United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, FIRST SESSION

Vol. 143 WASHINGTON, WEDNESDAY, OCTOBER 8, 1997 No. 139

Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Gracious Lord, You know what is ahead today for us. Crucial issues await our attention. Unmade decisions demand our concentration. And we know that the choices we make will affect us, others around us, our Nation and the world.

It's with that in mind that we say with the psalmist, ''Show us Your ways, O Lord; teach us Your paths. Lead us in Your truth and teach us, for You are the God of our salvation; on You we wait all the day.''—Psalm 25:4–5.

May we prepare for the decisive decisions of this day by opening our minds to the inflow of Your spirit. We confess that we need Your divine wisdom to shine the light of discernment in the dimness of our limited understanding.

We praise You, that we can face the rest of this day with the inner peace of knowing that You will answer this prayer for guidance. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

The PRESIDENT pro tempore. The able assistant majority leader, Senator NICKLES of Oklahoma, is recognized.

SCHEDULE

Mr. NICKLES. Mr. President, this morning the Senate will begin immediately 1 hour of debate on the motion to invoke cloture on S. 25, the McCain-Feingold campaign finance reform bill. Members can therefore expect a cloture vote at approximately 12 noon today. Assuming cloture is not invoked, the Senate may then proceed to S. 1173, the so-called highway transportation bill, ISTEA legislation. It is also possible the Senate will resume consideration of the D.C. appropriations bill if the two remaining issues can be resolved. The Senate may also consider any appropriations conference reports that may be available. Therefore, Members can anticipate additional rollcall votes throughout today's session of the Senate.

BIPARTISAN CAMPAIGN REFORM ACT OF 1997—CLOTURE MOTION

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, there will now be 1 hour equally divided in the usual form, prior to the cloture vote on S. 25.

Mr. MCCONNELL. 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. 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, am I correct that the 1 hour between now and the vote at 12 is equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCONNELL. Mr. President, I would like to yield to the Senator from Arkansas such time as he may desire, and take this opportunity to come preside while he speaks.

(Mr. MCCONNELL assumed the chair.)

Mr. HUTCHINSON. Mr. President, I thank the Senator from Kentucky for yielding time.

Yesterday I voted to invoke cloture on the McCain-Feingold bill. Today I will oppose that effort.

I voted for cloture because I want campaign finance reform. I want an opportunity to amend McCain-Feingold, which I believe is a seriously flawed bill. I want a chance to vote on a reform bill and I want to ban or limit soft money. But it is now clear that there is no consensus in support of McCain-Feingold, and if we are to have serious and meaningful reform, we will and must take a different direction.

I absolutely do not support the current version of McCain-Feingold. In my opinion, and I have expressed it both publicly and privately, McCain-Feingold contains provisions that threaten free speech and pose serious constitutional problems, especially in the area of issue advocacy. These groups, which play such an important part in the political process, regardless of their affiliation, deserve to play that important role. And we must not in any way place a chill on their right of free expression and their ability to criticize their public officials. There have been abuses, no doubt about that. But it is far better for us to err on the side of freedom and to err on the side of liberty and to err on the side of the Constitution than to take a chance of passing a misguided, though popular right now, reform bill that would in fact begin that erosion of those liberties and freedoms and the right of free expression that we cherish as Americans and that we always should.

It is clear there is no consensus on McCain-Feingold and will not be. It is equally clear that repeated cloture votes on McCain-Feingold is a part of a political strategy to portray opponents of McCain-Feingold as opponents of reform. As unfortunate as it is for the American people, the McCain-Feingold bill has become so politicized that even supporters of campaign finance reform, like myself, are disgusted with the political tactics that have been used in this debate. You have to question the sincerity of a strategy that disrupts Senate business and distracts the Senate from other important business such as ISTEA, the transportation funding bill, fast track, appropriation conference reports and judicial nominations, all of these vitally important

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

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things, pressing business of the American people, and to set that aside so we can hold press conferences to portray opponents of McCain-Feingold as opponents of reform, which is not true and is not fair.

If supporters of McCain-Feingold truly wanted to put forth a serious effort to enact reform, they would take a different approach by working to find consensus, by working to find agreement, rather than attempting to score political points.

