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Senate

The Senate met at 9 a.m. and was called to order by the Honorable JUDD GREGG, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious Father, as this workweek comes to a close, we praise You for Your love that embraces us and gives us security, Your joy that uplifts us and gives us resiliency, Your peace that floods our hearts and gives us serenity, and the presence of Your Spirit that fills us and gives us strength and endurance.

Help the Senators to remember that debate and voting in the Senate is like members of a family playing on opposite teams in scrub football. After the wins and losses, they still are all brothers and sisters in the same family.

We dedicate this day to You. Help us to realize that it is by Your permission that we breathe our next breath and by Your grace that we are privileged to use all the gifts of intellect and judgment You provide. Give the Senators and all of us who are privileged to work with them a perfect blend of humility and hope so we will know that You have given us all that we have and are and have chosen to bless us this day. Our choice is to respond and commit ourselves to You. Through our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JUDD GREGG led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. THURMOND).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 30, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JUDD GREGG, a Senator from the State of New Hampshire, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. GREGG thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, today the Senate will resume consideration of the campaign finance reform legislation.

There will be numerous amendments offered with a time limitation of 30 minutes. Senators should be aware that all amendments must be offered prior to 11 a.m. By previous consent, any votes ordered will be stacked to occur at 11 o'clock this morning.

A vote on final passage, as everyone I think now knows, will occur on Monday at 5:30.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under a previous order, leadership time is reserved.

BIPARTISAN CAMPAIGN REFORM ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 27, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 27) to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Pending:

Reed amendment No. 164, to make amendments regarding the enforcement authority and procedures of the Federal Election Commission.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, was any time reserved for any closing discussion of the subject prior to the final vote prior to the 5:30 vote on Monday?

The ACTING PRESIDENT pro tempore. No time was reserved.

Mr. MCCONNELL. It seems to me, Mr. President, that both the proponents and the opponents might want maybe 10 minutes or so each. I will discuss that with Senator DODD and proponents of the legislation and come back to that later.

Mr. DODD. Mr. President, we may want to allocate an hour, I suspect, between the two authors of the bill and others who would want to use 5 minutes or so to put in final statements.

Mr. MCCONNELL. Mr. President, we will discuss that off the floor because we will be running time on the budget resolution. That will be the main business next week. We certainly are not going to enter into an agreement that interrupts that in any major way. We will discuss that off the floor of the Senate.

We are open for business, and we will be processing amendments throughout the morning.

Mr. DODD. Mr. President, I ask unanimous consent to be added as a cosponsor of S. 27.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Without objection, the pending amendment will be set aside.

AMENDMENT NO. 165

Mr. MCCAIN. I send an amendment to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 165.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment reads as follows:

On page 25, beginning with line 23, strike through line 2 on page 31 and insert the following:

SEC. 214. COORDINATION WITH CANDIDATES OR POLITICAL PARTIES.

(a) IN GENERAL.—

(1) COORDINATED EXPENDITURE OR DISBURSEMENT TREATED AS CONTRIBUTION.—Section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 (8)) is amended—

(A) by striking ''or'' at the end of subparagraph (A)(i)—

(B) by striking ''purpose.'' in subparagraph (A)(ii) and inserting ''purpose;'';

(C) by adding at the end of subparagraph (A) the following:

''(iii) any coordinated expenditure or other disbursement made by any person in connection with a candidate's election, regardless of whether the expenditure or disbursement is for a communication that contains express advocacy;

''(iv) any expenditure or other disbursement made in coordination with a National committee, State committee, or other political committee of a political party by a person (other than a candidate or a candidate's authorized committee) in connection with a Federal election, regardless of whether the expenditure or disbursement is for a communication that contains express advocacy.''.

(2) CONFORMING AMENDMENT.—Section 315(a)(7) of the Federal Election Campaign Act of 1971 (U.S.C. 441a(a)(7)) is amended by striking subparagraph (B) and inserting the following:

''(B) a coordinated expenditure or disbursement described in—

''(i) section 301(8)(C) shall be considered to be a contribution to the candidate or an expenditure by the candidate, respectively; and

''(ii) section 301(8)(D) shall be considered to be a contribution to, or an expenditure by, the political party committee, respectively; and''.

(b) DEFINITION OF COORDINATION.—Section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8)), as amended by subsection (a), is amended by adding at the end the following:

''(C) For purposes of subparagraph (A)(iii), the term 'coordinated expenditure or other disbursement' means a payment made in concert or cooperation with, at the request or suggestion of, or pursuant to any general or particular understanding with, such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.''

(c) REGULATIONS BY THE FEDERAL ELECTION COMMISSION.—

(1) Within 90 days of the effective date of the legislation, the Federal Election Commission shall promulgate new regulations to enforce the statutory standard set by this provision. The regulation shall not require collaboration or agreement to establish coordination. In addition to any subject determined by the Commission, the regulations shall address:

(a) payments for the republication of campaign materials;

(b) payments for the use of a common vendor;

(c) payments for Communications directed or made by persons who previously served as an employee of a candidate or a political party;

(d) payments for Communications made by a person after substantial discussion about the communication with a candidate or a political party;

(e) the impact of coordinating internal communications by any person to its restricted class has on any subsequent ''Federal Election Activity'' as defined in Section 301 of the Federal Election Campaign Act of 1971.

(2) The regulations on coordination adopted by the Federal Election Commission and published in the Federal Register at 65 Fed. Reg. 76138 on December 6, 2000, are repealed as of 90 days after the effective date of this regulation

Mr. MCCAIN. Mr. President, this is an amendment on coordination. We have been trying now for 2 weeks to reach an agreement. We have come a long way with the hard work of both staffs and a lot of other people involved. We have narrowed the gap from our original language, which all agreed was not satisfactory to what we believe is a reasonable compromise.

Basically, we are talking about any coordinated expenditure or other disbursement, means of payment made in concert or in cooperation with, at the request or suggestion of or pursuant to any general or particular understanding with such candidate, candidate's authorized political committee, or their agents or political party or its agents.

We are talking about how we can prevent what is really in major circumvention of the intent—in fact, in my view, the letter of the law—and that is to coordinate soft money, which means that additional funds are funneled into political campaigns on behalf of candidates.

Mr. President, the amendment states:

Within 90 days of the effective date of the legislation, the Federal Election Commission shall promulgate new regulations to enforce the statutory standards set by this provision. The regulation shall not require collaboration or agreement to establish coordination.

That is an important point in this amendment.

In addition to any subject determined by the Commission, the regulation shall address (a) payment for the republication of campaign materials, (b) payment for the use of common vendor, (c) payments for communications directed or made by persons who previously served as an employee of a candidate or a political party, (d) payments for communications made by a person after substantial discussion about the communication with a candidate or a political party.

The impact of coordinating internal communications by any person to its restricted class has any subsequent ''Federal election activity'' as defined in section 301 of the Federal Election Campaign Act of 1971.

What we are trying to do is allow legitimate communication within organizations, whether they be unions or whether they be organizations such as the National Rifle Association, National Right to Life, or any other organization—protect their legitimate right to communicate and, at the same time, prevent the so-called coordination which has been the explosion and exploitation of the loophole which has allowed huge amounts, hundreds of millions of dollars, literally, of funds to flow into a political campaign.

I think it is a very legitimate compromise. It favors neither one side nor the other. Again, I would like to emphasize, the present language in the bill is not satisfactory, as viewed by both sides. I hope that this is far more satisfactory, if not totally satisfactory, language so we can enforce the law and at the same time not prevent any organization from legitimate communication within that organization.

I yield the floor.

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

Mr. FEINGOLD. Mr. President, I am pleased to support this amendment. It would replace section 214 of the McCain-Feingold bill concerning coordination. Section 214 was designed to override an FEC regulation issued in December 2000 and scheduled to become effective soon that many observers of campaigns who are concerned about evasions of the law think is far too narrow to cover what really goes on in campaigns.

Senators MCCAIN, LEVIN, DURBIN, and I wrote the FEC during the rulemaking and expressed our concern about the overly narrow interpretation of the law that the FEC had accepted. But almost from the very first day we introduced the bill, we have heard from people about this provision, and what we have heard has not been pretty. It is clear that the provision was not well drafted. It caught what we wanted to catch—groups coordinating activities with candidates without a specific agreement concerning a specific ad or other communication, but it also caught much more, including perhaps legitimate conversations between Members of Congress and groups about legislation without touching on a campaign.

I committed to these groups and to my colleagues who expressed concern we would address the problems with 214, and we have with this amendment. But this amendment simply defines ''coordination'' in a general way, using language from current law and language from the Supreme Court opinion in the Colorado Republican case that came down in 1996.

Then the amendment instructs the FEC to do a new rulemaking, to interpret and enforce this new and admittedly general statutory provision. The amendment, therefore, gives some guidance to the FEC as to what issues it should address, without actually dictating the result.

I think this is a reasonable solution to a difficult problem. I thank all the Senators and staff who have been involved in working out this amendment.

There is one thing I want to make very clear and reiterate: While this amendment instructs the FEC to consider certain issues in the new rulemaking, it doesn't require the FEC to come out any certain way or come to any definite conclusion one way or another.

Of course, I also want to note that the Senator from Kentucky has repeatedly said this change is being made at the behest of organized labor. That is not true. It is true that labor didn't like the original 214, but neither did a lot of other groups, including the Christian Coalition and the National Right to Life Committee.

I ask unanimous consent that the letters from these groups that contacted us and criticized section 214 be printed in the RECORD.

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

[E-mail from National Right-to-Life]

Here are some of the key ways in which the McCain-Feingold bill (S. 27) violates First Amendment protections for groups that engage in free speech about politicians and communicate with elected officials and their staffs;

Coordination Traps: Under current law, ''coordination'' between a ''candidate'' and a group is established only when there is an actual prior communication about a specific expenditure for a specific project which results in the expenditure being under the direction or control of a candidate, or which causes the expenditure to be made based upon information about the candidate's needs or plans provided by the candidate. But S. 27 (Section 214) would redefine ''coordination'' in extremely expansive terms, to include (for example) mere discussion of elements of a candidate's ''message'' (whatever that is) any time during a two-year period. Thus, if early on Congress representatives of six groups met with Senator Doe to discuss what language they, and he, will use to collectively promote Doe's landmark bill to ban widgets, and Doe subsequently campaigns in part on his leadership on the widget-ban issue, all six groups arguably are ''coordinated'' with Doe.

Once such so-called ''coordination'' is established, the ''coordinated'' organizations are flatly prohibited from spending money on any public communications deemed to be ''of value'' to Senator Doe—by any media, at any time of the year. For example, a group's literature promoting the widget-ban bill could be considered to be ''of value'' to Doe, even if Doe's name is not mentioned, if it is disseminated to his constituents. Moreover, even if these organizations have connected PACs, those PACs would be prohibited from engaging in independent expenditures on Doe's behalf of more than $5,000.

Under Section 214, ''coordination'' is also triggered by the mere sharing (by a ''candidate'' and a group or person) of certain vendors of ''professional services'' during a two-year period, including ''polling, media advice, fundraising, campaign research, political advice, or direct mail services (except for mailhouse services).''

