallocating governmental power in ways that suit the views of its conservative majority. . . .
>
> For nearly a decade, the court's five conservative justices have steadily usurped the power to govern by striking down or weakening federal and state laws regulating issues as varied as gun sales, the environment and patents—as well as laws protecting women and . . . the disabled.

Many of the Supreme Court's recent decisions have indeed been made by the conservative majority. Decisions are often carried on the basis of a single vote. Age discrimination—five to four. Gay rights—five to four. Warrantless police searches—five to four. The Federal role in death penalty cases—five to four. And of course, the selection of the 43rd President of the United States—five to four.

Justice John Paul Stevens, in his dissenting opinion to this last decision, said:

> Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the nation's confidence in the judge as an impartial guardian of the law.

This is my own starting point for reflecting on the nonseverability question. I agree with Justice Stevens. My confidence in the impartiality of the Supreme Court has been shaken. The American judicial system has been increasingly politicized. Politicized by the unseemly rejection by the Senate of qualified nominees to the Federal bench. Politicized by the recent decision by the White House to end the half century involvement of the American Bar Association in reviewing the qualifications of potential nominees to the Federal bench—a tradition that dates back to the Eisenhower administration.

With that as context—recognizing that for many the impartiality of the Supreme Court is being called into question—I return to the question of nonseverability. Is this a Supreme Court to whom we want to hand over the absolute authority to rewrite whatever campaign finance reform measure ultimately is enacted by Congress?

I am not enamored by the idea of granting to the Court—particularly this Court—such authority. Maintaining severability denies them the opportunity to sink the entire law on the basis of the constitutionality of one provision.

At the same time, I am not enamored by the prospect of allowing this Supreme Court to selectively dismantle our campaign finance reform measures, picking and choosing among the different provisions to find ones that suit their visions of reform, and rejecting the rest.

The last time we tried this in Congress and sent the law across the street, it had a pretty disastrous outcome. The Supreme Court at that time decided they would limit how we raise money for campaigns. They would not limit, as Congress wanted to, the ultimate amount of money spent on campaigns, and then they came in with a decision in Buckley v. Valeo in 1976 and said, incidentally, millionaires in America, when it comes to campaign financing, are above the law. Now that preposterous outcome was rationalized by them and has been capitalized on by candidates since.

Campaign finance activist Ben Senturia compared the Buckley decision by the Court relating to campaign finance reform to that of a large tree in the middle of a ball field. The game can still be played, he says, but it has to be played around the tree.

Despite my serious misgivings about this Supreme Court, the opportunity severability will give it to move beyond the role of constitutional arbiter, to actually craft their vision of campaign finance reform, I will vote against the Frist amendment for three reasons.

First, for the good of our Nation, the strength of our Government, and the future of the Court, I must still retain the faith and the hope that the Supreme Court will rise above any political consideration to judge this law on its constitutional merits.

Second, taking my misgivings about the distribution of the Court to their logical conclusion, Congress would have to raise this matter on every legislative issue we face. That would invite confrontation and chaos that would not serve our Nation.

Third and finally, I have supported McCain-Feingold and campaign finance reform from the start. I am prepared to set aside my heartfelt concerns over the issue of severability rather than jeopardizing this good-faith effort to clean up the tawdry campaign climate in America.

I support the severability provision in this bill and oppose the Frist amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before the Senator from Illinois leaves the floor, I express my personal appreciation for his speech. I say that, recognizing that he and I have been in Congress the same length of time. We came together to the House of Representatives. During that period of time, I have gotten to know him well and I recognize his history as being a real legislator, a parliamentarian as he was in the State of Illinois.

This debate has been a very good debate. During the past couple of weeks, we have had some very fine presentations made. But when we look back on the presentations made, there will not be any better than the one just made by the Senator from Illinois. Not only did he deliver it well, as he always does, the Senator from Illinois has no peer, in my estimation, as someone able to present facts. But here, not only did he do a great job in his delivery, the substance of what he said is really meaningful.

For someone such as me who struggled with this issue of severability, he certainly laid the foundation, in effect poured the cement. I have no question the Senator from Illinois is right on this issue. I am personally very grateful for having been present to listen to this brilliant presentation.

The PRESIDING OFFICER. Who yields time?

Mr. REID. I yield to the Senator from Wisconsin for 15 minutes.

Mr. FEINGOLD. Mr. President, let me join in the comments the Senator from Nevada made about the presentation of the Senator from Illinois. I know he thought long and hard about this. I am grateful, not only for his decision on this but also for the rationale and presentation he made. I thank him for it.

I appreciate very much the way the Senator from Tennessee, Senator THOMPSON, kicked off the debate on our side. He made some very powerful points about how this issue of severability and nonseverability relates to the separation of powers and issues of judicial restraint. What I would like to do is use my time to talk about what this means for our effort to do something about the campaign financing system in our country.

Mr. President, the Senate is being asked to agree to an amendment that would make two provisions of this bill ''nonseverable'' from one another. What does ''nonseverable'' mean? What does it mean for this bill? And what does this vote mean for the cause of reform?

My friend JOHN MCCAIN has said that nonseverability is French for ''kill campaign finance reform.'' That is a pretty good short definition. But in simple legal and practical terms, the addition of this kind of nonseverability clause means that the soft money and Snowe-Jeffords provision, title I and title II of the bill, would become a single integrated unit for purposes of constitutional scrutiny, that its many separate sections would all stand or fall together if any part of it is challenged in court on constitutional grounds. So, if this amendment passes, and the bill passes into law in a form that includes this amendment, and some time later a federal court finds one provision of either the soft money ban or the Snowe-Jeffords provision to be unconstitutional, then both of those provisions will be struck down, and it will be as if we had never passed a campaign finance reform bill at all.

Our bill contains an explicit severability clause, added only for emphasis. We pass hundreds of bills in each Congress, and each of them is deemed implicitly to be comprised of severable parts, unless it contains ''nonseverability'' language. Two weeks ago we passed a bankruptcy bill, that ran on for hundreds of pages. I thought it was a bad bill, I wish it were not about to become law. Still, I understand that if some part of its hundreds of pages is struck down on constitutional grounds, the rest will stand. The same is true of nearly every bill we have passed or will in the future pass in this body. In fact, I am informed that during the last 12 years only 10 bills have been introduced, let alone passed, that contain a nonseverability clause. It is incredibly unusual.

The Supreme Court has repeatedly held that even without a severability clause, the presumption is that Congress intends for each provision of a bill to be evaluated on its own merits and severed from the bill if it is found to be unconstitutional. In Alaska Airlines v. Brock, for example, the Court said:

> A court should refrain from invalidating more of the statute than is necessary . . . Whenever an act of Congress contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of the court to so declare, and to maintain the act in so far as it is valid.

That is the general rule. In order to overcome that presumption there has to be specific evidence that Congress would not have passed the constitutional provisions without the unconstitutional provisions.

Senator MCCAIN and I have drafted a bill that we believe is constitutionally sound. My record is not the record of a legislator who is casual about the first amendment, but some people, out of legitimate concern, and some other people, seeking strategic advantage in their effort to kill reform, have raised first amendment questions about the Snowe-Jeffords provisions of the bill, which would place restrictions on the use corporate and union treasury of phony issue ads run on radio or TV within 60 days of general election. Similar questions have been raised about the Wellstone amendment that extends the Snowe-Jeffords restrictions to issue ads run by independent groups.

We knew that our bill would face this scrutiny and we drafted the Snowe-Jeffords provision with care and respect for the right to political speech, but if we, or the author of a successful amendment to our bill, has missed the constitutional mark, there are federal courts to rule on the question. Ultimately, under our system of government, there is a Supreme Court to give the final word about the constitutionality of any part of our bill that may be challenged. And if the Supreme Court says that some piece of our bill is unconstitutional, that's the last word, and we would have to accept that.

But this amendment goes much farther. It would mean that if the Supreme Court finds a defect in the Snowe-Jeffords provision, and strikes it down, then the soft money ban will be invalidated as well. This makes no sense. It respects neither the proper rule of the Court, nor the proper role of the Congress. We have a Congress to pass laws, in this case a set of laws. We have a Supreme Court to tell us when one of those laws is unconstitutional and must cease to have effect.

I try to avoid cliches in debate, but here I must implore my colleagues, don't vote for an amendment that obliges this Senate and the Court to throw the baby out with the bathwater. In this case, the bathwater is the Snowe-Jeffords provision that we have always known will face a constitutional challenge, and while we believe there is a strong argument for it being upheld, we cannot state with any certainty that it will. But the most important provision in our bill, the baby in our metaphor, is the soft money ban. The sponsor of this amendment knows that he will never get the Court to say that the soft money ban is unconstitutional. He holds out hope that Snowe-Jeffords will be found to be constitutionally flawed, so he pins his hopes on the extraordinary, mechanistic and, in this case, cynical device of non-severability. It is his only chance, because he knows he can't beat reform in the Congress, and he knows he can't possibly beat the most important part of it in the courts, not in any analysis on the merits.

So I urge my colleagues to vote against this amendment, and I add these words of caution: If you vote for this amendment, you are voting to place in peril the most important reform measure in this bill. If you vote for this amendment, you vote for a gross departure from ordinary legislative procedure. If you vote for this amendment, you vote to distort the usual proper role of and relationship between the courts and this Congress. If you vote for this amendment, you vote, and will be seen to vote, for maximizing the chances of the enemies of reform to prevail against the decisions of this Senate and against the will of the American people.

I must also point out to those of my colleagues who have told me privately, or have stated in public that they support a ban on soft money but cannot vote for the bill because they believe the Snowe-Jeffords amendment is unconstitutional, you should vote against this amendment. If you would vote for a bill that includes a soft money ban and no provision on issue ads, you should vote here to preserve the option for the Supreme Court to uphold a soft money ban and strike down the Snowe-Jeffords amendment.

I made this clear in the last few days. I believe this is the vote. This vote is the ultimate test for the Senate in this debate on campaign finance reform. It might be called the campaign finance reform test. The American people are standing by, waiting to see whether this body will pass or fail that test. Do not let them down my colleagues. There are no makeup exams.

This is the vote that will decide if we are going to be able to get rid of this awful soft money system—to really get rid of it, not just pass a bill in the Senate, not just pass a bill in the House, not just have the President sign it, but actually have it survive a court challenge and become the law of the land.

Before yielding the floor, I ask unanimous consent a letter sent to our Democratic colleagues of the Senate by Representative MEEHAN and Representative FRANK of the other body on March 22 be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, March 22, 2001.

DEAR SENATE DEMOCRATIC COLLEAGUE: We are writing to urge you to oppose any amendment to S. 27—the bipartisan campaign finance reform legislation introduced by Senators John McCain and Russ Feingold—that would invalidate all or other provisions of the bill were one such provision declared unconstitutional by the courts.

The House confronted amendments of this nature during debate on the similar Shays-Meehan campaign finance reform legislation in 1998 and 1999. These amendments were soundly defeated—in 1998 by a vote of 155 to 254 and in 1999 by a vote of 167 to 259. 188 of 194 House Democrats voted against a non-severability amendment in 1998, and 202 out of 210 House Democrats voted against this amendment in 1999.

The pro-reform majority in the House rightly perceived non-severability to be lacking in public policy justification and precedent. This amendment cedes enormous power to the courts to undo Congress's work in instances where that work is of unquestionable constitutionality. Under non-severability, if a court found one provision of a comprehensive bill to be unconstitutional, the entire bill would be invalidated. While we believe that judicial review is an essential part of our system of checks-and-balances, non-severability tilts the scales too far towards judicial domination. Indeed, we find it strange that some who have decided the prospect of so-called ''activist judges'' overriding the will of officials elected by the people apparently endorse such an assault on Congress's power and prerogatives.

The inclusion of non-severability provisions in enacted legislation is extremely rare. At the time the House considered the Shays-Meehan bill in 1999, only three bills had passed in the last decade that had non-severability clauses. Indeed, Congress has often inserted severability clauses in legislation to ensure that constitutional provisions remain in effect. For example Telecommunications Act of 1996 contained a severability clause. If Congress had instead inserted a non-severability clause in the Act, the entire Act would have been invalidated when the U.S. Supreme Court unanimously struck down its so-call ''Communications Decency Act'' provision. The Brady Bill was also protected by a severability clause.

Finally, non-severability is an unjustified threat to the laudable effort to clean up our campaign finance system. We believe that soft money contributions to the national political parties should be banned and that campaign ads masquerading as issue discussion should be subject to the same laws governing uncloaked campaign ads. Moreover, we believe that both of these elements of the McCain-Feingold bill pass constitutional muster. We do not believe, however, that tying the fate of one to a court's view of the other—or tying either's fate to a court's view of other provisions of McCain-Feingold—is justified. Soft money contributions at a minimum give rise to an appearance of corruption. That will be the case whether or not other provisions of McCain-Feingold ultimately survive judicial review. Accordingly, the public policy merits weigh strongly in favor of cleaning up as much of our disgraceful campaign finance system as we can. Non-severability may compromise our ability to do so, as well as create an incentive for opponents of reform to offer patently unconstitutional amendments in the hope of poisoning the prospects for reform's survival in the courts.

Thank you for you consideration.

Sincerely,

MARTY MEEHAN,
Member of Congress.

BARNEY FRANK,
Member of Congress.

Mr. FEINGOLD. Mr. President, I yield the floor.

Mr. MCCONNELL. Mr. President, how much time remains on the Frist amendment?

The PRESIDING OFFICER (Mr. FITZGERALD). The proponents have 53 minutes and the opponents have 44 minutes.

Mr. MCCONNELL. Mr. President, I have been listening carefully to the speeches on the other side of this issue. With all due respect, they are somewhat misleading.

The last three campaign finance reform bills that passed out of the Senate included nonseverability clauses—in 1990, 1992, and 1993. Members of the Senate who voted for that include 23 current Members who supported the bill with a nonseverability clause in it in 1990; 24 of the current Members supported the bill in 1992 with a nonseverability clause in it; and 28 of the current Members supported the bill in 1993 with a nonseverability clause in it.

It is wholly irrelevant whether most bills do or don't have nonseverability clauses. What we are talking about is campaign finance reform bills which are fraught with first amendment constitutional principles, and it has been almost always the rule rather than the exception that they include nonseverability clauses in them.

It is so common that the Harkin amendment we just voted on and was supported by 31 Members of the Senate on that side of the aisle had a nonseverability provision in it tied to Snowe-Jeffords; also, the amendment we had a couple of hours ago in which 31 Members of the Senate on the other side supported.

So this notion that somehow it is inappropriate and unwise to have a nonseverability clause in a campaign finance bill is utterly and totally baseless and without merit. In fact, that is what is typically done.

I say to my friends who support the underlying bill, what are you afraid of? There have been numerous discussions and hearings about how constitutional Snowe-Jeffords is. We have had lengthy discussion on the floor by various Members of the Senate.

Senator SNOWE, of Snowe-Jeffords fame, says it is constitutional. It is common sense. It is not speech rationing but informational, and so on. Senator SNOWE referred to 70, as she put it, constitutional experts.

Senator JEFFORDS says: My focus will be on reassuring you that Snowe-Jeffords is constitutional. He says they took great care in drafting their language.

Senator MCCAIN is, likewise, totally confident that Snowe-Jeffords is constitutional. Senator THOMPSON, the same.

Senator EDWARDS is on the floor now. He said he is totally confident that Snowe-Jeffords is carefully crafted to meet the constitutional test of Buckley v. Valeo.

Senator DEWINE offered an amendment to take Snowe-Jeffords out earlier today. That was defeated. It is a part of the bill.

Those who want to keep that in the bill are totally confident that it is constitutional.

What are they afraid of?

As the author of the amendment, Senator FRIST pointed out that there is a rationale for linking Snowe-Jeffords and the soft money ban. And it is this, I say to my friend from North Carolina: What if I am right and they are wrong, and Snowe-Jeffords is struck down, the Democratic Senatorial Committee loses 35 percent of its budget, and the Democratic National Committee loses 40 percent of its budget? If candidates are under attack by conservative groups from outside, who is going to rush to their defense?

The party is the only entity in America that will certainly support the candidates that bear its label. There is nobody else you can totally depend on to be there to defend you when you are under assault.

There is a rationale for linking Snowe-Jeffords and the party soft money ban; that is, if we eliminate it, and if all of the Senators who are confident, including the Senator from North Carolina, that it is constitutional are wrong, every group in America—conservative, liberal, vegetarian, and libertarian—will all have a right to come after our candidates and our parties will be largely defenseless.

I asked consent later this afternoon to have some time at 4 o'clock to describe to the Members of the Senate the impact of McCain-Feingold on our political parties. I am going to take the opportunity to do that at 4 o'clock. It will be chilling to learn what will happen to our parties under this underlying bill.

Let me sum up because I see the coauthor of the amendment is on the floor.

I don't think this is in any way inappropriate. In fact, it is common. If the proponents of Snowe-Jeffords are confident it will be upheld, I don't know what they are afraid of. We will need the political parties to defend our candidates if Snowe-Jeffords is struck down.

I yield the floor. I see the Senator from Louisiana is here.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Who yields time to the Senator?

Mr. FRIST. Mr. President, I yield 15 minutes to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I thank the author of the bill, the Senator from Tennessee, for yielding time to me.

We have just heard a good explanation of the situation from the Senator from Kentucky about the concern of the so-called severability. Imagine most people in America scratching their heads and asking: What in the

world is the Senate talking about —nonseverability, severability, and everything else? When we talk about severability, back in Louisiana they think someone lost an arm or a finger. They get very confused when we start talking about severability in legislation as an integral part of a bill.

We have learned the mistake we make when we craft a carefully constructed compromise that people are allowed to vote for because it is carefully balanced with amendments through the legislative process and then have that legislation go to a court which says that one part of this bill we will take out and we are going to leave everything else, or the court will say they will take out half of it and leave everything else. We tried that in 1971 when we wrote the landmark Federal elections law. I was running for Congress then and was watching it very carefully, not knowing what in the world the results would be. But I looked at it at that time, as the people helped write it, as a carefully crafted compromise. It did not have a nonseverability clause in that legislation. When it left this body and it left the House, a lot of people said: This is a good balance; I got this in it; I got that in it; I got limits on contributions but we got limits on how they can spend it; therefore, I think this is a good package; it makes sense; it is reform.

Because it didn't have a nonseverability clause in it, which we are trying to add in this legislation, when it got to the Supreme Court, in its wisdom, said: Well, this can stand and this can't stand; we are going to eliminate this and we are going to keep that.

In essence, what they did was replace the role of the Congress in writing the legislation as they thought in their final words what was legitimate and what was constitutional.

Guess what. We ended up for all of these years with a bill that was totally different from what the Congress had carefully crafted. In essence, what we ended up with was a bill that limited contributions but had no limits on expenditures. What we thought we were doing was saying, all right, we are going to reduce the money in campaigns, we are going to eliminate expenditures, and limit contributions. What we ended up with was only one-half of the equation. This body, the other body, this Congress and past Congresses learned from that monumental mistake.

As the Senator from Kentucky pointed out, when we considered campaign finance legislation in subsequent Congresses, we didn't make that mistake. We considered it in the 101st Congress, the 102d Congress, and the 103d Congress. And in every one of those Congresses we did not make the same mistake that we made in 1971.

We took the position in those acts of the Congress that the carefully crafted compromise was going to have to be accepted or rejected; the Court could not piecemeal it. They could not rewrite it. They could not decide in their wisdom what they thought was legitimate and keep that and throw out what they thought was unconstitutional. We did not make the mistake in the previous Congresses that we did the first time.

I hope what we do here is to also recognize that we should say that this carefully crafted compromise, the ban on soft money to parties plus the restrictions on outside groups running sham ads 60 days before an election, are intricately tied together. They are part of the compromise. If you knock out one, you break the deal. Without this amendment, we will have perhaps only half of the deal being enacted into law and the other half disappearing because of a Court decision.

That is not what the role of legislators should be. We should be putting together comprehensive packages with intricate amendments and compromises woven together to create a package.

There are people who would not be for this legislation, I dare say, if they thought the Snowe-Jeffords legislation on money being spent on sham ads right before the election were not restricted in this bill. What do we say to those people who voted for it because of Snowe-Jeffords being part of it: That somehow it may not be there in the end? They would not have voted for the legislation.

It is so significant that we have this nonseverability clause. It is very restrictive, and I want to expand it. I will ask unanimous consent to offer an amendment to the Frist-Breaux amendment which will include the soft money ban plus the Snowe-Jeffords amendment plus the Thompson amendment which increased the hard dollar contributions, that if any one of those three would be found to be unconstitutional, all three would fall.

It makes no sense, I agree, to have the ban, for instance, on soft dollars to be declared unconstitutional, which it probably is not, but if it should be, then you would be left with a hard dollar increase. It makes no sense to say that, well, we could ban or declare unconstitutional the Snowe-Jeffords prohibition but yet still have the hard dollar increase. All three are integral parts of this compromise. I think the Frist-Breaux amendment should be amended to say that if either of those three essential ingredients is knocked down as unconstitutional, therefore, all three of them would fall. That would be the right thing to do.

That doesn't mean the whole bill falls. Everything else is still there: The millionaire's amendment, the lowest unit rate for television would still be there, the ban on foreign contributions, the ban on solicitations. Those are all still improvements in the current system.

When I try to explain nonseverability to people, it gets very confusing. I am probably as confused as anyone trying to explain it to our colleagues and to the press, and to the general public, who have to cover all of this. I try to use the analogy of ANWR which I think makes sense. The question of whether we drill for oil in the Arctic National Wildlife Refuge is a very controversial and contentious issue. Suppose we came to the floor of the Senate and someone said: All right, I am willing to allow for drilling in ANWR if you double the environmental requirements that would apply to that part of the United States. That amendment is adopted. People say: Well, with that amendment, I can support drilling for oil in ANWR because we have an amendment that doubles the environmental protections in that part of the world only.

But then that bill goes to the Supreme Court and the Supreme Court says: Oops, sorry, you are all wrong, you can't do doubling of the environmental protections in only one part of the country. That part of the bill is unconstitutional. But the drilling for oil is OK.

How would that treat all the Members of Congress who said: Well, I can vote for the carefully crafted compromise because at the same time we have doubled the environmental protections and therefore it is a comprehensive package and therefore it makes sense? To have the Court strike down the environmental protections while leaving the right to drill would be a sham on the Members of Congress who voted for the carefully crafted compromise.

The same is true with regard to this controversial, complicated, emotional issue of how we handle campaigns in this country. All of the ingredients are essential to the compromise. To allow the Court to knock out one or two and leave the rest is to put into effect through law something that was never intended by the people who voted on it to ever occur. When you vote for all of the parts of the bill, you have the right to expect that all of the parts will survive.

Someone said: Maybe we should do that for every piece of legislation. I say: Well, it may not be a bad idea, but certainly not a bad idea for things that are complicated and carefully crafted and subjected to numerous compromises that are part of the package.

I am extremely concerned that we have a situation where we are going to ban soft money to the two political parties and somehow leave all of these groups and organizations that are running ads, special interest groups, basically single-interest groups, who will be able to continue to use all of the soft money they want to attack candidates for 2 years prior to our elections. None of these groups represents, I argue, the more moderate parts of both parties; they tend to be more extreme. Not all of them, some of them are moderate, but most are single-issue, one-issue groups that generally run only negative advertising against candidates.

Addressing this with the Snowe-Jeffords amendment, saying that corporate and union contributions cannot fund any of these groups within 60 days of an election, is an important step. If we don't have the nonseverability and Snowe-Jeffords is knocked out, all of these groups could use corporate money to continue to blast candidates without us having the same ability to help our parties respond to those accusations.

I am talking about groups such as those that ran the Flo ads on Medicare. None of the people on my side liked those at all. I am talking about groups that ran the Harry and Louise ads which used corporate contributions to run negative ads all the way up to 60 days before the election, if this amendment goes down. I am talking about the National Rifle Association. To people principally on my side of the aisle, how many times do we have to see Charlton Heston talking about why Democrats should not be elected and having corporate contributions pay for those ads?

Those principally on my side who are saying we want to vote for this because it is a carefully crafted compromise ought to recognize that without the Frist-Breaux amendment, that carefully crafted compromise could cease to exist. What we have done is to abdicate our responsibility to legislate in a package, not with blinders on, and not looking at reality.

I strongly support the nonseverability amendment. I plan at the appropriate time to ask that the amendment be modified in order to add a third category in addition to the soft money prohibition to parties and the Snowe-Jeffords amendment. I would add the Thompson amendment reflecting the increase in hard dollars, that any one of those three being declared unconstitutional would bring down all three of those.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Reserving the right to object, I would like to get a copy of the modification.

Mr. BREAUX. Mr. President, if it is all right, I will hand a copy to my colleague, since he is managing the bill, and allow him the chance to review it.

The PRESIDING OFFICER. Who yields time?

Mr. DODD. Mr. President, if I may, Senators have the right to modify their amendments. I thank my colleague.

Mr. President, I am prepared to yield 5 minutes to my colleague from North Carolina, Senator EDWARDS.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. EDWARDS. Mr. President, let me speak in opposition to this amendment. I'll talk briefly about why I oppose the amendment, and respond to the comment by the Senator from Kentucky and the Senator from Louisiana, who has just modified his amendment.

First, it is very important for my colleagues who aren't on the floor, in looking at the precise language of these amendments, to recognize there are really only three provisions, with the modification, that are covered by this amendment. The soft money ban is number one; the Snowe-Jeffords ban on broadcast ads paid out of union and corporation treasury funds 60 days before the election is number two; number three is the raising of the hard money limit.

No one who has looked closely at this question would argue that either the soft money ban or the hard money limit increase is subject to serious constitutional challenge. The only thing the soft money ban has to do under the Buckley case is for the Court to find that there was a compelling State interest to support that ban. The Court, in fact, has already found in Buckley there is such an interest. So as these other Senators have recognized during the course of this debate, there is no serious question about the soft money ban. The soft money ban—if it passes from this Chamber, and is signed by the President and passed by the House—is going to become law.

The raising of the hard dollar limit also is not subject to any serious constitutional challenge. So what we are talking about is Snowe-Jeffords.

Now my friend from Kentucky points out that during the course of this debate I have argued that Snowe-Jeffords is constitutional. I don't want to repeat that argument, but I, in fact, believe that Snowe-Jeffords is constitutional. But I want my colleagues to understand, and not get caught up too much in the morass of this debate, that there is only one issue raised by this amendment as modified, and that is if Snowe-Jeffords were found to be unconstitutional by a Court at a later time, do we want the soft money ban and the raising of the hard money limits to stand? That is the simple question raised by this amendment.

Now I don't believe a Court will find Snowe-Jeffords to be unconstitutional. But the U.S. Supreme Court has done many things in the past that I didn't expect, including some things in recent times. So I have no way of predicting with certainty what the Court will do when confronted with this question. I do believe Snowe-Jeffords meets the constitutional requirements. So the argument that is made is, if Snowe-Jeffords is found to be unconstitutional, we create a strategic imbalance in our electoral process.

The difference I have with my friends from Kentucky and from Louisiana is why we are enacting campaign finance reform. I don't think that the focus of campaign finance reform, and the reason we are doing it, is to make sure the strategic balance that now exists is maintained. I think what we are trying to do is take these huge, unregulated soft money contributions out of the system. What we are trying to do is restore public faith in our campaign and election system in this country.

It is difficult for me to understand how removing these huge soft money contributions doesn't contribute to the restoring of that integrity. It obviously does. It may be that if one of these provisions—I think the only one in play is Snowe-Jeffords—is found to be unconstitutional, somewhere down the road there is a strategic imbalance. That may be true. But this debate and this law is not about us. It is not about what is good for Democrats, it is not about what is good for Republicans, and it is not about what is good for incumbent Senators; it is about the American people. It is about whether their voice is going to be heard and whether they believe they have some ownership in their Government; or, instead, whether we continue to perpetuate a system where huge amounts of money flow, unregulated, into the campaign process and ordinary people feel as if their vote makes no difference anymore. Senator DODD made an eloquent and passionate presentation yesterday, or the day before, on this very subject.

My point is this: The disagreement I have with my colleague from Kentucky—and it is a fundamental disagreement—is why we are trying to enact campaign finance reform. I don't think we ought to be focused on ourselves, or focused on how we are going to combat a particular ad that may or may not be run against us. I am as practical as anybody else. I understand the way the system works. All of us have lived with it. But the baseline for this debate, and what I hope all of my colleagues will use as their touchstone, is not what is good for us, not what is good for Republicans, not what is good for Democrats, but what is good for the American people.

I have great respect for all of my Senate colleagues, including the Senators who have authored this amendment, who I know are well intentioned, and I don't doubt that. I just think we have a fundamental difference.

Mr. BREAUX. Will my colleague yield for a question?

Mr. EDWARDS. I will yield for a question now.

Mr. BREAUX. I take it the Senator from North Carolina, who supports Snowe-Jeffords, which would prohibit all these groups on this chart from using corporate dollars to attack candidates—these single-issue special interest groups—is that not an important amendment, that if it were to be declared unconstitutional, the rest of the bill would go into effect? Does this not bother the Senator that without the Snowe-Jeffords amendment all of these groups would be able to continue to use corporate dollars to attack candidates with no ability for the parties to defend them?

Mr. EDWARDS. My answer to that question is, first, what we do, even without Snowe-Jeffords, is we prohibit candidates for political office from raising large soft dollar contributions for these very groups to which the Senator from Louisiana is referring.

If our focus is on restoring integrity to the process and the public's perception of ourselves, then getting us out of the process of raising soft money dollars, getting soft money, period, out of the system is a positive thing. And my view is that it helps restore integrity.

Mr. BREAUX. Does the Senator think that the Health Insurance Association of America, or the National Rifle Association really needs any help from Members of Congress in raising corporate money to run those types of ads? My point is that those groups don't need Members of Congress to help them raise money to do the Flo ads, and the Harry and Louise ads. Those are corporate dollars. The pharmacy industry doesn't need Members of Congress to raise money to pay for ads attacking everybody in Congress.

Mr. EDWARDS. Mr. President, reclaiming my time, my answer is the very answer I just gave the Senator from Louisiana. We can't stop these entities from running ads. What we can do, is stop Members of Congress from raising huge amounts of money and creating a public perception that we are involved in what is wrong with the system. You are absolutely right. As a matter of pure strategic balance, that there is the possibility there will be a strategic imbalance, I would not argue for a minute about that. But that is not what campaign finance reform is about.

What campaign finance reform is about is restoring integrity to the system and causing the American people to believe, once again, that the system has integrity, that it works, and this democracy belongs to them, and that it is their Government. That is the fundamental difference. Anything we do, I strongly suspect, with or without Snowe-Jeffords, or any of these other provisions, as we have learned from experience, may turn out a year, 5 years, 10 years from now to create some result that we don't expect. I think that is just realistic.

But the one thing we know for certain is that the public believes this system is awash in money. These huge, unregulated contributions that are being made to political campaigns are wrong, and we need to make a clear and unequivocal statement that we will not allow that to happen.

This debate is not about us. It is about the American people. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I will take a couple of minutes, if I may. I think the Senator from North Carolina has eloquently framed what the present amendment would do and what the consequences are, should the Frist-Breaux amendment be adopted—and I am not sure it has been offered yet—even if you accept the modification that is about to be offered by our friend and colleague from Louisiana. This gets a little confusing. It is hard for people to even hear—despite the fact we live in this world—and to even understand the issues of severability, nonseverability, hard money, and soft money.

This can glaze over the eyes of even the most determined person to follow this debate. It is confusing, but it is very important.

Let me try, if I can, to frame this so people may have a clear understanding, at least as I understand it.

If Snowe-Jeffords—the union and corporate disclosure provisions; I will call that Snowe-Jeffords although they are often in different places—if that falls because it is ruled to be unconstitutional, then the ban on soft money also falls.

If the Breaux amendment modifies the Frist amendment, then so would, as I understand it, the Thompson-Feinstein amendment, which allowed for the increases in hard money.

With all due respect to my friend from Tennessee, who is also opposing this amendment—not the author of the amendment but the opponent of the amendment—and my friend from California, Senator FEINSTEIN, Thompson-Feinstein is not a reform. Thompson-Feinstein was the price we paid to have the votes together on the banning of soft money.

There is no illusion about this. That was not a reform. I know they want to call it that. I reluctantly voted for it, having spoken against the increases in hard money. My friend from Wisconsin and my friend from Arizona also took similar positions that they did not endorse or support those increases except that it was necessary to keep the votes together for the two reforms in this bill: Snowe-Jeffords, disclosure elements, and the ban on soft money. Those are the only two reforms in this bill.

Thompson-Feinstein is the price we paid for those two reforms politically. I will stand corrected if someone wants to tell me I am wrong.

Basically that is the deal. We have this increase in hard money, which I have a hard time accepting, but in exchange for that we get the two reforms of getting rid of unregulated money and the Snowe-Jeffords provisions. I believe, based on those who know far more about this than I do, Snowe-Jeffords should not fall for constitutional reasons, although my friend and colleague from North Carolina properly points out that we have been surprised lately by Supreme Court decisions where experts have told us they would rule one way and they ruled another.

I urge my colleagues to keep this in mind, that if, in fact, they have been a supporter of McCain-Feingold, understanding that this is not every reform of the process, and understanding there may be some imbalances created here—we are all very much aware of this. My colleague from Utah spoke eloquently about the fact that none of us can say with any certainty exactly where all of this is going to end up. If you took McCain-Feingold as modified up to now and it became the law of the land tomorrow, there is some uncertainty, except this: The certainty that soft money, the unregulated millions of dollars—billions of dollars now have been pouring into campaigns—is going to be stopped.

No one is suggesting the ban on soft money is unconstitutional, and that would be a major achievement. We may end up coming back at some future date, less than 30 years down the road, because we discover there have been unintended consequences in this legislation. Let's not lose sight of the fact that the ban on soft money and the Snowe-Jeffords provisions—assuming they survive—are worthy of this body's support. The issue of saying they both fall, the ban on soft money and the price we paid for it, as well, if Snowe-Jeffords falls is an unequal trade off. I urge my colleagues to reject it.

Lastly, I say to my friend from Kentucky, there are differences of opinion on how we voted on two previous campaign finance reform bills. There was tied severability in those two other bills. It was not nonseverability. We linked two provisions. We said if one fell, then the other would fall as well.

It was, if you will, a partial severability in those two bills for which 23 of us, who are still here, voted. We did not vote for nonseverability. That is a semantical game in a sense. We voted for tied severability, partial severability. That is a side question.

The basic issue is my colleagues ought to, with all due respect, reject the Frist-Breaux amendment if they believe, as I think a majority of us do, that the ban on soft money and Snowe-Jeffords are truly reforms. We fought too long and too hard not to succeed with those and to link severability is a mistake.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, listening carefully to the Senator from Connecticut trying to explain the previous nonseverability clauses that passed in 1992 and 1993, those nonseverability clauses included the whole bill, so that if any little portion of the bill that cleared the Senate in 1990, cleared the Senate in 1992, cleared the Senate in 1993, if any little portion of that bill was unconstitutional, the whole bill fell.

As I understand the amendment of the Senator from Tennessee and the Senator from Louisiana, the whole bill does not fall. It carefully tied the two relevant parts of the amendment, the Snowe-Jeffords language and the party soft money ban. The Senator from Louisiana has pointed out why those two are relevant and important. He has his whole list of people who are going to be attacking our candidates, and our parties are going to have no funds—none, none—to protect them from attack from outside groups.

Mr. President, I yield the floor.

Mr. BREAUX. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. I ask the Presiding Officer whether it would be appropriate for me now—I have two requests. First, would it be appropriate for me to now ask unanimous consent for a modification to the Frist-Breaux amendment?

The PRESIDING OFFICER. That would be appropriate.

Mr. BREAUX. Further parliamentary inquiry: If there is an objection to the unanimous consent request to modify the Frist-Breaux amendment, would it not be in order at a later date to reoffer a Frist-Breaux amendment with that modification?

The PRESIDING OFFICER. That would be in order under this agreement.

Mr. BREAUX. Mr. President, I ask unanimous consent that the modification to the Frist-Breaux amendment that is pending at the desk be offered.

Mr. THOMPSON. Reserving the right to object.

The PRESIDING OFFICER. Objection is heard.

Mr. THOMPSON. Reserving the right to object, and I do intend to object, I know my friend can bring this after—if this amendment survives a motion to table, of course, he can bring it back, or I suppose he can bring it back separately. My understanding is this amendment would cause the following result; that is, if either Snowe-Jeffords or the soft money portion of the bill were struck down, then the Thompson-Feinstein amendment language would fall also at that time. For that reason, I object.

Mr. FEINGOLD. Will the Senator withhold his objection?

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. The Senator from Louisiana still has the floor.

Mr. FEINGOLD addressed the Chair.

Mr. BREAUX. I yield.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, was the objection finalized or did the Senator withhold?

Mr. THOMPSON. I will withhold momentarily.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, I ask unanimous consent that the time be charged equally.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Who yields time?

Mr. DODD. I yield to my colleague from Tennessee 1 minute.

Mr. THOMPSON. Mr. President, I withdraw my objection.

AMENDMENT NO. 156, AS MODIFIED

Mr. MCCONNELL. I renew the consent request of the Senator from Louisiana that his amendment and the amendment of Senator FRIST be modified.

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

The amendment, as modified, is as follows:

On page 37, strike lines 18 through 24 and insert the following:

(a) IN GENERAL.—Except as provided in subsection (b), if any provision of this Act or amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding.