I will not be a part of these partisan guerrilla warfare tactics. I fully and completely support campaign finance reform. I think we have need to address it. I think we need to reform the system and particularly deal with that area in which there has been abuse, in the area of soft money. But I will not again vote to invoke cloture on S. 25 and be a part of a political game that is more concerned about portraying political opponents in a certain bad light than enacting meaningful and real and significant reform.

I thank again the Senator from Kentucky for his leadership and for his genuine deep convictions in defense of the first amendment and the right of free expression. I yield the floor.

(Mr. HUTCHINSON assumed the chair.)

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I listened with keen interest to the comments of the Senator from Arkansas and want to congratulate him for his decision. With his decision there is an excellent chance that today we will reach a historic high in opposition to measures similar to McCain-Feingold. So I commend the Senator from Arkansas for his conviction and thank him for his support in defense of the first amendment. I think he has done the courageous and correct thing.

I want to make a few brief observations this morning. There is not a whole lot left to say in this debate. But I wanted to refer to a few articles over the last few days that I think ought to be noted and printed in the RECORD.

A USA Today column on Monday, by Richard Benedetto, is worth noting, in terms of the attitude of the press on this issue. Americans have every right to expect that the press will not take sides on an issue off of the editorial page. Here is Mr. Benedetto's column of Monday, that I think is noteworthy, in USA Today. He says:

If you think the news media are providing the straight story on efforts to revise campaign finance laws, look closer.

Much of the reporting is tilted toward voices in favor of wholesale reform. Those who take an opposing view are mostly portrayed as either corrupt or partisan.

Little space or time is devoted to sober, broad looks at arguments on all sides of the issue. Instead, coverage is often emotional and selective. Reporting usually begins from the premise that the McCain-Feingold reform bill now before the Senate is good, and that any attempt to slow it, stop it or change it is bad.

Proponents say the fate of our democracy hangs on reform. And given a predisposition of many in the media to agree, that message is hammered home and almost daily.

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CNN gives its position away in the title of a show on campaign finance it will air Tuesday: The Money Trail; Democracy for Sale.

This was ostensibly an objective piece by CNN on campaign finance, an issue which the occupant of the chair has just said is largely about the first amendment to the U.S. Constitution.

Mr. Benedetto goes on:

Thanks to coverage such as that, it's no surprise polls show that a majority of Americans want Congress to pass legislation to tighten the rules under which politicians and political parties collect money.

Never one to misread a popular trend, President Clinton has enlisted on the side of reform. Never mind that it was alleged abuses of current law by Clinton and Vice President Gore in 1996 that intensified calls for change in the first place. He's now a believer.

Just a couple of other comments from his column, Mr. Benedetto's column in USA Today of Monday:

Media conduct on this one is not pure liberal bias. It's another example of what Washington Post columnist Robert Samuelson calls ''pack journalism run amok.''

''We media types fancy ourselves independent and skeptical thinkers,'' he recently wrote. ''Just the opposite is often true. We're patsies for the latest social crusade or intellectual fad.''

Mr. President, I ask unanimous consent Mr. Benedetto's column in USA Today be printed in the RECORD at this point.

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

[From USA Today, Oct. 6, 1997]

MEDIA TOO QUICK TO BUY INTO CAMPAIGN REFORM

(By Richard Benedetto)

If you think the news media are providing the straight story on efforts to revise campaign finance laws, look closer.

Much of the reporting is tilted toward voices in favor of wholesale reform. Those who take an opposing view are mostly portrayed as either corrupt or partisan.

Little space or time is devoted to sober, broad looks at arguments on all sides of the issue. Instead, coverage is often emotional and selective. Reporting usually begins from the premise that the McCain-Feingold reform bill now before the Senate is good, and that any attempt to slow it, stop it or change it is bad.

Proponents say the fate of our democracy hangs on reform. And given a predisposition of many of the media to agree, that message is hammered home almost daily.

Consider this opening sentence from an Associated Press wire story last week: ''Virginia's candidates for governor are taking full advantage of one of the nation's most liberal campaign finance laws, raking in more than $10 million through August.'' In one sentence, readers are given two negative cues on campaign finance. The first: that Virginia law is ''one of the nation's most liberal.'' The second: the loaded phrase ''raking in.''