''Electioneering Communications'': Section 201 applies additional restrictions to so-called ''electioneering communications,'' defined to cover TV and radio communications that merely mention the name of a federal politician, during ''pre-election'' periods, which include 30-day pre-primary periods that begin as early as February of each even-numbered year, as well as a 60-day period before a general election. For example, under the bill, an organization would engage in an ''electioneering communication'' if it purchased a radio ad within 30 days of a primary that said no more than, ''Urge [Congressman X] to vote against [or ''in favor of''] the McCain-Feingold bill.'' The bill flatly prohibits such ''electioneering communications'' by unions and by corporations, including for-profit business corporations, trade associations, veterans' groups, and organizations that hold 501(c)(3) status from the IRS. There is a narrow ''exception'' to the ban: corporations that hold 501(c)(4) or 527 status from the IRS would be permitted to pay for ''electioneering communications,'' but only by setting up a ''segregated fund,'' sort of a quasi-PAC, which could include no corporate or union contributions or business proceeds. The names of donors of over $1,000 to this quasi-PAC would be reported to the government and placed in the public domain.

Advance Notice Requirements: The ''disclosure'' provisions (for example, Section 202 and Section 212) include requirements that ''electioneering communications'' and independent expenditures be reported as soon as any contract is signed for the communication—which would be, in many cases, weeks in advance of the actual broadcasting of an ad. Such an advance notice requirement might be a boon to some powerful officeholders—an incumbent governor seeking a Senate seat, for example—who could then bring pressure to bear on broadcasters to refuse to sell airtime for the ads, or to back out. But under the First Amendment, Congress lacks authority to demand that NRLC declare in advance when and where we intend to utter a politician's name to the public, just as it lacks authority to utter a politician's name to the public, just as it lacks authority to impose such a burden on newspaper editorial boards.

Endorsements by Members of Congress: Section 101 of S. 27 would prohibit members of Congress from endorsing the fundraising efforts of advocacy groups that use any part of the money for any communication to the public—by any medium, at any time of the year—that ''promotes,'' ''supports,'' ''attacks'' or ''opposes'' a member of Congress (or other ''candidate''). This obviously would cover many of the routine communications that issue-oriented groups use to promote pending legislation. The following statement, for example, would certainly be considered an ''attack'' by some: ''Senator McCain has introduced an awful bill that would restrict the right of pro-life groups to communicate with the public about the voting records of members of Congress. Please write to Senator Jones and urge him to oppose the bill.'' Likewise, ''Senator Baucus has voted to keep the brutal partial-birth abortion method legal, but the bill is coming up again soon. Please call Senator Baucus and urge him to support the bill this time.''

[From the Christian Coalition of America]

PROTECT FREE SPEECH—OPPOSE H.R. 380, THE SHAYS-MEEHAN CAMPAIGN FINANCE BILL

FEBRUARY 27, 2001.

DEAR REPRESENTATIVE: The Christian Coalition of America strongly opposes H.R. 30, the Shays-Meehan campaign finance bill. H.R. 380 contains numerous unconstitutional provisions which are in direct opposition to Supreme Court rulings which have repeatedly upheld the First Amendment right of citizen groups, like the Christian Coalition of America, to educate the public on where officeholders and candidates stand on the issues. Because this legislation could effectively put our voter guides, as well as other voter education and issue advocacy activities at serious risk, we urge you to vote against the Shays-Meehan bill, as well as to actively oppose it on the House floor.

One of the most egregious of the unconstitutional provisions contained in H.R. 380 applies year-round during the entire two-year election cycle (or six-year cycle with respect to Senators). Section 206 contains a broad definition of ''coordination'' between a candidate and an outside group—so broad that if a representative or an organization were to discuss with an officeholder his ''message'' on a legislative issue, such as partial-birth abortion, anytime during the two-year election cycle, and the officeholder were to later campaign in the issue, the organization would be viewed as having ''coordinated'' with the officeholder. The organization could then be accused of violating the federal election laws if it were to disseminate a communication to the public that is deemed to be ''of value'' to the officeholder in his reelection campaign, even it if did not mention the officeholder by name.

Section 206 also broadens the definition of ''coordination'' to the point where if an incorporated organization making a voter education expenditure and a campaign were to merely use the services of the same fundraiser or media advisor—without having consulted or coordinated in any way—the expenditure would be considered an illegal contribution to the candidate's campaign if it were deemed to be ''of value'' to the campaign. This is what some have called, a form of ''guilt by association.''

And, as a catchall definition of ''coordination,'' the bill contains a vaguely worded restriction on payments ''made by a person in cooperation, consultation, or concert with, . . . or pursuant to any general or particular understanding with a candidate'' or candidate's agent.

Another section of the bill, Section 201, would prohibit incorporated organizations from funding television or radio communications to the public which mention the name of a candidate within 30 days of a primary or 60 days of a general election. This proposed restriction is blatantly unconstitutional. The Supreme Court has repeatedly protected the First Amendment right of like-minded citizens to educate the public on issues and where the officeholders and candidates stand on the issues. In Buckley v. Valeo (1976) and its progeny, the Supreme Court has made clear that issue advocacy (discussion on an issue in the public realm without expressly advocating the election or defeat of a candidate) is protected under the First Amendment from government regulation. Yet, under Section 201 of the Shays-Meehan bill, an organization such as the Christian Coalition of America, would be prohibited from disseminating a broadcast communication regarding an upcoming congressional vote within 60 days of an election, if the communication merely advised constituents of the name of their elected representative who would be casting that vote. The communication would also be banned if it merely mentioned the names of the sponsors of the bill, such as a reference to the ''Shays-Meehan'' bill.

But the Shays-Meehan bill goes even further in bringing issue advocacy by private citizen organizations under federal government regulation. The United States Supreme

Court and numerous other federal courts, have repeatedly protected issue advocacy and voter education from government regulation unless it ''expressly advocates'' the election or defeat of a clearly-identified candidate (i.e., ''vote for,'' ''defeat,'' etc.). This clear test ensures that the speaker will know whether they are complying with the law. As the Supreme Court explained in Buckley v. Valeo, the lack of such a clear 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.'' Yet the Shays-Meehan bill would do just that.

Section 201 would eliminate this bright-line protection set forth by the Supreme Court and redefine ''express advocacy'' to mean ''expressing unmistakable and unambiguous support for or opposition in one or more clearly identified candidates when taken as a whole and with limited reference to external events.'' This would take the determination beyond words of support or opposition (which is currently the standard in order to protect issue advocacy), to instead move to an examination of the overall context of a communication with respect to a candidate or type of candidate (such as pro-life candidates). Under this vague definition, a communication that contains any negative or positive commentary about an officeholder/candidate's positions or voting record, might become the subject of a complaint to the Federal Election Commission (FEC). This vague definition (in similar language) has been put forth by the Federal Election Commission in regulations and been rejected in court. Congress should reject it as well.

Lastly, the Shays-Meehan bill purports to contain an ''exception'' for voter guides. But under this exception, an organization could not verbally clarify the voting record or position of an officeholder or candidate for purposes of compiling the voter guide. Moreover, the ''exception'' prohibits the voter guide from containing ''words that in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates,'' as well as requiring that the voter guide ''when taken as a whole . . . not express unmistakable and unambiguous support for or opposition'' to a candidate—vague wording that would leave organizations that issue voter guides constantly at risk of being the subject of an FEC complaint and investigation. Furthermore, organizations that wish to issue voter guides would still have to fear violating the broad ''coordination'' prohibitions elaborated on at the beginning of this letter.

In light of the serious First Amendment ramifications that this bill would have on the week of the Christian Coalition of America, as well as on our nation's ability to discuss and debate issues, we urge you to vote against H.R. 380, the Shays-Meehan campaign finance bill.

Sincerely,

SUSAN T. MUSKETT, J.D.,
Director, Legislative Affairs.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I rise in support of this amendment as well. I think this has been worked out carefully. I commend the Members and staffs who worked on this amendment. This is in very sound shape. It avoids the potential problems of being overly broad or too vague with respect to the language, which would expose too many honest and good people who want to be involved in the political process from allegations of criminality. None of us want that to occur. This amendment is worthwhile.

Mr. President, if I might, since we are going to be a few minutes before we vote on this, I want to take a couple minutes and address another matter that may come up this morning which deserves some attention. That is what I see as one of the glaring problems still with the bill as a result of an amendment we adopted last week dealing with the so-called millionaires loophole. I voted against that amendment because I thought it was unnecessary. But it is even more so by the events over the past week, as we have adopted amendments now which have increased the hard dollar limits by 100 percent. Thus, the need for providing some additional resources to so-called less wealthy candidates is certainly far less than it was a week ago.

As we all recall, last Tuesday the Senate adopted amendment No. 115 offered by Senators DOMENICI, DEWINE, DURBIN, MCCONNELL, and others. I opposed the amendment because it did not appear to me to be reform. It added more money to the system and did so in a way to protect nonwealthy incumbents with substantial campaign treasuries. The amendment that may be offered later this morning would intend to close what I think is an unintended loophole in this language.

The Domenici amendment addressed the situation of a wealthy candidate financing his or her own election with personal resources. It granted more generous contribution limits to nonwealthy opponents. It sounds reasonable enough, but in the case of a nonwealthy incumbent, the amendment ignored the substantial resource that such an incumbent may have at his or her disposal in their campaign committees' accounts or treasuries.

The amendment that may be offered provides that the amount of such campaign balances must be taken into account before a wealthy candidate's contributions to his or her own campaign trigger the higher contribution limits for the incumbent.

Last Tuesday, the authors of this amendment described the situation of a wealthy candidate financing his or her own election as a constitutionally protected loophole. But my colleagues' solution, as adopted last week, unwittingly opens a more insidious loophole. One that protects incumbents and, more precisely, incumbents' campaign treasuries, from a wealthy candidate.

In describing the purpose of their amendment, which I opposed, my colleague contended that the Buckley decision created a substantial disadvantage for opposing candidates who must raise campaign funds under the current fundraising limitations.

That was last Tuesday. This week we adopted the Thompson-Feinstein amendment which doubled the individual hard money contribution limits and indexed those limits for future inflation.

The Thompson-Feinstein amendment also doubled the contribution amount a Senate campaign committee can make directly to candidate to $35,000 per election cycle and indexed it for inflation also.

In a period of 1 short week, we potentially gave an incumbent facing a wealthy challenger an additional $17,500, plus an additional $4,000 per couple per election. So the substantial disadvantage that incumbents supposedly faced last Tuesday has been substantially eliminated by the actions we took during this week on the bill.

Even so, the entire premise of the Domenici amendment that somehow incumbents need protection from wealthy opponents ignores one simple fact: Many nonwealthy opponents are actually incumbents sitting on healthy campaign accounts. Those campaign war chests can be equal to or greater than the personal funds being used by a so-called wealthy opponent.

For example, based on FEC disclosures, some of my colleagues facing reelection next year are sitting on campaign accounts with cash balances ranging from $100,000 to in excess of $3 million.

Surely my colleagues cannot be serious that with $1 million or $2 million sitting in their treasuries, and the advantages of incumbency we have automatically, including increased hard money limits, that they somehow need protection from a candidate who decides to put $600,000 into their own race.

For example, take a State the size of mine, a State with a little over 3 million people. The threshold amount would be $270,000. A wealthy candidate who contributed or spent $600,000 of his or her own money in that race would trigger contribution limits three times the normal for that incumbent, or $12,000 per individual per election, or $24,000 per couple. If you double that for primaries, as well as an election, you actually get $48,000. That is a substantial increase from where we were a week ago.

If that same incumbent has a war chest of $1 million, he actually has a cash balance of $400,000 more than the wealthy challenger.