(b) NONSEVERABILITY OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—If one of the provisions of, or amendments made by, this Act that is described in paragraph (2), or if the application of any such provision or amendment to any person or circumstance, is held to be unconstitutional, then all the provisions and amendments described in paragraph (2) shall be invalid.

(2) NONSEVERABLE PROVISIONS.—A provision or amendment described in this paragraph is a provision or amendment contained in any of the following sections:

(A) Section 101, except for section 323(d) of the Federal Election Campaign Act of 1971, as added by such section.

(B) Section 103(b).

(C) Section 201.

(D) Section 203.

(E) Section 308.

(c) JUDICIAL REVIEW.—

(1) EXPEDITED REVIEW.—Any Member of Congress, candidate, national committee of a political party, or any person adversely affected by any provision of, or amendment made by, this Act, or the application of such a provision or amendment to any person or circumstance, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that such provision or amendment violates the Constitution.

(2) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia granting or denying an injunction regarding, or finally disposing of, an action brought under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered.

(3) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under paragraph (1).

(4) APPLICABILITY.—This subsection shall apply only with respect to any action filed under paragraph (1) not later than 30 days after the effective date of this Act.

Mr. DODD. Mr. President, I suggest the absence of a quorum and ask that the time be divided equally.

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

Mr. FRIST. 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. FRIST. Mr. President, I yield 15 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I thank the Senator from Tennessee for yielding.

For nearly 2 weeks, the Senate has been engaged in an exhaustive but illuminating debate on reforming the campaign finance system of the Nation, the foundation of the rules by which a free people choose their government. The consequences could not be more enormous.

I believe the Senate has met the best expectations of the American people in this debate. It has been thoughtful, civil, and far reaching. Indeed, rather than simply engaging in a narrow changing of the rules, what has emerged from the Senate is genuinely comprehensive campaign finance reform. It may not have been our intention, I don't believe it was planned, but in the best traditions of the Senate, Members from both political parties, with good ideas, took some basic reform legislation and made it into a workable, comprehensive system.

That is what brings this question before the Senate. If these were simply individual changes in the campaign finance system, where some were enacted and some failed, it would be interesting but not of overriding consequence. That is not what the Senate has done. This is a series of reforms inextricably dependent on each other. If one or more is removed, the Nation will have a radically different campaign finance system and our system of choosing candidates, and even the people whom we elect, will be altered.

I understand in the rush to judgment there are some who are prone to reform for reform's sake. It is a question of pass anything, get something done, and we will live with the consequences. But the truth is, the campaign finance system of this country is changed only once in a generation. These rules will last, not simply for us but for those who follow us, not just in this decade but in decades to come.

The fact that we have seized this opportunity in these 2 weeks to write comprehensive changes, far-reaching in nature, is not only to the credit of the Senate but it is a genuine contribution to the country.

This is the last great debate of the campaign finance consideration. But in

some ways it is the most profound question because ultimately the question is whether we have simply decided on a series of ideas that will be thrown out to the American people to challenge in the courts where others will make the decision or whether we have really designed a new campaign finance system in the Senate, where it is our responsibility.

It is important to look at how each of these provisions is linked because, as one Member of the Senate, I am only voting for McCain-Feingold because of the different provisions and how they are all related. We eliminate soft money for the political parties. We also eliminate it from outside interest groups. But we do not want to deny the American people political debate, so we raise the hard money limits. We want to end the monopoly on candidates' time and the growing expense of campaigns, so we lower the cost of television advertising. Those are all related and they are all important.

My colleagues, what is to happen if the Supreme Court of the United States decides the Senate has decided upon six interrelated provisions but we do not like one—or two? Then the Senate is no longer writing campaign finance reform; we simply made a few suggestions, enacted them into law, and we will let someone else write them.

This would not be so perplexing to this Member of the Senate, that we might be yielding in our responsibilities on the question of severability, if not for the fact that the Senate has been at this moment before. This is exactly what happened in 1974. If you do not like the campaign system now in the United States of America, if you object to what has happened in public confidence, the rising expense, the dominance of powerful interests, the rise of soft money expenditures, then you have a responsibility to ensure these provisions are inseparable, or the Supreme Court will write this law just as they did in 1974.

Here is the most remarkable thing about the campaign finance system in the United States: No one ever proposed it, no one ever wrote it, and no one ever voted for it. Because the Supreme Court of the United States created it, and that is exactly where we are going again.

In 1974—a year in which I did not serve in government, but I remember the debate, and some of my colleagues were here—had the Senate been presented with the following proposition: We will limit contributions to $1,000 but we will allow unlimited soft money to political parties and we will allow outside groups to spend their money and we will allow wealthy candidates to spend unlimited amounts of money—if anyone had come to the floor of the Senate with that bill, it would have received no votes. There is not a member of the Democratic or Republican Party who would have voted to limit themselves to $1,000 contributions while wealthy individuals could spend unlimited money and outside groups had no restrictions at all, with no control on expenditures. No one would vote for such a system. But that is the law of the United States of America. It has governed our country for 25 years. If we fail today, it will continue to govern our country.

That has created all this outrage, and that is the product of not having a nonseverability clause. That was an attempt to have comprehensive reform. But when the Court ruled provisions unconstitutional, rather than meeting our responsibilities, returning to the floor of the Senate to rewrite the legislation consistent with constitutional guidelines, ensuring it was comprehensive and met our national objectives, the Senate failed to meet its responsibilities and this problem was created.

By what logic do we solve this problem now by returning to the same rules, the same yielding of responsibility, to ask the same Court to write campaign reform legislation once again? I ask my colleagues to think of the system that may not evolve from McCain-Feingold as we have voted upon it but which might evolve from a reasonable action by the U.S. Supreme Court.

I believe every provision we have agreed to in this Senate, absent possibly the Wellstone amendment, is constitutional. It is noteworthy the Senator from Tennessee does not put the Wellstone amendment in his nonseverability amendment that he offers the Senate at this moment. I believe the remainder is constitutional.

But if I am wrong and the U.S. Supreme Court decides that Snowe-Jeffords amendment controlling expenditures by independent groups by the use of unlimited soft money is unconstitutional, mark my words, the system we are creating in the United States of America is a radical change in how we govern this country and, for all practical purposes, it is the end of the two-party system financing national elections as we have known them in our lifetime. That is because under a McCain-Feingold bill that no one in this Senate voted for—and I suspect no one really supports—the system enacted in the United States will be the Democratic and Republican Parties will be limited to hard money expenditures only and independent groups will spend unlimited money with no restrictions or controls. Of all the thousands of organizations in America, civic and corporate and labor, of all the thousands of organizations, we will have chosen two for these restrictions: The Democratic Party and the Republican Party.

In the practical world in which we live, let's consider what this will look like. I, as a candidate, may choose to run for office on a progressive platform, wanting to describe my own views. And good allies that I believe in, such as organized labor or environmental groups or women's rights groups or civil rights groups, may decide to support me. But they will run my ads. They will decide what I am for, describe my positions, and run my advertising.

My Republican opponent will be in a similar position. The Chamber of Commerce or a business group, a gun advocacy group, will run advertising with soft money, saying what I am against.

American politics will be fought over the heads of the candidates—aerial warfare with the Democratic and Republican Parties in the trenches simply firing at each other. The real battle will be fought by surrogates, and political candidates in the Democratic and Republican Parties will be nothing but spectators in American politics.

This is not the system anyone here wants. Were I to offer it now, no one would vote for it. It sounds like 1974, doesn't it? It is. And we can have exactly the same result.

My colleagues, the Senator from Tennessee has offered an important, in some respects the most important, amendment in campaign finance reform.

It is the difference between a few ad hoc ideas to reform the campaign finance system and ensuring that this is comprehensive and fundamentally changes the entire system. Each becomes dependent on the other.

I asked the Senator from Tennessee to change his amendment in one more respect. I do not want my intentions questioned on the Senate floor. I have voted for campaign finance reform as often as any Member of this Congress in the last 20 years—as many times as Senator MCCAIN, as many times as Senator FEINGOLD. I will keep voting for reform.

My intention to ensure that this is constitutional and comprehensive is not because I oppose reform but because I want it to be genuine and complete. It is because of that that I asked the Senator from Tennessee to adjust his amendment. He complied. Under his amendment, not only are these provisions nonseverable, but there would be immediate Federal court review.

Upon action of the district court finding any provision of this legislation unconstitutional, there would be immediate appeal to the U.S. Supreme Court to ensure that this Senate had guidance immediately so we could return to session and correct any constitutional defects.

This, my colleagues, is exactly what this Senate has done in dealing with other legislation that was of questionable constitutional compliance. It is what the Senate and House of Representatives did in dealing only a few years ago with the Religious Land Use Institutionalized Persons Act. We ensured that the provisions would have to stand together, and that there would be immediate court review if they did not return to the Senate.

So I ask the Senate to do what it did to correct what it did wrong in 1974 and did correctly on three previous occasions to ensure constitutionality and

that the responsibility for writing this legislation remains here.

I do not understand, my colleagues, in fact, if we vote differently. The lessons of 1974 were learned in a very hard way. The American people lost confidence in this Government, and the campaign finance system evolved which took Members of the Congress away from their responsibilities and dispirited us and our constituents. It is not a system worthy of a good and great country—but it is the law—because we did not write it. We allowed others to write it. It evolved. It was not thought through or properly conceived.

I thought we learned that lesson in 1974 because on the last three occasions that we reviewed campaign finance legislation in this Congress, we ensured that there was a nonseverability clause.

What Senator FRIST does today, on three previous occasions this Congress assured was in campaign finance legislation. What he does is not the exception. It has been the rule, specifically because of what we learned in 1974. Now Senator FRIST brings it to the Senate again.

I urge my colleagues to act with caution. This vote has meaning, and it will last. It will change the complexity of this entire Congress as the years pass because the access to financing and how we govern this campaign finance system governs who rules, who wins, and who loses, and what issues come before their institution. It could not be more profound.

I urge my colleagues, no matter how they have viewed this question of severability in the past, to think carefully—not reform for reform sake, not a slogan, not a campaign statement, but a careful review of how this law will evolve and what it means to this Senate and to this country.

I compliment the Senator from Tennessee for offering it. I urge my colleagues to adopt it. I yield the floor.

Mr. MCCONNELL. Mr. President, before the Senator from New Jersey leaves, I listened carefully to his remarks, and I also say to the Senator from New Jersey that not only were nonseverability clauses a part of the three campaign finance reform bills that left the Senate in 1990, 1992, and 1993, it is a part of the Harkin amendment that we just voted on a couple of hours ago which had the support of 32 Members of the Senate on his side of the aisle.

So the notion that somehow nonseverability is unusual or inappropriate is absurd. It is more often the case that these are part of campaign finance reform bills that we deal with in the Senate.

Mr. TORRICELLI. I am glad the Senator noted that.

I yield the floor.

Mr. DODD. Mr. President, how much time remains for the opponents?

The PRESIDING OFFICER. The opponents have 21 minutes.

Mr. DODD. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, it continues to be such an excellent debate. I am proud to be a part of it. I commend my colleagues on both sides of the issue.

I believe it is fair to say that putting nonseverability clauses into bills is not at all unusual. Congress passing a bill with a nonseverability clause in it is very usual.

Let's make sure we are not comparing apples with oranges.

Are campaign finance laws so different from anything else that it should be looked upon differently? Because in everything else, severability is the norm. Nonseverability is very unusual. So we say we continually do it in these bills that we don't ever make into law. But we continue to put them into bills because they are campaign finance bills, and they are intricately woven.

I suggest if anybody who ever sponsored a bill—especially a large bill on the floor of this Senate—thinks this bill is pretty intricate, they think their bill was pretty intricately woven, also.

I don't think there is anything that unusual about campaign finance regulations except it pertains to how we raise money. That makes it unusual.

With regard to Buckley, my colleagues, of course, are correct to say the law that was passed in 1974 changed our campaign system in this country in the aftermath of Watergate. Buckley took a look at it and basically said: Congress, you can limit contributions but you can't limit expenditures.

I have often wondered what the Congress would have done had they known that.

My friend from New Jersey talks about soft money and all of that that was not relevant back then. That was in play. Certainly the so-called billionaire exception turned out to be in play with regard to Buckley, and limiting the expenditures was certainly in play. That was stricken.

But what would they have done? Would Congress, knowing they were going to have their expenditures limited, have raised the ceiling on the contributions? I don't think so. What they were doing was in response to Watergate. Would they have lowered the contributions? Basically, that is what you are talking about—contributions and expenditures. I do not know that Congress would have done anything any differently had they known what Buckley was going to do. And, if so, why didn't they?

We have been meeting regularly now for 27 years since they did that dastardly deed to us, as it has been described to us on the floor. I don't know of any serious attempt to go back and readdress the entire issue since that time.

I think the longstanding practice we have had in this country both legislatively and in our court systems to be restrained to have severability clauses in most cases is a wise one.

I say to my friends who talk about these outside groups that both sides have groups that support them and campaign against them. As far as I am concerned, let them come on as long as I have the right to go out and be happy when groups support me or oppose my opponent, and whatnot. And there will be plenty of each. There is plenty of robust debate out there. It makes us mad sometimes. These people have a first amendment right to do that.

According to an independent study, the House of Representatives the last time had more independent money spent on them than the Democrats did with independent ads.

They also said that Senate Democrats had more independent ad money spent on them than the Republicans did. Of course, in that battle, and the Presidential race, the Republicans won. And that is one race. If you look at these soft money donors—I say to my friend from Louisiana who is concerned about this aspect, if you look at the large soft money donors, of the top 10 of them, 6 or 7 are Democrats. They will find a way to support some of these organizations otherwise. In fact, that is a concern on our side of the aisle, that they will do that. The Democrats will have more support that way than the Republicans will have.

Democrats say: Well, the hard money limits will hurt us more than it will the Republicans.

We will never be able to figure out exactly who is marginally helped or hurt with all of these. We have never been able to do that before.

Mr. President, I ask for 1 more minute from my friend.

Mr. DODD. I yield an additional minute.

Mr. THOMPSON. We are in as much equilibrium now probably as we will ever be. Behavior changes. The reason we are so soft money oriented now is because we have neglected the hard money, the small dollars, for some time. I think both parties have. If we raise the hard money limits, as we have, and do away with soft money, you will see the concentration back toward the old-time way of raising money—in smaller amounts, legitimate, limited amounts—that we had since 1974.

Don't treat the legislation that was passed that year as a total abomination. The fact is, until the mid-1990s, the 1974 law worked pretty well. We didn't have any Presidential scandals. The money spent on each side was about the same. Sometimes the challenger won. Sometimes an incumbent won. We don't like it now because some people in the 1990s showed us some ways to get some whole new money into the process.

That is what we are reacting to now. It is not that law. It is what has been

done, not just by the courts but the FEC and the Justice Department and a few others.

It is a complicated issue, but it all boils down to this: Are we prepared to get rid of the multimillionaire soft dollars that are coming from corporations and unions and wealthy individuals in this country into our political process? That is what this vote is all about.

Mr. DODD. Mr. President, I commend my colleague from Tennessee. He made a very good point at the outset on the severability issue and precedence. We went back the other day and looked at legislation over the last 10 or 15 years. We are told that of the hundreds, thousands of bills that passed the Congress, there are about 10 or 11 examples where limited severability was involved, the point the Senator was making.

With that, let me turn to my colleagues who seek recognition. Senator WELLSTONE has been around all afternoon.

I yield Senator SCHUMER 7 minutes.

Mr. WELLSTONE. I ask unanimous consent that I follow Senator SCHUMER.

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

Mr. SCHUMER. Mr. President, I rise in adamant opposition to the nonseverability amendment. At the outset, let us be very clear about the unmistakable goal of this amendment. It has been signed, sealed, and delivered primarily by opponents of the bill for one and only one purpose: as a poison pill.

Of all the prescriptions for all of the poison pills that our friends on the other side of this issue have diligently mixed over the last 2 weeks, this one is the most lethal.

Why do I say that? Because it is aimed straight at the soft money ban, which is the heart and soul of this bill and has been at the core of cleaning up our campaigns since at least 1988. Banning soft money finally ends the practice, unhealthy in any democracy, whereby the wealthiest few pour millions and millions into our campaigns with no restriction at all and sometimes no disclosure, as long as the money is given to a State party.

The debate over how much advocacy groups can do is simply a sideshow. Only those who don't believe that banning soft money is key let it override the dominant purpose of this bill, to ban soft money once and for all. Banning soft money is the forest of this effort. It is far more important to the viability of our campaigns to ban soft money than regulate sham issue ads. There is no compelling reason to force the former to live or die based on the latter.

In medicine, it would be like killing the patient when all he has is a headache. In warfare, we would destroy the village in order to save it. In legislation, it is just plain bad policy.

The better policy, obviously, is to see what the Court does. And if we are left with an uneven system we don't like, fix it then. That is what we always do. That is why we never enact nonseverability clauses. Only once in the last 12 years has a nonseverability provision become law, though nearly 3,000 bills were passed during that time. Passing one now will just be a transparent way of saying we never wanted to ban soft money in the first place, and we found a clever way to pass the buck.

It would be particularly ironic to do this in the name of preventing the Court from writing our campaign finance laws instead of Congress. It is precisely this amendment that gives the Supreme Court too much power, not ordinary severability of the kind we always have and that is in McCain-Feingold.

If we approve this amendment, we will be asking the Court to dictate our campaign finance laws to a far greater extent than in McCain-Feingold because the soft money ban, which is constitutional, which we and the House have debated for years and which we are poised to enact right now, will disappear even if it is not considered by the Court, much less struck down.

Why would we concede that much power to the Court? Most of the time the Senators supporting this amendment talk about the danger of judicial activism, but we will be rubberstamping a peculiar and virtually unprecedented form of judicial activism with this amendment.

As the great Justice Robert Jackson once wrote of the Supreme Court's role as the final arbiter of our law:

> We are not final because we are infallible—we are infallible because we are final.

In the area of campaign finance, the Supreme Court has not been infallible, although it certainly is final. We should not tie this entire bill to the Court's final decision on any one of dozens of minor provisions.

I will close by reemphasizing what the Senators from Arizona and Wisconsin have so often and eloquently said in the course of this debate. I plead with my colleagues, we cannot let the perfect be the enemy of the good. On this side of the aisle, I say to my colleagues, even if you are unhappy with the delicate balance of 501(c)(4) organizations, even if you realize they may not be limited once the courts get hold of this, don't throw out the baby with the bath water. The good in this bill is more than just good, it is great. It is a landmark achievement, the first serious reform in a generation. And we should strive to preserve it, not kick the can across the street to the Supreme Court.

Mr. President, I yield back to the Senator from Connecticut my remaining time.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Minnesota is to be recognized.

Mr. DODD. That is right. We are down to a very limited amount of time. I have two or three people who want to be heard. I am going to ask the indulgence of my colleagues, unless the other side would like to give us a little time for people who want to be heard. How much time do the proponents have?

The PRESIDING OFFICER. Ten minutes.

Mr. DODD. May we have 5?

Mr. FRIST. I will yield 4 minutes.

Mr. WELLSTONE. I will do it in 3 minutes.

Mr. DODD. The Senator yields 3 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Although I don't like doing it in 3 minutes.

Mr. President, I think that some of what other Senators have said about the whole being greater than the sum of the parts is, in part, true. But I think the soft money ban, which is at the heart of the McCain-Feingold bill, is important enough that we want to protect it.

Second of all, I frankly don't know what the supremely political Court will do. You can argue different ways, but I would hate to see the supremely political Court render a decision taking on one part of the legislation and having the whole bill fall.

Third, I would like to point out to my colleagues that the amendment I introduced that was passed as a part of this legislation now was based upon the idea of severability. That was an amendment to improve this bill, not to jeopardize this legislation. And so, consistent with my commitment to severability, I will vote against nonseverability.

And then, finally, may I say this? How ironic it is that the amendment I introduced the other night is not even covered by this amendment that my colleagues introduced on the other side; that the amendment I introduced the other night that deals with these sham issue ads and the potential of all the soft money shifting here is still severable. It is so ironic. But I say, no self-righteousness intended, consistent with the principle of improving this bill, not in any way, shape, or form trying to jeopardize this bill, I don't even know how I am going to vote on final passage. But I certainly am opposed to this nonseverability.

You see why I wanted to have more time than 3 minutes? I have a lot to say.

Mr. DODD. The distinguished Senator is always eloquent.

I yield to my colleague from Massachusetts 3 minutes.

Mr. KERRY. Mr. President, it seems to me it is obvious to almost every Senator that we are sort of reaching a critical moment where we decide whether we are for campaign reform or we are not. At the bottom line, that is really what the severability issue is about, even though the severability has been limited now to a major component of the bill: Issue ads, i.e., Snowe-Jeffords, versus soft money. The soft money falls, the prohibition on it, only if the Court finds that Snowe-Jeffords is inappropriate, unconstitutional.

I say to my colleagues that the whole purpose of this reform is to get rid of the largest component of money that

most taints the political process, which is soft money. One of the reasons people have doubts about their ability to be able to counter issue ads, if indeed that prohibition were to fall, is that they haven't been raising hard money, because when you can go to somebody and ask for $50,000, $100,000, $500,000, why bother going after the smaller sum of money?

So it seems to me what is ignored in this argument is, if indeed you don't have soft money, and if indeed the prohibition on issue ads, if Snowe-Jeffords were to fall, you are not defenseless at all, you still have the capacity to spend unlimited amounts of hard money in defense.

One of the reasons Senator WELLSTONE, Senator BIDEN, I, and others are so concerned about the McCain-Feingold bill in the end, though we support it, is that it ultimately only reduces a portion of the money that is in American politics. It still leaves us in a race, ever-escalating, of raising extraordinary amounts of hard money, cavorting around the country, still indebted to interests, still asking for large sums of money. We are still going to do that. I know Senators MCCAIN and FEINGOLD would love to go further if they could.

So, colleagues, this vote on severability is really a simple vote about whether or not we are prepared to take the risk of getting rid of the extraordinary amounts of soft money and taking on ourselves the burden, if indeed Snowe-Jeffords were to fall, of raising appropriate amounts of hard money with which to take our case to the American people.

I happen to believe very deeply that the bright-line test we have set up will withstand scrutiny. All you have to do is read Buckley v. Valeo and read the Nixon and Missouri case. The Court makes clear that it is prepared to limit contributions where they are clearly contributing to the advocacy of the election of a candidate. Anybody can watch those ads and tell the difference as to whether they are purely about an issue or trying to seek defeat or election of a candidate. I am confident we have drawn a line that will pass constitutional muster.

I ask my colleagues to take the risk in favor of reform and eliminate the soft money from American politics. That is what this vote is about.

Mr. DODD. Mr. President, am I out of time?

The PRESIDING OFFICER. The Senator has 4 minutes 43 seconds.

Mr. DODD. I yield 2 minutes to my colleague from Arizona.

Mr. MCCAIN. Mr. President, we are now facing one of the major hurdles, and perhaps the last major hurdle, between us and successful resolution of this issue. We had to fight back a poison pill in the form of a so-called paycheck protection. We had to speak clearly that we will not accept soft money in American politics. Then we voted in favor of a very hard-fought and carefully crafted compromise in the form of the Thompson-Feingold amendment. Now we face this issue. Have no doubt about what this vote is really about. If you vote for this amendment, you are voting for soft money. That is really what this vote is all about.

Since this may be the last major obstacle we face, I take the opportunity to thank all of my colleagues for the level of this debate, the tenor of this debate. I also thank the thousands and thousands of Americans who have been active in this debate and participated with us through e-mail, phone calls, and through all communications. Without their support, we would not be where we are today.

I urge a vote in favor of the tabling motion that will be proposed by Senator THOMPSON of Tennessee.

Mr. DODD. Mr. President, let me also commend our colleague. This has been a good debate, one we can be proud of in this body. I ask for recognition of the Senator from Wisconsin.

Mr. FEINGOLD. I thank the Senator. I join with my colleague in thanking each and every Member of this body for the way this debate has been conducted. It has been a great example of the way this institution can work.

The Senator from Arizona is also right about the ultimate point. This amendment is couched in rather technical terms—severability or nonseverability. But it truly is the whole issue. I said it time and again, but it is the most important thing to point out to people, and that is that we have never allowed unlimited campaign contributions from corporate treasuries to political parties since 1907. We have never allowed unions to do the same thing from their treasury since 1947, the Taft-Hartley Act. But now, in the 1990s, the early part of this century, Members of Congress are engaged in asking for $100,000, $500,000, and $1 million contributions.

I say to you, Mr. President, if you told me even 10 years ago that such a practice could ever occur in this democracy, I would have been stunned. But it is standard procedure today. This vote on this amendment will decide whether this terribly unfortunate and corrupting system continues or not. This is the soft money vote. This is where the Senate takes its stand. This is the test.

Thank you, Mr. President.

Mr. DODD. I presume all time has expired.

The PRESIDING OFFICER. The Senator has 1 minute 22 seconds.

Mr. DODD. Mr. President, my colleague from Tennessee, the author, has been very gracious in giving us some time. I am going to return the favor and extend a minute and a half to him.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I, too, applaud my colleagues and everybody who has participated in the debate over the last 3 hours and really over the last 10 days. But over the last 3 hours, I have been quite pleased with the nature of the discussion, the debate, the issues.

It is very clear to our colleagues what this vote is about. Although some will say it is about soft money, it is about voice and it is about the freedom in our process, freedom of political speech.

Very briefly, I want to make three points in closing. No. 1, people are billing this as a poison pill. Very clearly, we are not adding anything. We are linking principally two underlying factors that are part of the underlying McCain-Feingold bill and added to the hard money the Thompson amendment. These are linked in a comprehensive, complementary, integral way. We are addressing just these three. If one falls, the other two come down; if one is unconstitutional, the others come down. Why? Because of balance.

All other provisions in this bill, whether it is increased disclosure, the provision clarifying the ban on foreign contributions, including soft money, the ban on raising money on Federal property, the millionaire amendment—all of those stand, all of those continue regardless of what happens with the Frist-Breaux amendment and constitutionality.

The second point is, the issue has been made that most bills coming out of this body do not have nonseverability clauses, but the point was made that some do. It is in times exactly such as these where we bring people together and knit together in a comprehensive way this balance that is so critical to maintain what we all cherish, and that is freedom of speech.

It is in unusual times such as these that a nonseverability clause is called for. It is this balance. If Snowe-Jeffords falls and the ban on soft money stays, then we increase, not decrease, the role of influence of the special interest groups we talked so much about over the last 3 hours. That is not the type of reform that Americans want.

Third, history. Clearly, there have been precedents, in fact, on campaign finance reform bills that have passed out of this body that have had nonseverability clauses.

In closing, I urge support of the Frist-Breaux amendment, as modified, during the course of the debate. It deals directly with the most cherished freedoms that any of us have today, and that is the freedom of speech.

If there is one thing that has been pointed out over the last several days, it is that we must be careful whenever we pass a bill that is going to ration free speech, and that is what we are doing. We must maintain that balance, and the only way to maintain that balance is to support the nonseverability clause amendment proposed by myself and Senator JOHN BREAUX.

I yield back the remainder of my time.

Mr. DODD. Mr. President, I move to table the Frist-Breaux amendment No.

156, as modified, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—57

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

NAYS—43

Allard	Gramm	Nickles
Allen	Grassley	Roberts
Baucus	Gregg	Santorum
Bennett	Hagel	Sessions
Bond	Hatch	Shelby
Breaux	Helms	Smith (NH)
Bunning	Hollings	Smith (OR)
Burns	Hutchison	Stevens
Campbell	Inhofe	Thomas
Craig	Kyl	Thurmond
Crapo	Lincoln	Torricelli
Domenici	Lott	Voinovich
Ensign	McConnell	Warner
Enzi	Murkowski	
Frist	Nelson (NE)	

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The previous order was to recognize the Senator from Kentucky for up to 30 minutes.

Mr. MCCONNELL. Mr. President, I assure my colleagues that I am not likely to take 30 minutes. But I thought it was an appropriate time to say that I think we have dealt with the last very significant amendment to this bill.

I think it is time for Members of the Senate on both sides of the aisle to take a good hard look at what we have done to the political parties—both yours and ours. I asked the pages to hand out this little chart.

My colleagues, we have reached a point in this debate where I think it might be a good idea to take a look at what life in a hard money world is going to look like for our two great political parties. We have taken pretty good care of ourselves in this debate.

We have raised the hard money limit for us. I am for that. I think that is a very important step in the right direction.

We lowered the broadcast discount so we can buy time cheaper. I voted for that.

We tried to protect ourselves against being criticized by outside groups through the adoption of the Wellstone amendment and the Snowe-Jeffords language.

We even adopted the Schumer amendment which would make it difficult for parties to use coordinated expenditures over and above the current limit if the Supreme Court in fact strikes down the coordinated expenditure limit as unconstitutional, which is the case currently before the Supreme Court.

We have also defeated the non-severability clause, so that now if the Court strikes down our efforts to limit the ability of outside groups to criticize us in proximity to an election, and we are unable through the charting of new turf, new ground, to convince a court that the federalization of our parties is unconstitutional—and no one really knows; there is no case law on that—the parties will not be able to support their candidates against attacks by outside groups. By the way, I want you to know that I will be the plaintiff in the case. We will be meeting with the other people who are likely to be the co-plaintiffs in this case in my office next week.

But we are left now with the possibility of being saved by the House or being saved by the President, who says he is going to sign this bill.

If none of those things happens, you are looking at the plaintiff. I have no idea what the chances are of getting a Federal district court, or the U.S. Supreme Court, for that matter, on appeal, to tell us whether parties have a right of free association and a right of speech somewhat similar to individuals. That is really uncharted turf. We do know this: What we can calculate is what happens to the parties in a 100-percent hard money world.

I hope by now some of you have gotten—I don't see that any of you have gotten—where are our pages with additional copies? I guess they thought you all wouldn't be interested in this. I don't know why. Could the pages please deliver those over to the Democratic side? This won't take long.

I took a look at the 2000 cycle, the cycle just completed. You will see in the chart before you that the chart depicts the net Federal dollars available to the three national party committees.

Under current law, on the left—if I could call your attention to the column on the left, and for those in the gallery, this column is called ''Actuals.'' This was the last cycle, net hard dollars.

The Republican National Committee had net hard dollars to spend on candidates of 75 million; the Democratic National Committee, 48 million net hard dollars to spend on candidates.

The Republican Senatorial Committee, net hard dollars to spend on candidates, 14 million; the Democratic Senatorial Committee, net hard dollars to spend on candidates, 6 million.

The Republican Congressional Committee, $22 million; the Democratic Congressional Committee, minus 7 million in the whole cycle, net party dollars.

Now let's take a look at what the 2000 cycle would have looked like under McCain-Feingold in a 100-percent hard money world. That is the column over here on the right. You see the Republican National Committee would have gone from 75 million net hard dollars down to 37 million net hard dollars; the Democratic National Committee, from 48 million net hard dollars down to 20 million net hard dollars; the Republican Senatorial Committee, from 14 million net hard dollars down to 1 million. That wouldn't even cover the coordinated in New York. The Democratic Senatorial Committee, 6 million net hard dollars down to 800,000.

Welcome to the 100-percent hard money world. You are going to like it.

There has been a lot of discussion about who wins and who loses. We both lose. This is mutually assured destruction of the political parties.

I don't think any of you believes seriously that Jeffords, or Wellstone, or Snowe-Jeffords are going to be upheld in court. This is an area of the law I know a little bit about. So the chances are pretty good that all of those groups that Senator BREAUX was describing are going to be out there on both the right and the left pounding away.

Maybe your friends in organized labor will be able to help you, or the Sierra Club. Or maybe the NRA will come save some of our people. But under this bill, I promise you, if McCain-Feingold becomes law, there won't be one penny less spent on politics—not a penny less. In fact, a good deal more will be spent on politics. It just won't be spent by the parties. Even with the increase in hard money, which I think is a good idea and I voted for, there is no way that will ever make up for the soft dollars lost.

So what have we done? We haven't taken a penny of money out of politics. We have only taken the parties out of politics—mutual assured destruction.

What is this new world going to be like without parties? Here was a full-page ad in the paper 2 days ago by a billionaire named Jerome Kohlberg. He happens to mostly like you all, but we have some billionaires, too. They have a perfect right to spend their money any way they want to, and they will. These billionaires are the people who are underwriting the reform movement with lavish salaries for these people who are hanging around off the side of the Senate telling us that we ought to squeeze the money out of politics.

Welcome to the new world, a battle of billionaires over the political discourse in this country while we have

made the political parties impotent; impotent in order to satisfy who? The New York Times, the biggest corporate soft money operation in America? The Washington Post, the second biggest corporate soft money operation in America? I know you all like them because they are sympathetic to you, but there are people on our side, too.

This is a massive transfer of speech away from the two great political parties to the press, to academia, to Hollywood, to billionaires in order to satisfy who? I have often said that this issue ranks right up there with static cling as a matter of concern to the American people.

This is a stunningly stupid thing to do, my colleagues. Don't think there is anybody out there to save us from this. I am not going to embarrass anybody, but I had a lot of frantic discussions over the course of the last 2 weeks with my friends on the other side of the aisle, hoping somebody, somewhere, somehow was going to keep this from happening. There is nobody to come to the rescue. This train is moving down the track.

This is my main point, in asking for your attention—and I thank you for being here—this is a candid appraisal. This is not a partisan observation. This is a candid and realistic appraisal of life after McCain-Feingold. I am sure there are very few of you who will believe this is going to improve the political system in America.

This bill is going to pass later tonight. If I were a betting man, I would bet it is going to be signed into law. I just wanted to welcome you, my friends, to a 100-percent hard money world.

I thank the Chair and yield the floor.

Mr. DODD. Mr. President, may I inquire, I believe there was a similar request made to respond to the unanimous consent request of the Senator from Kentucky.

The PRESIDING OFFICER. The Senator is correct. There are an additional 30 minutes under the control of the Senator from Connecticut.

Mr. DODD. The distinguished Senator from Wisconsin or the Senator from Arizona, Mr. MCCAIN, I had thought, wanted to be heard on this issue.

Mr. President, let me reserve the time for them. I will take 2 minutes and say to my friend and colleague from Kentucky, this is a new world. I accept that description. I wouldn't call it necessarily a perfect world, but I think for those of us who support McCain-Feingold, we think this is a far better world than the one we have been engaged in over the past number of years, as we have watched the explosion of unregulated soft money flow into the political process in this country.

Senator BENNETT of Utah a little while ago said no one can say for certain where this is going to go. That is true. I think we do appreciate, those of us who have supported this legislation, that a system that is devoid of unregulated soft money, and those of us who believe that the Snowe-Jeffords provisions and the price we paid by increasing modestly the hard money contributions, make this a better system than the one we presently are operating under. So, yes, it is a new world.

I happen to believe it is a vastly better world and that the American public, who have something to say about this and who have been declining, as my colleague and friend from Kentucky has pointed out, declining in their checking off on the 1040 forms of moneys to go into the public coffers to support Presidential elections is a good poll about how the public feels—he says about public financing, I think about politics—I am not certain this is going to change entirely the public mood. I think we are taking a giant step forward with the adoption of McCain-Feingold in improving the climate and improving the public's confidence and their respect for the political process in this country.

Yes, it is a new world. I think it is a better world.

I yield 5 minutes to my colleague from Massachusetts and then reserve the remainder for Senator FEINGOLD or Senator McCain.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I listened carefully to the comments of the Senator from Kentucky. I respect the very direct, open way in which he has stated his opposition, and he has done so on the basis of a belief system. I respect that. I think we all do.

Let me say to my colleagues, there is an analogy that is not completely inappropriate in the sense that when you have found a way to do things and it works pretty easily and you are sort of swimming in it because it is easy, it is hard to give it up. It is not unlike an addiction in a sense. There has been an easy addiction to this flow of money.

When you look at the amounts of money, from $100 million up to $244 billion in a span of 2 years, dozens of times in excess of the rate of inflation, you have to ask: What is going on here?

I say to my colleagues, for those who fear this new world that has been defined, there are alternatives. There are other ways to do this. I am proud that I can stand as a Senator in the Senate today, having gotten elected a different way.

In 1996, the Governor of our State and I mutually agreed to limit the amount of money we would spend—he, a fervent Republican; me, an ardent Democrat. We both agreed to spend the same amount of money. We both agreed that each of us would subtract from our total the amount of money that any independent expenditure ran in favor of the other person or that our parties spent on our behalf. We ran a race that was absolutely free from soft money, from party money. We had nine 1-hour televised debates, and the public knew us both, probably better than they wanted to, and made a decision.

We can all run that way. There is adequate capacity in this new world to raise countless amounts of hard dollars.

Under McCain-Feingold, we have raised the total amounts of money up to about $75,000 over 2 years to party and to individual.

Nothing stops one Senator from going out and raising as much hard money as they can access in a 6-year term, in amounts that have now been raised to $2,000 a person, which means you can visit one couple, a husband and wife, and you can walk out with $8,000. All of us know that one-half of 1 percent of the people in America even contribute $1,000 contributions.

So this is not a dire new world, a brave new world. This is a world the American people are asking us to live by, and countless business people across this country are sick and tired of us coming to them and saying I need $150,000 or I need $500,000 for my party. They look at the committee you serve on and they feel pressured, whether they say it or not. Whether you say it or not, it is an appearance.