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Never one to misread a popular trend, President Clinton has enlisted on the side of reform. Never mind that it was alleged abuses of current law by Clinton and Vice President Gore in 1996 that intensified calls for change in the first place. He's now a believer.

While reform may be needed, there are several arguments for moving carefully. For example, enacting limits on contributions could run afoul of the Constitution.

In 1976, the Supreme Court ruled 9–0 that campaign contributions are the equivalent of speech and that attempts to limit them could violate First Amendment rights. How thoroughly has that issue been aired? Not very. The focus of most reporting is on procedural maneuvering of opponents.

When Senate Majority Leader Trent Lott, R–Miss., introduced an amendment last week to require labor unions to get permission of members before spending dues money for political purposes, news reports said he was ''muddying the water.''

Opponents called it ''a poison pill.'' Newspaper editorials denounced the move as shamefully partisan. The charge: Republicans want to hamper unions' ability to raise money because the millions of dollars they raise for campaigns go mostly to Democrats.

But if that's legitimate cause for denouncing the amendment, why is it not similarly legitimate to question the motive of Democrats seeking to ban ''soft money?'' Those are unlimited contributions that go to political parties and are supposed to help pay for party-building activities such as get-out-the-vote efforts.

Republicans collect more soft money than Democrats. So it would seem in the Democrats' interest to get rid of that GOP advantage. Yet, few raise that point. According to the prevailing wisdom, soft money must go—period.

Media conduct on this one is not pure liberal bias. It's another example of what Washington Post columnist Robert Samuelson calls ''pack journalism run amok.''

''We media types fancy ourselves independent and skeptical thinkers,'' he recently wrote. ''Just the opposite is often true. We're patsies for the latest social crusade or intellectual fad.''

The anti-smoking campaign is a recent example of the media buying in with few reservations. Global warming, too. Now it's campaign finance reform.

Mr. MCCONNELL. Also there was a recent and interesting survey conducted by Rasmussen Research, out of North Carolina.

Most Americans think that friendly reporters are more important to a successful political campaign than money, according to a Rasmussen Research survey of 1000 adults. By a 3-to-1 margin (61 percent to 19 percent) Americans believe that if reporters like one candidate more than another, that candidate is likely to win—even if the other candidate raised more money in a campaign.

I ask unanimous consent that be printed in the RECORD as well.

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

REPORTERS MORE INFLUENTIAL THAN CAMPAIGN CASH?—MOST AMERICANS SAY YES!

WAXHAW, NC.—Most Americans think that friendly reporters are more important to a successful political campaign that money, according to a Rasmussen Research survey of 1,000 adults. By a 3-to-1 margin (61% to

19%) Americans believe that if reporters like one candidate more than another, that candidate is likely to win—even if the other candidate raised more money in the campaign.

''This finding raises basic questions about the types of reform that it will take to restore voter confidence in representative democracy,'' noted Scott Rasmussen, president of Rasmussen Research. ''Campaign contributions that buy special favors are viewed by the American people as a problem that needs to be addressed. However, most also think that much more serious reform will be needed to solve our nation's electoral problems.''

Earlier surveys by Rasmussen Research have found the most Americans think the passage of new campaign finance laws will not end corruption in government. The consensus view is that new laws would simply encourage politicians to find new ways of obtaining money in exchange for votes or other favors. Nine-out-of-ten Americans believe that members of Congress do exchange votes for campaign cash.

Americans are also generally suspicious of reporters. More than seven-out-of-ten registered voters believe that the personal biases of reporters affect their coverage of stories, issues, and campaigns.

Additional survey information on campaign finance reform and other issues can be found at www.PortraitoAmerica.com, a web site maintained by Rasmussen Research.

Rasmussen Research is a public opinion polling firm that conducts independent surveys on events in the news and other topics. The survey of 1,000 adults was conducted September 27–28, 1997. The survey has a margin of sampling error of +/−3 percentage points, with a 95% level of confidence.

Mr. MCCONNELL. Also, there was a fascinating column by Robert Samuelson in Newsweek of October 6, Monday of this week. The headline says, ''Making Pols Into Crooks—Campaign-Finance 'Reform' Criminalizes Politics and Deepens Public Cynicism.''