Are we really serious that the incumbent in that situation is somehow disadvantaged—should he or she be able to raise $24,000 from a couple until the difference in the balances are reached? Yet that is exactly what the Domenici amendment, which I opposed, will provide.

Although my colleagues have argued that the tiered trigger system of the Domenici amendment is proportional, and that proportionality levels the playing field, that is simply not the case when a nonwealthy candidate is an incumbent.

In the case of a nonwealthy incumbent, the provision does anything but level the playing field. It becomes essentially an incumbent protection provision.

The amendment that was adopted last week simply goes too far under the present circumstances.

The amendment that may be offered by Senator DURBIN, myself, and others restores some balance between the incumbents with healthy campaign treasuries and individuals with personal wealth. It requires that the personal wealth of an opponent be offset by the amount of campaign treasury funds of a nonwealthy incumbent before any trigger of benefits to that incumbent occurs.

This amendment effectively adds the amount of the cash-on-hand balance reserves of an incumbent's war chest into the calculation of the opposition personal funds amount. So in my example, until the ''wealthy'' challenger spent $1 million in personal funds, that ''poor'' incumbent with the war chest would not get the advantage of the increased limits.

Just as my colleague's amendment last week was an attempt to correct the unintended effects of the Buckley decision, this amendment, which I believe will be offered, corrects the unintended effects of the amendment adopted last week; namely, protecting incumbents from wealthy opponents.

When that amendment is offered, I urge my colleagues to support it.

AMENDMENT NO. 165

Mr. MCCONNELL. Mr. President, is the pending amendment the McCain amendment on coordination?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MCCONNELL. Mr. President, unfortunately, the McCain amendment coordination provision lets big labor continue to coordinate its ground game with the Democrats. As you know, I have been predicting for 2 weeks that there would be an effort to water down provisions in the bill that were offensive to big labor.

With all due respect to the author of the amendment, the intent is quite clear: to mitigate the damage that has caused concern among those in organized labor about this bill. I note there is apparently not enough concern to get many Democratic votes against on final passage Monday, but they are very upset about the coordination provisions of this bill, thus the reason for the amendment that has been sent to the desk.

Let me make it clear, the coordination provision lets big labor continue to coordinate its ground game with the Democratic Party. It does this by changing the ''concept of coordinated activity'' that includes the union in-kind activity to ''coordinated expenditures or disbursements'' which are legal terms of art that do not encompass in-kind contributions. This new coordination provision is still unconstitutional and will result in Government witch hunts because it does not require actual collaboration or agreement to have a finding of coordination. This is in direct contravention to Colorado 1 and will result in a lengthy onerous investigation of citizens groups.

Mr. President, there will be a need to have a rollcall vote on the McCain amendment at 11 a.m. I do not know whether this is the appropriate time to request that rollcall vote or not.

The ACTING PRESIDENT pro tempore. If the Senator wishes to request a vote.

Mr. MCCONNELL. Mr. President, I request the yeas and nays on the McCain amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. BOND. 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.

AMENDMENT NO. 166

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

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 166.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To amend the Federal Election Campaign Act of 1971 to increase the penalties imposed for making or accepting contributions in the name of another and to prohibit foreign nationals from making any campaign-related disbursements)

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

SEC. 305. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) INCREASE IN CIVIL MONEY PENALTY FOR KNOWING AND WILLFUL VIOLATIONS.—Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) in paragraph (5)(B), by inserting before the period at the end the following: ''(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation)''; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: ''(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation)''.

(b) INCREASE IN CRIMINAL PENALTY.—

(1) IN GENERAL.—Section 309(d)(1) of such Act (2 U.S.C. 437g(d)(1)) is amended by adding at the end the following new subparagraph:

''(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating $10,000 or more during a calendar year shall be fined, or imprisoned for not more than 2 years, or both. The amount of the fine shall not be less than 300 percent of the amount involved in the violation and shall not be more than the greater of $50,000 or 1000 percent of the amount involved in the violation.''.

(2) CONFORMING AMENDMENT.—Section 309(d)(1)(A) of such Act (2 U.S.C. 437g(d)(1)(A)) is amended by inserting ''(other than section 320)'' after ''this Act''.

(c) MANDATORY REFERRAL TO ATTORNEY GENERAL.—Section 309(a)(5)(C) of such Act (2 U.S.C. 437(a)(5)(C)) is amended by inserting ''(or, in the case of a violation of section 320, shall refer such apparent violation to the Attorney General of the United States)'' after ''United States''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations occurring on or after the date of enactment of this Act.

Mr. BOND. Mr. President, we talked about imposing a lot of new laws and new provisions in some areas where I think we may not be doing what we wish to achieve. We are in this bill proposing to take political parties out of the campaign process which inevitably is going to shift money into other channels. One of the things I don't think we have adequately considered is what we do about people who have violated existing laws. Certainly, to the extent I have heard concerns about campaign finance, it has been about the failure to provide adequate penalties for those who violate the laws that are already on the books.

Under current campaign finance laws, there is no meaningful punishment of campaign violators. Over the last several years, we have had hearings, investigations and read about key figures in campaign scandals only to learn later that they walk. It is small wonder that abuse occurs on the scale that we have recently witnessed. It is a misdemeanor offense to make a campaign contribution in the name of another person, knowingly permit your name to be used for a contribution or knowingly accept a contribution made in the name of another, in other words make an illegal contribution through a conduit (2 U.S.C. 441f).

Despite this clear prohibition, it came to light that during the 1996 presidential campaign millions of dollars in illegal donations from foreign nations were funneled into party and campaign coffers through conduit contributors, some as outrageous as nuns and other people of worship. Despite these outrageous abuses, illegal contributions totaling hundreds of thousands of dollars in some cases flowed with impunity. Under the circumstances, the punishments handed out to those caught red-handed can barely be considered slaps on the wrist.

As simply a misdemeanor offense, those intent on corrupting the process do not fear the consequences. Despite the scale of some of the abuses, the offense is rarely prosecuted. When it is, the offenders are handed minimal fines and no jail time. The message from the so-called prosecutions is that there is no threat of jail time for those who break campaign finance laws. If it feels good, do it.

As the gross abuses of the 1996 presidential campaign came to light, we heard from the perpetrators of the

abuses themselves that what was needed was not enforcement of the law but new laws and reform of the campaign finance system. Despite their gross indifference to the law, it appears they got their wish. We are here debating more laws with no discussion about increasing penalties and cracking down on law breakers.

If we are truly serious about reforming the system, we must crack down on the lawbreakers. Abusers must be punished accordingly or no new law is going to make a difference in cleaning up the system.

Violators have to fear punishment or they will continue to violate the law as they have abused existing law. There is no reason to think that yesterday's lawbreakers will not break tomorrow's laws unless they understand there are consequences. New laws cannot be effective if ''teeth'' are not put in the law. Without this change, ''reform'' talk is cheap and just talk.

My amendment would make it a felony to knowingly make conduit contributions, knowingly permit your name to be used for such a contribution or knowingly accept a contribution made in the name of another. The amendment does not change the conditions of the underlying offense, but by making it a felony, it adds some ''teeth'' to the law. Maybe the Johnny Chungs and the Charlie Tries of this world will understand there are consequences for their actions and no longer violate campaign finance laws with impunity.

As a felony offense, violators will be subject to either jail time or a stiff fine, or perhaps both. Fines will be increased dramatically to a minimum of not less than 300 percent of the amount involved. The amendment requires, not suggests, that the FEC refer these cases to the Justice Department. Finally, it broadens the prohibition on donations from foreign nationals, ensuring that clever lawyers won't be able to move funds to accounts like ''redistricting'' or others. There is a prohibition on donations from foreign nationals. This takes away an exploitable loophole.

By taking this step, Congress will be sending a clear message that it considers the funneling of illegal campaign contributions a serious offense to be punished accordingly.

It becomes an offense that prosecutors can use in pursuing a case. Currently there is little incentive for a suspect to cooperate if they are threatened only with a misdemeanor. There is less incentive for busy prosecutors to dedicate the time and resources to prosecute this offense if it remains a misdemeanor. This amendment gives prosecutors something they can use.

This amendment goes after lawbreaking contributors to any candidate of any party. Contributors to all parties are required by law to disclose their donations properly. Concealing the source of a donation is illegal. If you do it, you can expect punishment. Similar legislation has been introduced on the House side and has strong bipartisan support.

We in Congress should be very concerned about the growing willingness we have seen in recent cycles for people to break the law apparently with impunity. We should be further concerned with the meaningless punishments handed down and the signal it sends that we will tolerate corruption.

According to news accounts, what has become of these notorious abusers of our campaign finance laws?

Yah Lin ''Charlie'' Trie was convicted of funneling over $1 million in conduit contributions during the 1996 cycle, a large percentage of the money was traced to Macau. For this, Mr. Trie was sentenced on November 1, 1999 to 3 years probation and 4 months home detention and fined $5,000—but he received no jail time.

Mr. Johnny Chung funneled $300,000 he received from a general in the Chinese Military Intelligence Agency and made another $350,000 in conduit contributions. This individual who brazenly said ''the White House is like a subway, you have to put in coins to open the gate,'' was sentenced to 3,000 hours of community service for bank fraud, tax evasion, and his role in aiding donations to the Clinton campaign, but he received no jail time.

Mr. President, 3,000 hours of community service—if they make enough, that ought to be a good year's work for anybody. They ought to be willing to do community service not as a punishment but as their contribution.

Next, John Huang pleaded guilty on August 12, 1999, to arranging illegal political contributions from overseas. It was found that he arranged over $1 million in illegal contributions, primarily with money from Indonesia. He was fined $10,000 and sentenced to 1 year probation and 500 hours of community service but no jail time.

I suspect that whatever source provided him the million dollars probably helped him cover the amount of that fine. And 500 hours of community service, well, that would be a nice year's work.

Maria Hsia, who funneled over $100,000 through nuns and monks at a temple was tried and convicted of five counts. She was sentenced on February 6 of this year to a whopping 90 days—90 days—of home confinement—that is really tough; you have to stay home for 90 days—250 hours of community service, 3 years of probation and she was fined a whopping $5,000. The ''home confinement,'' of course, permits Ms. Hsai to work each day, care for her elderly parents and attend religious services—but no jail time. So you can't really say this is an onerous penalty.

Billionaire James Riady agreed on January 11 of this year to pay an $8.6 million fine and plead guilty to unlawfully reimbursing donors to the 1992 campaign of President Bill Clinton—but he will serve no jail time.

But for a billionaire, $6 million is like me reaching in my wallet to buy lunch at the sandwich shop. Do you think that hurt him very much? I do not believe so. For $8.6 million, he has every incentive to come back and do his trick again. That is a small price to pay for being able to exercise inappropriate, unwarranted, and illegal influence on a campaign.

Until this point, this body has focused exclusively on making it more difficult for candidates to raise money legally while remaining silent on blatant abuses. If we are to get serious about reform, at least we should go after those who are willing to break the law. If campaign violators refuse to respect the law, then maybe they will respect the threat of real, not meaningless, punishment. Congress needs to get tough and send a clear message that the days of tolerance for these illegal, unlawful, and improper practices are coming to an end. I urge my colleagues to adopt this very simple amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields the time?

Mr. MCCAIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Missouri.