So I say to colleagues, this is a world we can survive in just fine. With 6 years of incumbency, with all of the power of the incumbent, with all of the times you can return home as a Senator and meet with constituents, there isn't one of us who doesn't start with the natural advantage, even under McCain-Feingold.

So I suggest respectfully that this is the right world, the world with which we ought to be living. We should not fear the outcome of this particular change. I thank the Senator from Connecticut.

Mr. FEINGOLD. Mr. President, I thank the Senator from Kentucky for ensuring that the Senate has a moment to reflect on the implications of this bill. I think it is very important that we pause to evaluate this legislation, and what it will mean for our parties, and for the voters.

As my colleagues might imagine, I take a drastically different view on effects of this legislation than the Senator from Kentucky. I realize that change can be difficult, and even a little scary, but I think it is a mistake to try to scare Members out of voting for this bill. This reform is about increasing the public's faith in our work. This bill doesn't destroy the political parties; it strengthens them by ending their reliance on a handful of wealthy donors.

Parties need money to operate, and under this reform, the national parties will be able to raise hard money, just as they have for many years. What they won't be able to do is raise the unlimited amounts of soft money. Just like the parties didn't have much, if any, soft money for much of the 1970s and 1980s.

Soft money isn't some magic bullet that the parties need to increase voter

turnout or voter participation in the democratic process. Throughout much of the 1970s and 1980s, soft money was mostly absent from party fundraising. The parties raised hard money, and ran their parties on hard money. It is easy to forget that when we look at fundraising today, I know, but it is important to remember as we consider this bill. We didn't need soft money then, and we don't need it now; that is a myth that has been perpetuated, frankly, on both sides of the aisle, and it is time to put that myth to rest once and for all.

Neither party can thrive when they are beholden to the wealthy few. Soft money doesn't strengthen the parties, it undermines the spirit that keeps our parties strong. We all know that people, not soft money, are the heart and soul of our political parties.

With the soft money system, the parties have been operating outside the spirit of the law, and outside the public trust, for too many years. With this bill, we can return the parties to the people who built them in the first place. Our democracy demands vibrant political parties. No one believes that more than I do. But soft money has, ironically, cheapened our parties. I feel that is true in my own party, and I am deeply saddened to have to say that. Last spring the Democratic Party held a fundraiser where soft money donors in the arena sat down to dinner at lavishly decorated tables, while those who could only afford a cheaper ticket actually sat in the bleachers and watched them enjoy their meal. Is that party-building? I think we all know that to say that kind of event strengthens the parties is just absurd.

The parties aren't strengthened when people across the country, Republicans and Democrats, pick up the newspaper and read that their party is giving access and favors to the wealthy, while they struggle to pay for health care coverage, or they worry about how safe their drinking water is. They pick up the paper and see the parties take unlimited money from HMOs and big polluters, and they wonder how in the world could their party really stand up for them when they depend so completely on a wealthy few? The assumption that we can be bought, or that our parties can be bought, has completely permeated our culture. I'd guess that there are few if any Members of this body who haven't faced gone home to face the deep skepticism of their constituents on a given issue, when people felt like they or their party have been ''bought off'' by a wealthy interest.

Soft money, like perhaps no other abuse of our system in history, creates an appearance of corruption. To demonstrate that, I want to put in the record two items of interest. The first are the results of a poll conducted just last week by ABC News and the Washington Post. This poll found that 74 percent of the public now support stricter laws controlling the way political campaigns raise and spend money. That is an 8 percent increase from just a year ago. The poll had a margin of error of plus or minus 3 percent.

More important, however, the same poll found that 80 percent of the public thinks that politicians do special favors for people and groups who give them campaign contributions. And 67 percent consider this a big problem. Seventy-four percent of those who believe that politicians do special favors for donors said they think these favors are unethical.

This is the appearance of corruption. The assumption that politicians are on the take, and that money purchases favors. The ''Coin-Operated Congress,'' as Pat Schroeder used to say.

I have felt so strongly over the past few years that money is setting the agenda that began to speak on the Senate floor during debates on substantive legislation about the money flowing from companies and groups interested in that legislation. I have called this the ''Calling of the Bankroll,'' and since I started this practice in June of 1999, I have called the bankroll 30 times. I think it is important for us to acknowledge that millions of dollars are given in an attempt to influence what we do. The appearance of corruption is rampant in our system.

I have called the bankroll on mining on public lands, the gun show loophole, the defense industry's support of the Super Hornet and the F–22, the Y2 K Liability Act, the Passengers' Bill of Rights, MFN for China, PNTR for China, and the tobacco industry. I have talked about agriculture interests lobbying on an agriculture appropriations bill, telecommunications interests lobbying on a tower-siting bill, and railroad interests lobbying on a transportation appropriations bill. I've talked about contributions surrounding the Financial Services Modernization Act, nuclear waste policy, the Arctic National Wildlife Refuge, and the ergonomics issue. I have also called the bankroll on the Patients' Bill of Rights, twice, the Africa trade bill, twice, the oil royalties amendment to the fiscal year 2000 Interior Appropriations bill, twice, and I have Called the Bankroll on three tax bills, and four separate times on bankruptcy reform legislation.

I think it is safe to say that the public doesn't think much of the current system, and that soft money plays a big part in the public's lack of faith in us and the work we do.

One of the most important ways I think this bill can change the fundraising culture is not just by stopping soft money fundraising, but by stopping soft money fundraising by Members of Congress. Soft money fundraising is something that many Members of this body find deeply troubling. How many of Members of the Senate enjoy picking up the phone and asking a donor for $100,000? How many Senators feel uncomfortable exerting pressure on wealthy interests to come through with big contributions to fuel the fundraising contest between the parties?

I have said before that I have had Members tell me they felt like taking a shower after asking for a huge contribution. And I recently quoted Senator MILLER's Washington Post op-ed, where he said that after raising soft money, he felt like ''a cheap prostitute who'd had a busy day.'' Haven't we had enough? I think we have. When this body voted 60 to 40 against the Hagel amendment, which would have put the Senate's stamp of approval on the soft money system, I think we really turned a corner in this debate. We joined the rest of the country in recognizing that this system puts our integrity at risk, and that soft money simply isn't worth that risk anymore.

This bill will reinvigorate the political process, and it will renew faith in the parties, and in each and every one of us. With the passage of this bill, we won't have to face the accusations that our parties have been bought off by soft money. We won't have to read about million dollar donations or getaways for hundred thousand dollar donors with party leaders, and neither will our constituents. And that will do something to improve the public's attitude toward us, and I think it will improve our own feeling about the work that we do. All of us take pride in our work, and in this institution. But we all face nagging accusations that unlimited money plays a role in the legislative process in which all of us play a part. Today we have a rare chance to change that, and I believe we will.

I stand here today before my colleagues to say that soft money isn't good for politics. It is time to stop protecting soft money, or defending it as something that strengthens our parties, or the political life of the nation. Soft money removes people of average means from the political process, and replaces them with a handful of wealthy interests. So to say that soft money is good for parties is to say that people, the party faithful who should be the lifeblood of a political party, don't really count anymore. That in the quest for unlimited contributions, the parties are willing to forgo the trust of the people they purport to serve. I don't accept that point of view. And I don't think that most of my colleagues do either. Soft money does a disservice to the work of this Senate, it does a disservice to our parties, and most of all, it does a grave disservice to the American people. So let us come together to end the soft money system, and dispel the tired myth that soft money is good for democracy once and for all.

I ask unanimous consent that a chart detailing the times I have called the bankroll be included in the RECORD at this point.

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

THE CALLING OF THE BANKROLL

Date	Legislation/Issue	Bankroll of PAC and Soft Money Contributions	Forum
5/20/99	Emergency Supplemental Appropriations Conf. Rpt./Mining rider.	PACs associated with the members of the National Mining Association and other mining-related PACs contributed more than $29 million to congressional campaigns from January 1993 to December 1998. Mining soft money contributions totaled $10.6 million during the same 6–year period.	Senate floor statement given live, CR S5652.
5/20/99	Juvenile Justice (S.254)/ Gun control measures.	Gun rights groups, including the NRA, gave nearly $9 million to candidates, PACs, and parties from 1991 to 1998. The NRA gave $1.6 million in PAC contributions to federal candidates last cycle. Handgun Control, Inc. gave a total of $146,614. Those who voted against the first Lautenberg amendment to close the gun show loophole received an average of over $10,478 from gun rights groups, while those who voted for it averaged only $297.	Statement for the Record, printed in CR S5721.
5/27/99	Defense Dept. Authorization/Super Hornet amendment.	The defense industry gave more than $10 million dollars in PAC money and soft money to parties and candidates in the last election cycle alone. In the last ten years, the defense industry gave almost $40 million to candidates and the two national political parties.. Boeing, the Super Hornet's primary contractor, gave more than $3 million in PAC money and more than $1.5 million in soft money during that same 10–year period.	Senate floor statement given live, CR S6181.
6/10/99	Y2K Liability Act	The computer and electronics industry gave close to six million dollars in PAC and soft money during the last election cycle—$5,772,146 dollars to be exact. And the Association of Trial Lawyers of America gave $2,836,350 in PAC and soft money contributions to parties and candidates in 1997 and 1998.	Statement for the Record, printed in CR S6853.
6/23/99	Patients' Bill of Rights	During the last election cycle, managed care companies and their affiliated groups spent more than $3.4 million dollars in soft money, PAC, and individual contributions—roughly double what they gave during the last mid-term election cycle. The pharmaceutical and medical supplies industry gave more than $4 million dollars in PAC money contributions and more than $6.5 million dollars in soft money contributions in 1997 and 1998. The AMA made more than $2.4 million dollars in contributions in the last cycle ($2.3 million in PAC money, approximately $77,000 in soft money.) The AFL–CIO gave parties and candidates close to $2 million dollars in 1997 and 1998. ($1.1 million in PAC money, $777,059 in soft money.)	Senate floor statement given live, CR S7502.
7/14/99	Patients' Bill of Rights	During the last election cycle, managed care companies and their affiliated groups spent more than $3.4 million dollars on soft money contributions, PAC, and individual contributions—roughly double what they spent during the last mid-term elections. Managed care giant United Health Care Corporation gave $305,000 in soft money to the parties, and $65,000 in PAC money to candidates. Blue Cross/Blue Shield's national association gave more than $200,000 in soft money and nearly $350,000 in PAC money; the managed care industry's chief lobby, the American Association of Health Plans, has given nearly $60,000 in soft money in the last two years..	Senate floor statement given live, CR S8428.
7/20/99	China MFN	Members of USA Engage, a major coalition lobbying for MFN status for China were big contributors in the last election cycle. Examples include:. Defense contractor TRW Inc. gave more than $195,000 in soft money and $236,000 in PAC money Financial services giant BankAmerica gave more than $347,000 in soft money and more than $430,000 in PAC money. The U.S. Chamber of Commerce gave nearly $50,000 in soft money and $10,000 in PAC money. Exxon, one of the world's largest oil companies, gave $331,000 in soft money and nearly half a million dollars in PAC money Communications giant Motorola gave more than $100,000 in both soft money and PAC money. This is just the tip of the iceberg.	Senate floor statement given live, CR S8845.
7/22/99	Commerce-Justice-State Appropriations Bill/ Report language on DOJ pursuing tobacco suit.	The nation's tobacco companies are some of the most generous political donors around today, including Philip Morris, which reigns as the largest single soft money donor of all time. During the 1997–1998 election cycle the tobacco companies, including Philip Morris, RJR Nabisco, Brown and Williamson, US Tobacco and the industry's lobbying arm, the Tobacco Institute, gave a combined $5.5 million in soft money to the parties, and another $2.3 million in PAC money contributions to candidates.	Statement for the Record, printed in CR S9068.
7/29/99	Tax Bill	Just a few examples of what these wealthy interests gave and what they got in either this bill, the House tax measure, or both. The Coalition of Service Industries, a coalition of banks and securities firms, won a provision to extend for five years a temporary tax deferral on income those industries earn abroad. The value of this tax deferral: $5 billion over ten years. During the 1997–1998 election cycle, coalition members gave the following: Ernst & Young—more than half a million dollars in soft money, and nearly $900,000 in PAC money. CIGNA Corporation—more than $335,000 in soft money, and more than $210,000 in PAC money. American Express—more than $275,000 in soft money and nearly $175,000 in PAC money. Deloitte and Touche—more than $225,000 in soft money and more than $710,000 in PAC money.	Senate floor statement given live, CR S9655.
		The utility industry got a provision affecting utility mergers in the House measure, which, if it survives, is worth more than $1 billion to the utility industry. The provision would excuse the payment of taxes on the fund that utilities set up to cover the costs of shutting down nuclear power plants. Entergy Corporation gave $228,000 in soft money and nearly $250,000 in PAC money; Commonwealth Edison gave $110,000 in soft money and more than $106,000 in PAC money; and Florida Power and Light, gave nearly $300,000 in soft money and more than $182,000 in PAC money	Senate floor statement given live, CR S9655.
8/4/99	Agriculture Appropriations bill	Agriculture interests have donated nearly $3 million $15.6 million in PAC money Examples of soft money ''double givers'' in the agriculture industry during the last cycle include the Archer Daniels Midland Company, which donated $263,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated $157,500 to the Democrats and almost $250,000 to the Republicans; and Ocean Spray Cranberries Incorporated, which donated $156,060 to the Democrats and $117,600 to the Republicans. Not everyone is a double giver. The top agribusiness soft money donor to the Democratic party, crop producer Connell Company, gave $435,000, all to the Democratic party committees. Dole Food Company gave more than $200,000 in soft money in 1997 and 1998, all to Republican party committees An agribusiness donor that shares my position against the extension of the Northeast Dairy Compact: The International Dairy Foods Association, which gave more than $71,000 in soft money during 1997 and 1998 all to the Republican party committees.	Statement for the Record, printed in CR S10211.
8/5/99	Introduction of Tower Siting Bill, S. 1538	During the last election cycle the following telecommunications companies with a stake in the wireless market gave millions upon millions of dollars to candidates and the political parties. Bell Atlantic gave more than $920,000 in soft money and $870,000 in PAC money. Wireless manufacturer Motorola gave $100,000 in soft money and nearly $110,000 in PAC money. The Cellular Telecommunications Industry Association, the lobbying arm of the wireless industry, gave more than $100,000 in soft money and more than $85,000 to candidates; and AT&T gave nearly $825,000 in soft money to the parties and nearly $820,000 in PAC money to candidates.	Statement for the Record, printed in CR S10460.
9/8/99	Interior Appropriations bill/Oil royalties Amendment.	During the 1997–1998 election cycle, oil companies that favor this rider gave the following in political donations to the parties and to federal candidates: Exxon gave more than $230,000 in soft money and more than $480,000 in PAC money; Chevron gave more than $425,000 in soft money and more than $330,000 in PAC money; Atlantic Richfield gave more than $525,000 in soft money and $150,000 in PAC money; BP Oil and Amoco, two oil companies which have merged into the newly formed petroleum giant, BP Amoco, gave a combined total of more than $480,000 in soft money and nearly $295,000 in PAC money. That's more than $2.9 million just from those four corporations in the span of only two years.	Floor Colloquy with Sen. Boxer, CR S10567.
9/15/99	Transportation Appropriations bill/Railroad consolidation.	The railroad companies are backing up their point of view with almost $4 million dollars in PAC and soft money contributions in the last election cycle alone. During 1997 and 1998, the four Class I railroads gave the following to political parties and candidates: CSX Corporation gave more than $600,000 in unregulated soft money to the parties and nearly $275,000 in PAC money to federal candidates; Union Pacific gave more than $600,000 in soft money and more than $830,000 in PAC money; Norfolk Southern gave more than $240,000 in unregulated money to the parties and almost a quarter million to candidates; Burlington Northern Santa Fe gave more than $445,000 in soft money and nearly $210,000 in PAC money.	Statement for the Record, printed in CR S10922.
9/15/99	Transportation Appropriations bill/Passengers' Bill of Rights.	The six largest airlines in the United States—American, Continental, Delta, Northwest, United and US Airways—and their lobbying association, the Air Transport Association of America, gave a total of more than $2 million dollars in soft money and more than $1 million dollars in PAC money in the last election cycle alone. Northwest was the largest soft money giver among these donors, giving well over half a million dollars to the political parties in 1997 and 1998.	Statement for the Record, printed in CR S10923.
9/23/99	Interior Appropriations bill/Oil royalties Amendment.	During the 1997–1998 election cycle, the very large oil companies that will benefit from this amendment gave the following political donations to the parties and to Federal candidates: Exxon gave more than $230,000 in soft money and more than $480,000 in PAC money; Chevron gave more than $425,000 in soft money and more than $330,000 in PAC money; Atlantic Richfield gave more than $525,000 in soft money and $150,000 in PAC money; BP Oil and Amoco, two oil companies that have merged into the newly formed petroleum giant, BP Amoco, gave a combined total of more than $480,000 in soft money and $295,000 in PAC money. That is more than $2.9 million just from those four corporations in the span of only 2 years.	Senate floor statement given live, CR S11284–88 and colloquy with Sen. Lott on germaneness of debate, S11347.
10/14/99	Defense Appropriation bill/Air Force F–22 program.	Defense contracting giant Lockheed Martin, the primary developer of the F–22, gave nearly $300,000 in soft money and more than $1 million in PAC money in the last election cycle. During that same period, Boeing, one of the chief developers and producers of the F–22's airframe, gave more than $335,000 in soft money to the parties and more than $850,000 in PAC money to candidates. Four of the most important subcontractors of the project, TRW, Raytheon, Hughes Electronics and Northrop Grumman, also happened to be major political donors in the last election cycle. Raytheon tops this list with nearly $220,000 in soft money and more than $465,000 in PAC money. Northrop Grumman gave more than $100,000 in soft money to the parties and more than $450,000 in PAC money to candidates. Hughes gave nearly $145,000 in PAC money during 1997 and 1998, and TRW gave close to $200,000 in soft money and more than $235,000 in PAC money.	Statement for the Record, printed in CR S12573.
10/27/99	Africa Growth and Opportunity Act (AGOA)	The companies that are members of the Africa Growth and Opportunity Act Coalition, Inc., a group established specifically to ''demonstrate public support for AGOA, which includes Amoco, Chevron, Mobil, The Gap, Limited Inc., Enron, General Electric, SBC Communications, Bristol-Myers Squibb, Caterpillar and Motorola, to name just a few, gave a total of $5,108,735 in soft money to the political parties in the '98 election cycle. Two major U.S. retailers and coalition members, Gap Inc. and The Limited Inc., have a particularly strong interest in passing AGOA, since they can benefit from importing cheap textiles. During the 1997–1998 election cycle, Limited, Inc. gave the political parties $553,000 in soft money donations, and in just the first six months of 1999, Limited Inc. gave the parties more than $160,000 via the soft money loophole. The Gap also played the soft money game during this period, with more than $185,000 in the 1998 election cycle and nearly $54,000 already during the current election cycle. Fruit of the Loom, which is one of the primary beneficiaries of the Caribbean Basin Initiative (CBI) legislation that was added to AGOA gave nearly $440,000 in soft money during the last election cycle. On June 14 of this year, just over a month before CBI/ NAFTA parity legislation was introduced in the Senate on July 16, Fruit of the Loom gave $20,000 to the Republican Senate-House Dinner Committee. On July 30, 1999, two weeks after the bill was introduced, the company gave the National Republican Senatorial Committee $50,000.	Senate floor statement given live, CR S13229.

THE CALLING OF THE BANKROLL—Continued

Date	Legislation/Issue	Bankroll of PAC and Soft Money Contributions	Forum
11/4/99	Financial Services Modernization (S. 900) ...	The lobbying effort for so-called financial services modernization combined the clout of three industries that on their own are giants in the campaign finance system, particularly the soft money system. One of these industries, the securities and investment industry is a legendary soft money donor. Merrill Lynch, its subsidiaries and executives gave more than $310,000 in soft money during the 1998 election cycle. Morgan Stanley Dean Witter gave more than $145,000 in soft money in 1997 and 1998. The Washington Post reported that the company's chairman, along with several other corporate heads, made calls to White House officials the very night the conference hammered out an agreement on this bill. Citigroup from the banking industry was also there, and so was the presence of the more than $720,000 that Citigroup and its executives and subsidiaries gave in soft money to the political parties in the 1998 election cycle. And in the current election cycle Citigroup is off to a running start with $293,000 in soft money from Citigroup, its executives and subsidiaries. That's more than $1 million from Citigroup, it's executives and subsidiaries in just two and a half years. The powerful banking interest BankAmerica, its executives and subsidiaries also weighed in with more than $347,000 in soft money in the 1998 election cycle, and more than $40,000 already in the current election cycle. The insurance industry was also well-represented. For instance there's the Chubb Corp and its subsidiaries, which gave nearly $220,000 in soft money contributions in 1997 and 1998, and has given more than $60,000 already in 1999. And there's industry lobby group the American Council of Life Insurance, which also gave heavily to the parties with more than $315,000 in soft money contributions in 1997 and 1998, and more than $63,000 so far this year.	Statement for the Record, printed in CR S13897.
11/5/99	Bankruptcy Reform Act (S. 625)	This bill is a poster child for the 'Calling of the Bankroll.' In the last election cycle, the members of the National Consumer Bankruptcy Coalition, an industry lobbying group made up of the major credit card companies such as Visa and MasterCard and associations representing the Nation's big banks and retailers, gave nearly $4.5 million in contributions to parties and candidates. It is very hard to argue that the financial largess of this industry has nothing to do with its interest in our consideration of bankruptcy legislation. For example, on the very day that the House passed the conference report last year and sent it to the Senate, MBNA Corporation gave a $200,000 soft money contribution to the National Republican Senatorial Committee. PAC contributions from National Consumer Bankruptcy Coalition members totaled $227,000 in March of this year alone. That's a full 20 months before the next election. March 1999 was a month during which the Judiciary Committees of both the House and the Senate were considering the bill. Members of the coalition gave nearly $1.2 million in PAC and soft money contributions in the first 6 months of 1999. During that time period, MBNA Corp. gave $85,000 in soft money to the Republican Party committees, while Visa USA Inc. gave $30,000. During the first 6 months of 1999, the Democratic party committees took in more than four times the soft money from banks and lenders than they did during the first 6 months of the last presidential election cycle in 1995.	Senate floor statement given live, CR S14066.
2/9/00	Nuclear Waste Policy Amendments Act (S. 1287).	The Nuclear Energy Institute, which is the chief lobbyist on behalf of companies that operate nuclear power plants in the U.S. and has led the fight for the nuclear waste legislation, gave more than $135,000 in soft money to the parties and more than $70,000 in PAC money to candidates in the 1998 election cycle. In addition to NEI, a number of utilities which operate nuclear plants were also significant PAC and soft money donors in the '98 cycle, including: Commonwealth Edison, which gave $110,000 in soft money and more than $106,000 in PAC money, and Florida Power and Light, which gave nearly $300,000 in soft money to the parties and more than $182,000 in PAC money to candidates. NEI already reported donating more than $66,000 in soft money in 1999, and Commonwealth Edison already reported $90,000 in soft money donations in 1999. On the other side of this fight is a coalition of environmental groups, including the Sierra Club, which gave more than $236,000 in PAC money to candidates in the '98 cycle, and Friends of the Earth, which gave just under $4,000 during that same period. These groups also exercise their clout through the loophole of phony issue ads. The Sierra Club spent an estimated $1.5 million on issue ads in the '98 election cycle, and the Nuclear Energy Institute reportedly spent $600,000 on issue ads in just two Senate races in the last cycle.	Statement for the Record, printed in CR S534.
4/5/00	Arctic National Wildlife Refuge (budget resolution debate).	Oil companies with an interest in drilling in the refuge poured millions of dollars of soft money into the coffers of the political parties in 1999. Giant political donor Atlantic Richfield , its executives and subsidiaries, gave more than $880,000 in soft money to the parties. The recently merged Exxon-Mobil, its executives and subsidiaries, gave more than $340,000 in soft money in 1999. And in 1999, BP Amoco, the result of another oil megamerger, gave over $361,000 in soft money, along with its executives and subsidiaries.	Statement for the Record printed in CR S2211.
5/10/00	Africa Growth and Opportunity Act (AGOA) Conference Report.	All the figures I am about to cite are for the first 15 months of the current election cycle—all of 1999 and the first 3 months of this year. I will start with Pfizer, which is one of several pharmaceutical giants that rank among the top soft money donors in 1999, and with good reason. Pfizer and its executives gave more than $511,000 in soft money during the period, including a $100,000 contribution earlier this year. Pfizer was also a top PAC money donor in its industry during the period, with more than $242,000 to Federal candidates during the period. Then there's Bristol Myers Squibb, another top soft money donor, which, with its executives, gave nearly $529,000 in soft money to the parties, including two $100,000 contributions during the period. Bristol Myers Squibb also gave more than $146,000 in PAC money during the period Merck and Company gave more than $51,000 in soft money and nearly $168,000 in PAC money during the period And finally, Glaxo Wellcome and its executives gave more than $272,000 in soft money to the parties and gave more PAC money than any other pharmaceutical company during the period—more than $291,000	Senate floor statement given live, CR S3804.
5/16/00	Bankruptcy Reform bill	Common Cause just put out a stunning report recently on the amount of money that the credit industry has contributed to members of Congress and the political parties in recent years. $7.5 million in 1999 alone, and $23.4 million in just the last three years. One company that has been particularly generous is MBNA Corporation, one of the largest issuers of credit cards in the country. In 1998, MBNA gave a $200,000 soft money contribution to the Republican Senatorial Committee on the very day that the House passed the conference report and sent it to the Senate. This year, MBNA gave its first large soft money contribution ever to the Democratic party—it gave $150,000 to the Democratic Senatorial Campaign Committee on December 22, 1999, right in the middle of Senate floor consideration of the bill	Senate floor statement given live CR S3969.
7/12/00	Estate Tax Bill	National Federation of Independent Business' PAC has given more than $441,000 in PAC money through June 1 of this election cycle, according to the Center for Responsive Politics. That is on top of the incredible $1.2 million in PAC contributions NFIB doled out during the 1997–1998 election cycle. NFIB has also given soft money during the first 18 months of the current election cycle—just over $30,000 so far. Then there is the Food Marketing Institute, which represents supermarkets. Through June 1st of this election cycle, the Food Marketing Institute has given more than $241,000 in PAC donations to candidates, after it made more than a half million in PAC donations during the previous cycle. FMI is also an active soft money donor, with more than $156,000 in soft money to the parties since the beginning of this cycle through June 1st of this year. On top of these wealthy associations, there are countless wealthy individuals who want to see the estate tax repealed, and a 527 group called The Committee for New American Leadership.	Senate floor statement given live, CR S6433.
9/6/00	Permanent Normal Trade Relations with China, H.R. 4444.	The Center for Responsive Politics estimates labor's overall soft money, PAC and individual contributions at roughly $31 million so far in this election cycle in a May 24th report. In particular, the AFL–CIO and its affiliates, which have campaigned hard against PNTR, have given $60,000 in soft money through the first 15 months of this election cycle. On the side of PNTR we find corporate America, which, according to a New York Times report, engaged in its 'costliest legislative campaign ever' to win this fight—including an $8 million advertising campaign The Center for Responsive Politics' May 24th report put the collective contributions of Business Roundtable members at $58 million in soft money, PAC money and individual contributions so far in the election cycle. And that is in addition to the Roundable's $10 million dollar advertising campaign to push PNTR, according to the Center. Business Roundtable members are corporations like Boeing, Philip Morris, UPS and Citigroup. Boeing has given more than $465,000 in soft money through the first 15 months of the election cycle, including 10 contributions of $25,000 or more. UPS, its subsidiaries and executives have given more than $960,000 in soft money through March 31st of the current cycle. That includes two contributions of a quarter million dollars. Citigroup, its subsidiaries and executives gave more than one million dollars in soft money through the first 15 months of this election cycle, including six contributions of $50,000 or more. Philip Morris and its subsidiaries have given more than $1.2 million in soft money through March 31st of the election cycle, including more than eight donations of $100,000 or more. China is a huge untapped market for cigarettes. So Philip Morris's soft money contributions open the doors for its lobbyists on this issue, just as they open the doors for its anti-tobacco control arguments	Senate floor statement given live, CR S8051.
09/28/00	H–1B Visa Bill	American Business for Legal Immigration, a coalition which formed to fight for an increase in H–1B visas, offers a glimpse of the financial might behind proponents of H–1Bs. Following are donation of ABLI members through at least the first 15 months of the election cycle, and in some cases include contributions given more recently in the cycle: Price Waterhouse Coopers, the accounting and consulting firm, has given more than $297,000 in soft money to the parties and more than $606,000 in PAC money to candidates so far in this election cycle. Telecommunications giant Motorola and its executives have given more than $70,000 in soft money and more than $177,000 in PAC money during the period. The software company Oracle and its executives have given more than $536,000 in soft money during the period, and its PAC has given $45,000 to federal candidates. Executives of Cisco Systems have given more than $372,000 in soft money since the beginning of this election cycle. And Microsoft gave very generously during the period, with more than $1.7 million in soft money and more than half a million in PAC money. Many unions are lobbying against the H–1B bill, including the Communication Workers of America, which gave $1.9 million in soft money during the period, including two donations of a quarter of a million dollars last year. And CWA's PAC gave more than $960,000 to candidates during the period. The lobbying group Federation for American Immigration Reform, or 'FAIR,' has lobbied furiously against this bill with a print, radio and television campaign, which has cost somewhere between $500,000 and $1 million, according to an estimate in Roll Call.	Senate floor statement given live CR S9443.
10/29/00	Omnibus Tax Bill	These figures include contributions through the first 15 months of the election cycle, and in some cases include contributions given more recently in the cycle.	Senate floor statement given live CR S11324.

THE CALLING OF THE BANKROLL—Continued

Date	Legislation/Issue	Bankroll of PAC and Soft Money Contributions	Forum
		Some of the biggest investment and finance firms are supporting passage of this bill. For example, Merrill Lynch, its executives and subsidiaries, have given more than $915,000 in soft money, according to the Center for Responsive Politics. American Express, its executives and subsidiaries have given more than $312,000 in soft money so far in this election cycle. And Fidelity Investments and its executives have given at least $258,000 in soft money to date. The American Benefits Council, which is strongly supporting this bill, sent around a list of supporters of provisions of the legislation. That list includes still more big donors. The American Council of Life Insurers and its executives have given more than $260,000 to the parties' soft money warchests during the period. The U.S. Chamber of Commerce and affiliated chambers of commerce have given more than $110,000 in soft money during the period. The list also included many of the nation's labor unions, which are also pushing for some of the provisions of this bill, including: American Federation of Teachers, which has given at least $820,000 so far during this election cycle; and the International Brotherhood of Electrical Workers, which has given more than $853,000 in soft money during the period. Many members of the Business Roundtable, an organization which has urged the passage of this legislation, are some of the biggest arms manufacturers in the U.S., and some of the biggest political donors. I'd like to review the contributions of some of these companies. These figures are for contributions through at least the first 15 months of the election cycle, and in some cases include contributions given more recently in the cycle. Lockheed Martin, its executives and subsidiaries have given more than $861,000 in soft money, and more than $881,000 in PAC money so far during this election cycle. United Technologies and its subsidiaries have given more than $293,000 in soft money and more than $240,000 in PAC money during the period. During that period, Raytheon has given more than $251,000 in soft money to the parties and more than $397,000 in PAC money to Federal candidates. Textron has contributed more than $173,000 in soft money and more than $205,000 in PAC money And last but not least, Boeing has given more than $583,000 in soft money since the election cycle began, and more than $593,000 in PAC contributions.	
10/31/00	Embassy Security and Bankruptcy Conference Report.	Common Cause reports that the credit industry has contributed $7.5 million in 1999 alone, and $23.4 million in just the last three years, to members of Congress and the political parties. In 1998, MBNA gave a $200,000 soft money contributions to the Republican Senatorial Committee on the very day that the House passed the conference report and sent it to the Senate—not terribly subtle.. In December 1999, MBNA gave its first large soft money contribution ever to the Democratic party—it gave $150,000 to the Democratic Senatorial Campaign Committee on December 22, 1999, Mr. President, right in the middle of Senate floor consideration of the bankruptcy bill. And just a few months ago, on June 30, 2000, Alfred Lerner, Chairman and CEO of MBNA—one person, one individual—gave $250,000 in soft money to the RNC. The following figures are from the Center for Responsive Politics, through the first 15 months of the election cycle, and in some cases include contributions given later in the election cycle. MBNA and its affiliates and executives gave a total of $710,000 in soft money to the parties. Visa and its executives gave more than $268,000 in soft money to the parties during the period. Mastercard gave nearly $46,000.	Senate floor statement given live CR S11397.
	Disapproval of Department of Labor Ergonomics Rule.	Along with its affiliates and executives, the American Trucking Association gave more than $404,000 in soft money in the 2000 cycle. They have weighted in against the ergonomics rule, and they do so with the weight of their soft money contributions behind them. The same is true for a host of other associations fighting to see the rule overturned: in the last cycle, the National Soft Drink Association and its executives gave more than $141,000 in soft money, the National Retail Federation doled out more than $101,000 in soft money, and the National Restaurant Association ponied up more than $55,000 in soft money to the parties. On the other side of the soft money coin, the unions that have lobbied to keep the rule in place. They include the AFL-CIO and its affiliates, which gave more than $827,000 in soft money in the last election cycle, and the Teamsters Union and its affiliates, which gave $161,000 during the same period.	Senate floor statement given live CR S1875.
	Floor Statement in Support of Durbin Amendment (substitute for the bankruptcy reform bill).	Most of the $1.2 million in soft money that MBNA gave to the parties in the last cycle was given in the second half of 2000, when a ''shadow conference'' determined what the final bankruptcy bill would look like, and the bill was brought back to the House and the Senate in an extraordinary procedural maneuver. In particular, MBNA gave $100,000 in soft money to the National Republican Senatorial Committee on October 12, 2000, the very same day that the House gave final approval to the bill. MBNA has a habit of making well-timed contributions. On the very day that the House passed a bankruptcy conference report in 1998 and sent it to the Senate. MBNA gave a $200,000 soft money contribution to the NRSC. MBNA Chairman & CEO, Alfred J. Lerner, and his wife, Norma, each made contributions of a quarter of a million dollars to the Republican National Committee in the last cycle. According to an article in the Wall Street Journal from March 6th, MBNA President Charles M. Cawley is also an active political donor and fundraiser who gave $100,000 to the Bush-Cheney Inaugural Committee. According to the Center for Responsive Politics, the nine members of the National Consumer Bankruptcy Coalition contributed more than $5 million in soft money, PAC money and individual contributions during the 2000 election cycle. The Coalition's members include Visa USA, Mastercard International and several financial industry trade groups, including the American Bankers Association and the American Financial Services Association.	Senate Floor Statement Submitted for the Record.

Mr. DODD. Mr. President, I will reserve the remainder of that time. Let me turn to our colleague from New Mexico, Senator BINGAMAN, for the purpose of offering an amendment.

Mr. MCCONNELL. Mr. President, before that, I believe Senator SPECTER's amendment is pending. He expects to have the next Republican amendment.

I ask unanimous consent that the Specter amendment be temporarily laid aside so we can go to Senator BINGAMAN. Senator SPECTER will come after that.

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

Mr. BINGAMAN. I thank my colleagues very much. I have two amendments, the first of which I believe is acceptable to the managers of the bill.

Mr. DODD. That is correct.

AMENDMENT NO. 157

Mr. BINGAMAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 157.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment reads as follows:

(Purpose: To require the Presidential Inaugural Committee to disclose donations and prohibit foreign nationals from making donations to such Committee)

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

SEC. ___. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) IN GENERAL.—Chapter 5 of title 36, United States Code, is amended by—

(1) redesignating section 510 as section 511; and

(2) inserting after section 509 the following:

''§ 510. Disclosure of and prohibition on certain donations.

''(a) IN GENERAL.—A committee shall not be considered to be the Inaugural Committee for purposes of this chapter unless the committee agrees to, and meets, the requirements of subsections (b) and (c).

''(b) DISCLOSURE.—

''(1) IN GENERAL.—Not later than the date that is 90 days after the date of the Presidential inaugural ceremony, the committee shall file a report with the Federal Election Commission disclosing any donation of money or anything of value made to the committee in an aggregate amount equal to or greater than $200.

''(2) CONTENTS OF REPORT.—A report filed under paragraph (1) shall contain—

''(A) the amount of the donation;

''(B) the date the donation is received; and

''(C) the name and address of the person making the donation.

''(c) LIMITATION.—The committee shall not accept any donation from a foreign national (as defined in section 319(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441e(b))).''.

(b) REPORTS MADE AVAILABLE BY FEC.—Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434), as amended by sections 103 and 201, is amended by adding at the end the following:

''(g) REPORTS FROM INAUGURAL COMMITTEES.—The Federal Election Committee shall make any report filed by an Inaugural Committee under section 510 of title 36, United States Code, accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.''.

Mr. BINGAMAN. Mr. President, this is a noncontroversial amendment that would simply require that contributions made to a Presidential inaugural committee be publicly disclosed, and also it would require that the same rules that govern foreign contributions to our political campaigns be applied as well to inaugural events.

As I understand it, this is an acceptable amendment. At this time, I believe we are prepared to go ahead and vote on this by voice vote.

The PRESIDING OFFICER. Is all time yielded back on the amendment?

Mr. REID. We yield back our time.

The PRESIDING OFFICER. Does the Senator from Kentucky yield back his time?