Let me just take a few excerpts out of this article, because I think it really is excellent, and sums up the nature of this debate. Bob Samuelson says:

The ''reformers'' claim they're trying to lower public cynicism by cleansing politics of the evils of money. Actually, they're doing the opposite: by putting so many unrealistic restrictions on legitimate political activity, the ''reformers'' ensure that more people—politicians, campaign workers, advocacy groups—will run afoul of the prohibitions. Public cynicism rises as politics is criminalized.

Mr. Samuelson goes on:

There is no easy way to curb the role of money in politics without curbing free expression. If I favor larger (smaller) government, I should be able to support like-minded candidates by helping them win. Campaign ''reformers''—who would like to replace private contributions with public subsidies and impose strict spending limits—reject this basic principles.

Money, they say, is corrupting politics. It isn't.

Campaign spending isn't out of control or outlandish. In the 1996 election, campaign spending at all levels—

At all levels, Federal, State and local—

totaled $4 billion, says political scientist Herbert Alexander of the Citizens' Research Foundation. That was one twentieth of one percent of the gross domestic product of $7.6 trillion. Americans spend about $20 billion a year on laundry and dry cleaning. Is the price of politics really too steep?

Robert Samuelson asks.

Further in the article he says:

More menacing are the artificial limits that ''reformers'' have imposed on political expression——

Something the Senator from Arkansas was just referring to a few moments ago in his speech——

What's been created is a baffling maze of election laws and rules that, once codified, establish new types of criminal or quasi-criminal behavior. Anyone tiptoeing around the rules is said to be ''skirting the law.'' And there are violations. In the futile effort to regulate politics, the ''reformers'' have manufactured most of the immorality, illegality and cynicism that they deplore.

Today's ''abuses'' stem mostly from the 1974 ''reforms'' enacted after Watergate. Congress then limited the amount individuals could give a candidate to $1,000 per election; total giving to all candidates (directly, through parties or committees) was limited to $25,000 a year. What happened? The limits inspired evasions. Suppressing contributions to candidates encouraged new political-action committees. People gave to PACs, which give to candidates. In 1974, there were 608 PACs; now there are 4,000.

Another evasion is ''independent spending'': groups (the Supreme Court says) can promote a candidate by themselves if they don't ''coordinate'' with a candidate. The present evasion of concern is ''soft money'': contributions to parties for ''party-building'' activities like voter registration. ''Soft money'' contributions have no limits; so Tamraz could give $300,000. But ''soft money'' can also be used for general TV ads that mention candidates as long as they don't use such words as ''vote for.'' Does any of this make any sense? Not really. Ordinary people can't grasp all the obscure, illogical distinctions.

And he is talking, Mr. President, about current law, even before we talk about making it more complicated.

No matter. The failure of past ''reforms'' is no barrier to future ''reforms.'' The latest effort is the McCain-Feingold bill now before the Senate.

Samuelson says:

Most of the bill flouts the spirit, if not the letter, of the First Amendment.

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

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

[From Newsweek, Oct. 6, 1997]

MAKING POLS INTO CROOKS—CAMPAIGN-FINANCE ''REFORM'' CRIMINALIZES POLITICS AND DEEPENS PUBLIC CYNICISM

(By Robert J. Samuelson)

The prospect that an independent counsel will be named to investigate the alleged campaign-law violations of President Bill Clinton and Vice President Al Gore exposes a central contradiction of ''campaign-finance reform.'' The ''reformers'' claim they're trying to lower public cynicism by cleansing politics of the evils of money. Actually, they're doing the opposite: by putting so many unrealistic restrictions on legitimate political activity, the ''reformers'' ensure that more people—politicians, campaign workers, advocacy groups—will run afoul of the prohibitions. Public cynicism rises as politics is criminalized.

The distasteful reality is that politics requires money. To compete, candidates must communicate; and to communicate, they need cash. Someone has to pay for all the ads, direct mail and polls. There is no easy way to curb the role of money in politics without curbing free expression. If I favor larger (smaller) government, I should be able to support like-minded candidates by helping them win. Campaign ''reformers''—who would like to replace private contributions with public subsidies and impose strict spending limits—reject this basic principle.