There is a great deal of redundancy in his amendment. We already bar foreign contributions and increase penalties in some areas. But I think the Senator from Missouri makes very valid points. I think his amendment probably addresses some very helpful areas. I am prepared to accept the amendment. I do not know about all Members yet, but we would like to run it by them and see if we can't get some agreement on the amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. MCCONNELL. Would the Senator from Iowa withhold for just a moment? We have an amendment that is cleared. I would just like to process it if I could.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, the pending amendment is the Bond amendment?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. MCCONNELL. I ask unanimous consent it be temporarily set aside.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 167

Mr. MCCONNELL. Mr. President, there is an amendment by Senator

HATCH with regard to expedited review that has been cleared on both sides. I send that amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. HATCH, proposes an amendment numbered 167.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide expedited review)

On page 38, after line 3, add the following:

SEC. 403. EXPEDITED REVIEW.

(a) EXPEDITED REVIEW.—Any individual or organization that would otherwise have standing to challenge a provision of, or amendment made by, this Act 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. For purposes of the expedited review provided by this section the exclusive venue for such an action shall be the United States District Court for the District of Columbia.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order or judgment of the United States District Court for the District of Columbia finally disposing of an action brought under subsection (a) 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 or judgment is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order or judgment is entered.

(c) 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 subsection (a).

Mr. HATCH. Mr. President, I am offering an amendment that will provide for expedited judicial review of the provisions of the McCain-Feingold Bipartisan Campaign Finance Reform Act of 2001. Without this amendment, American citizens and public interest groups, among others, will be subject to controversial, unworkable, and in my mind, likely unconstitutional provisions that infringe free speech rights protected by the first amendment.

Supporters of the bill should welcome this amendment as well. All of us, supporters and opponents alike, stand go gain by a prompt and definite determination of the constitutionality of many of the bill's controversial provisions.

For those who oppose the bill, these controversial provisions pose imminent danger not only to individuals' rights to free speech, but also to our cherished two party system. Because the harm these provisions will cause is serious and irreparable, it is imperative that we afford the Supreme Court the opportunity to pass on the constitutionality of this legislation as soon as possible.

The way the amendment works is simple, and I believe it should be noncontroversial. Those who challenge the constitutionality of the legislation must bring their case in the district court of the District of Columbia. Furthermore, only those who can show cognizable harm under the legislation will be permitted to bring a case. The district court, of course, has the authority to consolidate all the challenges brought against the legislation. To make certain that the district court considers the case promptly, my amendment directs the court to ''expedite to the greatest possible extent the disposition of [the] matter.''

My amendment also provides for an expedited appeal of the district court's ruling to the Supreme Court. The hearing of this appeal by the Supreme Court, however, follows the customary procedures for a writ of certiorari—that is, the Supreme Court has the discretion whether or not to review the case. If the Supreme Court declines to review the ruling, then the district court's ruling would stand.

Now some may complain that with this approach we are bypassing the Circuit Courts of Appeal. To them I say this: Such a procedure is not unprecedented. Indeed, the Supreme Court's own rules allow for such a procedure when it is authorized by law or when the case is of such imperative public importance as to justify deviation from normal appellate practice. I think we can all agree that the issues presented by this legislation meet that threshold.

I hope that my colleagues—whether they support or oppose the underlying legislation—will support my amendment. It is in all of our interests to have the prompt, authoritative, and final resolution of these issues that an expedited appeal will provide.

Mr. FEINGOLD. Mr. President, this amendment is acceptable to those who support this bill because we agree with the Senator from Utah that questions about its constitutionality should be resolved promptly. A procedure similar to the one set up in this amendment was used when the 1974 act was challenged, and although not all of us agree with everything that the Supreme Court decided in the Buckley case, the process served the country relatively well.

Let me make just a few points of clarification. First, the amendment makes no change in what would otherwise be the law on the issue of who has legal standing to sue. The text of the amendment is absolutely clear on that point. Second, as the Senator from Utah notes, the venue for actions challenging the constitutionality of the bill will be in the United States District Court for the District of Columbia, with direct appeal to the United States Supreme Court. The district court will have the power to consolidate related challenges into a single case.

Finally, and most importantly, although the amendment provides for the expedition of these cases to the greatest possible extent, we do not intend to suggest that the courts should not take the time necessary to develop the factual record and hear relevant testimony if necessary. And we do believe that the Court should allow interested parties to intervene, or become amici curiae as was done in the litigation that led to the Buckley decision. This case will be one of the most important that the Court has heard in decades, with ramifications for the future of our political system for years to come. By expediting the case, we in no way want to rush the Court into making its decision without the benefit of a full and adequate record and the opportunity for all interested parties to participate.

With that understanding, I support the amendment and I commend the Senator from Utah for thinking ahead to the inevitable legal challenges that await this bill and coming up with a fair and expeditious procedure to handle them.

Mr. DODD. Mr. President, we have been able to work out the amendment offered by my colleague from Utah, Senator HATCH, with regard to an expedited review of the McCain-Feingold measure.

While I strongly disagree with my colleague's conclusion that absent review, the citizens of this Nation will be subjected to unconstitutional provisions that infringe on speech, I do support the intent of this amendment. I believe that this measure, S. 27, is a balanced attempt to follow the requirements laid down in Buckley and the Shrink Missouri PAC cases. The Court has essentially invited Congress to express our will in this area, and the McCain-Feingold legislation does just that.

My support for the Senator's amendment should in no way be read to suggest that I think there are provisions of this measure that are unconstitutional. To the contrary, I believe it will pass constitutional review. However, I understand the Senator's desire to put this question to the test in an expedited manner.

This is not an unusual request for such far-reaching and important legislation. The purpose of this amendment is to provide expedited judicial review of this legislation. In this Senator's mind, this is a good idea. I am confident that the Supreme Court will ultimately uphold this legislation and it is in everyone's best interest to know that as soon as possible.

But by saying that, however, I do not want to suggest that the Court should not take adequate time to review any such challenge. Furthermore, I am not suggesting that such an expedited review be conducted at the expense of allowing all interested parties to intervene in this matter in order to provide assistance to the Court in its decision. This may be the first major effort to reform this Nation's campaign finance

laws in nearly 25 years that becomes law, and there is a wealth of expertise on this issue in both Congress and the private sector which can be of immense assistance to the Court in its review.

Finally, I express my appreciation to the Senator from Utah for his willingness to clarify that any such expedited challenge to this measure must be brought exclusively in the District Court for the District of Columbia.

I urge the adoption of the amendment.

Mr. MCCONNELL. Mr. President, I believe we are ready to adopt it.

Mr. DODD. Mr. President, there is no objection to the amendment on this side.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment? The question is on agreeing to the amendment.

The amendment (No. 167) 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.

Mr. MCCONNELL. I yield the floor.

AMENDMENT NO. 168

The PRESIDING OFFICER (Mr. KYL). The Senator from Iowa.

Mr. HARKIN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 168.

Mr. HARKIN. 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 add a nonseverability provision with respect to the ban on soft money and the increase in hard money limits)

On page 37, strike lines 15 through 24 and insert the following:

TITLE IV—NONSEVERABILITY OF CERTAIN PROVISIONS; EFFECTIVE DATE

SEC. 401. NONSEVERABILITY OF CERTAIN PROVISIONS

(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 PROHIBITION ON SOFT MONEY OF POLITICAL PARTIES AND INCREASED CONTRIBUTION LIMITS.—If any amendment made by section 101, or the application of the amendment to any person or circumstance, is held to be unconstitutional, each amendment made by sections 101 or 308 (relating to modification of contribution limits), and the application of each such amendment to any person or circumstance, shall be invalid.

Mr. HARKIN. Mr. President, this is a very simple amendment. All it does is provide that if the soft money ban is struck down in the courts, then the hard money increases now included in the bill will also be taken out.

During the debate on raising the hard money limits, we heard a lot of discussion about, if we are going to ban all the soft money, then we at least ought to raise the hard money limits. I happened to personally oppose that, but obviously I was on the losing side of that issue. So the hard money limits were raised. There is some question as to whether or not the ban on soft money is going to be upheld in the courts. There are those who say that it can withstand constitutional scrutiny; there are others who say it won't. I don't know. It is sort of a tossup on that one.

All my amendment says is that if the courts strike down the ban on soft money, then the increase in hard money that we included will go back to the limits we now have in law. It is very simple. I don't know that I need to describe it any more than that.

We would be a laughing stock if, in fact, the courts struck down the soft money ban so that now we have soft money and an increase in hard money. What kind of reform is that? Obviously, if the soft money ban is found to be constitutionally secure, then we have the increases in the hard money.

That is all this amendment does. There is more I could say about how much people give in hard money, but that has already been discussed. I don't need to go through that. It would cast a bad light on reform if in fact the courts struck down the soft money ban so now we have soft money and more hard money. That would be the total antithesis of what we are trying to do here.

That is what the amendment is. It is very simple. It is straightforward. Again, my amendment says, if the courts strike down the ban on soft money, then the increases we have put in here on hard money will go back to the levels we have had for the last 25 years.

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

Mr. HARKIN. I am glad to yield.

Mr. DODD. I think this is an amendment that makes some sense. He is absolutely correct. There is some question about the soft money constitutionality. If that ban is found to be unconstitutional, then the door is wide open again. As my colleague knows, while I supported the Thompson-Feinstein compromise, I did so reluctantly, having spoken out against the increases. I agree with my colleague on that point. I have some concerns over the so-called millionaires amendment as well which allows for an exponential increase in contributions if someone challenges us with personal wealth. I know that makes Members uneasy, but it allows for a factor as high as presently six times the hard dollar limits.

Mr. HARKIN. That is correct.

Mr. DODD. I don't know if his amendment includes reaching that provision. Even if we go back to the original hard dollar limits, we still include the millionaires which would allow those numbers to go up. I was curious as to whether or not the amendment touched on that provision.

Mr. HARKIN. I don't think it touches that. No, we did not touch on that provision with the amendment.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, the Senator from Iowa voted against nonseverability yesterday. After Senator MCCAIN and Senator THOMPSON and others went through this painful compromise of working out an appropriate hard money increase that only had 16 votes against it, the Senator from Iowa wants to come in here at the last minute and unravel that compromise. I thought we were past that on this bill, I say to the Senator from Arizona. I thought we were down to a few wrap-up items. This amendment ought to be defeated overwhelmingly, and we should stick with the compromise that was so painstakingly worked out the other day.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, the Senator from Kentucky is exactly right. This whole thing has been a series of fragile compromises. This would unravel the whole effort. Although the Senator from Kentucky and I are not in agreement on the amount, there is no doubt that we have to increase hard money. To say that we would not increase hard money at all and do away with all the soft money is just not a viable proposal. I hope the Senator from Iowa will recognize that there is overwhelming opposition to this amendment, and we could voice vote it at this time.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Wisconsin.

Mr. FEINGOLD. I join in the opposition to the Harkin amendment. There was a very good discussion yesterday about the rarity and lack of wisdom of the nonseverability provisions. To head in that direction, given the rarity of it, given the clear intention of the Senate yesterday, is unwise. We oppose this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. 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. HARKIN. 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. HARKIN. Mr. President, it is my understanding that the pending amendment is one I had sent up earlier. To summarize the amendment, which is

now under consideration, it is simple and straightforward. It says if the courts strike down the ban on soft money, then the increases in the hard money limits we put in this bill would also go back to the levels we have right now. So we would not be faced with a situation later on that. If the court struck down the soft money ban, we get to raise soft money and also get the increases in the hard money limit.

Senator DODD pointed out that my amendment does not reach to the millionaire amendment that we adopted. It doesn't. I did not include that. These are the things I understand that are going to have to be worked out in conference with the House. I am hopeful that as we go into conference, the problem I just pointed out would also be addressed. We certainly don't want to wind up having both the soft money and the increases in hard money—at least I don't think.