Mr. MCCONNELL. Mr. President, this amendment is acceptable to us. I yield back the time on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 157) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN. Mr. President, the Senator from Virginia has asked that he be given permission to speak for 4 or 5 minutes before I offer this amendment. I am certainly pleased to do that. I will yield the floor to him at this point.

The PRESIDING OFFICER. The Senator from Virginia, Mr. WARNER, is recognized.

(The remarks of Mr. WARNER, Mr. ALLEN, and Mrs. BOXER, are located in today's RECORD under ''Morning Business.'')

AMENDMENT NO. 158

Mr. BINGAMAN. Mr. President, I rise to offer another amendment. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the Specter amendment is set aside. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 158.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide candidates for election to Federal office with the opportunity to respond to negative political advertisements sponsored by noncandidates)

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

SEC. ___. OPPORTUNITY OF CANDIDATES TO RESPOND TO NEGATIVE POLITICAL ADVERTISEMENTS SPONSORED BY NONCANDIDATES.

Section 315 of the Communications Act of 1934 (47 U.S.C. 315), as amended by this Act, is amended—

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

(2) by inserting after subsection (a) the following:

''(b) POLITICAL ADVERTISEMENTS OF NONCANDIDATES.—

''(1) IN GENERAL.—If any licensee permits a person, other than a legally qualified candidate for Federal office (or an authorized committee of that candidate), to use a broadcasting station during the period described in paragraph (2) to attack or oppose (as defined in paragraph (3)) a clearly identified candidate (as defined in section 301 of the Federal Election Campaign Act of 1971) for Federal office, the broadcasting station shall, within a reasonable period of time, make available to such candidate the opportunity to use the broadcasting station, without charge, for the same amount of time during the same period of the day and week as was used by such person.

''(2) PERIOD DESCRIBED.—The period described in this paragraph is—

''(A) with respect to a general, special, or runoff election for such Federal office, the 60-day period preceding such election; or

''(B) with respect to a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for such Federal office, the 30-day period preceding such election, convention, or caucus.

''(3) ATTACK OR OPPOSE DEFINED.—The term 'attack or oppose' means, with respect to a clearly identified candidate—

''(A) any expression of unmistakable and unambiguous opposition to the candidate; or

''(B) any communication that contains a phrase such as 'vote against', 'defeat', or 'reject', or a campaign slogan or words that, when taken as a whole, and with limited reference to external events (such as proximity to an election) can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates, regardless of whether or not the communication expressly advocates a vote against the candidate.''.

Mr. BINGAMAN. Mr. President, I am here for two reasons: First, to express my strong support for the bill we have been considering this week and last, this bipartisan campaign finance reform bill which we have come to refer to as the McCain-Feingold bill; second, I am here to offer this amendment which I believe will further improve the bill.

Our colleague from Kentucky said, as he gave his short statement a few minutes ago, now that all the important amendments have already been offered and dealt with, he wanted to go ahead with his comments. I beg to differ with him on that conclusion, that all the important amendments have been offered. This amendment I am offering today I believe is very important, and I believe it will substantially improve this legislation. It will help to address the increasingly negative nature of today's campaign advertising, and it will assist those candidates, whether they are challengers or incumbents, in responding to that negative advertising.

The debate we are engaged in is long overdue. Congress has not revised its campaign finance laws in any meaningful way since I came to the Congress in 1983. The last significant reform of campaign finance laws was in 1974. Nearly everything about campaigns has changed radically since 1974, from the tremendous amount of money that has been spent on campaigns to the technologies and methods used to communicate with voters.

I congratulate Senator MCCAIN, my colleague from Arizona, and I congratulate Senator FEINGOLD, my colleague from Wisconsin, on their determination in finally bringing this bill to the Senate floor. I can think of no two individuals in recent memory who have worked harder on a bipartisan basis in pursuit of basic reform than these two Senators.

They have traveled the country, one of them, of course, during the time he was running for President. They have taken the campaign finance reform message to every corner of this country. We all in this Senate, in my view, owe them a debt of gratitude. I hope our effort is worthy of their significant effort. It has been a true labor of genuine reform in the interest of better and cleaner democracy, and I am very pleased to cosponsor this legislation.

Mr. President, turning to the amendment I have offered, it is a relatively simple amendment. It proposes to accomplish a central goal, and that is to provide candidates for Federal office who are confronted with sham negative issue ads the opportunity to respond to those ads.

The amendment states that if a broadcast station, whether it is a television station or radio station, permits any person or group to broadcast material opposing or attacking a legally qualified candidate for Federal office, then that station, within a reasonable period of time, must provide, at no charge to the candidate who has been attacked, an equal opportunity to respond to those attacks.

This requirement would apply in this same period that is discussed in the legislation pending before us in the so-called Snowe-Jeffords language; that is, 60 days prior to a general election, 30 days prior to a primary election. It is in those two periods of time that the requirements apply.

All of us who have run for Federal office in recent years have been in the situation about which I am concerned. As a candidate, you are out on the hustings; you are conducting a campaign that you hope is addressing the issues voters care about; you are trying to give the people in your State, or the people in your congressional district, the best vision you can for where this country should go, what should be done in the State; and you turn on the television in your hotel room and see an ad attacking you for some issue on some basis that you probably did not anticipate. You ask yourself the questions: Who is paying for the ad? Who is this group? Who do they represent? Where did they get the information that they are using in this attack?

The process leaves the candidate, more often than not, unfairly accused of a position. It leaves voters increasingly cynical about the growing negative nature of our campaigns.

Unfortunately, this is the new world of campaigns in which we live. This is true whether you are Republican, whether you are Democrat, whatever your party affiliation, regardless if you are a challenger or incumbent.

Through the loopholes in our current campaign finance laws, outside interest groups and political parties are funding

hundreds of thousands of dollars worth of political ads in many of our States. Most of those are very negative and have minimal issue content. Most of those ads flood our airwaves right before the election when they will have the biggest impact on the minds of the voters.

As noted, congressional authority Norm Ornstein said these ads often dominate and drown our candidate communications, particularly in the last weeks of the campaign. While the ads are often effective in a raw and practical sense, they are incredibly corrosive; they are frequently unfair; they are sometimes very personal in the attacks they make; and they breed voter cynicism and voter apathy toward the electoral process.

We know all too well the gross aspects of the advertising, but now, thanks to a number of dedicated reform-minded groups and academicians, we have some real data to back up what we have all known as a matter of common sense for some time. The Brennan Center for Justice at NYU, New York University, and the University of Wisconsin at Madison have teamed up to develop a national database of political television advertising from the 2000 election cycle. They monitored political advertising in the Nation's top 75 media markets, and researchers, through that monitoring, have documented the frequency, the content, and the costs of television ads in the 2000 election, which duplicates a similar study they conducted in 1998.

The findings are stunning. Let me give a brief summary of what they found. First, the independent groups alone spent, conservatively estimated, about $98 million on media buys for political TV commercials in the year 2000. That is roughly a sixfold increase from what they spent 2 years before. This is not an inflationary increase; this is a sixfold increase in spending by the independent groups on these ads.

Second, in the 2000 Presidential election, voters received the largest share of political advertising messages from independent groups and party committees, not from the candidates themselves or from the candidate's committees.

Third, while all of the unregulated issue ads produced by the parties and independent groups are supposed to theoretically cover issue positions, since they do not contain these so-called magic words that there has been a lot of discussion about on the Senate floor in the last 2 weeks, the words ''noted by the Supreme Court in the Buckley decision,'' the public does not see these as issue ads. Virtually all ads sponsored by party committees are viewed as electioneering ads. Within 60 days of the election, 86 percent of the ads produced by independent groups are viewed by voters as electioneering. They are not seen as issue ads.

Fourth, the chart from the Brennan Center dramatically makes the point I am trying to make; the sham issue ads that are run by these groups become increasingly negative in tone as election day approaches. Issue ads by independent groups are far more likely than candidate ads or even party ads to attack candidates. Fully 72 percent of the issue group ads aired in Federal races last year directly attacked one of the candidates in the race in which they were run.

This chart is entitled ''Growth of Negative Tone of Electioneering Issue Ads as Election Day Nears.'' There are three lines on this chart. One is the red line which represents the attack ads. This is according to the Brennan Center study. The green line is the contrast ads. The blue line is the ads to promote a particular candidate, positive advertising, ''vote for me, I'm your best candidate,'' on Social Security, Medicare, or whatever issue.

Finally, the Brennan Center notes that issue ads that are targeted at candidates are decisively negative in tone and pursue the tact of attacking a candidate's character. These ads do not discuss substantive issues; they often focus on personal histories of the candidate.

The dramatic thing about the chart, which covers the period from January to the beginning of November of the year 2000, the negative ads are virtually nonexistent, very low level negative ads, until June; and then in the last couple of months of the campaign, the negative ads overwhelm the rest of the advertising. These are the negative ads that are being run almost exclusively by the independent groups—not by the candidate. The candidates do not want to be associated with negative ads, so they stay out of this and let the independent groups run the very negative ads.

I believe this study I have referred to provides the hard data to back up what we have all known for some time. That is, that sham issue ads are increasing sevenfold each election. They are casting a negative and personal tone to campaigns and are particularly effective and dominant in the last few weeks before election day. There is not a voter in any one of our States who would not validate these findings from their personal experience of watching television or listening to the radio. I heard this refrain from people in my State of New Mexico constantly during the last campaign cycle. They thought the airwaves were clogged with ads and that the majority of them were too negative. The complaint is constant by the public. It is well justified.

That brings me back to the amendment I am offering. Again, the amendment is straightforward. Let me make it very clear to people what the amendment does not do. First of all, the amendment does not in any way restrict the ability of any candidate to run any ad they want. It does not put on broadcasters, radio or television broadcasters any obligation with regard to those ads, except to run the ads, obviously. That obligation is already there. The amendment does not affect ads sponsored by the candidate or the candidate's committee.

Second, the amendment does nothing to restrict either the candidate or a party or an independent group from running any and all ads they want that are positive or that are contrast ads. On the chart, the green lines are contrast ads and the blue line is for ads that promote the candidate. We are in no way talking about those in this amendment. There is no requirement on broadcasters to take any action with regard to those. They can take those ads sponsored by anybody they want without incurring any obligation.

In the case of an independent group or a party that wants to run attack ads, which they are free to do, there is no prohibition against running attack ads, if they want to run attack ads. The broadcasters who run those ads then have an obligation to provide the candidate who is attacked with an opportunity to respond. This is a level playing field kind of amendment. We are saying to broadcasters, if you want to accept these attack ads during these short periods of time, 30 days prior to a primary, 60 days prior to a general election, you are not required to, of course; there is no obligation under the Constitution or anything else that you accept ads from noncandidates; but if you want to accept these ads, fine, just provide an opportunity for the candidate who is attacked to respond.

That is what the amendment does. I think it is a straightforward amendment. The reason I am offering it is because I believe it will help improve this bill in a very dramatic way.

It will say to all candidates, whether they are challengers or whether they are incumbents in the office, that there will be an opportunity for them to respond when they are unfairly attacked.

The Brennan Center report—let me quote from that report:

> Candidate ads are much more inclined than group sponsored ads to promote candidates or to compare and contrast candidates on issues. Conversely, issue ads that are sponsored by groups tend to attack candidates and attempt to denigrate their character. These ads tend to be very negative in tone. They do not discuss substantive issues and frequently they focus on personal histories of the candidate. As election day nears, electioneering issue ads become increasingly negative and personal in tone.

That is what this graph demonstrates. That is why this red line goes up and up and up as you get closer to the election.

I hope very much we can agree to this amendment. While McCain-Feingold's legislation goes to the very heart of the issue that plagues us today, the soft money loophole that has allowed sham issue ads to proliferate, I believe outside groups will continue to run those ads and this brand of negative issue advocacy is, unfortunately, here to stay. In that environment, I believe it is essential we provide a way to hold outside groups accountable for the content of the ads

they run by providing the opportunity for candidates who are the targets of the ads to respond no matter how poorly or how well their campaigns may be funded.

That is what the amendment does. I commend it to the consideration of my colleagues. I think it will substantially improve the legislation before us. I hope it will be favorably voted on.

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

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

The yeas and nays were ordered.

Mr. BINGAMAN. Mr. President, I reserve the remainder of my time and yield the floor.

Mr. DODD. Mr. President, let me thank our colleague from New Mexico for proposing this amendment. All of us here, and those who pay any attention at all to politics in this country and are confronted with this, as most Americans are, if you look at this chart by the Senator from New Mexico, particularly in that August, September, October period of an election year, it is hard not to be confronted with the assault—that is the only way to describe this—of ads on television from one end of the country to the next, on every imaginable radio station, television station, now cable stations—this bombardment that occurs.

What the Senator from New Mexico has graphically demonstrated with his chart is that the overwhelming majority of these ads are the so-called attack ads. Usually, they are very vicious, designed to not promote one's ideas nor one's vision, one's agenda—if they are elected to Congress or the Senate or the Presidency or some other office—but merely to try to convince the rest of us why you ought to be against someone; not why you ought to be for me but why you ought to be against my opponent.

The least enlightening part of a campaign is the proliferation of these ads. They do nothing, in my view, to contribute to the education, the awareness of the American people. We have seen an explosion of them over the past few years. I suspect this has probably been in the last 6 or 7 years, with the explosion of soft money that the McCain-Feingold bill seeks to shut down.

As I understand, we are not talking about ads where candidate X goes after candidate Y—an individual candidate making a case, although I have problems with that as well, but what the Senator from New Mexico is talking about are these issue-based ads where they get away with it by merely not putting in a line at the end—they don't say at the end ''vote for,'' ''vote against,'' but that is hardly a necessary tag line after they have proceeded to just destroy your reputation and probably that of your families and your neighborhood, and any pets you may have as well.

These are designed to be sort of nuclear bombs on people. We have all seen them. Some of them are almost laughable they are so bad, and I suspect the damage may be minimal because they are so bad. Unfortunately, many of them are very effective.

The theory works, again, if I can get you to hurt my opponent or hurt someone whom I think may be inimicable to my special interest, you are more likely to vote for the person you know less about or nothing about. So this has become a standard diet to which the American public is subjected every late summer and fall of an election year.

As I understand it, what the Senator from New Mexico attempts to do is address these issue-based ads, ads not from a specified opponent but, rather, from one of these amorphous organizations that, up to now, have had unlimited sources of revenue to come in and destroy a reputation without having any fingerprints. You can't find out who contributes the money; you can't find out where they come from; usually your opponent says I know nothing about them; in many cases the opponent will hold a press conference to disavow that ad and say I deplore that kind of advertising, while simultaneously winking and allowing this process to go forward, distorting the political process.

The Senator from New Mexico makes a very valid point in his amendment. It is something we are getting further and further away from, by the way. The airwaves in this country belong to the American public. We give people the privilege to utilize those air waves for the benefit of the American public. It is not a right; it is a privilege. It is a limited privilege, based on your sense of responsibility. That privilege or that license can be removed if you abuse it.

There are numerous examples, almost on a daily basis, where that happens. What the Senator from New Mexico, as I understand it, is suggesting is that if, in your discretion as a radio station or television station, you decide to tolerate this kind of political advertising, knowing full well how damaging it can be, then we have the right to say to that station you must extend to that candidate an opportunity to respond to that kind of garbage.

I think this has value. It will have the net effect of ending these issue-based ads that destroy people's reputations and destroy any sense of understanding of what that particular campaign may be about. To that extent, everyone is benefitted—not the candidate so much, in my view, but the voting public who may learn more about what people stand for, rather than what some issue group dislikes about a candidate.

I am attracted to this amendment. I think it contributes to McCain-Feingold. Obviously, there are questions that will be raised about constitutionality. My friend and colleague is a brilliant lawyer. He understands it well. He has crafted it about as tightly as you can to achieve the desired result. I think it is worthy of our support.

I look forward at the time this comes up for a vote to support it. I urge my colleagues to do so as well. We are all sick and tired of this.

I go back to the point I made earlier. We are seeing a declining level of participation too often in the political life of our country. How sad I think all of us are when we see that. There are a myriad of reasons for it, but one of the major reasons is this growing disgust people have over the low level of debate, the way campaigns are conducted. It is all done now on television and radio; most of it in negative ads, as this graph so graphically points out.

We wonder why only one out of every two eligible adult Americans participated in the national elections of this past fall. Fifty percent of adult eligible Americans stayed home. I know some may have done so for legitimate personal reasons. I suspect a significant majority of those who stayed home did so because they are fed up. They are fed up with the process. They think it is out of control, and one of the strongest pieces of evidence of that is this: a deluge of negative ads that have swamped the airwaves of this country and have the net effect of depressing turnout of the vote and disgusting the American public.

I think the Senator from New Mexico has offered a very constructive suggestion with this amendment, and I urge my colleagues on both sides of the aisles to be supportive of it.

I see my friend from Arizona is still here.

Mr. MCCAIN. Mr. President, in behalf of the Senator from Kentucky, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. MCCAIN. Mr. President, I rise in opposition to the amendment. I appreciate very much what the Senator from New Mexico is attempting to do. He has identified very eloquently an enormous problem that we have with these so-called attack ads which we don't know who paid for and which are clearly not identified. With passage of McCain-Feingold, I think we will make some progress in that area.

I say that also as a person who supports free television time for candidates. I agree with the Senator from New Mexico that when a broadcast station obtains a license, they sign a piece of paper that says they will act in the public interest. I think that Americans believe free television time for candidates can be very helpful.

But this amendment raises many troublesome issues that I, frankly, can't quite fathom.

First of all, who would determine if an ad was indeed a negative ad? Is there going to be a censorship board? Is there going to be a group of Americans who say, OK, watch all of these ads and see which one is negative and which one is not? Is an ad that says: Call your Senator—which I have seen many

times—and ask him or her to save Social Security a negative ad or a positive ad?

I don't know who makes this determination as to what is indeed a negative ad. Is it the argument of every candidate I have ever known that says that wasn't a negative ad; I was trying to inform the people of my district or State about the fact that my challenger is a baby killer?

It is very difficult to define what a negative ad is. Suppose we had some organization that could determine that this is a negative ad. What if a broadcaster had already sold all their television time? It is the last week of the campaign. It is certainly not unusual that a broadcaster has sold all of their television time in the last 2 or 3 weeks. Do they have to pull ads off the air and replace them with the ads that are mandated by this legislation? I am not sure how you do that either, especially in a Presidential election year. That is time already sold.

So the night before the election or 3 days before the election, I say: Wait a minute. My opponent is running attack ads. Now you have to run three times that many on my behalf or against them. However, they say: I am sorry. We have sold all of our time.

What is your option then? Suppose they had some television time. What is fair ad placement? Reruns of ''Gilligan's Island'' at 2 a.m. or is it the evening news? I don't know exactly. One station maybe has a higher rating than the other station. You are going to give me the local channel 365 versus the CBS, ABC, NBC, or FOX Network.

This is very difficult to work out. I am a little surprised that the Senator from Connecticut didn't look at some of these problems.

I want to repeat. I am for free television time for candidates. I detest the negative advertising. I think it is one of the worst things that has ever happened in American politics, that we have these unnamed, unknown groups calling themselves by some attractive name and buy millions of dollars of advertising, and they basically viciously attack their opponents.

Who decides that?

Many years ago, I reminded the Senator from Connecticut they had a board in Hollywood that used to make decisions as to what was acceptable and not acceptable. They had problems. I don't know who is going to be doing that.

I want to work with the Senator from New Mexico. I think we have to do something about these negative ads. I tell you the best way is to dry up their money, and what you don't dry up fully disclose.

I want to work with the Senator from New Mexico. I would like to sit down and see how we could work this out. But in its present form, I am just not sure how this amendment can possibly be workable.

Finally, I want to say that we just had a major vote, as we all know. We have amendments that are still outstanding.

I know Senator MCCONNELL, the Senator from Kentucky, will be back fairly soon. I understand they have a minimal number of amendments. I still think we can get done in a relatively short period of time.

I hope all Senators who have amendments will come over so we can start putting these amendments in order and so we can get time agreements, and perhaps not just time agreements but agree to amendments that are satisfactory to both sides so we can wind up all of this.

It is not that I am getting fatigued, but it is that we are sort of at a point now where we should bring this to a closure, and I hope we can do that.

Reluctantly, at the appropriate time I will be moving to table the Bingaman amendment.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. MCCAIN. Mr. President, in behalf of the Senator from Kentucky, I yield such time as the Senator from Wisconsin may consume.

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

Mr. FEINGOLD. Thank you, Mr. President.

Not only is this amendment well-intentioned, but it is offered by somebody who anyone in the Senate knows is not only one of the most decent but one of the best Members of this body.

Since I have been here, no one has been easier to work with and kinder to me than the Senator from New Mexico. I really appreciate the time which he had for me and Senator MCCAIN. He has been a totally stalwart supporter of reform every year, and has been there on every key vote in this debate. I thank him also for the amendment which we adopted that requires disclosure of Presidential inaugural funds. That is exactly the kind of thing we are trying to accomplish in this effort so the public can be fully informed of what is going on with all of these venues where large amounts of money can have a negative impact on some of our most sacred public traditions.

That was an important addition to the bill and will result in more information being available to the public of who is giving large sums of money to the inaugural events.

Reluctantly, I will oppose this amendment.

The bill addresses a number of problems with our system which the Senator from Connecticut correctly pointed out must be addressed. It is a problem that deserves more study. I don't think this particular approach is one that I am quite ready to accept. I am willing to look at it some more.

So I will be taking the same position as the Senator from Arizona, but with a willingness and desire to continue to work on this issue and this idea in the future.

Again, I thank the Senator from New Mexico for all of his support.

Mr. DODD. Mr. President, I was going to respond to some of the things the Senator said.

Let me also in response to my good friend from Arizona say that there are a number of amendments that Members have that have been coming over with great regularity over the last 2 weeks. I have been sitting here for 2 straight weeks. We have had very few quorum calls. I have been asking the indulgence of my colleagues to postpone their offering of amendments over the past 2 weeks while we considered some of these other amendments, such as the ones that we most recently rejected dealing with severability. But these are serious amendments.

Like any other issue, I suppose, depending upon whether it is your amendment or someone else's amendment, it becomes more serious or less serious.

But I know my colleagues from Michigan, from Florida, and Illinois, also my colleague from Minnesota, among others, have some amendments, some of which will probably be agreed to. My hope is that certainly will be the case. But others may require a little debate. I apologize to them because I don't want them to think this is going to be a rush deal. If they want to be heard, they are going to be heard. I bear some responsibility for having told them to wait while we considered some of these other amendments.

I promise you, I am not going to then ask you to somehow be on a fast track here when you want your amendment considered and debated adequately. My hope is you will be able to do it in less amounts of time than we have allocated for every amendment. You get 3 hours if you want it, unless you yield back time or the opponents do. We ought to try to move along if we can. I want you to know, I think your amendments are serious and they deserve to be heard, debated, and voted upon, if you so desire.

I apologize for having asked you to wait for a week and a half and want you to know that you will have adequate consideration for your time.

I turn to my colleague from New Mexico to respond to any of the unfair accusations that have been made about his stunning amendment.

Mr. BINGAMAN. Mr. President, I greatly appreciate the courtesy of all Members, particularly the Senator from Connecticut and his statement in support of this amendment.

There were several questions raised. Let me be clear so there is no confusion about this. If an independent group or a party committee or anybody else wants to run an advertisement endorsing or supporting a candidate for office, this amendment does nothing to restrict that, prohibit it, impose obligations on broadcasters, or anything else. That is perfectly appropriate. If anybody wants to take an ad out for my opponent and run ads in favor of

my opponent, they should be able to do that.

If they want to run ads that contrast my opponent's position with my position, that would be these ads that are reflected by the green line on the chart, it is entirely appropriate, no obligation on the part of broadcasters. This amendment only deals with advertisements which attack or oppose a legally qualified candidate.

The question has been raised by the Senator from Arizona, who will decide whether this is a negative ad, whether this is an ad that attacks or opposes a candidate for public office. My initial reaction is to refer to Justice Stewart's great comment when he was told that he could not define ''pornography.'' He said: I may not be able to define it, but I know it when I see it. Government can regulate pornography because of that. The American people know a negative television ad or a negative radio ad when they see it or hear it. The answer to who will decide initially, the person who will decide is the candidate who is being attacked or the candidate's campaign who is being attacked; they would detect an advertisement that is attacking them by a group is being run by a broadcasting station and they would presumably go to that broadcasting station and say, this is an advertisement that falls within the definition of this statute and we would like our time to respond. That is how it would work.

We have been very specific about what kinds of ads they would be entitled to respond to, what kinds of ads they would reply to. The term ''attacked'' or ''opposed'' means, with respect to a clearly identified candidate, first, A, any expression of unmistakable and unambiguous opposition to the candidate. So that is pretty easy to determine. You can listen to an advertisement on radio. You can see an advertisement on television and determine whether it is, in fact, an unmistakable and unambiguous statement in opposition to the candidate. Or, B, if it does not fall within that description, it would be any communication that contains a phrase such as ''vote against,'' ''defeat'' or ''reject'' or campaign slogan or words that when taken as a whole and with limited reference to external events, such as proximity to the election, can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates, regardless of whether or not the communication expressly advocates a vote against the candidate.

If it could have no reasonable meaning other than to advocate the defeat of the candidate, then it is an advertisement that would entitle the candidate who is being attacked or being opposed the opportunity to respond. That is, we have given a tight definition. It would be up to the candidate or his campaign, first of all, to identify that such an ad is running, and then they would presumably go to the broadcast station and say: Look, this is what this advertisement is. I should get equal time to respond.

Of course, the broadcast station at that point has to either say yes or no. If they say no, then of course it goes, as all other matters in our society, to some judge, presumably. If the candidate wants to push the issue, the judge will decide whether the candidate should have the right to respond on that station.

A second objection that was raised is, what if the station in question has already sold all their time. If they have sold all their time, and some of it, of course, to the organization that is running the attack ads, they would have to make room for the candidate to respond during the time period between then and the election on a basis that would be considered equal. He asked: What is fair in ad placement? And we have used general language here that the candidate would be entitled to respond for the same amount of time during the same period of the day and week as was used by the person who is doing the attack.

I am sure there are details of this that will be debated and discussed, if this becomes law, as there always is in every piece of legislation we pass. It is pretty clear what we are talking about. We are talking about a limited time period, 30 days before a primary, 60 days before a general election. We are talking about ads that involve attacking or opposing a candidate for Federal office, and we are providing a pretty precise definition of what ''attack'' or ''oppose'' means for purposes of this statute applying.

I believe this would be an enforceable provision. It would be an understandable provision. I think it would add greatly to the quality of the campaigns that we run in this country. It would be fair to the candidates in the sense that they would have the opportunity to respond. That is all we are saying.

In this country, we used to have a fairness doctrine. I know that has become something of a dead letter, but there used to be an obligation on the part of broadcasters to provide equal time for people to respond when there were particularly controversial positions taken and attacks. This is not a fairness doctrine, but this is the same basic concept.

When a candidate has been qualified to run for Federal office, clearly that candidate is fair game for any attack that the candidate's opponent or opponents want to make. There is no obligation on any broadcaster who wants to take those ads by opponents of that candidate. But if the candidate is attacked or opposed by people who are not in the race, by organizations that are not part of the campaign, then that is where the candidate should, once again, be given a chance to respond.

I believe it is a good amendment. I hope very much we can get a favorable vote on it. I know my colleague from Nevada, Senator REID, had indicated earlier he might want to make some comments in reference to this amendment. I don't know if he is prepared to do that at this point or if I should yield back my time. I will withhold at this point and yield the floor so my colleague from Nevada can speak on the issue.

Mr. REID. I say to the Senator from New Mexico, everything that I could have said, he said. Anything that I wanted to say, he has said, and has done it much better than I could have. Based upon that, I think we should vote.

Mr. MCCAIN. Mr. President, on behalf of the Senator from Kentucky, I yield myself such time as I may consume.

Mr. MCCAIN. Mr. President, I want to say to the Senator from New Mexico, I am in total sympathy of what the Senator's intent is. Let's go back into the language of his amendment:

> The term ''attack or oppose'' means, with respect to a clearly identified candidate—
>
> (A) any expression of unmistakable and unambiguous opposition to the candidate.

Does that mean if I took out an ad and I say I am a better candidate than Mr. SMITH and I am opposed to him, is that an attack ad? That is the first definition.

> Any expression of unmistakable and unambiguous opposition to the candidate.

If I am running and I am a better candidate and I oppose him, we are not going to be able to run an ad that says I oppose Senator SMITH or Senator BINGAMAN.

Mr. BINGAMAN. Will the Senator yield?

Mr. MCCAIN. Yes.

Mr. BINGAMAN. I just point out to the Senator that this legislation would not apply at all to any candidate who wanted to run an ad such as the Senator has proposed.

Mr. MCCAIN. Suppose it is the Sierra Club that says we oppose Senator MCCAIN. That is an attack ad? They can't say that?

Mr. BINGAMAN. Mr. President, again, if the Senator will yield, they would certainly be able to run that ad. But if they say we oppose Senator MCCAIN, then Senator MCCAIN should have an opportunity to come on and say, ''I believe people should still vote for me'' in spite of the fact that the Sierra Club, or whoever, opposes him.

Mr. MCCAIN. So any organization in America that opposes me, no matter if it is in the mildest terms, and supports my opponent, therefore, I have the right to go get free television time. I don't quite understand that, frankly. I think what you are doing, probably—the effect would be, one, that the broadcast stations probably would not sell time because of the requirement to respond, which is, by the way, what happened in the fairness doctrine. What happened in the fairness doctrine, which was a good idea, was that broadcast stations decided not to air any controversial opinion because somebody was going to say, ''I have another opinion and I have to have free

time.'' That led to the demise of the fairness doctrine.

If someone runs an ad and says, ''I oppose Senator MCCAIN,'' I don't think that should necessarily trigger free television commercial time for me.

Let me just continue, if I might. The Senator said this is not unlike the ability of the State to control pornography. The reason the Court decided that we had a right, as far as child pornography was concerned, is that it was a compelling State interest. I don't think you can make the same argument in respect to television time or attack ads.

Part B says:

Any communication that contains a phrase such as ''vote against,'' ''defeat,'' or ''reject—

Boy, we better get out the dictionary because there is a great deal of ambiguity of words. I have ''concerns'' about the candidacy of Senator SMITH. Well, is that in opposition to? Words ''such as,'' I think, are hard. Again, I get back to my fundamental point. It says in the amendment:

(Such as proximity to an election) can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates.

Who decides that? The Senator says you go to the station and get free time and, if not, you go to a judge. Now you are asking a judge to look at every commercial, or you are asking the broadcast station to look at every commercial and make some decision as to whether it is an attack ad or not. I will tell you if I were on the station, I would say never mind; why should I take a risk when I am not sure this ad is an attack ad or not.

This is the problem we had when we have gone over and over and over this issue. How do you stop these attack ads without infringing on freedom of speech and not being so vague that it is very difficult to stand constitutional muster? The difference between Snowe-Jeffords and this amendment is that Snowe-Jeffords draws a very bright line and it says:

Show the likeness or mention the name of a candidate.

That is a very bright line. This is a campaign slogan or words that, when taken as a whole and with limited reference to external events, such as ''proximity to an election''—these words—I admit to the Senator from New Mexico, I am not a lawyer, but I have been involved so long and so engaged in these issues that words do have meaning, and this amendment is very vague.

I am sure we can make a judgment on a lot of ads we have seen and the same ads the Senator and I find disgusting and distasteful and should be rejected. But at the same time, I don't know how we can say, OK, if this station doesn't run my ads, I am going to go to a judge and have the judge make them run my ads. It just is something that would be very difficult.

I would love to work with the Senator from New Mexico. He has been a steadfast stalwart for campaign finance reform. I would love to work with him to try to achieve this goal. Frankly, after going around and around on this issue, identifying who paid for the ad, full disclosure and, frankly, not allowing corporations and unions to contribute to paying for these things in the last 60, 90 days, which is part of our legislation, is about the only constitutional way that we thought we could address the issue.

I thank the Senator from New Mexico. He is addressing an issue that has demeaned and degraded all of us because people don't think very much of you when they see the kinds of attack ads that are broadcast on a routine basis.

As the Senator pointed out, they are dramatically on the increase. I will tell you what. You cut off the soft money, you are going to see a lot less of that. Prohibit unions and corporations, and you will see a lot less of that. If you demand full disclosure for those who pay for those ads, you are going to see a lot less of that because people who can remain anonymous or organizations that can remain anonymous are obviously much more likely to be a lot looser with the facts than those whose names and identity have to be fully disclosed to the people once a certain level of investment is made.

I thank the Senator and I regret having to oppose his amendment. I yield the floor.

Mr. BINGAMAN. Mr. President, I thank the Senator from Arizona for his comments. I understand the concerns he has raised. Let me make one thing very clear. Snowe-Jeffords is a prohibition against certain acts by certain groups. Now, that is a very different kettle of fish than what I am proposing.

My amendment does not in any way prohibit anyone from running ads. All my amendment says is that if an independent group wants to run an ad that attacks or opposes a candidate, then the candidate is entitled to an opportunity to respond to the ad.

That is a very different thing than saying, during certain periods of time, groups cannot run ads. So I think the constitutional problem that people have raised with regard to Snowe-Jeffords is much less of a concern than the kind of amendment that I have proposed.

This amendment is designed to deal with a particular type of advertisement run by groups other than the candidate and the candidate's committee during certain periods of time. I think we have clearly defined what we are talking about. There are many advertisements that would not fall within the definition of attacking or opposing a candidate. Certainly, there is nothing here that would in any way obligate broadcasters, when they take those kinds of ads. But when they are running ads that do attack or oppose a candidate, then they would be under an obligation to provide an opportunity to respond. I think that is eminently fair, constitutional, and consistent with the general obligation that I believe broadcast stations ought to have to present both sides of an issue during a campaign when a candidate has become qualified for a Federal office. For that reason, I urge my colleagues to support the amendment.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, unless the Senator from Arizona has more time, I suggest the absence of a quorum.

Mr. MCCAIN. Mr. President, may I be recognized?

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, again I thank the Senator from New Mexico. He has identified a very serious issue. I want to work with him on this issue. It is important because his graph dramatically illustrates the magnitude of the problem.

The Senator from New Mexico is trying to address one of the most serious issues that affects American politics today and makes us much diminished in the eyes of our constituents and the people around the country.

I really do applaud the Senator from New Mexico on this issue. At the appropriate time, I will move to table the amendment.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. Mr. President, if I may have the attention of my colleague from Arizona, Senator MCCAIN, we are in the process of hotlining the vote. If it is all right with my friend from Arizona, the vote on or in relation to the Bingaman amendment can begin at 5 of 6. A couple of people are having meals, and this will give them a chance to get online.

I ask unanimous consent that the vote on or in relation to the Bingaman amendment commence at 5 of 6.

Mr. MCCAIN. Mr. President, I move to table the amendment, to take place at 5:55 p.m.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DODD. Mr. President, may we ask for the yeas and nays at this time? Is it an appropriate request?

The ACTING PRESIDENT pro tempore. It is an appropriate request.

Mr. DODD. I ask for the yeas and nays on the motion to table commencing at 5 of 6.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I wish to make a statement and engage in a colloquy with my colleague, Senator MCCAIN.

Mr. MCCAIN. May we ask unanimous consent to engage in a colloquy?

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

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I spoke about this amendment last week that I had introduced to try to correct an inequity in the law we passed last year that required State and local candidates to file with the IRS as a 527 political organization. I think the purpose of this was not to affect State and local candidates who have no involvement in a Federal election. I think we did intend to include any PAC that might have an influence on a Federal election.

I worked with Senator LIEBERMAN, Senator MCCAIN, and others who were interested in trying to fix this problem. But I did give the commitment that we would not allow the bill to be blue-slipped in the House because of this amendment. The fact is, we came to an agreement among all the parties who worked together on the Senate side that would correct the problem. Senator LIEBERMAN, Senator MCCONNELL, Senator DODD, Senator MCCAIN, and I, all agreed that the language would do the job, but I could not get the commitment from the Ways and Means Committee on the House side not to blue-slip the bill even though I think a blue slip was not warranted. I made the commitment on the floor I would not do anything to jeopardize the bill procedurally with a blue-slip question.

This is my question to my colleague from Arizona. I will not pursue the amendment, but I think since everyone has agreed this needs to be fixed and we have the language to fix it, I ask the Senator from Arizona if he would agree to work with me to get this fixed in another bill.

Mr. MCCAIN. I say to the Senator from Texas, we established a $100,000 threshold so those who went above that would be disclosed; that is the outline of the agreement. Senator LIEBERMAN agrees, I agree, and I look forward to working with the Senator from Texas.

Mrs. HUTCHISON. I would like to clarify that the $100,000 threshold is not on State and local candidate committees but on State and local PACs.

Mr. MCCAIN. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from New Mexico, Mr. BINGAMAN. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 72, nays 28, as follows:

[Rollcall Vote No. 60 Leg.]