Money, they say, is corrupting politics. It isn't. Campaign spending isn't out of control or outlandish. In the 1996 election campaign spending at all levels totaled $4 billion, says political scientist Herbert Alexander of the Citizens' Research Foundation. That was one twentieth of one percent of the gross domestic product (GDP) of $7.6 trillion. Americans spend about $20 billion a year on laundry and dry cleaning. Is the price of politics really too steep?

Nor have contributions hijacked legislation. Consider the tax code. It's perforated with tax breaks, many undesirable. Some tax breaks benefit wealthy constituents who sweetened their lobbying with generous campaign contributions. But the largest tax breaks stem mostly from politicians' desire to pander to masses of voters. In the 1997 tax bill, Clinton and Congress provided huge tax breaks for college tuition. Does anyone think these passed because Harvard's president is a big contributor?

The media coverage and congressional hearings of today's alleged campaign-finance ''abuses'' have, of course, revealed the frenzied and demeaning efforts of politicians of both parties to raise money. But there hasn't been much evidence of serious influence buying. The worst we've heard is of President Clinton's, in effect, subletting the Lincoln Bedroom to big contributors and of businessman Roger Tamraz's giving $300,000 to Democrats in the hope of winning government support for an oil pipeline. All Tamraz got was a brief chat with Clinton and no blessing for the project. This sort of preferential ''access'' isn't dangerous.

More menacing are all the artificial limits that ''reformers'' have imposed on political expression. What's been created is a baffling maze of election laws and rules that, once codified, establish new types of criminal or quasi-criminal behavior. Anyone tiptoeing around the rules is said to be ''skirting the law.'' And there are violations. In the futile effort to regulate politics, the ''reformers'' have manufactured most of the immorality, illegally and cynicism they deplore.

Today's ''abuses'' stem mostly from the 1974 ''reforms'' enacted after Watergate. Congress then limited the amount individuals give a candidate to $1,000 per election; total giving to all candidates (directly, through parties or committees) was limited to $25,000 a year. What happened? The limits inspired evasions. Suppressing contributions to candidates encouraged new political-action committees. People give to PACs, which give to candidates. In 1974, there were 608 PACs; now there are nearly 4,000.

Another evasion is ''independent spending'': groups (the Supreme Court says) can promote a candidate by themselves if they don't ''coordinate'' with a candidate. The present evasion of concern is ''soft money'': contributions to parties for ''party-building'' activities like voter registration. ''Soft money'' contributions have no limits; so Tamraz could give $300,000. But ''soft money'' can also be used for general TV ads that mention candidates as long as they don't use such words as ''vote for.'' Does any of this make sense? Not really. Ordinary people can't grasp all the obscure, illogical distinctions.

No matter. The failure of past ''reforms'' is no barrier to future ''reforms.'' The latest effort is the McCain-Feingold bill now before

the Senate. Named after its sponsors (Republican John McCain of Arizona and Democrat Russell Feingold of Wisconsin), it would outlaw ''soft money'' and try to ban ''issue advocacy'' ads in the 60 days before an election (''Issue advocacy'' ads favor or oppose candidates; the distinction between them and ''independent spending'' cannot briefly be explained.) Most of the bill flouts the spirit, if not the letter, of the First Amendment:

''Congress shall make no law . . . abridging the freedom of speech . . .; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.''

The connection between campaign ''reform'' and the Clinton-Gore predicament has emerged, ironically, in the complaints of some ''reformers'' that the president and vice president are being unfairly targeted. In The Washington Post, Elizabeth Drew says that Gore behaved like a ''klutz,'' but ''klutziness isn't a federal crime.'' The 1883 law that he and the president may have violated (soliciting contributions from federal property), argues Drew, aimed to protect civil servants from being shaken down by politicians. In The New York Times, former deputy attorney general Philip Heymann says the campaign against Gore aims only to ''destroy the Democratic front runner for president.''

All this is true. But it misses the larger point: the campaign-finance laws are so arbitrary and complex that they invite ''criminality'' or its appearance. Bad laws should be discarded. Rep. John Doolittle of California sensibly suggests abandoning all contribution limits and enacting tougher disclosure laws. The best defense against the undue influence of money is to let candidates raise it from as many sources as possible—and to let the public see who's giving. That would be genuine reform.