In talking with colleagues on this side, that is why I decided to offer this amendment. But I understand that it would not be adopted; I understand the lay of the land.

I ask that we just proceed to a voice vote on the amendment and, hopefully, the managers would consider this when they get into conference.

Mr. MCCONNELL. Mr. President, there is bipartisan opposition to the amendment of the Senator from Iowa. We will be voting no on the voice vote.

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

The amendment (No. 168) was rejected.

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

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I suggest the absence of a quorum to be charged to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The Bond amendment No. 166.

AMENDMENT NO. 166, AS MODIFIED

Mr. MCCONNELL. Mr. President, on behalf of Senator BOND, I send a modification to the amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

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

SEC. 305. INCREASE IN PENALTIES IMPOSED FOR VIOLATIONS OF CONDUIT CONTRIBUTION BAN.

(a) INCREASE IN CIVIL MONEY PENALTY FOR KNOWING AND WILLFUL VIOLATIONS.—Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended—

(1) in paragraph (5)(B), by inserting before the period at the end the following: ''(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation)''; and

(2) in paragraph (6)(C), by inserting before the period at the end the following: ''(or, in the case of a violation of section 320, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of $50,000 or 1000 percent of the amount involved in the violation)''.

(b) INCREASE IN CRIMINAL PENALTY.—

(1) IN GENERAL.—Section 309(d)(1) of such Act (2 U.S.C. 437g(d)(1)) is amended by adding at the end the following new subparagraph:

''(D) Any person who knowingly and willfully commits a violation of section 320 involving an amount aggregating $10,000 or more during a calendar year shall be fined, or imprisoned for not more than 2 years, or both. The amount of the fine shall not be less than 300 percent of the amount involved in the violation and shall not be more than the greater of $50,000 or 1000 percent of the amount involved in the violation.''.

(2) CONFORMING AMENDMENT.—Section 309(d)(1)(A) of such Act (2 U.S.C. 437g(d)(1)(A)) is amended by inserting ''(other than section 320)'' after ''this Act''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to violations occurring on or after the date of enactment of this Act.

Mr. DODD. Mr. President, while I will not object to the adoption of the amendment by my colleague from Missouri, Mr. BOND, I do not believe that it presents the best approach for ensuring comprehensive enforcement of this new law. In particular, I disagree with the method of appearing to single out one type of violation for enhanced enforcement or prosecution, namely conduit contributions in the name of another.

My lack of objection should not be read to infer that either this Senator, or this body, believe that conduit contributions represent the most serious abuse of campaign finance laws nor that such an abuse requires selective enforcement and prosecution apart from other violations of the Act.

I also want to be clear that I do not completely agree with the characterizations of the Senator from Missouri of the alleged campaign finance abuses in the 1996 Presidential and Congressional elections. Let me also be clear, campaign finance violations are already subject to civil enforcement and prosecution as both misdemeanor and felony offenses. The remedies Senator BOND is proposing appear to already be available in law if the facts or evidence in such cases include aggrevated circumstances.

An unintended result of the amendment of Senator BOND may be the appearance and reality of selective prosecution. Such a result is avoided by the approach of my colleagues from Tennessee, Senator THOMPSON, and Connecticut, Senator LIEBERMAN. Theirs is the preferred approach which provides for comprehensive enforcement of all violations of the new law. I am pleased that their provision has also been included in S. 27, the McCain-Feingold legislation, and believe that it should be applied across the act to all violations.

We all agree that existing civil and criminal laws must be vigorously and uniformly enforced. I believe that this will be the case.

Mr. MCCONNELL. Mr. President, this has been worked out now and is acceptable to both sides.

Mr. DODD. The Senator from Kentucky is correct.

The PRESIDING OFFICER. Without objection, the amendment, as modified, is agreed to.

The amendment (No. 166), as modified, 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.

Mr. MCCONNELL. 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. MCCAIN. 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. MCCAIN. Mr. President, I am very cognizant of the very short period of time remaining under the UC agreement on amendments. We have been working on a modification of the so-called millionaires amendment. I believe we are very close in trying to equalize this situation so that when a person contributes a certain amount of money, then the incumbent or the candidate without the money will be able to have not an unfair advantage.

We have been in consultation, and I hope we can reach an agreement under the UC, if all sides agree, to have an amendment adopted after the vote. That is up to Senator MCCONNELL. I want to hear from him on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I missed the first part of the comment of the Senator from Arizona. I gather it was whether this amendment can be offered after 11 o'clock.

We have been on this bill 2 weeks. This was adopted the first day of the 2-week debate, and here we are at 2 minutes to 11 still trying to fix it. With all due respect to the Senator from Michigan, I am not going to agree to a modification of the consent agreement so it can be offered after 11 o'clock. I will be happy to work with him on whether it can be included as a technical amendment at the end on Monday. I am not going to agree to change the consent under which we are currently operating.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I understand Senator MCCONNELL's position. It

has been long debated. I had hoped we would reach agreement that by unanimous consent we could offer an amendment after 11 o'clock because we are still working on some of the technical aspects of this amendment. But if the Senator from Kentucky believes he has to object to that unanimous consent request, then I will offer this amendment at this time. I ask the Senator if that is his position.

Mr. MCCONNELL. I think the Senator should offer the amendment because this, at the risk of repeating myself, is the first amendment we dealt with 2 weeks ago, and here we are 1 minute to 11 trying to modify it. My colleague had plenty of time to do that. The Senator can go ahead and do that if he wants.

Mr. DURBIN. I thank the Senator.

AMENDMENT NO. 169

Mr. DURBIN. 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 Illinois [Mr. DURBIN] proposes an amendment numbered 169.

Mr. DURBIN. 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 limit the increase in contribution limits in response to expenditures from personal funds by taking into consideration a candidate's available funds)

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

SEC. . RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(i)(1)), as added by this Act, is amended by adding at the end the following:

''(E) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.—

(i) IN GENERAL.—For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the net cash-on-hand advantage of the candidate.

(ii) NET CASH-ON-HAND ADVANTAGE.—For purposes of clause (i), the term 'net cash-on-hand advantage' means the excess, if any, of

(I) the aggregate amount of 50% of the contributions received by a candidate during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 30 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50% of the contributions received by an opposing candidate during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 30 of the year preceding the year in which a general election is held.

Mr. DURBIN. Let me explain.

Mr. DODD. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

The PRESIDING OFFICER. The hour of 11 o'clock has arrived, and there are 2 minutes equally divided.

Mr. DODD. Parliamentary inquiry: Is it permissible for a modification to be sent to the desk and considered prior to the vote of an amendment that has already been submitted?

The PRESIDING OFFICER. By unanimous consent.

Mr. DURBIN. Could I ask for clarification? I have 2 minutes to explain the amendment?

The PRESIDING OFFICER. Two minutes, equally divided.

Mr. DURBIN. This was one of the first amendments, the Domenici-DeWine-Durbin amendment, related to the millionaire candidates who are showing up more and more.

Since this amendment was originally adopted, some people have noted the fact that some incumbents may have cash on hand and that ought to be taken into consideration when you consider the triggers as to millionaires' expenditures. That is what this amendment addresses.

We also had changed the hard money contributions. We have raised the level of the contributions, which affects the same amendment, the Domenici amendment. I am only addressing the cash on hand aspect. I hope my colleagues would agree with me that we want to get as close to possible to a level playing field but not create incumbent advantage. That is what this amendment seeks to do.

Mr. DODD. I thank my colleague for doing this. I opposed the millionaires amendment for the very reason that the Senator from Illinois outlined this morning. The reason he has offered this amendment is to correct it; it creates a giant loophole.

Talk about incumbent protection, we allow now six times the new levels of hard money. It allows literally someone to receive a check from one couple of $48,000, vastly in excess of what Members intended when they adopted this amendment a week ago.

Under the Feinstein-Thompson increase in hard dollars, we need to come back to this. The Senator from Illinois offered a reasonable, sensible amendment to correct this problem. I urge its adoption.

Mr. DURBIN. I ask unanimous consent for 30 additional seconds.

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

Mr. DURBIN. I make the record clear. We asked for unanimous consent so we could continue to work on this amendment. I only addressed the cash on hand.

I agree completely with the Senator from Connecticut when it comes to the increased hard money contribution. I hope to address that in my technical amendment, if not in conference. I agree with him completely on the point. We have not had the time this morning to include that.

Mr. MCCONNELL. If ever that were a faulty excuse, this is the time. This was the first amendment adopted 2 weeks ago and the Senator from Illinois is here at the last minute trying to unravel an amendment that got 70 votes. A Domenici amendment was passed 70–30 2 weeks ago and here at the last minute we are trying to unravel it.

It is no surprise that there is some confusion about what is going on. My conclusion is that a vote that got 70 Members of the Senate maybe ought to stand. I think the Durbin amendment should be opposed.

AMENDMENT NO. 164, AS MODIFIED

Mr. DODD. Is it permissible to move to a second amendment? I want to send a modification on behalf of the Senator to the desk on the Reed amendment.

Mr. MCCONNELL. Reserving the right to object—I do not object.

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

The amendment will be so modified.

The amendment, as modified, is as follows:

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

SEC. ___. AUDITS.

(a) 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, or with the express authorization of the candidate, 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.''.

The PRESIDING OFFICER. There are 2 minutes equally divided. All time on the Reed amendment has expired.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The PRESIDING OFFICER. The question is on agreeing to the Reed amendment numbered 164, as modified.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Nevada (Mr. ENSIGN), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from Louisiana (Mr. BREAUX), the Senator from Minnesota (Mr. DAYTON), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

The result was announced—yeas 41, nays 50, as follows:

[Rollcall Vote No. 62 Leg.]

YEAS—41

Akaka	Edwards	Lieberman
Bayh	Feingold	Lincoln
Biden	Fitzgerald	Mikulski
Byrd	Graham	Murray
Cantwell	Harkin	Nelson (FL)
Carnahan	Hollings	Reed
Carper	Inouye	Reid
Cleland	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kerry	Schumer
Daschle	Kohl	Stabenow
Dodd	Landrieu	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NAYS—50

Allard	Domenici	Nelson (NE)
Allen	Enzi	Nickles
Baucus	Feinstein	Roberts
Bennett	Frist	Santorum
Bond	Grassley	Sessions
Boxer	Gregg	Shelby
Brownback	Hagel	Smith (NH)
Bunning	Hatch	Smith (OR)
Burns	Hutchinson	Snowe
Campbell	Hutchison	Specter
Chafee	Inhofe	Stevens
Clinton	Jeffords	Thompson
Cochran	Kyl	Thurmond
Collins	Lott	Torricelli
Craig	Lugar	Voinovich
Crapo	McCain	Warner
DeWine	McConnell	

NOT VOTING—9

Bingaman	Ensign	Miller
Breaux	Gramm	Murkowski
Dayton	Helms	Thomas

The amendment (No. 164), as modified, was rejected.

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.

Mr. MCCONNELL. Mr. President, let me report to the Members of the Senate that there may only be one more rollcall vote. I ask unanimous consent—there could be more than one but maybe only one—that the next vote in the series be limited to 10 minutes.

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

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona has 1 minute.