YEAS—72

Allard	Enzi	McConnell
Allen	Feingold	Miller
Baucus	Feinstein	Murkowski
Bayh	Fitzgerald	Murray
Bennett	Frist	Nelson (NE)
Bond	Graham	Nickles
Breaux	Gramm	Roberts
Brownback	Grassley	Rockefeller
Bunning	Gregg	Santorum
Burns	Hagel	Schumer
Campbell	Hatch	Sessions
Cantwell	Helms	Shelby
Carnahan	Hutchinson	Smith (NH)
Chafee	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Cochran	Jeffords	Specter
Collins	Kerry	Stabenow
Craig	Kohl	Stevens
Crapo	Kyl	Thomas
DeWine	Landrieu	Thompson
Domenici	Lincoln	Thurmond
Dorgan	Lott	Voinovich
Edwards	Lugar	Warner
Ensign	McCain	Wyden

NAYS—28

Akaka	Dayton	Lieberman
Biden	Dodd	Mikulski
Bingaman	Durbin	Nelson (FL)
Boxer	Harkin	Reed
Byrd	Hollings	Reid
Carper	Inouye	Sarbanes
Clinton	Johnson	Torricelli
Conrad	Kennedy	Wellstone
Corzine	Leahy	
Daschle	Levin	

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTT. Mr. President, a number of Senators are inquiring about how we will proceed for the balance of the evening and when we can expect to complete this bill, how long we will go tonight and also, of course, will it be necessary for us to go over until tomorrow and beyond.

All along, the commitment and the understanding have been, I believe by all parties, that we would spend 2 legislative weeks on this issue and we would have a full debate and votes on amendments, and that we would bring to it a conclusion at about this time so we could be prepared to move on to other very critical national issues. I am not sure exactly how many amendments are still remaining.

I know Senator REID has been working to try to identify exactly what amendments remain and to move those by consent agreement or voice vote, where it was possible. I know Senator MCCONNELL has been doing the same thing on our side, working with Senator DODD.

I think we are ready to complete action on this legislation. We have no more than four amendments on our side, and we think we could be prepared to work through those very quickly. I am not sure exactly what remains on the Democratic side, but I believe that the opponents and proponents are ready to vote. We have been through this. We have not moved toward a filibuster or cloture on either side. Although, in talking to Senator MCCAIN a moment ago, he was saying that, if it were necessary, he hopes that I would file cloture on this bill. Can you believe those words came from his mouth? If I had to, of course, the cloture would ripen on Saturday. I don't think we should end this process that way.

We do need to keep going. I know some Senators have commitments tonight they would like to go to. Some Senators have commitments they would like not to have to go to. I have heard—more of the latter, yes.

So I would like to propose a unanimous consent request. I haven't precleared this with Senator DASCHLE. He looked over it. We talked about it. I am not exactly sure what his thinking is. I would be willing to consider other ideas if somebody has a good idea about how we can complete it. This is the fairest way.

I ask unanimous consent that all remaining amendments in order to S. 27 be limited to 30 minutes equally divided and all other provisions of the consent agreement of February 6, 2001, remain in order.

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, I inquire of the managers, how do we wish to proceed? I yield to Senator DASCHLE.

Mr. DASCHLE. Mr. President, I have not had a chance yet to consult with our colleagues. We have 10 remaining amendments on this side. I know Senator SPECTER has been waiting patiently to offer his amendment.

Throughout the week, I have promised our colleagues that if they played by the rules and waited patiently for their opportunity to offer their amendments, we would accord them the same opportunity other Senators have had throughout the duration of this debate, as the majority leader indicated.

This has been a very good debate. No one has talked about the need to file cloture. I hope we will not have any reason to do that in the future. I believe Senators ought to have an opportunity to have their amendments considered and have a vote. So until I have had the opportunity to consult more carefully with those colleagues who still have outstanding amendments, I have to object.

Mr. LOTT. Mr. President, then, let me say to colleagues, we will continue on into the night. We will be having votes. If necessary, to have those votes in a reasonable period of time, we will move to table them. But we will continue as long as it takes to get this bill done.

When we know more about what we could agree to, we will let you know. You should expect a vote within the next couple of hours.

Mr. GRAHAM. If the majority leader will yield.

Mr. LOTT. I yield.

Mr. GRAHAM. For those who do want to make commitments, would it be possible to have a window of a couple of hours with assurance that we not vote within that window?

Mr. LOTT. I think the majority of those who had talked to me were hoping we would not have a window. I think we need to keep our nose to the grindstone and try to complete this legislation. I am not saying it won't happen. I don't think we should make a commitment of a window. My wife will be waiting for me to come home and have supper. When we complete our work, I will go home and have supper with her. She may be hungry, but she waits.

Mr. GRAHAM. That commitment is important above all.

Mr. LEAHY. If the leader will yield, will it be safe to say that in the next hour or so those who show up on the floor with a tuxedo or evening dress are those who want to fulfill their commitments, and those who are not would like to keep voting?

Mr. LOTT. Those who show up with a tuxedo, that will count as having fulfilled your commitment to the dinner because it would show intent to be there, but a higher calling prevented your presence. You might want to don your evening attire and come to the floor and wait for an opportunity to vote.

Mr. LEAHY. I will change within the hour.

Mr. LOTT. I yield the floor.

AMENDMENT NO. 140, AS MODIFIED

Mr. SPECTER. I send an amendment to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 7, line 24, strike ''and'', and insert the following:

''or

(iv) alternatively, if (iii) is held to be constitutionally insufficient by itself to support the regulation provided herein, which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; and''

On page 8, line 1, by striking ''(iv)'' and replacing with ''(v)''.

On page 15, line 19, strike ''election, convention or caucus.'' and insert the following: ''election, convention, or caucus; or alternatively, if subclauses (i) through (iii) of subsection (3)(A) are held to be constitutionally insufficient to support the regulation provided herein, which also

(iv) promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

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

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) In the twenty-five years since the 1976 Supreme Court decision in Buckley v. Valeo, the number and frequency of advertisements increased dramatically which clearly advocate for or against a specific candidate for Federal office without magic words such as ''vote for'' or ''vote against'' as prescribed in the Buckley decision.

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

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

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

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

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

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

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

(9) These television ad campaigns were in each case prepared, directed, and controlled by the campaign committees of these candidates.

(10) The television ads by campaign committees forcefully advocated the election of their candidate and the defeat of their opponent and those television ads were suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; however, in the absence of a specific statement to ''vote for'' or ''vote against,'' those television ads were deemed issued ads and not advocacy ads under Buckley v. Valeo.

(11) Television ads were coordinated between the candidate committees and the relevant national party committees.

(12) Agents of the candidate committees raised the money used to pay for these so-called issue ads supporting their respective candidacies.

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

(14) After reviewing spending in the 1996 Presidential election campaign, auditors for the Federal Election Commission recommended that both the 1996 candidate committees repay millions of dollars because the national political parties had closely coordinated their soft money issue ads with the respective presidential candidates and, accordingly, the expenditures would be counted against the candidates' spending limits.

(15) On December 10, 1998, in a 6–0 vote, the Federal Election Commission rejected its auditors' recommendation that either of these campaigns repay the money.

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

(17) The television ads by the 2000 presidential campaigns forcefully advocated the election of their candidate and the defeat of their opponent and those television ads were suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; however, in the absence of a specific statement to ''vote for'' or ''vote against,'' those television ads were deemed issue

ads and not advocacy ads under Buckley v. Valeo.

(18) Television ads in the 2000 presidential election were coordinated between the candidate committees and the relevant national party committees.

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

(20) The details of corruption and the public perception of the appearance of corruption have been documented in a flood of books, newspapers and public documents.

Mr. MCCONNELL. It is my understanding that the Senator from Pennsylvania believes he might be able to wrap up his remarks in 15 minutes or so?

Mr. SPECTER. Mr. President, it is my hope to be able to do it within a brief period of time—perhaps as little as 15 minutes, in that range.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment, as modified, seeks to accomplish two objectives. One objective is to set forth findings to provide a factual basis to uphold the constitutionality of the statute, and the second objective is to insert a definition so that the bill will survive constitutional challenge under the Buckley v. Valeo decision, which has language that required specifically saying ''vote for,'' ''support,'' with ads being deemed to be issue advertisements where the obvious intent is to extol the virtues of one candidate and to comment extensively on the deficiencies of another candidate; and notwithstanding the clear purpose of these ads in the 1996 Presidential election and the Presidential election of 2000, those ads were deemed

to be issue ads and, therefore, could be paid for with soft money.

The bill as presently written endeavors to provide a bright-line test with the provision of identifying a specific candidate. The reason I am able to abbreviate the argument this evening, or the contentions this evening, is that we had about 2 hours of debate last Thursday.

The critical language in the bill is the reference to a clearly identified candidate for Federal office. Now this may or may not be a sufficiently bright line to satisfy the requirements of Buckley v. Valeo, or in fact it may not be because it does not deal with the kind of specific urging of a candidate to ''vote for'' or ''support,'' which Buckley has talked about.

In Buckley, in a very lengthy opinion, the Supreme Court of the United States said that in order to avoid the constitutional challenge for vagueness, those specific words of support—''vote for'' or ''vote against''—had to be used in order to avoid the vagueness standard of the due process clause of the fifth amendment.

What this amendment seeks to do is to provide an alternative test, which is derived from the decision of the court of appeals for the Ninth Circuit in the Furgatch case, and this definition is really Furgatch streamlined. The original amendment that was offered provided that the context of the advertisement was ''unmistakable, unambiguous, and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

In our debate last Thursday, there were arguments made that the language of ''unmistakable'' and ''unambiguous'' left latitude for a challenge.

In the amendment which has been modified, it is deemed to be sufficient to have the language be ''suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

This really sharpens up Furgatch, really streamlines Furgatch in order to pass constitutional muster.

The findings which have been set forth in the modified amendment seek to characterize events which have occurred in the intervening 25 years since the decision of Buckley v. Valeo, reciting how much money has been paid, the very heavy impact of funding, the ads really, in effect, urging the election of one candidate and the defeat of another so that, by any logical definition, they would be deemed advocacy ads and not issue ads, but they do not meet the magic words test of Buckley v. Valeo.

The expanded test of having ''no plausible meaning other than an exhortation to vote for or against a specific candidate'' would make it plain that the kinds of ads which have been viewed as being issue ads are really advocacy ads.

We had an extended debate last Thursday about the impact of this language on the balance of what is in the bill at the present time on a clearly identified candidate. This modified amendment has been very carefully crafted to meet the concerns that if the Supreme Court of the United States determines that the language in the underlying bill is sufficient, and the language added in this modified amendment is insufficient, that one or the other will be stricken so that there is a severability clause within this amendment as modified.

We have already legislated, we have already adopted an amendment to provide for severability. So it may be this is surplusage or it may be that it is necessary, but it does not do any harm to have this language.

I believe that most, if not all, of the objections which were raised last Thursday have been satisfied in this modified amendment. I urge my colleagues to adopt it.

I am not yet asking for the yeas and nays to see if the arguments which may be presented here are suggestive of some further modification which would require consent after asking for the yeas and nays, but it is my intention, as I have notified the managers, to seek a rollcall vote. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I can be yielded 5 minutes, 2½ minutes from either side, because I am not sure if I am for or against it because I don't have a copy of the final product. May I ask the Senator to yield me 2½ minutes from his side?

Mr. SPECTER. I do.

Mr. LEVIN. I yield myself 2½ minutes from our side. We are trying to determine which version of the amendment is pending. I ask the Senator from Pennsylvania, are the references in the findings to—we now have a modified amendment. Are there any references to the specific candidates in the 1996 Presidential campaign left in here?

Mr. President, I wonder if I can have the attention perhaps of all of my colleagues on this question. It may be a question in which we are all interested. It relates to the findings. For instance, one of the findings here says that both the Clinton and Dole ad campaigns should have been subject to the limits, implying that, in fact, they had somehow or other violated the limits of the campaign despite the 6–0 vote of the Federal Election Commission which rejected the recommendation that either of the campaigns repay the money.

I happen to agree with the Senator from Pennsylvania on the thrust of his amendment, by the way, because I have always liked the Furgatch test myself. I cannot speak for the floor manager on this side. I do not know where he is. But I do think these findings should be reviewed because I do not think we want to reach any conclusion that any of the expenditures of the Presidential campaigns violated that law in 1996.

The problem was the law was so full of loopholes and we need to close those loopholes.

Mr. MCCAIN. Will the Senator from Michigan perhaps call for a quorum call for 5 minutes to see if we cannot sort this out. I thought we had an agreement, but perhaps we do not.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. LINCOLN. Mr. President, I ask unanimous consent I be allowed to speak as if in morning business for about 10 minutes.

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

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

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

The PRESIDING OFFICER (Mr. ALLEN). The clerk will please call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded and that I be allowed to speak briefly as in morning business.

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

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

Mr. SMITH of Oregon. Mr. President, I thank the Chair and yield the floor.

The PRESIDING OFFICER. I thank the Senator from Oregon.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 140, AS FURTHER MODIFIED

Mr. SPECTER. Mr. President, I send to the desk a further modification of amendment No. 140.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, it is so ordered.

The amendment as further modified, is as follows:

On page 7, line 24, strike ''and'', and insert the following:

''or

''(iv) alternatively, if subclauses (i) through (iii) are held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, which is also in the aggregate found to be suggestive of no plausible meaning other than an extortion to vote for or against a specific candidate; and''.

On page 8, line 1, by striking ''(iv)'' and replacing with ''(v)''.

On page 15, line 19, strike lines 3 through 19 and insert the following:

''(A)(i) IN GENERAL.—The term 'electioneering communication means any broadcast, cable, or satellite communication which—

''(I) refers to a clearly identified candidate for Federal office;

''(II) is made within—

''(a) 60 days before a general, special, or runoff election for such Federal office: or

''(b) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for such Federal office: and

''(III) is made to an audience that includes members of the electorate for such election, convention, or caucus.

''(ii) If subclause (i) of subsection (3)(A) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term 'electioneering communication' means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

Further, nothing in the subsection shall be construed to affect the interpretation or application of 11 CFR 100.22(b).

Mr. SPECTER. Mr. President, the further modification has been made to satisfy some concerns about drafting. I believe the language had been definitive, but it was faster to make some changes than it was to debate that proposition. And where we are now—if I may have the attention of the Senator from Michigan—where we are now is to satisfy all the parties that what we are accomplishing on this amendment is that if the Snowe-Jeffords test is held to be unconstitutional by a final judicial decision, then the modified Furgatch test will be applied to define an advocacy advertisement which will satisfy Buckley v. Valeo that the advertisement ''is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.''

The additional sentence has been made: ''Further, nothing in this subsection shall be construed to affect the interpretation or application of 11 CFR, 100.22(b),'' which is the current FEC regulation on an electioneering communication which follows Furgatch.

Then the further modified amendment strikes the findings, and they will be supplemented at a later time because to call through and satisfy all the parties as to the findings would take longer than we can accomplish it simply by full striking, which this further modification does.

I believe at this juncture that we have satisfied all the concerns of the varieties of cooks who have been added to the stew.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Texas?

Mr. GRAMM. I ask the Senator from Kentucky to yield me 20 minutes.

Mr. MCCONNELL. Mr. President, I yield 20 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, we are in the process of rapidly completing this bill. I would not have come over to speak, except that it was clear to me that, for the moment, nothing was happening. I have not yet spoken on it. And while I think it is clear what the outcome will be, I at least want to go on record on this issue.

Free speech in America is a very funny thing. If a person goes out and burns the American flag and they say they are exercising free speech or they dance naked in a nightclub and say that that was personal expression, a league of defenders springs up in America to defend the first amendment of the Constitution. Yet when someone proposes that we preserve free speech about the election of our Government and the election of the men and women who serve the greatest country in the history of the world, when such a motion is made, it dies from a lack of a second.

It is astounding to me that free speech in America has come to protect flag burning and nude dancing but yet the greatest deliberative body in the history of the world feels perfectly comfortable in denying the ability of free men and women to put up their time and their talent and their money to support the candidates of their choice.

I can't help but say a little something about the protagonists in this debate. I would like to begin by saying of my dear friend Senator MCCAIN, with whom I profoundly differ on this issue, I have the highest respect for him. In fact, he has reminded me in this debate of an ancient god, Antaeus, whose mother was the earth, and every time he was thrown to the ground, he became stronger than he had been when he was cast down.

Having said that, having admired his diligence and his determination, I would say that seldom has a more noble effort been made on behalf of a poorer cause in the history of the U.S. Senate.

I would like to say of our colleague from Kentucky that he has again won our admiration and our respect. He has been vilified in every media outlet in the Nation. Yet his sin is to stand up and defend freedom.

You ask yourself: Why do people want to influence the Government? Why do people want to influence the Government of the United States of America? It seems to me there are really two reasons: One, they have strong feelings about something. They love their country. They have strong passions and they want to express them. And who would want to prevent them from expressing themselves? I say nobody should.

The second reason they want to influence the Government is that the Government spends $2 trillion a year, most of it on a noncompetitive basis. The Government sets the price of milk. The Government grants numerous favors. If we were serious about campaign reform, we would try to change the things that lead people to want to influence the Government for their advantage, and we would want to leave in place a system where people could express their love and their passions. Yet there is no proposal here to end the Government setting the price of milk. There is no proposal here that would have competitive bidding on contracts. Instead, we single out one source of influence, and that source of influence is money. Our problem is not bad money corrupting good men, our problem is bad men corrupting good money.

When I listen to my colleagues talk about this corrupting influence, let me say they apparently have lived a different political life than I have lived. I have never in my 22 years in public office and in the 2 years prior to that, when I ran unsuccessfully for the Senate and lost, had anyone come up to me and say: If you will vote the way I want you to vote, I will contribute to your campaign. I am proud that 84,000 people contribute to my campaign, and I believe they contribute to me because they believe in the things I believe in. I am proud to have their support. I don't apologize for it.

Remember this, and this is what is lost in this whole debate: This is an Alice in Wonderland debate where black is white and wrong is right. It is a debate that ignores the fundamental nature of the American political system. Government has power and people want to influence it. If we limit the power of people to spend their money, we strengthen the power of people who exert influence in other ways. We don't reduce power. We don't reduce whatever corruptive influence may exist among the people who want to influence government. We simply take power away from some people and, by the very nature of the system, we give it to somebody else.

Why should the New York Times have more to say in my election than the New York Stock Exchange? Is the New York Times not a for-profit company? Why should they have the right to run editorials and write front-page articles that can have a profound impact on your election, and they are a for-profit corporation, publicly traded, and yet we say in this bill, they, but not others, have freedom of speech? They can say whatever they want to say. But yet the New York Stock Exchange is denied the same freedom. How can that be rational? How can that be just?

Who says that freedom of speech should belong only to people who own radio stations and television stations and newspapers? I reject it.

What makes this debate an Alice in Wonderland debate is that the people who support this bill are the very people who will benefit from taking the American people out of the debate by limiting the ability of people to put up their time and their talent and their money.

The very groups, the so-called public interest groups, the media, the very people who preach endlessly about this issue and about this bill being in the public interest, they are the very people who win an enhancement of their

political power from this bill. What we are hearing identified as public interest is greedy, selfish, special interest. The amazing thing is that the voice of freedom and the right of people to be heard is not represented to any substantial degree on the floor of the Senate.

If I should believe, as a free person, that the Senator from Virginia is the new Thomas Jefferson and I believe the future of my children will be affected by his political success, don't I have the right to sell my house, to sell my car and to use that money to help him be elected? Why shouldn't I have that right? Who has the right to take that away from me? No one has the right to take it away from me. But this bill does take it away from me.

This distinction between soft money and hard money is a fraud. What we are seeing here is an effort to collect political power and to concentrate it. Our Founders understood special interests. The Senator from Arizona and the Senator from Wisconsin are not the first people in the history of this country who have ever been concerned about special interests. James Madison understood special interests. He understood that the way you deal with them is to allow many special interests to be created and have them compete against each other.

The editorial proponents of this bill see it as somehow corrupting when somebody contributes money to my campaign. But I wonder if really they support the bill because they know that the contributors of such money, with that participation and interest, offset the influence of their editorials and their political power. Why should some people have freedom and not others? That is the profound issue that is being debated here.

I suspect this bill is going to pass, but this is not a bright hour in American history, in my opinion. The amazing thing—I never cease to be amazed by our system—is there is no constituency for this bill.

This is a total fabrication. The constituency for this bill is a group of special interests who cloak themselves as public interest advocates and it is they who will have their power enhanced by limiting the ability of people to put up their time, talent, and money in support of candidates. The so-called public interest promotion of the bill in editorials across America is coming from the very people who will become more powerful if this bill is adopted.

So what we have is an incredible example, cloaked in great self-righteousness, of special interest triumphing over public interest through the power of the same groups that will have their power enhanced if this bill is adopted.

If editorialists in America, if Common Cause, and all these similar groups, can induce the Congress to limit freedom of speech to enhance their power, what strength will those who oppose their views have when freedom of speech has been, in fact, limited? I think that is something that should give us all pause, though I have no doubt there will be no pause tonight.

It is as if we look at the Constitution and we say that what is at stake is either protection of the first amendment of the Constitution, or whether we are going to get a good editorial in tomorrow morning's newspaper, and the judgement is made that tomorrow morning's newspaper is much more important than the first amendment of the Constitution.

Let me conclude by quoting, because I never think it hurts to read from the greatest document in history, other than the Bible—the Constitution. Let me read amendment No. 1 of the Constitution, and I will read the relevant points:

> Congress shall make no law abridging the freedom of speech.

If I believe the Senator from Virginia is the next Thomas Jefferson and I want to sell my house to support his candidacy, who has the right under the Constitution to deny me that right? No one has that right. Yet we are about to vote on the floor of the Senate to keep me from doing that.

The Constitution says that:

> The right of the people peaceably to assemble and to petition the government for a redress of grievances shall not be abridged.

If I am not permitted to spend my money to present my grievances to my Government, how am I going to be heard? In modern society, the ability to communicate depends on the ability to have funds to amplify your voice so it can be heard in a nation of 285 million people.

If I don't have the right to use my time and my talent and my money to enhance my voice, how can I be heard? Well, what the advocates of this bill are really saying is we don't want you to be heard because we might not like what you have to say.

We have a bill before us that says you can't run ads. If I wanted to run ads supporting you, or give you money to spend, I can't do it. We are all unhappy that these special interest groups run ads. It hurts my feelings. When people tell my mama that I am this terrible, bad person, that I have sold out to the special interests, my mama asks me, ''Why can they say that?'' How can they say it? You know why they can say it? Because they have the right to say it because of the first amendment of the Constitution. It is not true, but it doesn't have to be true.

It amazes me—and I will conclude on this remark—I hear colleagues talk about corruption, corruption, corruption. I wonder if people back home know that there has never been a Congress in American history less corrupt than this Congress. I don't agree with many of the people in this body, but I don't believe there is a person in this body who is dishonest.

I can only speak for myself, but I have never, ever felt compromised because somebody supported me. I have felt honored, I have felt grateful, but I have always believed they supported me because of what I believed. In fact, on many occasions, when people have supported me—the AMA is a perfect example. When I was a young man running for Congress, the American Medical Association supported me and just thought I was wonderful. Now they don't like me. What changed? They changed; I didn't change. I have always been for freedom. When I stood right at this desk and helped lead the effort to kill the Clinton health care bill, I did it because I believed in freedom, and they loved it. Now that they want to kill HMOs, they don't think so much of freedom anymore.

But I didn't feel corrupted by them giving me money. They supported me because of what I believed in. When they didn't believe it anymore, they changed; I didn't change. So I don't know what is in the hearts of those who feel this corruption. I do not feel it. I think corruption, as it is portrayed in the media, has increasingly become a codeword for anybody who can speak for themselves and, therefore, doesn't have to be too concerned about the commentary of some special interest group or the media.

I love the Dallas Morning News, especially when they write good things about me. When they endorse me and support me, I like it. But I have 84,000 contributors. The newspaper can go ahead and say whatever they want to say about me because my contributors and supporters have ensured that I will get to respond and tell my side of the story.

What this bill is going to do, and the terrible effect of it if it does become law, is that it is going to limit the ability of people to tell their side of the story. I think that is fundamentally wrong. I still do not understand how someone can burn a flag, and that is freedom of speech; someone can dance naked in a night club, and that is freedom of public expression; but if I want to sell my house and support somebody that I believe in with all my heart, that is fundamentally wrong; that is corrupt.

I believe there is salvation. I believe we are going to get salvation from this bill. I think the salvation is going to come from this ancient document, our Constitution, because I believe this bill is going to be struck down by the courts, and that is ultimately going to be our salvation.

I want to say to my dear colleague from Kentucky that I admire him, and I want to thank him for the great sacrifice he has made to stand up on behalf of freedom, when very few people are offering compliments, and very few pundits are applauding. I am one person who is applauding, and I will never, ever forget what you have done. It may not be in an editorial, but it will be enshrined in my heart.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I want to say to the Senator from Texas how much I appreciate what he had to say. There is no question that he gets it. It is all about the first amendment. It is all about the first amendment and the rights of Americans to have their say.

This bill, as the Senator from Texas pointed out, is simply trying to pick winners and losers. It takes the parties and it crushes them. And the irony of it all is there will be way more money spent in the next election than there was in the last one. It just won't be spent by the parties.

So we have taken resources away from the parties, which will be spent otherwise because of all of these other efforts, as the Senator from Texas pointed out. And I assure him I will be in court. I will be the plaintiff, and we will win if we have to go to court. Efforts to restrict the voices of outside groups will be struck down.

I hope we will be able to save the ability of parties to engage in speech that isn't federally regulated, which is what soft money is. It is everything that isn't hard money. I thank the Senator from Texas for always being there on so many issues, and especially for the kind things he said tonight about this struggle. It isn't a lot of fun being the national pinata. But there are some rewards.

I say to my friend from Texas my reward is that I really could not think of a group of enemies I would rather have than the ones I have made in this debate. I can't think of a single set of friends I would rather be associated with than people such as the Senator from Texas, who understand what freedom is all about and understand what this debate is all about.

I say to my colleague, we may lose tonight, but we will ultimately win this no matter how long it takes; we will win it. I thank him so much for being there when it counts.

Mr. President, I yield the floor.

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator NELSON from Florida be allowed to proceed to offer his amendment, 5 minutes equally divided, and then there be a voice vote on that amendment, and that we lay aside the Specter amendment in order to permit that to happen; then we immediately vote on the Specter amendment.

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

AMENDMENT NO. 159

Mr. NELSON of Florida. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Florida [Mr. NELSON] proposes an amendment numbered 159.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit fraudulent solicitation of funds)

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

SEC. ___. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended—

(1) by inserting ''(a) IN GENERAL.—'' before ''No person'';

(2) by adding at the end the following:

''(b) FRAUDULENT SOLICITATION OF FUNDS.—No person shall—

''(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

''(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).''.

Mr. NELSON of Florida. Mr. President, the Federal Election Commission reports receiving a number of complaints that people have fraudulently raised donations by posing as political committees or candidates and that the current law does not allow the Commission to pursue such cases.

For example, one newspaper reported that after last November's Presidential election, both Democrats and Republicans were victims in a scam in which phony fundraising letters began popping up in mailboxes in Washington, Connecticut, Michigan, and elsewhere. Those letters urged $1,000 contributions to seemingly prestigious Pennsylvania Avenue addresses on behalf of lawyers purportedly for both George W. Bush and Al Gore. About the same time, thousands of similar letters offering coffee mugs for contributions of between $1,000 and $5,000 were sent to Democratic donors from New York to San Francisco.

Clearly, one can see the potential for harm to citizens who are targeted in such fraudulent schemes. Unfortunately, the Federal Election Campaign Act does not grant specific authority to the Federal Election Commission to investigate this type of activity, nor does it specifically prohibit persons from fraudulently soliciting contributions.

The FEC has asked Congress to remedy this, and the amendment I offer today is in response to this request. This amendment makes it illegal to fraudulently misrepresent any candidate or political party or party employee in soliciting contributions or donations.

I thank my Senate colleagues for their consideration of this amendment.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this is a very important amendment. It is going to protect our citizens from fraudulent solicitation of their funds. It will give the Federal Election Commission the tools it needs to address these fraudulent acts which take advantage of our citizens. It implements an important recommendation of the Federal Election Commission. I hope our colleagues will all support this amendment.

I also congratulate the Senator from Florida. I believe this may be his first amendment. It is a very important amendment. He has made an important contribution to this Senate in many ways already. It is important for all of us to recognize the first amendment of the Senator from Florida that is being accepted, hopefully, tonight, and I congratulate him.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 159.

The amendment (No. 159) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 140, AS FURTHER MODIFIED

Mr. SPECTER. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 140, as further modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Ohio (Mr. VOINOVICH) is necessarily absent.

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

The result was announced—yeas 82, nays 17, as follows:

[Rollcall Vote No. 61 Leg.]

YEAS—82

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

NAYS—17

Allen	Enzi	Hatch
Brownback	Gramm	Helms
Bunning	Grassley	Hutchinson
DeWine	Gregg	

Kyl	Nickles	Smith (NH)
McConnell	Roberts	Thomas

NOT VOTING—1

Voinovich

The amendment (No. 140), as further modified, was agreed to.

Mr. LOTT. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. President, I know Senators are interested in how we proceed for the remainder of tonight and tomorrow. I believe we have come up with the best possible arrangement of how we can complete action on this bill and be prepared to move on to other legislation.

Senator DASCHLE and I have talked about it and have talked to the managers and the proponents of the legislation. I think everybody is satisfied that this is a fair way to bring this to a conclusion.

I ask unanimous consent that all remaining amendments in order to S. 27 be limited to 30 minutes equally divided and that all provisions of the consent agreement of February 6, 2001, remain in order, except for this change:

I further ask unanimous consent that all remaining amendments must be offered either tonight or between 9 a.m. and 11 a.m. tomorrow and that any votes ordered with respect to those amendments occur in a stacked sequence beginning at 11 a.m. on Friday, with 2 minutes prior to each vote for explanation.

I further ask unanimous consent that following the stacked votes the bill be immediately read for the third time and passage occur at 5:30 p.m. on Monday, all without intervening action or debate, and that paragraph 4 of rule XII be waived.

Also, it has been suggested that we include in this consent, if necessary, a technical amendment that is agreed to by both managers may be in order.

The PRESIDING OFFICER. Is there objection?

Mr. LOTT. Mr. President, I just covered this with the manager. I want to make sure Senator DASCHLE is aware. A technical amendment may not be necessary. But we want to make sure, if there is a need for a technical amendment, that there be a way to deal with that but that a technical amendment would have to be identified and agreed to tomorrow along with other amendments before we complete action.

The problem is, if we wait until Monday, there is a lot of opportunity for mischief to develop.

Mr. DASCHLE. Mr. President, reserving the right to object, it is suggested that perhaps having a weekend for the staff to go through whatever screening or final review may be helpful. Obviously, I think both managers would have to agree to any technical amendments. So there is that assurance. But this would give the weekend to the staff to assure that if there is any inadvertent mistake, it be caught prior to the time we vote on final passage on Monday.

I also note that it was suggested we may want to include in this unanimous consent agreement any second-degree amendments. I don't think that will be necessary because I don't anticipate second-degree amendments.

Mr. LOTT. Wouldn't that be in order under the earlier agreement? I think that would be covered by the underlying unanimous consent agreement because other than what is specified here——

Mr. DASCHLE. As long as we make it clear it includes amendments in the second degree.

Mr. DODD. The Democratic leader said it well. Any technical amendments would have to be amendments agreed to by both managers. So that the idea of something coming up late—I make it plural because the staff is apt to encounter more than one. Any technical amendments would have to have the concurrence of both managers.

Mr. LOTT. I can understand how the managers might want to obviously have that opportunity. But also we want to have a chance to review it. I also see how maybe the Senator from Arizona would want to be included in reviewing that.

But, again, there is no intent on anybody's part to try to snucker anybody. I think the way I worded it, where both managers have to agree to it, takes care of the problem. I can understand how the managers would prefer not being dragged around by our very capable staff for 2 or 3 hours on Monday, arguing over a technical amendment. However, I think this does give us a way to correct legitimate problems.

I say to Senator MCCONNELL, do you want to comment on this?

Mr. MCCONNELL. Is the leader then confirming no technical amendments could be offered after tomorrow without the consent of both managers?

Mr. LOTT. Absolutely.

Mr. NICKLES. Will the leader yield further?

Mr. LOTT. Certainly, I yield to Senator NICKLES.

Mr. NICKLES. One of the remaining issues is—some people would call it technical, but I think it is major, and that deals with coordination. A lot of us recognize that the underlying bill needs some improvement on coordination or else we are going to have a lot of people who are going to be crooks who want to participate in the political process. And they should have the opportunity to participate. I have been trying to get language, and I have not seen it. But that is not insignificant and not technical; that is major concern.

Mr. LOTT. I believe that would have to be one of the regular amendments, not a technical amendment.

Mr. DODD. Yes. That will be up tonight.

Mr. NICKLES. Will it be possible for us to see language tonight?

Mr. DODD. Probably not.

No. We will get you some.

Mr. LOTT. Senator MCCAIN.

Mr. MCCAIN. I thank both leaders for their cooperation on this. I am confident after tomorrow, if there are technical amendments, they will only be allowed if we are in agreement.

On the issue of coordination, we are ready to consider amendments and votes on that issue.

Mr. LOTT. I say to Senator WELLSTONE, did you get wet?

Mr. WELLSTONE. I did.

Mr. LOTT. I mean that literally now, not figuratively. I saw you drenched.

Mr. WELLSTONE. Because of you, I tried to run all the way up to Connecticut Avenue, and I got wet on the way.

I want to ask the majority leader—I am sorry; Mike Epstein, who used to work with me, is no longer here or I would have asked him this—but on technical amendments, is the definition of that that there would not be an up-or-down vote automatically?

Mr. LOTT. After the vote tomorrow on the sequence of amendments, there would not be a vote on the technical amendment. It would have to be agreed to. So it would be handled in that way.

Mr. WELLSTONE. I think I would object to a technical amendment unless there is an understanding to this effect: If this affected the work of any one Senator, that we would be consulted before an agreement.

Mr. DODD. Yes, we would provide that.

Mr. WELLSTONE. Is that implicit?

Mr. LOTT. That is implicit. Also, it would certainly be the proper way to proceed.

Are we ready to get this consent?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. I thank all Senators. I urge those of you who have amendments, stay and do them tonight, because the 2 hours tomorrow will go very fast. And if you are ready, I hope you will be prepared to offer your amendment tonight.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, we have an amendment.

AMENDMENT NO. 160

Mr. President, I send an amendment to the desk on behalf of Senator KERRY, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. KERRY, proposes an amendment numbered 160.

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

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

The amendment is as follows:

(Purpose: To provide a study of the effects of State laws that provide public financing of elections)

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

SEC. 305. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) CLEAN MONEY CLEAN ELECTIONS DEFINED.—In this section, the term ''clean money clean elections'' means funds received under State laws that provide in whole or in part for the public financing of election campaigns.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the clean money clean elections of Arizona and Maine.

(2) MATTERS STUDIED.—

(A) STATISTICS ON CLEAN MONEY CLEAN ELECTIONS CANDIDATES.—The Comptroller General of the United States shall determine—

(i) the number of candidates who have chosen to run for public office with clean money clean elections including—

(I) the office for which they were candidates;

(II) whether the candidate was an incumbent or a challenger; and

(III) whether the candidate was successful in the candidate's bid for public office; and

(ii) the number of races in which at least one candidate ran an election with clean money clean elections.

(B) EFFECTS OF CLEAN MONEY CLEAN ELECTIONS.—The Comptroller General of the United States shall describe the effects of public financing under the clean money clean elections laws on the 2000 elections in Arizona and Maine.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Congress detailing the results of the study conducted under subsection (b).

Mr. DODD. Mr. President, this is an amendment that has been agreed to by both sides. It is one of these amendments we can move out of the way very quickly. I gather the majority has seen it and approves as well.

Mr. MCCONNELL. We have no objection to it.

Mr. DODD. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 160) was agreed to.

Mr. DODD. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, the next amendment will be by Senator LEVIN and Senator ENSIGN.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 161

Mr. LEVIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration on behalf of myself and Senators ENSIGN, CLINTON, DORGAN, and BEN NELSON.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself, Mr. Ensign, Mrs. CLINTON, Mr. DORGAN, and Mr. NELSON of Nebraska, proposes an amendment numbered 161.

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

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

The amendment is as follows:

(Purpose: To amend the definition of Federal election activity as it applies to State, district, or local committees of political parties)

Beginning on page 3, strike line 12 and all that follows through page 4, line 4, and insert the following:

''(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of 1 or more candidates for State or local office, or individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act. Nothing in this subsection shall prevent a principal campaign committee of a candidate for State or local office from raising and spending funds permitted under applicable State law other than for a Federal election activity that refers to a clearly identified candidate for election to Federal office.

''(2) APPLICABILITY.—

''(A) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the costs of such activity are allocated under regulations prescribed by the Commission as costs that may be paid from funds not subject to the limitations, prohibitions, and reporting requirements of this Act.

''(B) CONDITIONS.—Subparagraph (A) shall only apply if—

''(i) the activity does not refer to a clearly identified candidate for Federal office; and

''(ii) the costs described in subparagraph (A) are paid directly or indirectly from amounts donated in accordance with State law, except that no person (and any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district or local committee of a political party in a calendar year to be used for the costs described in subparagraph (A).

Mr. LEVIN. Mr. President, this amendment will allow the use of some non-Federal dollars by State parties for voter registration and get out the vote, where the contributions are allowed by State law, where there is no reference to Federal candidates, where limited to $10,000 of the contribution which is allowed by State law, and where the allocation between Federal and non-Federal dollars is set by the Federal Election Commission.