Mr. MCCONNELL. Mr. President, also in the Wall Street Journal of October 1, there was a piece by Jonathan Rauch, who is a contributing editor to the National Journal. I want to read a few parts of that.

Mr. Rauch said:

The McCain-Feingold bill being debated in the Senate this week has become the default option for campaign-finance reformers: If you are an editorialist who needs to suggest something better than today's tumbledown system, you press the McCain-Feingold button on our word processor. Well, the system today is rotten, and radical change is needed. But McCain-Feingold, for all its good press and good intentions, is a bad bill. It would do nothing to end the failures of the past 20 years. Indeed, it would unflinchingly compound them.

At the core of today's troubles are two realities that will not yield to any amount of legislative or lawyerly cleverness. The first is that private money—a lot of it—is a fact of life in politics, and if you push it out of one part of the system it tends to re-enter somewhere else, usually deeper in shadow. The second is that money spent to communicate with voters cannot be regulated without impinging on the very core of the First Amendment, which was written to protect political discourse above all.

That is what they were thinking about when they wrote the first amendment, political discourse.

We got into today's mess by defying both of these principles, with predictable results. When reformers placed limits on money spent to support or defeat candidates, lobbies simply shifted to ad campaigns that omitted explicit requests to vote for or against candidates: ''issue advocacy,'' which the courts have ruled is constitutionally protected. And when reformers placed tight limits on contributions to candidates, donors began giving to political parties instead: ''soft money.''

The distinctions between ''hard'' and ''soft'' money, and between ''express advocacy'' and ''issue advocacy,'' are grounded in legalistic mumbo-jumbo, and so the attempts to enforce them have made campaign law bewilderingly complex without accomplishing any of the law's goals. Campaigns are neither cheaper nor fairer nor less dependent on private money than, say, 30 years ago—just the opposite, in fact. One conclusion you might draw is that the 1970s-style, money-regulating model is bankrupt. Another is that a horse-doctor's dose of the old medicine will finally heal the patient. Enter Sens. John McCain and Russell Feingold.

Among many things their bill would do, two are paramount. First, it would ban ''soft money'' given to political parties. Second, to make the ''soft money'' ban work, it would also restrict independent ''issue advocacy.'' Voila—no more money, right?

Wrong. Lots and lots of money, but in different places. Ban soft money, and lobbies would bypass the parties and conduct their own campaign blitzes. Candidates and parties are already losing control of their messages as lobbies—which, unlike candidates and parties, are not accountable to voters—run independent advocacy campaigns.

Mr. President, I see that my friend from Wisconsin is here. I am going to reserve the remainder of my time and ask that the entire Jonathan Rauch article that I just was reading from be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 1, 1997]

VOTE AGAINST MCCAIN, WAIT, CAN I SAY THAT?

(By Jonathan Rauch)

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The sponsors are aware that independent advertising might replace soft money: thus the bill's remarkable new limits on all ads that mention candidates within 60 days of an election. In the words of Sen. McCain: ''Ads could run which advocate any number of causes. Pro-life ads, pro-choice ads, antilabor ads, pro-wilderness ads, pro-Republican Party ads, pro-Democrat Party ads—all could be aired in the last 60 days. However, ads mentioning the candidates could not.'' So, for example, I might commit a federal crime by taking out an ad in this newspaper criticizing Sen. McCain for supporting his bill. The Founders would have run screaming from such a notion, and rightly so: You cannot improve the integrity of any political system by letting politicians restrict political speech.

In real life the courts are likely to strike down McCain-Feingold's speech controls, in which case, of course, the limits would not work. But even if the limits were allowed to stand, they still would not work: Everybody would race to game the system by dressing up political expression in absurd costumes, whose legitimacy would be contested ad nauseam in the courts. Maybe my ad couldn't say ''Vote against McCain and Feingold,'' but could it say ''Show the promoters of the dangerous McCain-Feingold bill how you feel''? Who would decide?

The potential for speech micromanagement is endless. Imagine the fun lawyers could have with the bill's exception for ''voter guides''—a permissible voter guide being (hold on tight, now) any printed matter written in an ''educational manner'' about two or more candidates that (1) is not coordinated with a candidate, (2) gives all candidates an equal opportunity to respond to any questionnaires, (3) gives no candidate any greater prominence than any other, and (4) does not contain a phrase *''such as''* (my italics), ''vote for,'' ''re-elect,'' ''support,'' ''defeat,'' ''reject'' or other ''words which in context can have no reasonable meaning other than to urge the election or defeat of one or more candidates.'' Is that clear?