AMENDMENT NO. 165

Mr. MCCAIN. Mr. President, I urge adoption of this amendment. It basically codifies regulation. It requires the Federal Election Commission to promulgate new regulations to enforce the statutory standards. It shall not require collaboration or agreement to establish coordination, in addition to any subject determined by the Commission. In other words, we are asking the FEC to promulgate regulations to crack down on the abuses of coordination. I think it is legitimate. It neither favors unions nor business and corporations.

It may not be the answer that we both wanted, but it is a far significant improvement from the present language. I look forward to working with the Senator from Kentucky in trying to improve it even further.

I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I urge that the amendment be opposed. I particularly want to get the attention of the Republican Senators. I have been predicting for 2 weeks that at the end there would be an effort to water down offending language that big labor did not like that was inadvertently included, or maybe on purpose included, in the original McCain-Feingold. This is that effort. What it does is let big labor continue to coordinate its ground game with the Democratic Party.

This is a modification of the original language in McCain-Feingold which the AFL-CIO thought was offensive. It is now being modified in a way that makes it bite less. So this will complete the job.

You noticed, all the amendments during the course of the last 2 weeks that had any impact on labor at all were defeated. Now the provision that was in the bill that was offensive to labor is being watered down. I urge that this amendment be opposed.

Mr. DODD. Mr. President, is there any time remaining?

The PRESIDING OFFICER. All time has expired.

Mr. DODD. Mr. President, I ask unanimous consent for 20 seconds, if I can.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. I ask unanimous consent for 20 seconds.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. This amendment covers every organization. If you are for McCain-Feingold, you don't want to put people in the situation where you are potentially becoming a criminal because you had a conversation. So this covers the NRA, pro-life groups, every organization. Without the adoption of this amendment, you have a situation that is inviting criminality. I do not think any of us want to see that be the case. Senator MCCAIN and others have worked this out. I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 20 seconds.

Mr. MCCONNELL. Let me sum this up. This is the last gift to the AFL–CIO right here at the end of the bill. It will allow them to continue to coordinate their ground game with the Democrats. I urge opposition of the amendment.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 165. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Nevada (Mr. ENSIGN), the Senator from Texas (Mr. GRAMM), the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Wyoming (Mr. THOMAS), are necessarily absent.

Mr. REID. I announce that the Senator from New Mexico (Mr. BINGAMAN), the Senator from Louisiana (Mr. BREAUX), the Senator from Minnesota (Mr. DAYTON) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

The result was announced—yeas 57, nays 34, as follows:

[Rollcall Vote No. 63 Leg.]

YEAS—57

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

NAYS—34

Allard	Enzi	Nickles
Allen	Fitzgerald	Roberts
Bennett	Frist	Santorum
Bond	Grassley	Sessions
Brownback	Gregg	Shelby
Bunning	Hagel	Smith (NH)
Burns	Hatch	Smith (OR)
Campbell	Hutchinson	Stevens
Craig	Inhofe	Thurmond
Crapo	Kyl	Voinovich
DeWine	Lott	
Domenici	McConnell	

NOT VOTING—9

Bingaman	Ensign	Miller
Breaux	Gramm	Murkowski
Dayton	Helms	Thomas

The amendment (No. 165) was agreed to.

Mr. COCHRAN. 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.

Mr. MCCONNELL. Mr. President, there is one amendment remaining, and I believe it has been worked out. I believe Senator DURBIN has to modify it.

AMENDMENT NO. 169, AS MODIFIED

Mr. DURBIN. Mr. President, I ask unanimous consent that the modification I have delivered to the desk be agreed to.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 169), as modified, was agreed to, as follows:

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

SEC. . RESTRICTION ON INCREASED CONTRIBUTION LIMITS BY TAKING INTO ACCOUNT CANDIDATE'S AVAILABLE FUNDS.

Section 315(i)(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(i)(1)), as added by this Act, is amended by adding at the end the following:

''(E) SPECIAL RULE FOR CANDIDATE'S CAMPAIGN FUNDS.—

(i) IN GENERAL.—For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) GROSS RECEIPTS ADVANTAGE.—For purposes of clause (i), the term ''gross receipts advantage'' means the excess, if any, of

(I) the aggregate amount of 50% of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50% of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

Mr. DURBIN. Mr. President, I ask unanimous consent that Senators DOMENICI, DEWINE, and LEVIN be shown as cosponsors of the modified amendment.

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

Mr. DODD. Mr. President, I am going to oppose the modified Durbin amendment. Quite simply, it preserves all of the incumbency protection provisions of the original Domenici amendment.

I compliment my colleague from Illinois on his attempt to correct his amendment of last week, but this modification does not get the job done.

Let me review for my colleagues what happened last Tuesday and which provisions of the Domenici amendment are most objectionable to this Senator.

Last Tuesday the Senate adopted amendment number 115 offered by Senators DOMENICI, DEWINE, DURBIN, MCCONNELL and others regarding wealthy candidates. The proponents of this amendment claimed that it addressed an unintended effect of the Buckley decision—namely, that wealthy candidates have a constitutional right to use their own resources to finance a campaign. My colleagues argued at the time that the Buckley decision created a substantial disadvantage for opposing candidates who must raise campaign funds under the current fund-raising limitations.

That is an outrageous statement. Who among us really believe that we are disadvantaged by hard money contribution limits? The benefits of incumbency are well known and are recognized obstacles for challengers to overcome.

The contention of my colleagues, who supported the Domenici amendment last week, is that the current limits are simply too low for incumbents to overcome challengers who have independent wealth. Consequently, their amendment establishes threshold amounts, based on the voting population of the state, which if exceeded by contributions of personal wealth by a candidate, would trigger outlandish benefits to an incumbent. Benefits of 4 to 6 times the contribution limits of current law.

I opposed that amendment because it clearly created yet another advantage of incumbency—that of ignoring the significant wealth that incumbents also have in the form of campaign treasuries.

Moreover, the benefits afforded to an incumbent with a war chest were way out of line with the threshold limits that triggered these benefits.

For example, in my State of Connecticut, the voting age population is roughly 2.5 million. Under the Domenici amendment, a wealthy candidate would only have to expend $250,000 of his or her own resources to trigger benefits to an incumbent. And what are those benefits? Well, it depends upon how much the wealthy candidate spends.

If the wealthy candidate spends $500,000 of his or her own money—not an insignificant sum, but not huge either—the amendment would triple the contribution rates for the incumbent. That means that the incumbent could raise funds, equal to 110% of the $500,000, in amounts three times as large as current law. The incumbent facing this moderately wealthy challenger in the State of Connecticut would be able to solicit $6,000 per individual, per election for a total of $12,000, or $24,000 per couple. That is hardly reform.

But what if that moderately wealthy challenger expends twice that amount

in personal resources, or $1 million? In that case, the so-called disadvantaged incumbent can raise contributions from individuals at 6 times the current rate. In that instance, the incumbent could legally solicit funds from an individual in the amount of $12,000 per election, or $24,000 per election cycle, or $48,000 per couple.

Is there anyone who believes that asking a couple to write a check in the amount of $48,000 is reform or in the best interest of this Democracy? I think not.

But let me add another twist. Suppose this same incumbent, facing the wealthy challenger, has a campaign account—as almost all incumbents do. And in that campaign account there is a balance of $1,000,000, not an unrealistic amount for many incumbents. And yet, even though that incumbent has 1 million dollars in the bank, and the wealthy candidate spends only $500,000 of their personal funds, the incumbent still gets 3 times the benefits. What is fair about that?

Some of my colleagues suggest that their campaign accounts are not the same as a challenger's personal wealth—that they have worked hard to raise those campaign dollars, living within the current limits of only $1,000 per individual per election. Before my colleagues feel too sorry for themselves, let me point out that I am sure that wealthy candidate believes he has worked equally hard for his personal wealth. And like the wealthy candidate who, alone, controls whether to spend those resources, the incumbent is similarly in charge of his or her campaign account.

There is simply no way to justify treating an incumbent's war chest differently than a challenger's personal wealth. And yet, both the original Domenici amendment and this so-called fix offered today do.

The amendment by the Senator from Illinois also ignores what has transpired since last Tuesday and the adoption of the original amendment. Since that time, the Senate has adopted the Thompson-Feinstein amendment which doubled the hard money contribution limits for individuals and indexed them for future inflation, so we are now up to $2,000 per year, or $4,000 per election, $8,000 per couple. That amendment also doubled the amount that a Senate campaign committee can give such a candidate to $35,000 and indexed it for inflation also.

In the period of a short week, we potentially gave an incumbent facing a wealthy challenger an additional $17,500, plus an additional $4,000 per couple per election. To address these increased limits would require additional reform which Senator DURBIN's amendment does not address—that is, whether the benefits of this provision providing for a triple or 6 times current rates, are now too great. When the original amendment was drafted, the contributions limits were one-half of what they are today. Consequently, any benefits offered by this amendment should recognize that fact.

Moreover, this so-called fix is not a fix at all. To fairly level the playing field, an incumbent's campaign treasury should be matched dollar-for-dollar by a wealthy candidate's spending of personal funds before any benefits accrue to the incumbent. But that is not what the amendment before us does. Rather, it allows an incumbent to disregard 50% of the funds in his or her war chest before matching such balances against the personal spending of a challenger.

So again, in the example of a race in Connecticut, the incumbent has a war chest of $1,000,000, but only $500,000 of that is considered. So when the wealthy candidate spends $500,000 of his or her own money, no benefits are triggered. But as soon as that wealthy candidate spends $1,000,000, the triple limits apply. That simply does not make sense. The entire balance of the incumbent's campaign treasury should be counted.

I opposed the original amendment because it did not appear to me to be reform, and I oppose this so-called fix as well. I urge my colleagues in the House to take a close look at this provision and either completely eliminate the Domenici provision from the bill—which would be preferable—or amend it to eliminate the substantial loophole for incumbents.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for the third reading and was read the third time.

Mr. MCCONNELL. Mr. President, that essentially completes the underlying bill, upon which final passage will occur at 5:30 on Monday. There will be no more rollcall votes.

Mr. DODD. Mr. President, I know the leaders were discussing this.

I ask unanimous consent that there be 1 hour on Monday, off the budget resolution, prior to the vote at 5:30 for Members to come over to make final comments about the adoption of this important piece of legislation.

Mr. MCCONNELL. Reserving the right to object, we need to check with our leader in terms of how that might impact the running of the clock on the budget resolution, which is the most important item for next week, obviously. I will have to object, until I get some word from the leader.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, I think it is appropriate to have at least a brief discussion before final passage—very brief because we have been on this 2 weeks. People do have a sense of what this issue is about.

One possibility, of course, would be to let that time we use on this subject count on the budget resolution. That would probably smooth the passage to approving this. We will get a report from our leader shortly.

Mr. DODD. Mr. President, I point out we are not on the budget resolution yet. I was just looking for time for Members to speak on the bill, to get a little time to be heard prior to final passage.

It seems to me that is not an unreasonable request. Given the 2 weeks we have spent on this bill, I think Members would like to spend a few minutes expressing their thoughts on this legislation. Rather than take the time of the Senate today, I thought prior to the vote on Monday was the time to do that.

Mr. MCCONNELL. The perfect time to do it is right now. We are basically finished with business for today, and anybody who believes they need to express themselves on this matter further after 2 weeks of robust debate might want to take advantage of morning business, or something along those lines, today.

Mr. DODD. Mr. President, I suggest the absence of a quorum until we come to some understanding.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, Stuart Taylor, Jr. of the National Journal, has been among the more insightful and persuasive voices emerging against the so-called reformers' campaign finance effort.