This bill that is before us is about limits. We have set limits on contributions by individuals, by PACs, by national parties to State parties. It is all about trying to restore some limits to a law where that law has really been completely subverted in terms of contribution limits by the so-called soft money loophole.

I think it is perfectly appropriate that the bill set limits. The bill has also put some restrictions which are excessive on the use of non-Federal dollars by State parties for voter registration and get out the vote.

I think in our efforts over the last couple weeks we have really done the right thing in establishing the limits that we have. We have focused on trying to restore something which was always intended, which is contribution limits, but we have also, in our review, done some fine tuning. We have done some adjustments.

This amendment provides some fine tuning in an area where State parties are using non-Federal dollars, dollars allowed by State law, for some of the most core activities that State parties are involved in; that is, voter registration and get out the vote.

Now the bill does not restrict State parties when it comes to using non-Federal dollars for things such as salaries and rent and utilities, nor should it. But it does prohibit altogether—unless this amendment is adopted—the use by State parties of non-Federal dollars. These are dollars not raised through any effort on the part of Federal officeholders, Federal candidates, or national parties. These are non-Federal dollars allowed by State law.

The bill, as it is currently written, would prohibit the use of any of those dollars for those core activities of State parties that we all know and call by get out the vote, registration activities, and voter identification.

In this regard, I believe and our cosponsors believe that the bill has gone too far, that we ought to allow State parties using non-Federal dollars, under very clear limits, where there is not an identification of a Federal candidate, where there is a limit as to how much of those contributions they can use, and where the contributions are allowed by State law—that we ought to allow, with the proper Federal match, determined by the Federal Election Commission, State parties to use these non-Federal dollars in some of the most core activities in which State parties are involved.

There is nothing much more basic to State parties than identifying voters who agree with their causes and to try to get those voters to the polls.

That is about as core an effort as you can get. Yet unless we make this modification in the bill, we would tell State parties they can't use the non-Federal dollars in any year where there is a Federal election, which is every other year, for those core activities.

This amendment, I believe, now has the support of the managers of the bill.

They will speak for themselves, of course. But we have worked very hard to make sure there are still some limits. We are not eliminating the limits on this spending, nor should we, because if it is unlimited, we then have a huge loophole again where State parties would become the funnel for the Federal campaign money to be poured into. So we keep reasonable restrictions, but what we do is, we pull back from the total elimination of the use of these non-Federal dollars by State parties for their fundamental basic activity.

Mr. DORGAN. Will the Senator from Michigan yield for a question?

Mr. LEVIN. I am happy to yield.

Mr. DORGAN. I am pleased to support this with Senator LEVIN, Senator CLINTON, and others.

I ask the Senator from Michigan, isn't it the case that, as currently written, a Governor and a mayor could not use non-Federal money to conduct their own activities for get out the vote, for example, in an election in which there might have been a Federal candidate, and would that not be the case?

Mr. LEVIN. The Senator is correct.

Mr. DORGAN. Secondly, there are roughly 160 democracies in the world. I wonder if the Senator knows—I didn't know until a few minutes ago—where we rank in the democracies around the world in voter participation. Before asking whether he knows the right answer, I will say we rank 139th among the democracies in the world in voter participation. It seems to me we ought to encourage in every conceivable way activities that get out the vote, that encourage voter participation. Is it not the case, that is exactly what this amendment does?

Mr. LEVIN. This amendment is aimed at restoring the appropriate use by parties of non-Federal funds which are obtained by those parties in compliance with their own State laws in those very activities which the Senator has identified. These are the fundamental activities in a democracy. We want State parties to be involved in those activities, as the Senator pointed out. We don't want that to become the loophole, however, for unlimited Federal dollars. That is why this amendment is crafted the way it is.

Mr. DORGAN. Finally, if the Senator from Michigan will yield one additional time, let me say the proposal of the Senator from Michigan is a modest one. We could have done more, perhaps should have done more. This represents a compromise, a modest compromise, however. It does the right thing. We don't want to pass campaign finance reform and then produce impediments to those very activities that would encourage voter participation. That would be a step in the wrong direction.

I, again, say how pleased I am at the effort tonight and the sponsorship by Senator LEVIN. I am very proud to be a cosponsor. I am pleased this is going to be accepted.

Mr. LEVIN. I thank Senator DORGAN for his cosponsorship, all of our cosponsors. I acknowledge the principal cosponsorship of the Senator from Nevada. I wasn't going to yield the floor to him, but I was going to acknowledge him as my principal cosponsor. I am happy to yield to the Senator from Connecticut.

Mr. DODD. Let me say to Senator LEVIN and Senator ENSIGN and others, I want to be considered a cosponsor as well, Mr. President. I appreciate the efforts of Senator LEVIN and Senator ENSIGN to work this out. This is an important provision that is going to make a difference. It is done in a very thoughtful way, a very responsible way. I think it adds again to the value of this piece of legislation. I thank our colleagues for their efforts.

Mr. LEVIN. Before I yield the floor, I want to add as a cosponsor Senator HARRY REID and to thank him for the efforts behind the scenes, as is so often true with Senator REID, making things happen in the Senate which otherwise simply would not happen, but doing it in a very self-effacing way, a very critically important way. I thank him as we ask unanimous consent that he be added as a cosponsor, and Senator CORZINE as well.

I yield the floor.

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

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I first thank the Senator from Michigan for the work we have done together. He started this work and I joined him in it some time ago. We had a few differences on the amendment, but we were able to work those out. I thank the managers of the bill for also working with us to make sure we would be able to include this amendment in the bill. It is a very important amendment.

We look at our turnout of voters today, and we see a continual decline each and every year. The people who have brought the underlying bill to the floor are doing it partially because of that decreasing turnout. People out there in America are increasingly turned off from elections because of negative ads. A lot of those negative ads have been funded by some of the independent expenditures as well as some of the soft money that has been run through the parties.

What this bill, I don't think, intended to do, however, was to limit the activities of actually getting people to the polls, of first signing people up to register to vote and then encouraging them to go to the polls.

When I was running against Senator HARRY REID back in 1998, the labor unions put about 300 people on the ground to get out the vote for Senator REID. It was perfectly within their right to do that. This bill would have limited, though, State parties from doing similar activities. We want to encourage more people to go to the polls, not discourage people from going to the polls. Let's face it, if more people are not interested in our government, if they are not participating in this form of government we call a Republic, then our Republic will be doomed. We have to encourage people to go to the polls, and part of that is through the State parties.

This amendment is going to allow State parties to be funded to the point where they will have the resources to be able to get people to the polls on election day because they will be allowed to spend money for voter ID, for voter registration, and then for what is called get-out-the-vote efforts, things that are very important for increasing the number of people who get to the polls.

I thank the Senator from Michigan for working together on this amendment. It is a very important amendment. I also thank Senator MCCONNELL for allowing us to bring this amendment up.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I think it is a good amendment. We should move to final passage, unless there are others who want to speak on it.

The PRESIDING OFFICER. The Senator from New York.

Mrs. CLINTON. Mr. President, I add my words of support and thank Senator LEVIN and the other cosponsors who have worked hard on this matter.

I wish to reiterate the point that, while we are working so hard to reform our campaign finance system, we cannot undermine our ability to reform the way elections are conducted. For all of the reasons Senator LEVIN and Senator ENSIGN and others have pointed out, registering voters, getting voters out to the polls is a critical role of parties. From my perspective, we need to be doing even more to try to promote what parties used to do, which was that kind of grassroots outreach activity.

In reforming the way campaigns are financed, we must not hurt out ability to reform the way elections are conducted. This amendment would ensure that State, district or local committees of a political party would be able to continue to provide vital services to our citizenry during Federal elections, from voter registration activities to assisting individuals in getting out to vote on Election Day.

The 2000 election taught us many things. One of the most important was the significance of having an informed electorate. Too many citizens in the last election were provided with too little information about where and how to vote. Too many citizens experienced unwarranted obstacles to registration and voting. As a result, fewer votes were counted, and in the next election fewer people may turn out to vote.

The solution to these problems cannot be in the province of Government alone. America's political parties must play an important role in helping people register to vote, helping them learn

more about the voting process and helping them turn out at the polls on election day. It is vital to the health of our democratic process. Leading up to an election, both parties provide voters with information on how and where to register to vote. On Election Day, both parties use their resources to drive elderly voters to the polls, provide answers to questions about where and how to vote, and give voters information about where the candidates stand on issues.

In the State of New York over the past 2 years, the State Democratic Party has conducted an intensive voter education drive in predominantly African-American and Latino communities, often our most disenfranchised citizens. This education drive resulted in a surge in voter registration and voter activity in both of these communities throughout the state. Republican parties around the country are also active in voter registration and get out the vote efforts. This type of activity should continue to be supported by our State parties for all elections so that all of our citizens fully participate in our democracy.

Some will claim that this amendment will bring soft money back into federal campaigns. Let me be very clear, this amendment does not bring soft money back into campaigns. Rather, it allows State and local parties to use money that is regulated by States and is capped at $10,000 for single contributions in order to support vital election services. That represents an improvement over the status quo, because under current law there is no national cap on such contributions at the local and State level.

I ask my colleagues to rise in support of an amendment that will ensure that our political parties can continue to use State regulated funds to provide voter education, registration and get out the vote services that we know work. Because helping voters register to vote, helping them to learn how and where to vote, and helping them get out to vote are American values we should encourage, not inhibit.

It is imperative this amendment pass so we are able to make a very clear distinction between the kind of roles and activities that should be conducted by parties and that we look forward to a time when we are going to be able to take up electoral reform with the same intensity that we have taken up campaign finance reform, which will give us a chance to go into more detail as to what our parties could and should be doing in order to promote democracy.

I thank our colleague from North Dakota for pointing out where we stand when it comes to voter participation. I hope all of our colleagues will support the amendment.

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

Mr. DODD. We do.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 161.

The amendment (No. 161) was agreed to.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 162

Mr. DURBIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator COCHRAN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself and Mr. COCHRAN, proposes an amendment numbered 162.

Mr. DURBIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish clarity standards for identification of sponsors in certain election-related advertising)

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

SEC. . CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking 'Whenever' and inserting 'Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever';

(ii) by striking 'an expenditure' and inserting 'a disbursement'; and

(iii) by striking 'direct'; and

(iv) by inserting 'or makes a disbursement for an electioneering communication (as defined in section 304(d)(3))'' after ''public political advertising''

(B) in paragraph (3), by inserting 'and permanent street address, telephone number, or World Wide Web address'' after 'name''; and

(2) by adding at the end the following:

'(c) SPECIFICATION.—Any printed communication described in subsection (a) shall—

'(1) be of sufficient type size to be clearly readable by the recipient of the communication;

'(2) be contained in a printed box set apart from the other contents of the communication; and

'(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

'(d) ADDITIONAL REQUIREMENTS.—

'(1) AUDIO STATEMENT.—

(A) CANDIDATE.—Any communication described in paragraphs (1) or (2) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

'(B) OTHER PERSONS.—Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following statement: 'XXXXXXXX is responsible for the content of this advertising.' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor). If transmitted through television, the statement shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.'.

'(2) TELEVISION.—If a communication described in paragraph (1)(A) is transmitted through television, the communication shall include, in addition to the audio statement under paragraph (1), a written statement that—

'(A) appears at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds; and

'(B) is accompanied by a clearly identifiable photographic or similar image of the candidate.'.

SEC. . SEVERABILITY.

If this amendment or the application of this amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.

Mr. DURBIN. I have given a copy of the amendment to Senator MCCONNELL and I will make copies available to any other Members who would like to read it. The amendment is very straightforward. If I can have just a moment or two, I will describe it for those who are interested.

It is an amendment relating to disclaimers on television and radio ads, as well as in print media. It requires of those electioneering communications—the so-called Snowe-Jeffords ads—that they abide by the same requirements for disclaimer and disclosure as ads for candidates themselves and ads authorized by candidates, and independent express advocacy ads. It requires, when it comes to these ads, that they also show on the screen, for example, not only the name of the organization that is sponsoring the ad, paying for the ad, but also either an address, phone number, or Internet Web site.

I can give a very inspired speech as to why this is necessary. But I think the concept is very basic. It is that we do not want to restrict freedom of expression, nor in fact do we restrict freedom of deception. If somebody wants to put an ad on that is categorically wrong, whether it is a candidate, a party, or any other group, I guess there is an American right to that. But we do, I hope, insist on accountability. At least identify who you are. If you are going to be part of our political process, tell us who you are. That is exactly all this does in terms of disclaimer. Whether it is a candidate, whether an ad authorized by a candidate, or so-called electioneering communication, that is what will happen. It applies to printed communications as well.

For those keeping track, this was part of McCain-Feingold in both the

105th and 106th Congress—a large portion of it was. It is something that many of us believe, and it was adopted by the House, would complement the work we have done thus far in the debate.

Mr. DODD. Mr. President, I commend our colleague from Illinois. This is a very worthwhile amendment. We can all relate to this. We have seen these ads come on and you have to freeze frame it and get a magnifying glass to even read the source, where they are coming from. Usually, it is a name that has no identification other than something that sounds very good and hardly revealing as to who is responsible for it, let alone any address or telephone number that would allow the kind of disclosure that ought to be associated with this kind of advertising.

This is a very commonsensical. I think everybody ought to appreciate the effort. I commend my colleague for offering it. I am happy to be a cosponsor of it and urge its adoption.

Mr. MCCONNELL. Mr. President, the amendment of the Senator from Illinois is a clear violation of the Supreme Court decision of McIntyre v. Ohio Elections Commission, handed down in 1995, in which the Supreme Court made it abundantly clear that you cannot require disclaimers on issue ads.

Having said that, I think everybody knows that the Senator from Kentucky would like to hang as many barnacles as possible on the hull of this bill, and I look forward to having one more argument to make before the courts. Therefore, I have no objection to this being adopted on a voice vote.

Mr. DODD. Who said politics makes strange bedfellows?

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

Mr. DURBIN. I yield back my time.

Mr. MCCONNELL. I yield back my time.

Mr. DURBIN. I urge adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 162) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 163

Mr. DODD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut (Mr. DODD), for himself, Mr. THOMPSON, Mr. LIEBERMAN, Ms. COLLINS, Mr. LEAHY, and Mr. Jeffords, proposes an amendment numbered 163.

Mr. DODD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend the Federal Election Campaign Act of 1971 to enhance criminal penalties for election law violations and for other purposes)

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

SEC. ___. INCREASE IN PENALTIES.

(a) IN GENERAL.—Subparagraph (A) of section 309(d)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(d)(1)(A)) is amended to read as follows:

''(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure—

''(i) aggregating $25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both; or

''(ii) aggregating $2,000 or more (but less than $25,000) during a calendar year shall be fined under such title, or imprisoned for not more than one year, or both.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring on or after the date of enactment of this Act.

SEC. ___. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 406(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 455(a)) is amended by striking ''3'' and inserting ''5''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring on or after the date of enactment of this Act.

SEC. ___. SENTENCING GUIDELINES.

(a) IN GENERAL.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) CONSIDERATIONS.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Government.

(3) Provide a sentencing enhancement for any violation by a person who is a candidate or a high-ranking campaign official for such candidate.

(4) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(5) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(6) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) EFFECTIVE DATE; EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.—

(1) EFFECTIVE DATE.—Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of—

(A) 90 days after the date of enactment of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) EMERGENCY AUTHORITY TO PROMULGATE GUIDELINES.—The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired.

Mr. THOMPSON. Mr. President, I am offering this amendment on behalf of Senator LIEBERMAN, Senator COLLINS, Senator LEAHY, and Senator JEFFORDS. It is designed to strengthen the enforcement of the criminal provisions of the Federal Election Campaign Act.

Four years ago, the Governmental Affairs Committee held hearings on illegal and improper activity in the 1996 presidential campaign. As a result of that investigation, we learned about a wide-ranging effort to circumvent the federal election laws by funneling campaign contributions, sometimes from foreign sources, through American citizens to benefit presidential campaigns.

While I have voiced my concerns about the quality of the Department of Justice's investigation and prosecution of these violators, today I am addressing structural flaws in the statute that make it difficult for the more conscientious prosecutors to adequately pursue their cases. Specifically: FECA fails to provide for felony prosecutions regardless of the severity of the offense. Its three year statute of limitations is too short—for instance, only the administration that wins the election can enforce the law prior to the running of the statute of limitations. Finally, there is no sentencing guideline for FECA violations. Because of these deficiencies in the statute, our amendment would make the following changes.

First, in the 1996 presidential campaign, the Special Investigation of the Governmental Affairs Committee identified at least $2,825,600 in illegal contributions to the DNC. Yet, regardless of the extent to which the laws were broken, all the violations under FECA were still misdemeanors. Our amendment would remedy this problem for the future by authorizing felony prosecutions of FECA violations, but only if (1) the offender committed the existing federal offense ''knowingly and willfully'' and (2) the offense involved more than $25,000.

Second, criminal violations of FECA are the only federal crimes outside of the Internal Revenue Code that have a statute of limitations shorter than 5 years. Our amendment conforms FECA's statute of limitations to those of virtually all other federal crimes.

Third, the Federal Sentencing Guidelines, which govern federal judges' sentencing decisions, do not currently have a guideline specifically directed at campaign finance violations. As a result, judges must use guidelines for other offenses, preventing them from considering factors which should enhance the punishment for FECA violations such as the size of a contribution or its origin. Our amendment would require the Sentencing Commission to promulgate a guideline specifically for violations of FECA and provide for enhancement of sentences if the violation involves (i) a contribution, donation or expenditure from a foreign source; (ii) a large number of illegal transactions; (iii) a large aggregate amount of illegal contributions, donations or expenditures; (iv) the receipt or disbursement of government funds; or (v) an intent to achieve a benefit from the government.

The changes made in this amendment will provide conscientious prosecutors with the tools they need to investigate and prosecute those who violate our campaign finance laws and attack the integrity of our electoral process. For that reason, I urge my colleagues to support this amendment.

Mr. LIEBERMAN. Mr. President, I am pleased to join my colleague from Tennessee in offering this amendment, and I am delighted to be joined by Senators LEAHY, COLLINS and JEFFORDS as cosponsors. Senators THOMPSON, COLLINS and I spent the better part of a year working on the Governmental Affairs Committee's investigation into fundraising improprieties in the 1996 federal election campaigns. That investigation sparked a lot of discussion about whether many things that happened in 1996 were illegal or just wrong—things like big soft money donations, attack ads run by tax-exempt organizations, fundraising in federal buildings and the like.

But one thing I never heard argument about is whether it was illegal to knowingly infuse foreign money into a political campaign or to use unwitting straw donors to hide the true source of money that was going to candidates or parties. I, for one, had no doubt that the people who did those things in 1996 would be prosecuted and appropriately punished.

Unfortunately, Mr. President, many of them were prosecuted, but I have grave doubts about whether they were appropriately punished. I know that there are many who blame the Justice Department for this, but when I first looked into it a couple of years ago, I was frankly surprised by what I learned—and that is that prosecutors just don't have the tools they need to effectively investigate, prosecute and punish people who egregiously violate our campaign finance laws. I think Charles LaBella, the former head of the Justice Department's Campaign Finance Task Force, put it best in a memo he wrote assessing the Department's campaign finance investigation. According to press reports, LaBella wrote that ''The fact is that the so-called enforcement system is nothing more than a bad joke.'' Unfortunately, it's a bad joke that has real consequences for the integrity of our campaigns and our democracy.

Let me give you one example. Many people are understandably upset that Charlie Trie and John Huang didn't go to jail for what they did in '96. But the Federal Election Campaign Act, or FECA, doesn't authorize felony prosecutions. No matter how egregiously someone violates FECA, all they can be charged with is a misdemeanor. And people rarely go to jail for misdemeanors.

To get around FECA's limits, prosecutors often charge campaign finance abusers with other federal crimes that are felonies, which is what they did with Trie and Huang. But that still often doesn't solve the problem. That's because when it comes time for sentencing, judges have to turn to the Federal Sentencing Guidelines, which still often bring light sentences because there is no guideline on campaign finance violations.

The guidelines assign what's called a ''base offense level'' for each crime, and then they give a number of factors that, if present, tell the judge either to increase or decrease the offense level. The higher the offense level, the higher the sentence.

Because the Guidelines don't have a provision on campaign finance violations, judges have to look for the next closest offense, and they often end up using the fraud guideline. But that guideline doesn't take into account the factors that make campaign finance violations so harmful, and the factors that are there often aren't particularly relevant to campaign finance violations. For example, there is nothing in the guideline that makes judges distinguish between a campaign finance violation involving $2,000 and one involving $2,000,000. So, when judges calculate the offense level of a defendant who funneled millions of foreign dollars into a US campaign, they don't end up with a high offense level, meaning that the defendant doesn't get a lengthy sentence. The prosecutors know this and the defendants know this, and that must be one of the reasons why prosecutors accepted plea bargains from John Huang and Charlie Trie—because they knew they wouldn't do much better even if they won convictions at trial.

Our amendment would solve these problems, by putting a felony provision into FECA and by directing the Sentencing Commission to promulgate a campaign finance guideline. If those two things happen, we will have greater confidence that those who violate the law will be appropriately punished.

I understand that some may worry that we are criminalizing participating in the political process. That is neither the intent nor the effect of this amendment. Our amendment would allow felony prosecutions only if, first, the defendant knowingly and willfully violated the law, and second, if the offense involved at least $25,000. So, it would not punish the donor who inadvertently goes over his contribution limits, nor would it go after the Party Committee clerk who makes a record-keeping mistake. Instead, our amendment aims at the opportunistic hustlers who come up with broad conspiracies to violate the election laws usually for personal gain by funneling foreign money into our campaigns or using large numbers of straw donors to hide their identity or make contributions they aren't allowed to make the people everyone says should be going to jail.

Our amendment contains one other provision—one extending FECA's statute of limitations from three to five years. As of now, FECA has the only statute of limitations outside the Internal Revenue Code of less than five years. We need to change that so that prosecutors are denied the time they need to pursue complex crimes.

Mr. President, this amendment is about something that we all should be able to agree upon, which is that actions that are already criminal and that we all agree are wrong should be punished. None of our amendment's provisions should be controversial, and I hope that we can see them enacted into law, so that we can go into the next election cycle with confidence that prosecutors have the tools necessary to deter and to punish those who would violate our election laws. I thank my colleagues, and I yield the floor.

Mr. DODD. Mr. President, I understand this amendment has been cleared by both sides. The amendment enhances the criminal enforcement provisions of the FECA legislation by authorizing felony prosecutions of willful and knowing violations of that law over $25,000, directs the Sentencing Commission to promulgate guidelines on campaign finance violations, and extends the FECA statute of limitations for criminal violations from 3 to 5 years.

Mr. MCCONNELL. Mr. President, I am sure this must be a wonderful idea if it was offered by Senator LIEBERMAN and Senator THOMPSON. Therefore, I am happy for the amendment to be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 163) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. MCCONNELL. I move to lay that on the table.

The motion to table was agreed to.

Mr. DODD. While we are waiting for Senator HATCH, Senator REED from Rhode Island has an amendment he would like to have considered.

AMENDMENT NO. 164

Mr. REED. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. REED] proposes an amendment numbered 164.

Mr. REED. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment reads as follows:

(Purpose: To make amendments regarding the enforcement authority and procedures of the Federal Election Commission)

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

SEC. ___. AUDITS.

(a) RANDOM AUDITS.—Section 311(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended—

(1) by inserting ''(1)'' before ''The Commission''; and

(2) by adding at the end the following:

''(2) RANDOM AUDITS.—

''(A) IN GENERAL.—Notwithstanding paragraph (1), the Commission may conduct random audits and investigations to ensure voluntary compliance with this Act.

''(B) LIMITATION.—The Commission shall not institute an audit or investigation of a candidate's authorized committee under subparagraph (A) until the candidate is no longer an active candidate for the office sought by the candidate in that election cycle.

''(C) APPLICABILITY.—This paragraph does not apply to an authorized committee of a candidate for President or Vice President subject to audit under section 9007 or 9038 of the Internal Revenue Code of 1986.''.

(b) EXTENSION OF PERIOD DURING WHICH CAMPAIGN AUDITS MAY BE BEGUN.—Section 311(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended by striking ''6 months'' and inserting ''12 months''.

SEC. ___. AUTHORITY TO SEEK INJUNCTION.

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

(1) by adding at the end the following:

''(13) AUTHORITY TO SEEK INJUNCTION.—

''(A) IN GENERAL.—If, at any time in a proceeding described in paragraph (1), (2), (3), or (4), the Commission believes that—

''(i) there is a substantial likelihood that a violation of this Act is occurring or is about to occur;

''(ii) the failure to act expeditiously will result in irreparable harm to a party affected by the potential violation;

''(iii) expeditious action will not cause undue harm or prejudice to the interests of others; and

''(iv) the public interest would be best served by the issuance of an injunction;

the Commission may initiate a civil action for a temporary restraining order or a preliminary injunction pending the outcome of the proceedings described in paragraphs (1), (2), (3), and (4).

''(B) VENUE.—An action under subparagraph (A) shall be brought in the United States district court for the district in which the defendant resides, transacts business, or may be found, or in which the violation is occurring, has occurred, or is about to occur.'';

(2) in paragraph (7), by striking ''(5) or (6)'' and inserting ''(5), (6), or (13)''; and

(3) in paragraph (11), by striking ''(6)'' and inserting ''(6) or (13)''.

SEC. ___. INCREASE IN PENALTY FOR KNOWING AND WILLFUL VIOLATIONS.

Section 309(a)(5)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(B)) is amended by striking ''the greater of $10,000 or an amount equal to 200 percent'' and inserting ''the greater of $15,000 or an amount equal to 300 percent''.

SEC. ___. USE OF CANDIDATES' NAMES.

Section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended by striking paragraph (4) and inserting the following:

''(4)(A) The name of each authorized committee shall include the name of the candidate who authorized the committee under paragraph (1).

''(B) A political committee that is not an authorized committee shall not—

''(i) include the name of any candidate in its name, or

''(ii) except in the case of a national, State, or local committee of a political party, use the name of any candidate in any activity on behalf of such committee in such a context as to suggest that the committee is an authorized committee of the candidate or that the use of the candidate's name has been authorized by the candidate.''.

SEC. ___. EXPEDITED PROCEDURES.

Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)), as amended by this Act, is amended by adding at the end the following:

''(14) EXPEDITED PROCEDURE.—

''(A) 60 DAYS PRECEDING AN ELECTION.—If the complaint in a proceeding is filed within 60 days immediately preceding a general election, the Commission may take action described in this paragraph.

''(B) RESOLUTION BEFORE ELECTION.—If the Commission determines, on the basis of facts alleged in the complaint and other facts available to the Commission, that there is clear and convincing evidence that a violation of this Act has occurred, is occurring, or is about to occur and it appears that the requirements for relief stated in clauses (ii), (iii), and (iv) of paragraph (13)(A) are met, the Commission may—

''(i) order expedited proceedings, shortening the time periods for proceedings under paragraphs (1), (2), (3), and (4) as necessary to allow the matter to be resolved in sufficient time before the election to avoid harm or prejudice to the interests of the parties; or

''(ii) if the Commission determines that there is insufficient time to conduct proceedings before the election, immediately seek relief under paragraph (13)(A).

''(C) COMPLAINT WITHOUT MERIT.—If the Commission determines, on the basis of facts alleged in the complaint and other facts available to the Commission, that the complaint is clearly without merit, the Commission may—

''(i) order expedited proceedings, shortening the time periods for proceedings under paragraphs (1), (2), (3), and (4) as necessary to allow the matter to be resolved in sufficient time before the election to avoid harm or prejudice to the interests of the parties; or

''(ii) if the Commission determines that there is insufficient time to conduct proceedings before the election, summarily dismiss the complaint.''.

SEC. ___. AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL ELECTION COMMISSION.

Section 314 of the Federal Election Campaign Act of 1971 (2 U.S.C. 439c) is amended—

(1) by inserting ''(a)'' before ''There'';

(2) in the second sentence—

(A) by striking ''and'' after ''1978,''; and

(B) by striking the period at the end and inserting the following: '', and $80,000,000 (as adjusted under subsection (b)) for each fiscal year beginning after September 30, 2001.''; and

(3) by adding at the end the following:

''(b) The $80,000,000 under subsection (a) shall be increased with respect to each fiscal year based on the increase in the price index determined under section 315(c) for the calendar year in which such fiscal year begins, except that the base period shall be calendar year 2000.''.

SEC. ___. EXPEDITED REFERRALS TO ATTORNEY GENERAL.

Section 309(a)(5) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)) is amended by striking subparagraph (C) and inserting the following:

''(C) The Commission may at any time, by an affirmative vote of at least 4 of its members, refer a possible violation of this Act or chapter 95 or 96 of the Internal Revenue Code of 1986, to the Attorney General of the United States, without regard to any limitation set forth in this section.''.

Mr. REED. Mr. President, I commend Senator MCCAIN and Senator FEINGOLD for their extraordinary efforts over the last several weeks, together with all of our colleagues, in trying to create a system of campaign finance reform that will be truly reflective of elections in the United States—elections about ideas and not just about money flowing in from everywhere.

Their efforts will be for naught if we don't have the adequate enforcement of the laws that we are adopting today and on succeeding days.

My amendment would specifically strengthen the Federal Election Commission, which is the organization that is charged with enforcing all the laws we have been discussing for the last 2 weeks. Observers have called the FEC ''beleaguered,'' a ''toothless watchdog,'' a ''dithering nanny,'' and a ''lapdog,'' indicating that the state of the FEC is rather moribund because they don't have the resources necessary or some of the tools necessary to do the job of effectively enforcing our campaign finance laws.

All of this effort over these several weeks and several years will amount to very little if we don't give the FEC the resources and tools to effectively enforce our campaign finance laws. If we are serious about reform, we need to be serious about giving the FEC these resources.

My amendment is based upon recommendations made by the FEC Commissioners over many years with respect to improving the performance of the FEC. As we all know, the FEC is composed of six Commissioners—three Republicans and three Democrats. These recommendations represent a bipartisan response to the observed inadequacies of the Federal Election Commission. First and foremost, my amendment would reauthorize the Federal Election Commission, which hasn't been technically reauthorized since 1980. It would also increase the authorized appropriations for this Commission. Over the past 2 weeks, we have talked about doubling and tripling money going to candidates. Again, if we are serious about campaign finance reform, we should also talk about increasing the budget of the FEC. Senator THOMPSON mentioned yesterday that the average amount spent by a winning Senate campaign went from approximately $1.2 million in 1980, to $7.2 million in the year 2000.

According to the FEC, total campaign spending has increased 1,000 percent since 1976. Total campaign finance disbursement activity was $300 million in 1976 and exploded to $3.5 billion in the year 2000 election cycle. But the agency responsible for administering these campaign finance laws, the Federal Election Commission, has seen very little increase in their operating budget over these many years. We have had an explosion of activity, we have had an explosion of contributions, but nothing to keep the FEC in league or in sync with this explosion of campaign spending.

Despite all the increased activity, the FEC staff is virtually the same as it was almost 20 years ago. In 1980, the FEC had 270 full-time equivalent staff. In 1998, the level was about 303, a very small increase, and at the same time there has been an explosion of donations, an explosion of reports, and increased in activity.

It is obvious with all of these activities, with all of these transactions that were reported that the FEC needs to do more and needs more resources to do the job it has been commissioned to do. The FEC is expected to review these financial reports. They are expected to enforce the laws, and unless we give them the resources to do that, we are going to be in a very sorry state and, indeed, we are in a very sorry state today. Because of the onslaught of cases before the FEC, it has to prioritize its enforcement work.

It turns out they give certain cases priority status. That means when there is an available attorney, they will put that attorney on the case, but there are so many cases that they eventually become stale. In fact, the FEC had to dismiss about half of its enforcement caseload in fiscal year 1998 and in fiscal year 1999 due to lack of resources. Due to the limited resources they have, they simply cannot keep up with the work. Once again, if we are serious about reform, we should be serious about giving the FEC the resources to do it.

Let me move forward and suggest other aspects of the legislation which is before us today in my amendment. In addition to increasing the resources to meet this obvious need, the amendment would also authorize the Commission to conduct random audits in order to ensure voluntary compliance with the campaign act.

It is based upon the same premise we use with the Internal Revenue Service. The idea that somebody would show up and look at your records encourages you to keep good records and to follow the law. That same principle would be effective with respect to the Federal Election Commission.

In addition to giving authority for random audits, it also would give the Commission the authority to seek an injunction from a Federal judge under specific circumstances.

First, there would have to be a substantial likelihood that a violation of campaign finance laws is occurring or is about to occur. There has to be a showing that the failure to act expeditiously will result in irreparable harm to a party affected by the potential violation, and that expeditious action would not cause undue harm to a party affected by the potential violation, and finally, the public interest would be best served by such an injunction.

I point out that in order to seek such an injunction, the Commission would have to have a majority vote, 4 out of 6, and since there are three Republicans and three Democrats, this process of injunction would necessarily have to include votes from both Republicans and Democrats. I think it is a way to ensure fairness and not abuse this injunctive power.

In addition to providing these aspects, the amendment would do something else. It would also increase the penalties for willful violations and knowing violations of the Federal Election Campaign Act. The violations would be increased from $10,000 to $15,000 or an amount equal to 300 percent of the violation amount, the greater of those two sums.

The amendment also includes a provision that would restrict the misuse of a candidate's name. It would require that a candidate's committee include the name of the candidate, but it also would prohibit the use of that candidate's name by an unauthorized committee or any other committee except the party committee.

This would, I hope, correct a situation in which committees or organizations unrelated to the candidate use the name of the candidate and misuse the name of the candidate.

Also, the amendment would expedite procedures used by the FEC to enforce violations or investigate violations of the Federal Election Campaign Act.

It would also allow an expedited referral to the Attorney General in the case of a perceived criminal violation of the Federal Election Campaign Act. Once again, such a referral would require a majority vote of the Commissioners, so it would be inherently bipartisan and could not be abused by a partisan faction of the Federal Election Commission.

We have for the last several weeks been working diligently, creatively to fashion stronger Federal election campaign laws. But without my amendment, all of our work might be for nought because unless we strengthen the Federal Election Commission, we will not have the enforcement capability to take this legislative design which we have worked over so many days, and make it effective to regulate the campaigns for Federal office in the United States.

I urge adoption of this amendment. I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, Senator REED seeks to reverse a decision taken in 1979. Back in 1979, under pressure from House Democrats, the Democratic-controlled House and Senate passed the amendment, signed into law by a Democratic President, which eliminated random audits.

The catalyst was a large number of audits that were commenced consuming enormous amounts of time and money and done in a manner which was viewed as unfair.

This provision may present the same problem. I say to my friend from Rhode Island, we are going to need to look at it overnight. My inclination is to oppose it, in which case we will need a rollcall vote. At least we can look at it overnight.

It is unclear who authorizes the audits, the six appointed members of the Commission or the general counsel appointed by those members? The period commencing these random audits is extended from 6 months to 12 months. Campaigns will have to wait 1 year before they even know if an audit will begin and if they need to raise additional funds to cover the cost.

There is no time limit for commencing audits of PACs or party committees. The 1979 amendment allowed the Commission to continue audits for cause where the FEC reviews the reports to determine if they meet the threshold for substantial compliance.

After the review, it takes an affirmative vote of four Commissioners to conduct an audit. The only other agency I know that conducts random audits is the IRS, and even they are scaling back.

Practically speaking, an audit by the FEC takes years, costs tens, even hundreds of thousands of dollars in lawyers and accountants. For instance, the audit of the 1996 Republican Convention concluded just months before the 2000 convention.

To carry out this provision, the FEC will have to double or even triple its audit staff. This is wrong for the FEC to review the record before commencing an audit, which precisely will no longer be the case under the Reed amendment.

We will have more to say about it tomorrow. Suffice it to say, I say to my friend from Rhode Island, he gets the drift. I think this is a step in the wrong direction, and I think Members of the Senate need to be apprised of the fact that they may be subjected to these lengthy and costly audits under the Senator's amendment.

Maybe we will wake up and see the light and conclude the amendment of the Senator from Rhode Island is a good idea. In any event, we will have to carry it over until tomorrow.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank my colleague from Rhode Island for bringing this up. These were provisions we proposed as well over the last number of years.

There are very good concepts here. The random audit races issues can be very expensive. If there is no cause for doing it randomly, there is a legitimate concern this can be abused by

those who would like to become a policing action, without any rationale for doing it, other than for the sake of doing it.

I would like to sleep on this and take a look at it and see if we can maybe get some agreement to accept it tomorrow, maybe make some modification; rather than dealing with it this evening, see if the staff can work on it, the majority and the minority, to see if we can come up with a proposal to be accepted before we can bring it up for consideration between 9 o'clock and 11 o'clock in the morning. If the Senator would agree, that would help.

Mr. REED. I have no opposition to working in a purposeful manner.

I reassure the Senator of concerns expressed. First, the random audit would have to be approved by the majority of commissioners. This is not something that would be inherently abusive, since it requires four commissioners, at least one of whom has to be from the opposing party.

In addition, the audits would be subject to strict confidentiality rules and only when the audits are completed would they be published, and not try to insinuate an audit into the newspapers for political campaign purposes.

I do believe this is a good way to reach compliance, and it is something that has been suggested by those people who look closely at the Federal Election Commission.

With respect to the lengthening of the time period for audit, the length is increased from 6 months to 12 months for those audits for cause. I think that is a reasonable amendment to the current practice. I hope it is accepted.