So, after McCain-Feingold, campaign law would become even more complex and mystifying. Politicians would remain mendicants, forced by low contribution limits to beg every day and in every way for donations. Our already weak parties would lose their main source of funds, becoming weaker still. If the speech controls were upheld, political discussion would be both chilled and

contorted. And if the speech controls were struck down, political campaigns would be run by lobbies (''independent expenditures'') rather than by candidates and parties. Quite a reform.

Even total deregulation would be better than McCain-Feingold, provided disclosure were retained. For that matter, doing nothing would be better. Best by a very long measure, however, would be a combination of deregulation, disclosure and generous public financing for candidates who forgo private fund-raising—a plan which, instead of trying to eliminate or micromanage private money, would give voters an alternative to it, and make the acceptance of private donations an issue in every campaign.

Alas, all of those admittedly imperfect ideas are bitterly opposed by the anti-money crusaders who gave us the system we have now, and who still predominate in the ''reform community.'' To change their minds, campaign-finance law will probably have to be made worse before it can be made better. That task, at least, McCain-Feingold would perform admirably.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President. Let me, first of all, congratulate the occupant of the chair for his vote yesterday. I heard his comments this morning. The occupant of the chair did the right thing yesterday. He voted for cloture and joined 52 other Senators—a Senator we had not in the past known for sure whether or not he was going to vote for cloture on any occasion, and I very much appreciate that.

I realize that his words are sincere. He does, in fact, support campaign finance reform. It is important that, again, the Senator from Arizona and I signal what we have signaled in the past, and that is that we are very eager to negotiate, whether on the floor or off the floor, to make a bill that would be more palatable to Members on both sides of the aisle.

I think the Senator from Arkansas has indicated some excellent ideas in the past. That is the signal I want to give, despite whatever indications one might feel from the press accounts, which, of course, all of us have to take with a grain of salt on both sides of the issue. The fact is that many of us really would like to change this system, and I believe the Senator who occupies the chair is one of them.

Let me reiterate our offer, which I think we have made good on time and time again, that if modifications need to be made to pass this terribly important bill, we are ready to do it. That is how the junior Senator from Maine became such a tremendous advocate for our cause. She had some ideas that were better than ours, and we incorporated them and moved on to make the bill even better.

So I look forward to working with the occupant of the chair so that, once again, he can feel comfortable voting for cloture as we continue to press this issue on the floor, which we will do until we get the result that the American people demand.

Let me also suggest, this is a point that seems to be missed in this debate frequently. The Senator from Kentucky speaks frequently and eloquently about the first amendment. But the way our system is established, surely if you pass a bill in the Congress, a piece of legislation, a statute, it doesn't amend the Constitution. There is more to the process. The President has to sign the bill, and it has to go up to the United States Supreme Court, unless nobody challenges it. And I have a sneaking suspicion that somebody might challenge this bill if it became law.

So what is the worst-case scenario? The worst-case scenario is that if, in fact, there is a shred of our bill that is unconstitutional, the Supreme Court will say so and strike it down. They know how to do their job. If we do our job, they will do their job. That is exactly what they did in the very famous case of Buckley versus Valeo. They determined that some elements of the bill were constitutional, despite the claim of the ACLU and others that they were not, and they said they were OK.

For example, having a limitation on contributions. It is, obviously, the law now, and the Senator from Kentucky cannot dispute that it is the law, that right now somebody can't give more than $2,000 in the course of 6 years to a U.S. Senate candidate in hard money. That is a limitation. The Supreme Court said it is OK.

On the other hand, in Buckley versus Valeo, the Court said you can't have overall mandatory spending limits because that, in their view, would be a violation of the first amendment.

So what is the threat to the first amendment of passing a piece of legislation about which we have a good-faith disagreement as to its constitutionality? I happen to think it is clear that the major provisions of our bill are constitutional.