In the January 1, 2000 edition of that publication, in a piece entitled The Media Should Beware of What it Embraces, Mr. Taylor cautions the media to reconsider its hypocrisy in so zealously attacking the first amendment freedom of every other participant in the political process.

This is especially significant because at one point not long ago, Mr. Taylor had advocated banning party soft money.

I ask unanimous consent that this article by Mr. Taylor and an article by Michael Barone, which ran in U.S. News, be printed in the RECORD.

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

[From the National Journal, Jan. 1, 2000]

THE MEDIA SHOULD BEWARE OF WHAT IT EMBRACES

(By Stuart Taylor, Jr.)

The uncritical enthusiasm of most media organizations for abolishing ''soft money'' and restricting issue advertising by ''special interests'' prompts this thought: How would the networks and The New York Times like a law imposing strict limits on their own rights to editorialize about candidates? After all, if some of their favored proposals were to be enacted, the media would be the only major interest still enjoying unrestricted freedom of political speech.

A few liberal legal scholars have proposed such laws as a long-term component of any

''reform'' aimed at purging the influence of private money and promoting true political equality. Associate Professor Richard L. Hasen of Loyola University Law School (Los Angeles) put it this way in the June issue of the Texas Law Review:

''If we are truly committed to equalizing the influence of money on elections, how do we treat the press? Principles of political equality could dictate that a Bill Gates should not be permitted to spend unlimited sums in support of a candidate. But different rules [now] apply to Rupert Murdoch just because he has channeled his money through media outlets that he owns. . . . The principle of political equality means that the press too should be regulated when it editorializes for or against candidates.''

Far-fetched? Politically impossible? Blatantly unconstitutional?

Perhaps. But I'm not the only one worried about the lack of a stopping point on the slippery slope that runs from such seemingly modest proposals as the McCain-Feingold bill to the notion of censoring New York Times editorials. Listen to former acting Solicitor General (and former Deputy White House Counsel) Walter Dellinger, the most widely respected constitutional expert to come out of the Clinton Administration:

''I've been struck by how shallow the thought has been about whether McCain-Feingold is a good idea. There's a credible argument that political parties may be the least bad place for monies to be funneled, and yet that's where money would be limited.

''[And] it's odd to see the press clamoring for restricting independent spending on campaigns by everybody other than the media. Even assuming that it would be desirable to say to one individual or group that you may not spend more than X dollars for television ads—while allowing another individual to buy a television network and spend as much as he wishes promoting a candidate or a party—it may be impossible under the First Amendment to restrict the 'media,' and it may be technically impossible in the age of the Internet to draw lines between the 'media' and everyone else.''

Part of Dellinger's point is what more-conservative critics of campaign finance restrictions stress: that each incremental step advocated by us reformers would create new problems and new inequities, fueling demands for more and more sweeping restrictions on political speech.

I say ''us reformers'' because I have been among the advocates of banning unlimited gifts of soft money to the political parties. (See NJ, 9/11/99, p. 2535.) But while John McCain and Bill Bradley have been riding a wave of media acclaim for pushing various reforms, I've been having second thoughts.

Banning soft money has considerable attraction because it would stop corporations, unions, and wealthy individuals from giving political parties the huge gifts that emit such a strong stench of corruption, or at least of influence-peddling.

But unless accompanied by a major increase in the caps on individual contributions of ''hard money''—which most campaign finance reformers vehemently oppose—a soft-money ban could muffle the voices of the parties and their candidates while magnifying the influence of the independent groups (''special interests'') that have already come to dominate some election campaigns. These include ideologically based groups ranging from the National Right to Life Committee on the right to the Sierra Club on the left.

Would it make sense to shift power from broad-based political parties to ideologically driven interest groups that are relatively unknown to the electorate? Dellinger thinks not: ''It wasn't a political party that did the Willie Horton ad. It was an independent expenditure group. . . . They are free to do drive-by political character assassinations without political accountability.''

In part for this reason—and in part because of the simple urge to quiet their critics—many members of Congress insist that any soft-money ban be coupled with restrictions on fund raising by independent groups that use issue ads to influence elections.

The House-passed Shays-Meehan bill would restrict fund raising by such independent groups. And while those restrictions have been stripped from the Senate bill (McCain-Feingold) in order to pick up more votes for the effort to abolish soft money, most reformers see that move as only a temporary, tactical concession.

A further complication is the likelihood that the current Supreme Court majority would strike down the Shays-Meehan restrictions on independent groups, even it if upheld the provision abolishing soft money. The reason is that the danger of corruption that has persuaded the Justices to uphold caps on hard-money contributions to candidates (and that might persuade them to uphold a ban on soft-money contributions to parties) seems far more remote when independent groups are raising and spending the money.

Indeed, the urge of many reformers to restrict independent groups has less to do with preventing corruption than with equalizing the political clout of all citizens by reducing that of people (and groups) with money. And that goal clashes with the Court's crucial holding in 1976, in Buckley vs. Valeo, that ''the concept that government may restrict the speech of some elements of our society in order to enhance the relative voices of others is wholly foreign to the First Amendment.''

Suppose, however, that Congress does eventually abolish soft money and tightly restrict issue ads and that the Supreme Court goes along—and thereby abandons its First Amendment ruling in Buckley. One result would be to weaken the political parties and the independent groups alike by restricting their fund raising.

Another result, liberal and conservative scholars agree, would be to enlarge greatly the power of the big media companies, because they would be the only major organizations still free to raise and spend unlimited amounts of money to amplify their speech about political campaigns. A.J. Liebling's line—''freedom of the press is guaranteed only to those who own one''—would become truer than he ever imagined. In such an environment, what justification would remain for continuing to exempt the institutional media from the pervasive regulation of everyone else?

Would the media be protected by their image of themselves as disinterested, politically neutral guardians of democracy? Hardly. The public is already properly skeptical of the accuracy and fairness of the big media companies. Many of them are already owned by commercial conglomerates, such as General Electric (which owns NBC and half of MSNBC), Disney (which owns ABC), and Rupert Murdoch's empire (which owns the Fox network, The New York Post, The Weekly Standard, and more). Many are even big soft-money donors.

And a media monopoly on freedom of political speech would enhance the already considerable incentives for monied interests seeking political clout to go into the media business.

Could the media count on the Supreme Court to strike down any congressional restrictions on their rights to editorialize? Dellinger believes so. I'm a bit less confident. For if we ever reach that point, Buckley vs. Valeo will already be dead, the First Amendment will be unrecognizable, and political speech will no longer be deemed a fundamental freedom, but rather a privilege to be rationed.

In such a ''post-Buckley era,'' Hasen enthuses, ''op-ed pieces or commentaries expressly advocating the election or defeat of a candidate for federal office could no longer be directly paid for by the media corporation's funds. Instead, they would have to be paid for either by an individual (such as the CEO of the media corporation) or by a PAC set up by the media corporation for this purpose. The media corporation should be required to charge the CEO or the PAC the same rates that other advertising customers pay for space on the op-ed page.''

This scenario seems very remote now. But it suggest some questions that we should ask ourselves before jumping aboard the campaign finance reform bandwagon: How far do we want to go? Is there a good place to stop? Who will be at the controls? And will we be any happier in the end that the campaign finance reformers of 1974 have been with the system they helped create?

[From U.S. News, Nov. 15, 1999]

MONEY TALKS, AS IT SHOULD

(By Michael Barone)

''How a company lets its cash talk,'' read the headline in the New York Times last month. The article tells of the success of Samuel Heyman, chairman of GAF Corp., in lobbying for a bill to change rules for asbestos lawsuits. The article sets out how much money Heyman, his wife, and GAF's political action committee have contributed to politicians and both parties, and the reader is invited to conclude that this billionaire and his company are purchasing legislation that will benefit them. Money buys legislation, which equals corruption: It is the theme articulated by John McCain in the Senate last month and on the campaign trail; it was the premise of questions asked at the Hanover, N.H., candidates' forum and taken for granted by Al Gore and Bill Bradley in their responses; it is the mantra of countless editorial writers and of Elizabeth Drew in her book The Corruption of American Politics.

But is it true? Careful readers of the Times's ''cash talks'' story can find plenty of support for another conclusion: ''Strong arguments talk.'' For 25 years, asbestos lawsuits have transferred billions of dollars from companies that once manufactured asbestos (it was banned in the 1970s) to workers exposed to asbestos and their lawyers. Asbestos causes sickness in some but by no means all workers many years after exposure. But most claimants who have recovered money are not sick and may never be, while those who are sick must often wait years for claims to be settled. The biggest winners in the current system are a handful of trial lawyers who take contingent fees of up to 40 percent and have made literally billions of dollars.

Heyman's proposal, altered somewhat by a proposed House compromise, would stop nonsick plaintiffs from getting any money, while setting up an administrative system to determine which plaintiffs are sick and to offer them quick settlements based on previous recoveries. The statute of limitations would be tolled, which means that nonsick plaintiffs could recover whenever signs of sickness appear. Sick plaintiffs would get more money more quickly, while companies would be less likely to go bankrupt; 15 asbestos firms are bankrupt now, and the largest pays only 10 cents on the dollar on asbestos claims. The two groups who lose, according to Christopher Edley, a former Clinton White House aide and Harvard Law professor who

has worked on the legislation, would be nonsick plaintiffs who might get some (usually small) settlements under the current system and the trial lawyers who have been taking huge contingent fees.

These are strong arguments, strong enough to win bipartisan support for the bill, from Democratic Sens. Charles Schumer and Robert Torricelli as well as House Judiciary Chairman Henry Hyde and Senate Majority Leader Trent Lott. You would expect Hyde and Lott to support such a law, but for Schumer and, especially, Torricelli, it goes against political interest: Torricelli chairs the Senate Democrats' campaign committee, and Democrats depend heavily on trial lawyer money. One can only conclude that Schumer and Torricelli were convinced by strong arguments, which was certainly the case for Democrat Edley, who was writing about cases long before Heyman's bill was proposed. When McCain charged that the current campaign finance system was corrupt, Republican Mitch McConnell challenged him to name one senator who had voted corruptly. Certainly no one who knows the issues and the senators involved would have cited this case.

Air pollution? And not just this case. When a government affects the economy, when it sets rules that channel vast sums of capital, people in the market economy are going to try to affect government. They will contribute to candidates and exercise their First Amendment right to ''petition the government for a redress of grievances,'' i.e., lobby. Both things will continue to be true even if one of McCain's various campaign finance bills is passed. There is no prospect for full public financing of campaigns (Gore says he's for it, but he has never really pushed for it); one reason is that it leaves no way to prevent frivolous candidates from receiving public funds. (Look at the zoo of candidates competing for the Reform Party's $13 million pot of federal money). Reformers speak of campaign advertisements as if they were a form of pollution and try to suppress issue ads as if no one but a candidate (or newspaper editorialist) had a First Amendment right to comment on politicians' fitness for office. And to communicate political ideas in a country of 270 million people you have to spend money.

The idea that the general public interest goes unrepresented is nonsense. There is no single public interest; reasonable people can and do disagree about every issue, from asbestos lawsuits to zoo deacquisitions. This country is rich with voluntary associations ready to represent almost anyone on anything; any interest without representation can quickly get some. Even when the deck seems stacked, as it has for trial lawyers on asbestos regulation, there will be a Samuel Heyman with, as Edley puts it, ''the moxie to act on his convictions.'' Money talks, as it always will in a free society. But in America, and on Capitol Hill, strong arguments can talk louder, and do.