As the Senator from Connecticut and the Senator from Kentucky suggest, I have no opposition to thinking on this overnight and coming back.

Mr. DODD. I thank my colleague.

I have an amendment I may offer tomorrow, but we will have the staff look at it and get their thoughts on it. We have done a lot of work. There are outstanding amendments, including the amendment of Senator REED of Rhode Island, an amendment of Senator HATCH and Senator SPECTER, and one I want to offer tomorrow morning, if necessary, with half an hour equally divided. That will be between 9 o'clock and 11 o'clock and we should be able to wrap this up.

Mr. MCCONNELL. Mr. President, I would like to read into the RECORD excerpts from the cogent analysis of S. 27 that was prepared by James Bopp, Jr., General Counsel of the James Madison Center for Free Speech, entitled ''Analysis of S. 27, 'McCain-Feingold 2001.'''

In this analysis, Mr. Bopp thoroughly demonstrates why this bill violates the free speech and associational rights of individuals, political parties, labor unions, corporations, and ''issue advocacy'' groups.

Mr. Bopp begins his analysis by noting whom S. 27 will hurt—the ''little guy'', as he puts it—and whom it will help, chiefly the wealthy and the news corporations:

McCain-Feingold 2001 is a broad-based and pernicious attack on the rights of average citizens to participate in the democratic process, thereby enhancing the power of already powerful wealthy individuals, millionaire candidates, and large news corporations—the archetypal story of big guys enhancing their power to dominate the little guy.

McCain-Feingold 2001 is a major assault on the average citizen's ability to participate in the political process because it targets and imposes severe restrictions on two key citizen groups, which serve as the only effective vehicles through which average citizens may pool their money to express themselves effectively: issue advocacy groups and political parties. However, McCain-Feingold 2001 leaves wealthy individuals and candidates and powerful news corporations unscathed, thereby enhancing their relative power in the marketplace of ideas.

Both issue advocacy groups and political parties are private organizations that provide a vehicle for average citizens to effectively participate in the political process by pooling their resources to enhance their individual voices. These organizations participate broadly in our democratic process by advocating issues of public concern, lobbying for legislation, and directly promoting the election of candidates.

Issue advocacy groups and political parties enhance individual efforts by association. One individual of average means can accomplish little alone in the public arena, but thousands of average citizens who pool their resources with like-minded individuals can accomplish great things by working together. The right to associate, therefore, is so fundamental to our democratic Republic and the ability of average citizens to affect public policy so important that the United States Supreme Court has recognized it as a fundamental right with powerful constitutional protection.

Furthermore, political parties are not just about electing candidates, particularly federal ones. Political parties constitute a vital way by which citizens come together around issues and values expressed in the planks of their party platforms—at all levels of government. Parties advocate these issues in the public forum in addition to lobbying for legislation and engaging in efforts to elect candidates. Parties are just as focused on the promotion of issues as are ideological corporations, such as the National Right to Life Committee or The Christian Coalition of America, and labor unions, such as the American Federation of Labor and Congress of Industrial Organizations, although with a broader spectrum of issues. McCain-Feingold 2001 ignores this reality and treats political parties as simply federal candidate election machines.

McCain-Feingold 2001 attacks the abilities of ordinary citizens to participate in the political process in two ways: (1) by focusing restrictive efforts on issue advocacy corporations, labor unions, and political parties—three organizations vital to the ability of average citizens to pool their resources to make their opinions heard, and (2) by imposing sweeping restrictions that reach broadly beyond direct participation in elections to restrict issue advocacy (limiting discussion of issues of public concern, the views of candidates on issues, and grassroots lobbying for favored legislation).

If McCain-Feingold 2001 succeeds, the influence of the average citizen would be drastically reduced because association with like-minded individuals is essential to effective participation in the public policy arena. With the little guys locked in the dungeon of nonparticipation, the rich and powerful will run politics, much as they did before the first and foremost campaign reform adopted by our Nation, the First Amendment, which protects the right of association and demands that ''Congress . . . make no law . . . abridging the freedom of speech''—especially speech about those in power and on the critical issues of the day.

Campaign finance ''reform'' proposals, notably McCain-Feingold 2001, do not, and could not, eliminate the power of the giant news media corporations, which are protected by the First Amendment from regulation of editorial content and news coverage. Neither may the wealthy be prohibited from spending their own money—either to express their views on public issues and candidates or to advocate their own election. But the wealthy don't need to pool their resources to be effective, they have all the money they need to pay for communications about the issues they care about. Furthermore, millionaire candidates remain unaffected by proposed campaign ''reforms'' because they need not rely on contributions from others—they can spend their own money to campaign—and officeholders of all stripes have the incredible power of incumbency to support their candidacy. Thus, campaign finance ''reform,'' as proposed by McCain-Feingold 2001, strips power from the People and gives it to the already wealthy and powerful.

So there are winners and losers under McCain-Feingold 2001. The losers are citizens of average means, citizens groups, advocacy organizations, labor unions, and political parties. The winners are the wealthy, major news corporations, and incumbent politicians. It is small wonder then that the wealthiest foundations and individuals are prime supporters of so-called campaign finance ''reform,'' that the mainstream media is the primary cheerleader for it, and that incumbent politicians are so attracted to it.

But in our Republic, founded by the People for the People, the right of the People to speak out on the most critical issues of the day in the political arena through issue advocacy and the right of the people to come together to pool their resources through associations may not be infringed without violating the Constitution. The United States Supreme Court and other federal courts have been stalwart in defense of the citizens' rights of free speech and association. Be assured that if these unconstitutional measures pass, we stand ready to promptly challenge them in the courts with a high probability of success.

Mr. Bopp then goes on to layout the general principles that the Supreme Court has set forth for analyzing government restrictions on political speech and political association. He states that:

''Many of the so-called reforms floating around Washington are in fact nothing more than incumbent protection acts. Many politicians feel threatened by negative advertisements and want to control what is said during campaigns.'' Others want to reduce spending on campaigns.

Chief among these proposals is McCain-Feingold 2001, the self-styled ''Bipartisan Campaign Reform Act of 2001'' (S. 27), sponsored principally by Senators John McCain and Russell Feingold. Though announced with the promise of reducing the corrupting influence of big money, McCain-Feingold 2001 is instead a broad attack on citizen participation in our democratic Republic. This bill shakes a fist at the First Amendment; if passed, it is destined for a court-ordered funeral. The most egregious provisions and their infirmities are discussed below.

As noted in the introduction, average citizens must pool their resources to have an effect in the political sphere of issue advocacy,

lobbying, and electoral activity. The wealthy and powerful have no such need. So ordinary people band together in ideological corporations, labor unions, and political parties to amplify their voices. This right to associate is a bedrock principle of our democratic Republic, powerfully protected by the U.S. Constitution. McCain-Feingold 2001, however, would suppress this ability, along with the foundational constitutional right to free speech.

It should be noted at the outset of this analysis that political speech and association are at the heart of the First Amendment protections. As the United States Supreme Court has declared, ''the constitutional guarantee [of the First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office.'' Free expression in connection with elections is no second-class citizen, rather political expression is ''at the core of our electoral process and of the First Amendment freedoms.'' Thus, ''there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates.''

Furthermore, the fundamental right of association was well articulated by the United States Supreme Court in the case of NAACP v. Alabama, when the Court reviewed a suit against the National Association for the Advancement of Colored People brought by the State of Alabama seeking disclosure of all its members.

The unanimous U.S. Supreme Court strongly affirmed the constitutional protection for the freedom of association:

''Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom in association for the advancement of beliefs and ideas is an inseparable aspect of the ''liberty'' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.''

Thus, the Court held that ''[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs,'' and it, therefore, protected the identity of members of the NAACP form disclosure.

In Buckley v. Valeo, the Supreme Court reaffirmed the constitutional protection for association. '[E]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association. [Consequently,] the First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas.' The Court then noted that 'action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.' This highest level of constitutional protection, of course, flows from the essential function of associations in allowing effective participation in our democratic Republic. Organizations, from political action committees ('PACs') to ideological corporations to labor unions to political parties, exist to permit 'amplified individual speech.'

Mr. President, Mr. Bopp next explains how S. 27 unconstitutionally prohibits and restricts the abilities of outside groups to exercise their rights to freedom of speech and of association. He first discusses how the bill's ''electioneering communication'' standard sweeps in issue speech and then shows how that standard violates Supreme Court precedent:

McCain-Feingold 2001 prohibits political participation by citizens of average means by broadly defining 'electioneering communication' so that issue advocacy expenditures currently permitted become forbidden under federal law for corporations and labor unions.

McCain-Feingold 2001 restricts the issue advocacy of ideological, nonprofit corporations and labor unions by first defining 'electioneering communication' to include issue advocacy, i.e., 'any broadcast, cable, or satellite communication' to 'members of the electorate' that 'refers to a clearly identified [federal] candidate' 'within 60 days before a general . . . election (30 days before primaries),' and then adding it to the list of prohibited activities by corporations and labor unions.

The broad definition of 'electioneering communication' plainly sweeps in and prohibits a wide variety of issue advocacy communications traditionally engaged in by such organizations. First, Congress is often in session within 60 days before a general election and 30 days before a primary. As a result, grass-roots lobbying regarding a bill to be voted on during this 60 period would be prohibited if the broadcast communication named a candidate by referring to the bill in question ('the McCain-Feingold bill') or by asking a constituent to lobby their Congressman or Senator.

With corporations and labor unions prohibited from making such communications, McCain-Feingold 2001 then requires those that may still do so, individuals and PACs, that spend over $10,000 per year, to file reports with the FEC. Among other things, the reports must list every disbursement over $200 and to whom it was made, the candidate(s) to be identified, and the identity of all contributors aggregating $1,000 or more during the year. The $10,000 triggering expenditure occurs when a contract is made to disburse the funds, which might be months in advance—allowing ample time for incumbent politicians, who object to the general public being informed of their voting record or positions on issues, to attempt to discourage the broadcast medium, or to intimidate the person or PAC paying for the ad, from actually running the ad.

In sum, the issue advocacy communications of nonprofit corporations and labor unions, are treated like express advocacy communications and organizations doing such issue advocacy are treated like PACs. However, as seen next, there is no constitutional warrant for Congress to regulate issue advocacy or the organizations that primarily engage in it. Period.

To protect First Amendment freedom, the Supreme Court has created a bright line between permitted and proscribed regulation of political speech. Government may only regulate a communication that 'expressly advocates the election or defeat of a clearly identified candidate' ('express advocacy'), by 'explicit words' or 'in express terms,' such as 'vote for,' 'support,' or 'defeat.' Election-related speech that discusses candidates' views on issues is known by the legal term of art 'issue advocacy.' Although issue advocacy undoubtedly influences elections, it is absolutely protected from regulation—even if done by corporations, labor unions, or political parties.

Although the First Amendment says that 'Congress shall make no law . . . abridging the freedom of speech', the 'reformers,' and the incumbent politicians that their efforts would protect, have refused to take ''no'' as an answer. But the federal courts have consistently enforced the First Amendment against all attempts to regulate issue advocacy.

The Supreme Court has recognized that the freedom of speech is both an inherent liberty and a necessary instrument for limited representative government. The Court observed that '[i]n a republic where the people[, not their legislators,] are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those elected will inevitably shape the course that we follow as a nation.' As a result, 'it can hardly be doubted that the constitutional guarantee [of the freedom of speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.'

The seminal case is the 1976 decision of Buckley v. Valeo, where the Supreme Court was faced with constitutional questions regarding the post-Watergate amendments to the Federal Election Campaign Act ('FECA')—which was by far the most comprehensive attempt to regulate election-related communications and spending to date. One of the more nettlesome problems with which the Court struggled was the question of what speech could be constitutionally subject to government regulation. The post-Watergate FECA was written broadly, subjecting any speech to regulation that was made 'relative to a clearly identified candidate' or 'for the purpose of . . . influencing' the nomination or election of candidates for public office.

In considering this question, the Court recognized that the difference between issue and candidate advocacy often dissipated in the real world:

''[T]he distinction between discussion of issues and candidates and advocacy of the election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.''

Thus, the Court was faced with a dilemma whether to allow regulation of issue advocacy because it might influence an election or to protect issue advocacy because it is vital to the conduct of our representative democracy, even though it would influence elections.

The Court resolved this dilemma decisively in favor of protection of issue advocacy. First, the Court recognized that 'a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs . . . of course includ[ing] discussions of candidates.' Thus, the Court concluded that issue advocacy was constitutionally sacrosanct:

''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 for the bringing about of political and social changes desired by the people.'''

Second, in order to provide this broad protection to issue advocacy, the Court adopted the bright-line 'express advocacy' test which limited government regulation to only those communications which 'expressly advocate the election or defeat of a clearly identified

candidate,' in 'explicit words' or by 'express terms.' In so doing, the Court narrowed the reach of the FECA's disclosure provisions to cover only 'express advocacy.' A decade later, the Court reaffirmed the express advocacy standard and applied it to the ban on corporate and labor union contributions and expenditures in connection with federal elections.

Finally, not even the interest in preventing actual or apparent corruption of candidates, which was found sufficiently compelling to justify contribution limits, was deemed adequate to regulate issue advocacy. The Court rejected this interest even though it recognized that issue advocacy could potentially be abused to obtain improper benefits from candidates.

In adopting a test that focused on the words actually spoken by the speaker, the Court expressly rejected the argument that the test should focus on the intent of the speaker or whether the effect of the message would be to influence an election:

''[W]hether words intended and designed to fall short of invitation [to vote for or against a candidate] would miss the mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

''Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.''

Some 'reformers' claim that the Court was not sufficiently farsighted to see the effect that issue advocacy would eventually have in influencing elections and, if we only bring this to their attention, then the Court will allow government regulation of it. However, the Court made clear that it was not so naive:

''Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, as well as more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.''

As a result, the Court explicitly endorsed the use of issue advocacy to influence elections:

''So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views.''

The several lower federal courts and state courts that have been faced with restrictions on issue advocacy have faithfully adhered to the 'explicit' or 'express' words of advocacy test according to its plain terms.

For example, in Michigan, the Secretary of State promulgated a rule that banned corporate and labor union communications made within 45 days of an election that merely contained the 'name or likeness of a candidate.' Two traditional adversaries, Right To Life of Michigan and Planned Parenthood, challenged the rule in separate federal courts and had the rule declared unconstitutional. Consequently, if passed, McCain-Feingold 2001's materially identical 'electioneering communication' definition is dead on arrival in the federal courts.

The weight of authority is indeed heavy; the express advocacy test means exactly what it says. Campaign finance statutes regulating more than explicit words of advocacy of the election or defeat of clearly identified candidates are 'impermissibly broad' under the First Amendment.''

Mr. President, Mr. Bopp then notes that while S. 27 has an exception for not-for-profit corporations so that they would not be banned from engaging in core political speech, issue advocacy, the price that the bill extorts from these groups from doing so—the disclosure of confidential donor information—is unconstitutional. I will quote Mr. Bopp's analysis of this part of S. 27, Mr. President, but I should note that because this body has adopted Senator WELLSTONE's amendment to this bill, not-for-profit corporations now cannot engage in issue advocacy at all within 60 days of an election, even if they divulge to the federal government their confidential donor information. Mr. Bopp observes that:

McCain-Feingold 2001 makes a very minor exception for nonprofits that (1) permits expenditures for ''electioneering communication,'' (2) applies only to those organizations tax exempt under §§501(c)(4) or 527 of the Internal Revenue Code, and (3) applies only if they are made by a quasi-PAC established by the corporation, to which contributions can only be made by individuals and with respect to which all receipts and disbursements must be reported.

The first thing to be noted about this minor exception is that it only applies to 501(c)(4) and 527 organizations. That means all other nonprofits are excluded from engaging in issue advocacy for a couple of months before an election, including 501(c)(3)s, veterans groups, trade associations, and labor unions.

Furthermore, this quasi-PAC is required to report all of its contributors of $1,000 or more. This is a very substantial burden because it exposes contributors to harassment and intimidation by ideological foes. The United States Supreme Court in Buckley held that such burdens could not be applied to issue-oriented groups, as McCain-Feingold 2001 does, because disclosure of private associations is an unconstitutional burden.''

Next, Mr. President, Mr. Bopp explains how the ''coordination'' provisions of McCain-Feingold effectively prohibits persons from exercising their First Amendment right to petition the government for redress of grievances, as well as their free speech and associational rights. Mr. Bopp notes that:

McCain-Feingold 2001 also prohibits corporations and labor unions for funding any ''coordinated activity.'' ''Coordinated activity'' is so broadly defined and uses such vague terms that it would ban nearly everything of any conceivable value to a candidate by converting it into a forbidden ''contribution.''

''Coordinated activity'' is ''anything of value provided by a person [including corporations and labor unions] in connection with a Federal candidate's election who is or previously has been within the same election cycle acting in coordination with that candidate . . . (regardless of whether the value being provided is in the form of a communication that expressly advocates a vote for or against a candidate).'' Thus, there are two key concepts to this prohibition: (1) ''anything of value'' and (2) ''coordination.''

Mr. Bopp first discusses why ''anything of value'' is both vague and broad, and he then explains why a ''coordinated activity'' is also extremely sweeping:

A ''coordinated activity'' includes ''anything of value provided by a person in connection with a Federal candidates' election.'' ''Anything of value'' is breathtakingly broad and vague and any such thing is subject to being coordinated. It provides no limit or notice to organizations subject to civil and criminal sanctions for coordinating it with a candidate.

Furthermore, with respect to communications, it is not limited to express advocacy and thus clearly encompasses issue advocacy by an organization. While the courts are currently divided on whether a coordinated communication must contain express advocacy to be subject to regulation or prohibition, no court has suggested that any and all communications are so subject.

Under current law, coordination between a candidate and a citizen group exists only when there is actually prior communication about a specific expenditure for a specific project that effectively puts the expenditure under the candidate's control or is made based on information provided by the candidate about the candidate's needs or plans. However, McCain-Feingold 2001 expands ''coordination'' to include, inter alia, mere discussion of a candidate's ''message'' any time during ''the same election cycle,'' i.e., a two-year period or, perhaps, a four-year period, if it relates to a President, or a six-year period if it relates to a Senator.

For example, if an incorporated ideological organization praised Sen. McCain for his work on campaign finance ''reform'' early in a session of Congress and worked with him on promoting such ''reform'' legislation, then ''coordination'' would be established and anything of value to Sen. McCain's candidacy would be deemed coordinated, would be a contribution to his campaign, and would be illegal because corporations cannot make contributions to candidates.

However, the very notion that American citizens should be punished for communicating, or even working, with their elected officials on a wide range of public issues important to the official and his constituency by having any subsequent efforts to praise the candidate's issue position or to support the candidate in his or her campaign considered a coordinated activity is repugnant to our constitutional scheme of participatory government in a democratic Republic run by and answerable to the People. In a conceptually related context, in Clifton v. FEC, the First Circuit struck down the FEC's voter guide regulations which prohibited any oral communications with candidates in preparation of voter guides. The court held that this rule is ''patently offensive to the First Amendment'' and that it is ''beyond reasonable belief that, to prevent corruption or illicit coordination, the government could prohibit voluntary discussions between citizens and their legislators and candidates on public issues.''

And coordination would also be presumed, under McCain-Feingold 2001, if the ideological corporation used the same vendor of ''professional services,'' including ''polling, media advice, fundraising, campaign research, political advice, or direct mail services (except for mailhouse services)'' if the vendor had worked for a candidate and if the vendor is retained to do work related to that candidate's election. Under this scheme, a vendor's decision to do work for a candidate could unilaterally lock an ideological corporation out of otherwise permitted issue advocacy at election time. And even if the corporation has a connected PAC, the PAC would be prohibited from making an independent expenditures of more than $5,000,

since that expenditure would also be deemed to be a contribution.

This presumption is also fatally infirm as coordination must be proven. In Colorado Republican Federal Campaign Comm. v. FEC, the FEC took the position that party expenditures were presumed to be coordinated with their candidates as a matter of law. The Supreme Court rejected this view: ''An agency's simply calling an independent expenditure a 'coordinated expenditure' cannot (for constitutional purposes) make it one. . . . [T]he government cannot foreclose the exercise of constitutional rights by mere labels.'' The Court held that there must be ''actual coordination as a matter of fact.'' Congress, therefore, cannot merely recite some factual scenarios wherein it might be possible, or even probable, that coordination with candidates takes place and then presume as a matter of law that it has occurred in such instances. To do so, would allow the government to drastically curtail independent expenditures by mere labels, which cannot be constitutionally limited.

Finally, McCain-Feingold finds ''coordination'' if there is any ''general understanding'' with the candidate about the expenditure. This general catchall goes way beyond the narrow understanding that the courts have on what ''coordination'' is. Consistent with other federal courts, the District Court in FEC v. Christian Coalition held that a communication

''becomes 'coordinated' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) Contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) 'volume' (e.g., number of copies of printed materials or frequency of media spots). 'Substantial discussion' or 'negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.''

This is a far cry from a 'general understanding.'

Mr. President, at this point in Mr. Bopp's analysis, he explains that the citizenry needs a bright line not only to protect them from prosecution, but to protect them from a punitive investigation simply because they exercised their First Amendment rights.

While it may be theoretically possible to do issue advocacy without running afoul of it being a prohibited 'electioneering communication' or 'coordinated activity,' only the reckless, foolish, or wealthy and powerful are likely to try. Particularly in Washington, D.C., the punishment is in the process. Any organization that does something that could be deemed of value to a candidate can expect to be the subject of an FEC complaint and investigation to ferret out whether the activity was 'coordinated.' Thus, publicly praising an officeholder for her vote on a bill invites investigation by the FEC. Daring to tell constituents to get an incumbent to change his position on an upcoming vote could provoke an FEC investigation. This is the world of ubiquitous FEC investigations that all advocacy groups can expect.

And these 'mere' investigations themselves violate the First Amendment. As the U.S. Supreme Court explained when Congress was busy investigating Communist influence in the 1940's and 50's, '[t]he mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of government interference' with First Amendment freedoms.

Mr. President, Mr. Bopp then notes another major impediment to individuals and citizens' groups exercising their First Amendment rights, and that is how the bill's coordination provisions interplay with contribution limits. He notes that ''[f]or any individual, and for any organization that can actually do a 'coordinate activity,' which seems to be only a federal PAC, the 'coordinated activity' would be limited by contribution limits. So a substantial amount of traditional 'independent expenditures' by PACs are now swept under the control of McCain-Feingold 2001 and limited because a multi-candidate PAC can only make a contribution of $5,000 per election to a candidate.''

Of course, Mr. President, this is only part of the story. As Mr. Bopp explains, S. 27 also violates the free speech and associational rights of our political parties in its effort to regulate non-federal money. Specifically, he states that ''[i]n its effort to regulate 'soft money,' McCain-Feingold 2001 has two dramatic adverse effects on political party activity: (1) it imposes federal election law limits on the state and local activities of national political parties, and (2) it dramatically limits the issue advocacy, legislative, and organizational activities of political parties. But first it is important to recall the U.S. Supreme Court's comment that '[w]e are not aware of any special dangers of corruption associated with political parties. . . .' Political parties are merely the People associating with others who share their values to advance issues, legislation, and candidates that further those values. When they do these things, they are just doing their historic job as good citizens. The notion that they are somehow corrupt for doing so is both strange and constitutionally infirm.''

Mr. President, Mr. Bopp next notes that this bill federalizes state and local parties and totally federalizes national parties, which engage in a multitude of activities besides federal elections. He observes that ''[a]lthough national parties care about local, state, and federal elections, they are treated by McCain-Feingold 2001 as if they only care about federal elections. As to state and local political parties, if there is a federal candidate on the ballot, they too are treated as if only the federal candidate matters. In short, McCain-Feingold 2001 federalizes the state and local election activities of national, state, and local political parties.''

Mr. Bopp then explains how this federalization occurs: ''As to national political parties, this happens as a result of the total ban on national political parties receiving 'soft money.' This happens to state and local political parties as a result of the definition of 'federal election activity,' which governs political party expenditures if any federal candidate is on the general election ballot, and which includes 'voter registration' during the 120 days before an election, 'voter identification, get-out-the-vote activity, or [any activity promoting a political party].' Therefore, if state and local political parties do 'federal election activity,' they must use 'hard money,' i.e., money subject to FECA restrictions, for such activity if a federal candidate is on the ballot. These activities are traditional activities that state and local parties have always done and the national political parties have supported. The fact that there is a federal candidate on the ballot, along with the state and local candidates for whom state and local parties have the greater concern, does not justify federalizing and limiting these activities.''

Mr. Bopp concludes his analysis of S. 27 by explaining the constitutional problem with the bill's prohibition on the parties' use of non-federal dollars to engage in issue discussion. He first notes that under the bill '' 'federal election activity' includes 'a public communication that refers to a clearly identified [federal] candidate . . . and that promotes or supports a candidate or opposes a candidate . . . (regardless of whether the communication expressly advocates a vote for or against a candidate) . . .' Presently, political parties, like any other entity, may receive and spend an unlimited amount of money on issue advocacy. McCain-Feingold 2001 would virtually eliminate this basic constitutional freedom for national political parties, by prohibiting the receipt of all 'soft money,' and severely limit it for state and local political parties, by requiring only hard money to be used if a federal candidate is involved. Because McCain-Feingold 2001 prohibits the raising of 'soft money' by national political parties, they have no such money available for issue advocacy, legislative, and organizational activities. It treats political parties as if they were just federal-candidate election machines. As a result, McCain-Feingold 2001 has effectively amputated these other important, historical activities of political parties.''

Mr. President, the constitutional problems with such restrictions on parties are explained in detail by Mr. Bopp as follows:

[T]hese 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'etre. '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.

If individuals and narrow interest groups enjoy the basic First Amendment freedom to discuss issues and the position of candidates on those issues, how can political parties, which have wide bases of interests that are necessarily tempered and diffused, be deprived of the right to engage in such issue advocacy?

However, proponents of abolishing 'soft money' argue that this is simply a 'contribution limit.' The fallacy of that argument, of

course, is that the Supreme Court has justified contribution limits only on the ground that large contributions create the reality or appearance of quid pro quo corruption, which, as discussed above, cannot justify a limit on issue advocacy.

Furthermore, the proposed ban on soft money contributions cannot be justified on the theory that political parties corrupt federal candidates, which the Supreme Court has already rejected. In Colorado Republican, the FEC took the position that independent, uncoordinated expenditures by political parties ought to be treated as contributions to the benefitted candidate. Such treatment would have resulted in allowing individuals, candidates, and political action committees to spend unlimited amounts of money on independent expenditures to advocate the election of a candidate, while limiting the amount a political party could spend for the same purpose.

The Supreme Court disagreed with the FEC, noting that '[w]e are not aware of any special dangers of corruption associated with political parties'' and, after observing that individuals could contribute more money to political parties ($20,000) than to candidates ($1,000) and PACs ($5,000) and that the ''FECA permits unregulated 'soft money' contributions to a party for certain activities,' the Court concluded that the 'opportunity for corruption posed by these greater opportunities for contributions is, at best, attenuated.' The Court continued in this vein with respect to the FEC's proposed ban on political party independent expenditures, which has direct application to McCain-Feingold 2001's ban on soft money contributions:

''[R]ather than indicating a special fear of the corruptive influence of political parties, the legislative history [of the Act] demonstrates Congress' general desire to enhance what was seen as an important and legitimate role for political parties in American elections. . . .

''We therefore believe that this Court's prior case law controls the outcome here. We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties.''

The concurring justices also found little, if any, opportunity for party corruption of candidates because of their very nature and structure.

The Supreme Court echoed the same theme with respect to the independent expenditures of political action committees:

''The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view.''

If this is true of PACs, then a fortiori there can be no corruption or appearance of corruption resulting from issue advocacy by political parties.

In addition, the Supreme Court in MCFL provided further guidance on whether the threat of corruption is posed by an organization such as a political party. The Court considered the ban on independent expenditures by corporations under 2 U.S.C. §441b. The MCFL Court evaluated whether there was any risk of corruption with regard to an MCFL-type organization that would justify such a ban on its political speech. While MCFL considered whether an ideological corporation was sufficiently like a business corporation to justify the ban on using corporate dollars for independent expenditures, there are several transferable concepts to evaluating the threat of corruption posed by a political party.

The concern raised by the FEC in MCFL was that §441b served to prevent corruption by 'prevent[ing] an organization from using an individual's money for purposes that the individual may not support.' The Court found that '[t]his rationale for regulation is not compelling with respect' to MCFL-type organizations because '[i]ndividuals who contribute to [an MCFL-type organization] are fully aware of its political purposes, and in fact contribute precisely because they support those purposes.' '[I]ndividuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction.' 'Finally, a contributor dissatisfied with how funds are used can simply stop contributing.' Thus, the Court held that the prohibitions on corporate contributions and expenditures in §441b could not be constitutionally applied to non-profit ideological corporations which do not serve as a conduit for business corporation contributions.

Political parties similarly pose no risk of corruption because people give money to parties precisely because they support what the political party stands for. A contribution to a political party is for the purpose of enhancing advocacy of the issues the party represents. Any individual unhappy with the use of the money may simply quit contributing and leave the political party. In sum, the threat of corruption cannot justify a limit on issue advocacy and, even if it could, political parties pose no threat of corruption to their candidates.

Finally, the Supreme Court also found that, just as independent expenditures of interest groups pose no danger of corrupting candidates, neither do those of political parties. And while no one disputes that expenditures on express advocacy actually coordinated with candidates are properly contributions to the candidate because of the possibility of quid pro quo corruption, the Court held that coordination must be proven as a matter of fact; it cannot be presumed. 'Reforms' may not presume coordination where it does not actually exist.

Thus, there is no justification, in either policy or law, for the severe limits on national, state, and local political parties that McCain-Feingold 2001 imposes.

Thus, Mr. President, Mr. Bopp has thoroughly shown the myriad of constitutional problems from which this bill suffers, and I am confident that the Supreme Court will ultimately validate his analysis.

Mr. President, I ask unanimous consent to have printed in the RECORD, the letter authored by Laura Murphy, Director of the Washington, D.C. office of the American Civil Liberties Union and Professor Joel Gora of the Brooklyn Law School. In this letter, Ms. Murphy and Professor Gora analyze S. 27, ''The Bipartisan Campaign Reform Act of 2001'' and thoroughly discuss its many constitutional infirmities.

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

AMERICAN CIVIL LIBERTIES UNION,
WASHINGTON NATIONAL OFFICE,
Washington, DC, March 20, 2001.

DEAR SENATOR: The McCain-Feingold bill, also misnamed as ''The Bipartisan Campaign Finance Reform Act of 2001'' (S. 27) is a destructive distraction from the serious business of meaningful campaign finance reform. Meaningful campaign finance reform would develop comprehensive programs for providing public resources, benefits and support for all qualified federal political candidates. Since 25 years of experience have shown that limits on political funding simply won't work, constitutionally or practically, it is time to seek a more First Amendment-friendly way to expand political opportunity. Public financing for all qualified candidates is an option that provides the necessary support for candidacies without the imposition of burdensome and unconstitutional limits and restraints. The ACLU has long argued for this, but instead we must use our time today to condemn the ill-conceived iterations of McCain-Feingold that are non-remedies to our national campaign finance woes and are wholly at odds with the essence of the First Amendment.

Simply put, the McCain-Feingold bill is a recipe for political repression because it egregiously violates longstanding free speech rights in several ways: It stifles issue advocacy in violation of the First Amendment; it criminalizes any constitutionally-protected contact that groups and individuals may have with candidates (through bans on so-called ''coordination''); and it virtually destroys political parties in an unconstitutional fashion.

I. S. 27 ERODES ROBUST CITIZEN SPEECH PRIOR TO ELECTIONS

As Virginia Woolf stated, ''If we don't believe in freedom of expression for people we despise, we don't believe in it at all.'' Clearly, the authors and supporters of McCain-Feingold despise any form of issue advocacy that has the audacity to mention candidates for federal office by name. The bill virtually silences issue advocacy (redefined as ''electioneering communications'') in three ways:

Section 201 requires accelerated and expanded disclosure of the funding of issue advocacy.

Section 202 effectively criminalizes issue advocacy as a prohibited contribution if it is ''coordinated'' in the loosest sense of that term with a federal candidate.

Section 203 bans issue advocacy completely if it is sponsored by a labor union, a corporation (including such non-profit corporations organized to advance a particular cause like the ACLU or the National Right to Life Committee or Planned Parenthood, unless they are willing to obey the government's stringent new rules) or other similar organized entity. Even an individual who receives financial support—from prohibited contributors such as corporations, unions or wealthy individuals—is also barred from engaging in ''electioneering communications.''

The bill would impose these limitations on communications about issues regardless of whether the communication ''expressly advocates'' the election or defeat of a particular candidate. Nor is there any requirement of even showing a partisan purpose or intent. Instead, during 60 days before a primary or 30 days before a general election, any such communication is subject to the new controls simply by identifying any person who is a federal candidate, which will usually be an incumbent politician.

These restraints and punishments are triggered by the making of any ''broadcast, cable, or satellite communication'' which ''refers to a clearly identified candidate for Federal office'' within 60 days of a general or runoff election or 30 days of a primary election or convention, ''made to an audience that includes members of the electorate'' for such election or convention. This distinction between broadcast, cable and satellite from

those communications through other media bears no relevance to the only recognized justification for campaign finance limitations or prohibitions, namely, the concern with corruption. Suppressing speech in one medium while permitting it in another is not a lesser form of censorship, just a different form.

A. THESE ISSUE ADVOCACY RESTRICTIONS WOULD HAVE ADVERSE, REAL-LIFE CONSEQUENCES

Had these provisions been law during the 2000 elections, for example, they would have effectively silenced messages from issue organizations across the entire political spectrum. The NAACP ads—financed by a sole anonymous donor—vigorously highlighting Governor Bush's failure to endorse hate crimes legislation—is a classic example of robust and uninhibited public debate about the qualifications and actions of political officials. By the same token, last Spring, when New York Mayor Rudy Giuliani was a candidate for the United States Senate, any broadcast criticism of his record on police brutality as mayor of New York, undertaken by the New York Civil Liberties Union, would have subjected that organization to the risk of severe legal sanctions and punishment under these proposals. The Supreme Court in cases from *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964) through *Buckley* v. *Valeo*, 424 U.S. 1 (1976) to *California Democratic Party* v. *Jones*, 120 S.Ct. 2402 (2000) have repeatedly protected full and vigorous debate during an election season. The provisions of the pending bills would silence that debate.

Second, the ban on ''electioneering communications'' would stifle legislative advocacy on pending bills. The blackout periods coincide with crucial legislative periods, including the months of September and October as well as months during the Spring. During Presidential years, the blackout periods would include the entire Presidential primary season, conceivably right up through the August national nominating conventions. For example had this provision been law in 2000, for most of the year it would have been illegal for the ACLU or the National Right to Life Committee to criticize the ''McCain-Feingold'' bill as an example of unconstitutional campaign finance legislation or to urge elected officials to oppose that bill! The only time the blackout ban would be lifted would be in August, when many Americans are on vacation!

During the 104th Congress, for example, the ACLU identified at least 10 major, controversial bills that it worked on that were debated in either chamber of the Congress within 60 days prior to the November 1996 general election. This legislation includes several anti-abortion bills including so-called partial birth abortion legislation, public disclosure of the CIA budget, creation of a federal database of sex offenders, new federal penalties for methamphetamine use, prohibition on discrimination of gays and lesbians in the workplace, same-sex marriage prohibition, anti-immigration legislation and school vouchers, among others. This pattern of legislating close to primary and general elections has only been repeated in subsequent Congresses.

B. WHY THESE LIMITATIONS RUN AFOUL OF THE FIRST AMENDMENT

Under the reasoning of *Buckley* v. *Valeo* and all the cases which have followed suit, the funding of any public speech that falls short of such 'express advocacy' is wholly immune from campaign finance laws. Speech which comments on, criticizes or praises, applauds or condemns the public records and actions of public officials and political candidates—even though it mentions and discusses candidates, and even though it occurs during an election year or even an election season—is entirely protected by the First Amendment.

The Court made that crystal clear in Buckley when it fashioned the express advocacy doctrine. That doctrine holds that the FECA can constitutionally regulate only ''communications that in express terms advocate the election or defeat of a clearly identified candidate,'' and include ''explicit words of advocacy of election or defeat.'' 424 U.S. at 44, 45. The Court developed that doctrine because it was greatly concerned that giving a broad scope to FECA, and allowing it to control the funding of all discussion of policy and issues that even mentioned a public official or political candidate, would improperly deter and penalize vital criticism of government because speakers would fear running afoul of the FECA's prohibitions. ''The distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical operation. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and government actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.'' Id. at 42–43. If any reference to a candidate in the context of advocacy of an issue rendered the speech or the speaker subject to campaign finance controls, the consequences for the First Amendment would be intolerable.

Issue advocacy is freed from government control through a number of other doctrines the courts have recognized as well. First, the constitutional right to engage in unfettered issue advocacy is not limited to individuals or cause organizations. Business corporations can speak publicly and without limit on anything short of express advocacy of a candidate's election. See *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978). (Of course, media corporations can speak publicly and without limitation on any subject, including editorial endorsements of the election or defeat of candidates, i.e. ''express advocacy'', see *Mills* v. *Alabama*, 384 U.S. 214 (1966).)

Contributions to issue advocacy campaigns cannot be limited in any way, either. See *Citizens Against Rent Control* v. *Berkeley*, 454 U.S. 290 (1981). Finally, issue advocacy may not even be subject to registration and disclosure. See *McIntyre* v. *Ohio Elections Commission*, 514 U.S. 334 (1995); *Buckley* v. *Valeo*, 519 F.2d 821, 843–44 (1975) (holding unconstitutional a portion of the FECA which required reporting and disclosure by issue organizations that publicized any voting record or other information ''referring to a candidate''). The rationale for these principles is not just that these various groups have a right to speak, but also that the public has a right to know and a need to hear what they have to say. This freedom is essential to fostering an informed electorate capable of governing its own affairs.

Thus, no limits, no forced disclosure, no forms, no filings, no controls should inhibit any individual's or group's ability to support or oppose a tax cut, to argue for more or less regulation of tobacco, to support or oppose abortion, flag-burning, campaign finance reform and to discuss the stands of candidates on those issues.

That freedom must be preserved whether the speaker is a political party, an issue organization, a labor union, a corporation, a foundation, a newspaper or an individual. That is all protected ''issue advocacy,'' and the money that funds it is all, in effect, ''soft money.'' Those who advocate government controls on what they call ''sham'' or ''phony'' or ''so-called'' issue ads, and those who advocate outlawing or severely restricting ''soft money'' should realize how broad their proposals would sweep and how much First Amendment law they would run afoul.

Finally, it is no answer to these principled objections that this flawed bill would permit certain non-profit organizations to sponsor ''electioneering communications'' if they in effect created a Political Action Committee to fund those messages. Under governing constitutional case law, groups like the ACLU and others cannot be made to jump through the government's hoops in order to criticize the government's policies and those who make them. In addition, most non-profits would be unwilling to risk their tax status or incur legal expenses by engaging in what the IRS might view as partisan communications. Moreover, the groups would still be barred from using organizational or institutional resources for any such communications. They would have to rely solely on individual supporters, whose names would have to be disclosed, with the concomitant threat to the right of privacy and the right to contribute anonymously to controversial organizations that was upheld in landmark cases such as *NAACP* v. *Alabama*, 357 U.S. 449 (1958). This holding guaranteed the opportunities that donors now have to contribute anonymously—a real concern when a cause is unpopular or divisive.

II. S. 27 ASSAULTS THE FREE SPEECH OF ISSUE ADVOCATES

The second systemic defect in this bill is its grossly expanded concept of coordinated activity between politicians and citizens groups. Such ''coordination'' then taints and disables any later commentary by that citizen group about that politician. By treating all but the most insignificant contacts between candidates and citizens as potential campaign ''coordination,'' the bill would render any subsequent action which impacts that politician as a regulated or prohibited ''contribution'' or ''expenditure'' to that candidate's campaign. These provisions violate established principles of freedom of speech and association.

Under existing law, contact coordination between a candidate or campaign and an outside group can be regulated as coordinated activity only where the group takes some public action at the request or suggestion of the candidate or his representatives, i.e., where the candidate is the driving force behind the outside group's action. *See Federal Election Commission* v. *Christian Coalition*, 52 F. Supp. 2d 45 (D. D.C. 1999). Under the bill, however, the definition of coordination is expanded in dramatic ways with severe consequences, thereby prohibiting certain kinds of contact with candidates. A coordinated activity can be found whenever a group or individual provides ''anything of value in connection with a Federal candidate's election'' where that person or group has interacted with the candidate then or in the past in a number of ways. This includes, for example, instances which the outside person or group has ''previously participated in discussions'' with the candidate or their representative, ''about the candidate's campaign strategy . . . including a discussion about . . . message. . .''

Section 214 of the bill thus imposes a year round prohibition on all communications that are deemed ''of value'' to a federal candidate. The bill wrongly asserts that issue groups are ''coordinating'' if they merely discuss elements of the lawmaker's message with the lawmaker or his or her staff anytime during a two year period. For example, if a veteran's group suggests to a candidate how best to talk about the flag amendment in order to win the hearts and minds of voters, the group then can't run ads in Senator McCain's state praising him for protecting the flag.

Once such so-called coordination is established it triggers a total ban on issuing any communication to the public deemed of value to the candidate, and it defines such communication as an illegal corporate contribution! These rules act as a continuing prior restraint, which bars the individual or group from engaging in core First Amendment speech for the lawmaker's entire term of office. Even if such an organization has a connected PAC, it can no longer engage in any independent expenditure affecting the lawmaker because by merely speaking to the candidate or his or her staff it has engaged in illegal ''coordination.'' Here again, the bill attempts to impose another gag rule on issue advocacy organizations.

Translated into the way in which citizen advocacy groups work, this means that a group cannot urge a candidate to make a particular proposal a part of the candidate's platform if the group subsequently plans to engage in independent advocacy on that issue. Likewise, a group like the National Rifle Association could not discuss a gun control vote or position with a Representative or Senator if the NRA will subsequently produce a box score that praises or criticizes that official's stand. Similar to the ban on coordination (Section 202) discussed earlier in this letter, banning ''coordination'' of ''electioneering activity'' resulting in a long blackout period when an outside group or individual can be blocked from broadcasting information about a candidate, this ban—on coordination of ''anything of value''—can operate month in and month out throughout the entire two or six year term of office of the pertinent politician. That is why the AFL–CIO, among other groups, is so concerned about the treacherous sweep of the anti-coordination rules. See ''Futile Labor: Why Are The Unions Against McCain-Feingold?'' The New Republic, March 12, 2001, pp. 14–16.

Thus, these coordination rules will wreak havoc on the ability of the representatives of unions, corporations, non-profits and even citizen groups to interact in important ways with elected representatives for fear that the taint of coordination will silence the voices of those groups in the future. The First Amendment is designed to encourage and foster such face-to-face discussions of government and politics, see *Buckley* v. *American Constitutional Law Foundation,* 525 U.S. 182 (1999), not to drive a wedge between the people and their elected representatives .

III. S. 27 ALLOWS THE UNCONSTITUTIONAL VIRTUAL DESTRUCTION OF POLITICAL PARTIES

In addition to its disruptive and unconstitutional effect on issue groups and issue advocacy, S. 27 also would have a disruptive if not destructive effect on political parties in America by totally shutting off the sources of funding that support so much of what American political parties do. It would cast a pall over the vital democratic work that political parties perform. These unprecedented restrictions on soft money would make parties less able to support grassroots activity, candidate recruitment and get-out-the-vote efforts.

A. THE BILL REPRESENTS A THREE-PRONGED ATTACK ON POLITICAL PARTIES

(1) Section 101 of the bill completely eliminates all ''soft money'' funding for all national political parties and all of their constituent committees and component parts. Under current law there are no federal restrictions on raising, spending or routing such soft money by federal state or local parties or their candidates or office holders. Under McCain-Feingold, all of the funding for all of the vital party activities described above would become illegal, unless it came only from individuals, in small dollar amounts. In other words, political parties may only raise and spend highly regulated ''hard money'' for virtually everything they do.

(2) Section 101 of the bill also bars any federal candidate or officeholder from having any contact whatsoever with the funding of any ''federal election activity'' by any organization unless that activity is funded strictly with hard money. The scope of ''federal election activity'' is extremely broad and encompasses the following activities if they have any connection to any federal election or candidate: (1) voter registration activity within 4 months of a federal election, (2) voter identification, get-out-the-vote activity or ''generic campaign activity,'' (3) any significant ''public communication'' by broadcast, print or any other means that refers to a clearly identified federal candidate and ''promotes,'' ''supports,'' ''attacks,'' or ''opposes'' a candidate for office (regardless of whether the communication contains ''express advocacy''). Under this rule, a candidate would attend an NAACP Voters Rights benefit dinner at his or her peril, if funds were being raised for any ''federal election activity'' such as getting people to the polls on election day. The same might be true for one who attended an ACLU Bill of Rights Day fund raiser, when the ACLU produces a box score on civil liberties voting records during an election season.

(3) The bill also reaches and regulates all State and local political parties and bans them from raising or spending soft money for any ''Federal election activity'' also or any activity which has any bearing on a federal election. It basically federalizes all of the restrictions and limitations of the FECA.

B. POLITICAL PARTY ACTIVITY IS PROTECTED BY THE FIRST AMENDMENT

Political funding by political parties is strongly protected by the First Amendment no less than political funding by candidates and committees. The only political funding that can be subject to control is either contributions given directly to candidates and their campaigns (or partisan expenditures explicitly coordinated with campaigns) or communications that constitute express advocacy. These can be subject to source limitations (no corporations or unions or comparable entities) or amount restraints ($1,000, or $5,000 in the case of PACs). All other funding of political activity and communication is beyond presumptive constitutional control. That would include soft money activities by political parties.

Parties are both advocates for their candidates' electoral success and issue organizations that influence the public debate. Get-out-the-vote drives, voter registration drives, issue advocacy, policy discussion, grass-roots development and the like are all activities fundamentally protected by the First Amendment and engaged in by a wide variety of individuals and organizations. An issue ad by the ACLU criticizing an incumbent Mayor on police brutality is an example of soft money activity, in the broadest sense of that term, as is an editorial on the same subject in The New York Times. We need more of all such activity during an election season, not less, from political parties and others as well.

The right of individuals and organizations, corporate, union or otherwise, to support such issue advocacy traces back to the holding in *Buckley* that only those communications that ''expressly advocate'' the election or defeat of identified candidates can be subject to control. The Supreme Court in the 1996 *Colorado Republican Federal Campaign Committee* v. *FEC,* 518 U.S. 604 (1996) case noted the varying uses of soft money by political parties. In the recent case, *Nixon* v. *Shrink Missouri Governmental PAC,* 528 U.S. 377 (2000), which upheld hard money contribution limits, the Court's opinion was silent on whether soft money could be regulated at all. Although certain individual Justices invited Congress to consider doing so, the case itself had nothing to do with soft money.

To be sure, to the extent soft money funds issue advocacy and political activities by political parties, it becomes something of a hybrid: it supports protected and unregulatable issue speech and activities, but by party organizations often more closely tied to candidates and officeholders. The organizational relationship between political parties and public officials might allow greater regulatory flexibility than would be true with respect to issue advocacy by other organizations. Thus, for example, disclosure of large soft money contributions to political parties, as is currently required by regulation, might be acceptable, even though it would be impermissible if imposed on non-party issue organizations. But the total ban on soft money contributions to political parties raises serious constitutional difficulties.

Just last year, the Supreme Court reminded us once again of the vital role that political parties play in our democratic life, by serving as the primary vehicles for the political views and voices of millions and millions of Americans. ''Representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting the electoral candidates who espouse their political views. The formation of national political parties was almost concurrent with the formation of the Republic itself.'' *California Democratic Party* v. *Jones,* 530 U.S. 567 2402, 2408 (2000). As Justice Anthony M. Kennedy put it in his separate opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996): ''The First Amendment embodies a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open. Political parties have a unique role in serving this principle; they exist to advance their members' shared political beliefs.'' Id. at 629.

While electing candidates is a central mission of political parties, they do so much more than that. They engage in issue formulation and advocacy on a daily basis, they mobilize their members through voter registration drives, they organize get-out-the-vote efforts, they engage in generic party communications to the public. Much of these activities are supported by what S. 27 would deem as soft money. The bill before you would dry up these significant sources of funding for those party activities. It would basically starve the parties' ability to engage in the grass roots and issue-advocacy work that makes American political parties so vital to American democracy.

C. S. 27 DIMINISHES THE ABILITY OF POLITICAL PARTIES TO COMPETE EQUITABLY WITH OTHERS WHO CHOOSE TO SPEAK DURING CAMPAIGNS.

Finally, the law unfairly bans parties, but no other organizations, from raising or spending soft money. That would mean that anyone else—corporations, foundations, media organizations, labor unions, bar associations, wealthy individuals—could use any resources without limit to attack a party and its programs, yet the party would be defenseless to respond except by using limited hard money dollars. The NRA could use unregulated funds to mount ferocious attacks on the Democratic Party's stand on gun control, and the Party would be effectively silenced and unable to respond. Conversely, NARAL could mercilessly attack the Republican Party's stand on abortion, using corporate and foundation funds galore, and that

Party would likewise be stifled from responding in kind. A system which lets one side of a debate speak, while silencing the other, violates both the First Amendment and equality principles embodied in the Constitution.

The Bipartisan Campaign Finance Reform Act of 2001 is not reform at all, but is a fatally flawed assault on First Amendment rights.

Sincerely,

LAURA W. MURPHY,
Director.
JOEL GORA,
Professor of Law, Brooklyn Law School and Counsel to the ACLU.

CHANGE OF VOTE

Mr. REID. I ask unanimous consent to change my vote on rollcall vote No. 41 from yea to nay. This change will not affect the outcome of the vote. The amendment at issue was adopted by a vote of 70–30 and if enacted will require broadcasters to charge political candidates the lowest rates offered by the broadcast, satellite or cable stations throughout the year.

While I believe the goal of this amendment is laudable I am concerned that it could unsettle the balance of support for the underlying legislation. Further, I believe it could provide political candidates with an unfair economic edge in the purchasing of air time.

On the first point, it should be clear to all that the McCain-Feingold legislation was carefully crafted to ensure meaningful campaign finance reform while recognizing the rights of all Americans to continue their participation in our electoral process. This is a delicate balance and I would regret to see this bill lose the support of such important participants in the political process as our nation's broadcasters.

I believe that political candidates should not be gouged in their purchase of air time but I remain unconvinced that such is the normal and usual practice today. Other groups, be they charitable or civic oriented, should not be disadvantaged because of efforts to lower the rates for political candidates. For the reasons stated above I believe this issue should not be considered on this important legislation.

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

1996 CAMPAIGN FINANCE VIOLATIONS

Mr. THOMPSON. Mr. President, in 1997, the Governmental Affairs Committee spent a year in investigating some of the worst campaign finance abuses in our Nation's history. Despite a number of obstacles, witnesses fleeing the country, people pleading the fifth amendment, entities failing to comply with subpoenas, our Committee uncovered numerous activities that were not only improper but illegal. To date, 26 individuals and two corporations have been prosecuted or indicted for campaign finance violations arising from the 1996 Federal elections.

Specifically, what we uncovered was a pattern of abuse in which access to people in power was bought with large campaign contributions. What made that possible was unregulated, unlimited soft money. Time after time we heard about contributions of tens and hundreds of thousands of dollars in exchange for which access was granted. In fact, one of the key reasons I have fought for the McCain-Feingold bill is to eliminate this opportunity for abuse.

There is no question in my mind that the enormous soft money contributions we examined led to corruption and the appearance of corruption to the American public. The committee's findings are contained in a six volume, 10,000 page report, S. Rpt. No. 105–167, the committee's depositions, S. Prt. No. 106–30, and the committee's hearings, S. Hrg. No. 105–300). The facts and findings contained in these documents clearly provide the basis for a determination that unlimited soft money contributions lead to corruption and the appearance thereof.

Mr. LEVIN. Mr. President, the Senator from Tennessee appropriately puts in context the work we are doing on the bill before us. The record in the Senate is replete with the compelling need for this legislation. In particular, we learned during the 1997 hearings that some of the most egregious conduct we uncovered, wasn't what was illegal, but what was legal. That was the real problem.

The 1997 Senate investigation collected ample evidence of campaign abuses, the most significant of which revolved around the soft money loophole. Soft money contributions of hundreds of thousands, even millions, of dollars, were shown to have undermined the contribution limits in Federal law and created the appearance of corruption in the public's eye. The Republican and Democratic national political parties that solicit and spend this money use explicit offers of access to the most powerful, elected officials.

Roger Tamraz, a large contributor to both parties and an unrepentant witness at our hearings, became the bipartisan symbol for what is wrong with the current system. Roger Tamraz served as a Republican Eagle in the 1980s during Republican administrations and a Democratic Trustee in the 1990s during Democratic administrations. Tamraz's political contributions were not guided by his views on public policy or his personal support for or against the person in office; Tamraz gave to help himself. He was unabashed in admitting his political contributions were made for the purpose of getting access to people in power. Tamraz showed us in stark terms to all-too-common product of the current campaign finance system, using unlimited soft money contributions to buy access. And despite the condemnation by the committee and the press of Tamraz's activities, when asked at the hearing to reflect on his $300,000 contribution to the Democrats in 1996, Tamraz said, ''I think next time, I'll give $600,000.''

As I said, most of the appearances of impropriety revealed during the 1997 investigations involved legal activities. Virtually every foreign contribution of concern to the Committee involved soft money. Virtually every offer of access to the White House or to the Capitol or to the President or to the Speaker of the House involved contributions of soft money. Virtually every instance of questionable conduct in the Committee's investigation involved the solicitation or use of soft money.

The McCain-Feingold bill recognizes that the bulk of troubling campaign activity is not what is illegal, but what is legal. It takes direct aim at closing the loopholes that have swallowed the election laws. In particular, it takes aim at closing the soft money and issue advocacy loopholes, while strengthening other aspects of the Federal election laws that are too weak to do the job as they now stand.

The soft money loophole exists because we in Congress allow it. The issue advocacy loophole exists because we in Congress allow it. Congress alone writes the laws. Congress alone can shut down the loopholes and reinvigorate the Federal election laws.

Mrs. MURRAY. Mr. President, in recent days there has been much speculation regarding my position on retaining the severability of the campaign finance reform bill being considered by the Senate.

First let me start by reiterating my strong and unwavering commitment to meaningful campaign finance reform. Since I arrived in the Senate, I, along with many of my colleagues, have championed an overhaul of our campaign finance system. Our system demands more disclosure and accountability, we should reduce the amount of money in the system, we should ensure that the voice of every American can be heard, and we must require fairness.

I admire Senator MCCAIN and others for their courage and persistence in pursuing this goal. Senator MCCAIN has shown himself to be a real leader, and I enjoy working with him in the Senate.

I believe the McCain/Feingold bill is a carefully crafted, balanced bill. There have been a number of amendments to this bill, some of which I have supported; some I've opposed. Campaign finance reform, in addition to reforming the excesses of the current system, must be fair and not favor any one party or group over another. If the court, at some later date, finds that some part or parts of our reform effort do not pass constitutional muster, that ruling should not be allowed to tip the scales to the benefit or detriment of one class of actors with regard to their ability to engage in political debate. As strongly as I believe in reforming our campaign finance laws, I also believe we should do a better job of supporting our public schools, providing more and better access to quality

healthcare, protecting our environment, and creating family wage jobs. If my, or the people who share my positions, ability to communicate those positions is altered to a greater or lesser extent than those with other opinions, then what we have left will be fundamentally unfair. The balance of this bill could change depending on the court's interpretation. The severability issue goes directly to this point.

Which leads me to why I believe this year's effort is different from previous efforts in one very significant and fundamental way. Today, we know more about the Supreme Court than we did just a few months ago. We know that the court is not beyond interpretations that would appear to favor one party over another. And that has given me pause, and, I would think, it may give my colleagues pause, when we consider the application of this law, how it will be tested in court, and what we may end up with as a result.

If the Supreme Court decided to uphold limits on the amount of soft money flowing to our parties, while allowing special interest groups to spend unlimited sums to attack or defend candidates, then we will turn the electoral process over to those same special interests who we seek to limit.

In this debate, too often, people who have differed with the sponsors have been characterized as wanting to ''kill'' the bill. Contrary to those assertions, this bill, with or without non-severability, is about to pass the Senate.

After careful consideration, I have decided to vote against the non-severability amendment. I have made this judgement with strong reservations about how the Court could interpret the law we pass.

I am not willing to participate in enacting a precedent for severability that could impact a wide range of bills to come before the Senate. Rather than adding a non-severability clause to this bill the Congress should act quickly to meet the challenges that may be presented by any future court action, and fashion a set of campaign finance laws that will serve to strike a balance and ensure fairness.

Mr. MCCONNELL. Mr. President, reformers frequently assert that there is a great desire throughout the land for their campaign finance scheme. The truth is there is not, nor has there ever been, a groundswell of public demand for even the concept of ''reform,'' let alone an unconstitutional assault by the Federal Government on the constitutional freedom of citizens, groups and parties to participate in America's democracy.

On that note, I would ask that a March 22, 2001 article in the Washington Times entitled ''Nation Yawns at Campaign Finances,'' be printed in the RECORD at this point.

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

[From the Washington Times, Mar. 22, 2001]

NATION YAWNS AT CAMPAIGN FINANCES

(By Donald Lambro)

Campaign finance reform may be the No. 1 issue in the Senate right now, but outside of Washington it does not even make the top-40 list of most important problems facing the country.

Sen. John McCain, Arizona Republican, with the help of favorable national news media coverage, has managed to drive the issue to the top of the Senate agenda this week—ahead of education, health care, Medicare, Social Security, tax cuts and other issues that score much higher in poll after poll.

Polls show that Americans strongly support the overall concept of campaign reform, but it does not appear on most lists of what concerns them the most, or if it does, comes in dead last.

''We've asked people what is the most important problem facing the country and watched campaign finance reform languish at the bottom of every list of 20 to 25 issues,'' said Whit Ayres, a Republican pollster based in Atlanta.

Compared to other issues, campaign finance long has been in the basement of public priorities,'' the ABC News Web site said in an analysis earlier this week.

''Most people have more pressing concerns, and most doubt reform would effectively curb the role of money in politics,'' it concluded.

The Pew Research Center asked 1,513 adult Americans last month what is ''the most important problem facing the country today.'' Campaign finance reform did not specifically appear among its list of 45 responses.

Morality/ethics/family values tops the list with 12 percent, followed by education (11 percent), the economy and jobs (13 percent), crime (8 percent), health care (6 percent), and energy costs (6 percent).

Other polls similarly place the issue at the bottom of the issue rankings. An ABC News poll taken in January ranked it 16th out of 18 issues. It was last among 16 issues in the general election.

Mr. McCain made campaign finance reform the centerpiece of his unsuccessful campaign for the Republican presidential nomination last year, but polls showed that most of those who supported him in the primaries did so for other reasons—such as his patriotism and character—not for his signature issue.

Only 9 percent of the voters in the New Hampshire primary said the issue was their biggest concern. There was even less concern on the Democratic side.

The issue all but disappeared in the general election. It was seldom raised by Al Gore, and George W. Bush, who opposes the McCain campaign finance reform bill, rarely mentioned the issue unless asked about it.

Asked how campaign finance reform was playing in Georgia, Mr. Ayres replied facetiously: ''It's a burning issue. It's a topic that dominates every dinner table conversation. You can't go into a supermarket checkout line without hearing everyone talk about it.''

In fact, Mr. Ayres, ''It's an elite, media-driven, editorial page issue that concerns'' very few people. Virtually every poll seems to confirm that view.

When a Princeton Survey poll released earlier this month asked 1,200 people what should be Mr. Bush's top priorities this year, campaign finance reform barely registered at the bottom of the list with a minuscule 3 percent.

What were the top concerns of most people? Education (29 percent), the economy (20 percent), tax cuts (15 percent), Medicare, (14 percent), and Social Security (13 percent). Even foreign policy, at 4 percent, scored higher than campaign reform.

''People care more about how the taxpayers' money is being spent than about how the politicians are raising money for their campaigns,'' Mr. Ayres said.

The fact that the Senate is spending so much time on an issue they rate very low, or not at all, ''just feeds the suspicion that Congress spends a lot of time on issues that people don't really care much about,'' he said.

''It doesn't show up as a high priority issue, not because people don't want reform, but because they don't believe that they are ever going to get it,'' said independent pollster John Zogby.

But for most Americans, Mr. Zogby conceded, ''it's just not a passionate issue.''

Mr. MCCONNELL. Mr. President, I have authored a number of op-eds on this subject over the years and I ask unanimous consent that the most recent, appearing March 23, 2001, in USA Today, be printed in the RECORD.

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

[From USA Today, Mar. 23, 2001]

''REFORM'' HURTS FREEDOMS

OPPOSING VIEW: BILL UNFAIRLY RESTRICTS PARTIES' ABILITY TO CHALLENGE INCUMBENTS

(By Mitch McConnell)

Next week, in its debate over changing campaign-finance laws, the Senate will consider a constitutional amendment overriding the First Amendment and thereby allowing the government to restrict all spending on communications ''by, in support of, or in opposition to'' candidates for public office.

So empowered, Congress could ban ''soft money'' and even make it illegal for corporate-owned newspapers to endorse or mention political candidates within 60 days of an election. Currently, the media is specifically exempted from federal campaign-finance law, even though these corporate conglomerates exert tremendous influence on the political system. You could call this exemption the media's ''loophole.''

The McCain-Feingold bill less forthrightly but just as effectively restricts the constitutional freedom of citizens groups and parties to speak out on issues, and elections. McCain-Feingold makes it illegal for citizen groups to criticize members of Congress in TV or radio ads, unless they register with the federal government and conform to a litany of restrictions. Such restrictions on political speech are sure to be declared unconstitutional, as have 22 similar efforts previously struck down in federal court.

McCain-Feingold also attack the national parties, making it illegal for them to pay for issue advocacy, voter turnout and such mundane overhead expenses as utilities, accountants, computers and lawyers (necessary to comply with existing complex campaign-finance laws) with funds outside the current strict ''hard money'' limits. Hard money refers to funds that can be given directly to candidates and is subject to severe contribution limits (limits not adjusted for inflation since they were created in 1974).

McCain-Feingold would starve the parties. Few are moved by the parties' plight until they consider that candidates running against incumbent congressmen have only one reliable source of support: parties.

Without party soft money, liberal news media and ''special interest'' groups would move closer to total domination of the American political environment. If banned, party soft money (which already is publicly disclosed and therefore accountable) will

give way to the shadowy world of special-interest soft money, where there is no public disclosure and no accountability. That does not meet anyone's definition of ''reform.''

Mr. MCCONNELL. Senator SESSIONS would like to speak on the bill at the conclusion of the session. Perhaps he could wrap it up for us tonight. We will see everyone at 9 o'clock in the morning. At the conclusion of his remarks, unless floor staff has an objection, he will put us in recess.

Mr. SESSIONS. Mr. President, as we consider this legislation, I am not sure it is possible for any of us, I certainly have not, figured out who might be the winner and loser in this legislation. Who would get the most benefits, which party, which candidates, those things are interesting and, in fact, significant. I am just not terribly worried myself.

I think about my campaigns and if they limit all contributions to just $100 per person and nobody else could contribute, nobody else could run a negative ad or positive ad about me, I would feel comfortable about that. I believe I can raise more $100's than any likely opponent I am facing. I could get my message out and it will be a good competitive race and that will be fine.

I wish it could be that simple sometimes. I faced two opponents who spent more than $1 million against me in the Republican primary. I know what it feels like to be frustrated by ads coming in against you.

I think this legislation transcends all the complexities and all the debate we have had tonight and over the last 2 weeks about soft money, hard money, issue ads, independent groups, independent expenditures, and all of that. It is a very complicated matter. I think that has caused us at some point to lose our contact with the fundamental questions with which we are dealing.

In my view, I have concluded, unfortunately, that on what is constitutional and what is good public policy, this legislation does not justify our support and should not be passed by this body.

America has always been a country of raucous debate, uncontrolled, exaggeration, negativity, at times emotional. That is the way we are. Sometimes I wish it were not so. Others complained on the floor of the Senate about negative ads against them. I had those run against me also. In my election, I raised a lot more hard money than my opponent, but he had equal time on television and it was mostly soft money. They came in from the Democratic Party or the Sierra Club and they ran ads against me. I know it wasn't a little environmentalist raising this money. It was money given to them so they could use it in certain campaigns in favor of Democratic candidates. That is the way life is. It is frustrating at times to see ads such as that pound on you.

Soft money didn't help me in this past campaign. I say that to say I resent and reject the assertion that those of us who are concerned about the serious public policy and constitutional questions involved are somehow advocating that because we have a self-interest in it, some personal agenda that will help them beat their opponent and get reelected. There may be a tendency for some, but it is not for me.

The problem is whether or not we are furthering or constraining political debate in America. Some believe, for example, that depictions of violent sex acts of all kinds, depictions of child pornography, are protected by the first amendment. Some believe that the act of burning a flag of the United States is free speech. Some of these same people, however, see things differently on this bill.

On the question of pornography and child pornography, and those questions, people can go either way. The Supreme Court has sort of split in a lot of different ways. These forms of speech and press are quasi-speech. Depictions or acts of burning a flag were never what our Founding Fathers were fundamentally concerned about. They were concerned in early America about political speech, the right to speak out on public policy issues and say what you wanted to say.

James Madison, the father of our Constitution, whose birth we celebrated earlier in the month, the 250th anniversary of his birth, in talking about our goal in America as to free elections and people you chose could be elected, said: The value and efficacy of this right to elect and vote for people for office depends on the knowledge of comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidate's respectively.

That suggests this is what America was founded about, to have a full debate about candidates and their position on issues. When do you do that? You do that during the election time. Not 2 years before an election.

I believe the contributing of money to promote and broadcast or amplify speech is covered by the first amendment. I do not think that is a matter of serious debate. Some have suggested otherwise. They said money is just an inanimate object. But if you want to be able to speak out and you cannot get on television, or you cannot get on radio, or you cannot afford to publish newspapers or pamphlets, then you are constrained in your ability to speak out.

The Supreme Court dealt with this issue quite plainly in Buckley v. Valeo in 1976. A string of cases since that time have continued that view.

In Buckley they said the following:

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

They go on to say:

> In a free society, ordained by our Constitution, it is not the government, not the government but the people individually as citizens and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a public campaign.

What is that Court saying? That Court is saying the right to decide who says what in a political environment is the right of the people and associations of people. They have that right. The Government does not have the right to restrain them and restrict that and to limit their debate, even if it is aimed at us in the form of a negative ad and it hurts our feelings and we wish it had not happened. We do not have the right to tell people they cannot produce honest ads, hard-hitting ads against us. If we ever get to that point, I submit, our country will be less free, you will have less ability to deal with incumbent politicians who may not be the kind that are best for America.

In the Buckley case the Court held that political contributions constitute protected speech under the first amendment.

I remain at this point almost stunned that earlier in this debate 40 Members of this Senate voted to amend the first amendment of the Constitution of the United States. Fortunately, 60 voted no. We had 38 vote yea in 1997 or 1998, and last year it dropped down to 33. But this year 40 voted for this amendment. It would have empowered Congress and State legislators, government, to put limits on contributions and expenditures by candidates and groups in support of and in opposition to candidates for office. Just as they outlined in Buckley.

That is a thunderous power we were saying here, that we were going to empower State legislatures and the U.S. Congress to put limits on how much a person and group could expend in support of or in opposition to a candidate. Think about that. Where are our civil libertarian groups?

I have to give the ACLU credit, they have been consistent on this issue. They have studied it. They know this is bad, and they have said so. But too many of our other groups—I don't know whether they are worried about the politics of it or what, but they have not grasped the danger to free speech and full debate we are having here.

It seems to me we are almost losing perspective and respect for the first amendment that protects us all. In this debate we have focused on what the courts have held with regard to the first amendment and to campaign finance. I remain confident that significant portions of the legislation as it is now pending before us will be struck down by Federal courts.

We ought not to vote for something that is unconstitutional. We swore to uphold the Constitution. If we believe a bill is unconstitutional, we should not be passing it on the expectation that someday a court may strike it down, even if we like the goal. If it violates the Constitution, each of us has a duty, I believe, to vote no. The idea that we

can pass a law that would say that within 60 days of an election a group of union people, a group of businesspeople, a group of citizens, cannot get together and run an ad to say that JEFF SESSIONS is a no-good skunk and ought not be elected to office, offends me. Why doesn't that go to the heart of freedom in America? Where is our free speech crowd? Where are our law professors and so forth on this issue? It is very troubling to me, and I believe it goes against our fundamental American principles.

I will conclude. I make my brief remarks for the record tonight to say I believe this law is, on balance, not good. I believe its stated goal of dealing with corruption in campaigns is not going to be achieved. I believe it is the case with every politician I know, that votes trump money every time anyway. If you have a group of people in your State you know and respect, you try to help them. Just because they may give you a contribution doesn't mean that is going to be the thing that helps you the most. Most public servants whom I know try to serve the people of the State and try to keep the people happy and do the right things that are best for the future.

I believe this bill is not good, that the elimination of the corrupt aspects we are trying to deal with will not ultimately be achieved. At the same time, I believe we will have taken a historic step backwards, perhaps the most significant retrenchment of free speech and the right to assemble, and free press, that has occurred in my lifetime that I can recall. This is a major bit of legislation that undermines our free speech.

I know we have talked about all the details and all the little things. There are some things in this bill I like. I wish we could make them law. But as a whole, we ought not pass a piece of legislation that would restrict a group of people in America from coming together to raise money and speak out during an election cycle, 60 days, 90 days, 10 days, 5 days, on election day—they ought not be restricted in that effort. In doing so, we would have betrayed and undermined our commitment to free speech and free debate that has made this country so great.

Mr. President, I will proceed to see if I can close us out for the night.

MORNING BUSINESS

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

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

TRIBUTE TO THE LATE CONGRESSMAN NORMAN SISISKY

Mr. WARNER. Mr. President, I am joined by my colleague, Senator ALLEN. We would like to address the Senate for a period not to exceed 10 minutes.

Mr. President, today, just hours ago, Senator ALLEN and I were informed of the loss of one of our Members of Congress from the State of Virginia, NORMAN SISISKY. It has been my privilege to have served with him in Congress throughout his career. Our particular responsibilities related to the men and women of the Armed Forces—I serving on the Senate Committee on Armed Forces and he on the House National Security Committee.

Our Nation has lost a great patriot in this wonderful man who started his public service career in 1945 as a young sailor in the U.S. Navy. In total, he served some 30 years, including his Naval service, service in the Virginia General Assembly, and in the service of the Congress of the United States.

The men and women of the Armed Forces owe this patriot a great deal, for he carried forth his earliest training in the Navy until the last breath he drew this morning. They were always, next to his family, foremost in his mind.

Throughout his legislative career in the Congress, many pieces of legislation bear his imprint and his wisdom on behalf of the men and women in the Armed Forces.

Mr. President, it is a great loss to the Commonwealth of Virginia, this distinguished public servant. It is a great loss to me of a beloved friend, a dear friend. My heart and my prayers go to his widow—a marriage of some 50 years—and to his family.

Mr. President, I yield the floor.

Mrs. BOXER. Mr. President, I just thank my two colleagues for bringing this information to the Senate. I came into the House of Representatives with NORMAN SISISKY. What a terrific person he was to work with. He had a wonderful sense of humor, was very dedicated, as my friend pointed out, to his country. He was very patriotic, and he was a real fighter for his district.

I want to associate myself with the eloquent words of Senator WARNER and Senator ALLEN.

Mr. ALLEN. Mr. President, I echo the words of the senior Senator from Virginia, JOHN WARNER. NORMAN SISISKY was a man who was loved all across Virginia. As the Senator said, he started his career in the Depression and served in the armed services. He also was a very successful businessman in the private sector. While he was a strong advocate for the armed services and the strength of our Nation, he also brought forth commonsense business principles of logistics and efficiency, whether it was in the days he was in the general assembly or in his many years of service in the U.S. House of Representatives.

He clearly was one of the leaders to whom people on both sides of the aisle would look. When there was a need for getting good, bipartisan support, obviously, folks would go to Senator WARNER. On the Democrat side, they looked to NORM SISISKY. NORM SISISKY cared a great deal, as Senator WARNER said, about the men and women who wear the uniform. He wanted to make sure they had the most advanced equipment, the most technologically advanced armaments for their safety when protecting our interests and freedoms abroad.

He was a true hero to many Virginians, not just in his district but all across the Commonwealth of Virginia, always bridging the partisan divides, trying to figure out what is the best thing for the people of America and also freedom-loving people around the world.

I will always remember NORM SISISKY as a person. I will always remember that smiling face, and he had that deep voice and that deep laugh, hardy laugh.

He was one who was always exuberant, always passionate, no matter what the effort, what the cause. You could be standing on the corner waiting for the light to change, and NORM would be carrying on with great passion and vigor about whatever the issue was. He would thrive on figuring out: Here is the way we will maneuver through the bureaucracy to get this idea done.

He truly was a wonderful individual. Everyone here speaks of him as a fellow Member of the House of Representatives.

When I was Governor, this man went beyond the call of duty. We were trying to get the department of military affairs to move from Richmond to Fort Pickett to transform that base which had been closed.

NORM SISISKY spent weekends talking with members on the other side of the aisle in the Virginia General Assembly, beyond the call of duty, to make sure we could move the headquarters to Fort Pickett and that the environmental aspects were cleaned up at no expense to the taxpayers, keep the facility open, and transform it to commercial use to benefit the entire Blackstone community.

The people in Southside Virginia will be forever grateful for what NORM SISISKY did in making sure Fort Pickett is there as a military facility for guard units in the Army, as well as private enterprise efforts and helping protect the jobs and people of that community.

Mr. REID. Will the Senator yield?

Mr. ALLEN. I will yield shortly.

Congressman NORM SISISKY was a great Virginian. He was a great American. I know our thoughts and prayers are there for his wife Rhoda. I know at least two of his sons very well, Mark and Terry, as well as Richard and Stuart.

Our prayers and thoughts go out to them. We tell them: Please realize NORM still lives on in you, in your blood, and also his spirit.

We also share our grief with his very dedicated and loyal staff who shared his passion for the people of Virginia and the people of America.

Mr. WARNER. Mr. President, if I may add to what my distinguished colleague said, we shall work together to