Mr. MCCONNELL. Mr. President, it has been encouraging to see the evolution of this debate over the years. While the New York Times and Washington Post are a broken record, repeating ad nauseam the tired and disproven cliches of the reform industry, there has been a marked increase in dissents put forth op-eds and scholarly works.

Among the leading columnists who has weighed in on behalf of the first amendment perspective is Charles Krauthammer.

I ask unanimous consent that Mr. Krauthammer's column of March 23, 2001 in the Washington Post be printed in the RECORD.

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

[From the Washington Post, Mar. 23, 2001]

MCCAIN'S COSTLY CRUSADE

(By Charles Krauthammer)

Pharmaceutical companies live on patent protection. They make their profits in the few years they enjoy a monopoly on the drugs they have discovered. They fight fiercely to protect their turf, and given generously to politicians to make sure they protect that turf too.

Who, then, do you think has just issued a report showing that changes in law and regulation have effectively doubled the drug companies' patent protection time? Some tiny, Naderite public interest group? Some other representative of the little guy?

No. A nonprofit institute founded and largely funded by the insurance companies. Insurance companies, you see, pay the bill for patent protection by drug companies. And they don't like it. There is more than one 800-pound gorilla in this room.

You wouldn't know that from hearing John McCain talk about how special interests buy their way in Washington. They try to, but they run up against the classic Madisonian structure of American democracy. Madison saw ''factions,'' what we now call interests, not only as natural, but as beneficial to democracy because they inevitably check and balance each other.

His solution to the undue power of factions? More factions. Multiply them—and watch them mutually dilute each other. For two centuries we followed the Madisonian model. But now McCain's crusade calls for restriction rather than multiplication: curtailing the power—and inevitably the right to petition and the right to free speech—of special interests.

True, money in politics in corrupting; opponents of McCain should admit as much. Generally one can't prove quid pro quos. But it is obvious that legislators are more attentive to the views of those who give money. Otherwise, they wouldn't give it. The problem, however, is that like all attempts to banish sin from public life—Prohibition, for example—campaign reform comes at a fearful price.

There are three basic ways to conduct effective political speech: own a printing press; buy a small piece of space (or time) in a medium owned by others, say, 30 seconds on TV or a page in a newspaper; or bypass the media and directly support a political actor—candidate, leader, party—whose views reflect yours.

McCain-Feingold would drastically restrict the third, by banning ''soft money'' contributions to parties. The Snowe-Jeffords amendment would drastically restrict the second by curtailing political ads by outside groups.

This is bad policy, first of all, on principle. Free speech is the first of all the amendments not by accident. It is the most important. Which is why we regulate it with the most extreme circumspection. It borders on the comic that the First Amendment should be (correctly) interpreted as protecting nude dancing and flag-burning but not political speech. And there are few more effective ways for someone who does not own a printing press to express and promote his political views than by contributing to a party that reflects them.

Hence, the second problem with McCain-Feingold. It purports to eliminate the influence of money and power in politics. In fact, it eliminates only some influence. It does not end influence peddling. It only skews it.

By restricting Madison's multiple factions, McCain-Feingold radically tilts the playing field toward (a) incumbent politicians, who enjoy the megaphone of public office; (b) the very rich, who can buy unlimited megaphone time (which is why so many now populate the Senate); and (c) media moguls, who own the megaphones.

The conceit of McCain-Feingold is that politicians prostitute themselves only for big corporate or individual contributors. But they give far more care and feeding, flattery and deference to the lords of the media. It stands to reason.

They can be helped or hurt infinitely more by the New York Times or network news shows than by any lobbyist. By restricting the power of contributors, McCain-Feingold magnifies the vast power of those already entrenched in control of information.

How to mitigate the effects of money? By demanding absolute transparency, say, full disclosure on the Internet within 48 hours of a contribution, so that contributions can be the subject of debate during, not after, the campaign. And by requiring TV stations, in return for the public licenses that allow them to print money, to give candidates a substantial amount of free air time.

Far better to reduce the demand for political money rather than the supply. For the Robespierre of American politics, however, such modest steps are almost contemptible. McCain's mission is not the mitigation of sin but its eradication. Yet like all avengers in search of political purity, McCain would leave only wreckage behind: a merely different configuration of influence-peddling—and far less freedom.

Mr. MCCONNELL. Mr. President, William Raspberry has also made some astute observations on this issue over the years. In the March 23, 2001 Washington Post, in a column entitled ''Campaign Finance Frenzy,'' Mr. Raspberry makes a refreshing observation, conceding that while he is drawn to ''reform'' he is not sure just what ''reform'' means. What is it? A fair question.

''I don't quite get it,'' Mr. Raspberry writes. He's for it but confesses to not being sure what it is.

I venture to guess Mr. Raspberry speaks for a lot of people who are not intimately familiar with the McCain-Feingold bill and the jurisprudence which governs this arena.

I ask unanimous consent that Mr. Raspberry's column be printed in the RECORD.

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

[From the Washington Post, Mar. 23, 2001]

CAMPAIGN FINANCE FRENZY

(By William Raspberry)

When it comes to campaign finance reform, now being debated in the Senate, I don't quite get it.

I know what the problem is, of course: People and organizations with big money (usually people and organizations whose interests are inimical to mine) are buying up our politics—and our politicians. It is disgraceful, and I'd like it to stop.

What I don't get is how the reform proposals being debated can stop it.

Up to now, I've been too embarrassed to say so. I think I'm for McCain-Feingold, but that's largely because all the people whose politics I admire seem to be for it. Besides, John McCain looks so sincere (I don't really

have a picture of Russ Feingold in my mind) and the Arizonan has made campaign finance reform such an important matter that he was willing to risk offending a president of his own party. I'm attracted to people of principle.

Similarly, I've been denouncing the substitute lately put forward by Sen. Chuck Hagel (R–Neb.) because my colleagues who know about these things say it is a sham—even a step backward. I don't like shams.

The problem is (boy, this is humiliating!) I don't know what I want.

Do I want to keep rich people from using their money to support political issues? Political parties? Political candidates? No, that doesn't seem right.

Didn't the Supreme Court say money is speech, thereby bringing political contributions under the protection of the First Amendment? That pronouncement, unlike much that flows out of the court, makes sense to me. If you have a First Amendment right to use your time and shoe leather to harvest votes for your candidate, why shouldn't Mr. Plutocrat use his money in support of his candidate? If it's constitutional for you to campaign for gun control, why shouldn't it be constitutional for Charlton Heston and the people who send him money to campaign against it?

If money is speech—and it certainly has been speaking loudly of late—how reasonable is it to put arbitrary limits on the amount of permissible speech? Is that any different from saying I can make only X number of speeches or stage only Y number of rallies for my favorite politician or cause?

But if limits on money-speech strike me as illogical, the idea that there should be no limits is positively alarming. Politicians—and policies—shouldn't be bought and sold, as is happening far too much these days.

The present debate accepts the distinction between ''hard'' and ''soft'' contributions—hard meaning money given in support of candidates and soft referring to money contributed to political parties or on behalf of issues.

McCain-Feingold would put limits on hard money contributions and, as I read it, pretty much ban soft money contributions to political parties. Hagel would be happy with no limits on contributions to parties but has said he might, in the interest of expediency, accept a cap of, say, $60,000 per contribution.

Hagel's view is that the soft money given to parties is not the problem, since we at least know where the money is coming from. More worrisome, he says, are the ''issues'' contributions that can be made through nonpublic channels and thus protect the identity of the donors.

Why has money—hard or soft—come to be such a big issue? Because it takes a lot of money to buy the TV ads without which major campaigns cannot be mounted. Politicians jump through all sorts of unseemly hoops for money because they're dead without it.

So why aren't we debating free television ads for political campaigns? Take away the politician's need for obscene sums of money and maybe you reduce the likelihood of his being bought. We'd be arguing about how much free TV to make available or the thresholds for qualifying for it, but at least that is a debate I could understand.

All I can make of the present one is that I'm for campaign finance reform, and I'm against people who are against campaign finance reform. I just don't know what it is.

MORNING BUSINESS

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

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

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, are we now in morning business?

The PRESIDING OFFICER. The Senator is correct.

SENATE'S FINEST HOUR

Mr. TORRICELLI. Mr. President, in my brief tenure in the Senate, I have never witnessed the Senate perform better or meet the expectations of the American people so unequivocally. The Senate is particularly indebted to the Senator from Kentucky, Mr. MCCONNELL, , and the Senator from Connecticut, Mr. DODD, for presiding over this debate and dealing with difficult moments. They have led the Senate to what is, in my experience, its finest hour.

I will confess, when this debate began on McCain-Feingold, I had real reservations as to whether, indeed, an attempt at narrow reform could genuinely result in comprehensive campaign finance reform. This legislation has exceeded my expectations. The public may have expected simply an elimination of soft money, but many of us who have lived in this process know that the rise of soft money contributions was only one element in a much broader problem.

This legislation is genuine comprehensive campaign finance reform. We have dealt with the need to control or eliminate soft money, but also reduce the cost of campaigns themselves, allowed a more realistic participation through hard money contributions, and dealt with the rising specter of eliminating the class of middle-class candidates in this country by opening this only to become the province of the very wealthy.

The burden may soon go from this Congress to the Supreme Court. I only hope that the Supreme Court meets its responsibility to protect the first amendment, assuring that in our enthusiasm to deal with campaign finance abuses we have not trespassed upon other fundamental rights of the American people. I understand that is their responsibility. I know they will meet it.

I hope they also balance that this Congress felt motivated to deal with the problem of public confidence, assuring the integrity of the process; that, indeed, the Court is mindful that we have attempted to meet that responsibility.

I have never felt better about being a Member of this institution. I am proud of my colleagues. I believe we can feel good about this product. It is not partisan in nature. It does not deal with one part of this problem. It is broad. It is deep reform. It has been a good moment for the Senate.

I yield the floor.

Mr. REID. Mr. President, 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. BYRD. 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. BYRD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The Senate is in a period of morning business with Senators allowed to speak for up to 10 minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak out of order without a limitation on time. I do not expect to speak at great length.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

THE BUDGET RESOLUTION

Mr. BYRD. Mr. President, the Senate will debate, beginning next week, legislation that will be remembered by Americans for decades to come.

The budget resolution that the Senate will debate will set the Nation on a course that will change, that will affect, and that will impact upon people's lives for a generation or more.

How long is a generation? One might think in terms, in speaking of a generation, of 25, 30 years. We are at a unique moment—hear me—we are at a unique moment in the history of this Nation when we must decide what is the most appropriate way to allocate a projected surplus when we know that just over the horizon we are facing the staggering costs of the retirement of the baby boom generation.

What do we mean in terms of the calendar when we speak of the baby boom generation? I started out in politics in 1946. The baby boom generation began then and there, for the most part, in 1946. That was a good starting point. Ten years from now, when 53 million Americans are expecting Social Security—hear me—10 years from now, when 53 million Americans will be expecting Social Security to be there for them in their retirement, they will remember—they will remember—whether we voted for a budget resolution that failed to address the long-term financing crisis that faces the Social Security program. They will remember, and so will we.

Ten years from now, when 43 million Americans—hear me, again—10 years from now, when 43 million Americans are expecting to rely on the Medicare program for their health care, they will remember whether we voted for a budget resolution that failed to address the long-term problem—they will remember whether we failed to address the long-term problem—the financing crisis that faces the Medicare program. Forty-three million Americans will remember us, whether we addressed the