I would be the first to concede that the closest case would be the one that the Senator from Kentucky has focused most of his firepower on in this debate, and that is the issue of what I like to call phony issue ads. But I can see that would be something the Supreme Court would have to take a long and hard look at, and I think they should. That is why, Mr. President, I don't support a constitutional amendment to get this done. The first amendment is too sacred.

So, I want to address your concern about the first amendment to tell you that I was, I believe, the first or second Member of the U.S. Senate to come out here and oppose something called the Communications Decency Act. People fell all over each other voting for that bill that would have censored the Internet. I came out here and said, ''Look, on the face of this, even though I am not a leading constitutional expert but I have looked at the Constitution, on the face of it, this is unconstitutional.'' Yet, I believe 84 Members of this body, including the Senator from Kentucky, voted for it, sent it up to the Supreme Court and, guess what? Unanimously that Supreme Court—of which a majority of the Members were appointed by the majority party Presidents—unanimously ruled that that was unconstitutional.

Mr. President, both with regard to your concern that we be flexible and open to other people's ideas, which I think you and I have established a good record on, and with regard to the issue of the first amendment to the Constitution, not only couldn't I agree with you more, but I believe we have a lot to talk about and work together on to achieve campaign finance reform.

Since the Senator from Kentucky continues in his steadfast way to make a record, which I hope one day will get before the Supreme Court—he hopes it won't get that far—let me address a couple of other issues and put a few things of concern to me in the RECORD.

The Senator from Kentucky has been proudly suggesting that the McCain-Feingold bill is dead, and yet we are out here today debating it again, and we will be debating it again. That is because it is not going away. It is because it is not simply a question of various elements of the media saying that the McCain-Feingold bill is a good idea. There are others who are not in the media who, I think, are not easily duped by the media who think we ought to enact some of the things that are in the McCain-Feingold bill.

Let me just put a few of those items in the RECORD. First, I ask unanimous consent that letters from former Presidents Gerald Ford, Jimmy Carter, and George Bush endorsing a soft money ban—a soft money ban, which is the centerpiece of the McCain-Feingold proposal—be printed in the RECORD.

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

HOUSTON, TX,
June 19, 1997.

Senator NANCY KASSEBAUM BAKER,
Washington, DC.

DEAR SENATOR KASSEBAUM: First, let me commend you and the former Vice President, Ambassador Mondale, for taking a leadership role in trying to bring about campaign reform.

I hope the current Congress will enact Campaign Reform legislation.

We must encourage the broadest possible participation by individuals in financing elections. Whatever reform is enacted should go the extra mile in demanding fullest possible disclosure of all campaign contributions.

I would favor getting rid of so called ''soft money'' contributions but this principle should be applied to all groups including Labor.

I congratulate you for working for better campaign finance law enforcement.

With my respects to you and Vice President Mondale I am, sincerely,

GEORGE BUSH.

JULY 17, 1997.

TO VICE PRESIDENT WALTER MONDALE:

I am pleased to join former Presidents Bush and Ford in expressing hope that this Congress will enact meaningful campaign finance reform legislation. For the future of

our democracy, and as our experience may be emulated by other nations, prompt and fundamental repair of our system for financing federal elections is required.

The most basic and immediate step should include an end to ''soft money,'' whether in the form of corporate or union treasury contributions to federal campaigns, or large and unregulated contributions from individuals. The initial step should also include measures that provide for complete and immediate disclosures of political contributions and expenses.

To accomplish these and other reforms and to lay the basis for future ones, we also need to develop a strong national consensus about the objectives of reform. It will take more than just the action of this Congress, but fundamental reform is essential to the task of repairing public trust in government in our leaders. We must take significant steps to assure voters that public policy is determined by the exercise of their franchise rather than a broken and suspect campaign finance system.

Please extend to Senator Nancy Kassebaum Baker my appreciation for the work that she has undertaken with you to advance the essential cause of bipartisan campaign finance reform.

Sincerely,

JIMMY CARTER.

JULY 10, 1997.

DEAR SENATOR KASSEBAUM: Our system of financing federal election campaigns is in serious trouble. To remedy these failings requires prompt action by the President and the House and Senate. I strongly hope the Congress in cooperation with the White House will enact Campaign Reform legislation by the forthcoming elections in 1998.

Public officials and concerned citizens. Republicans and Democrats alike, have aleady identified important areas of agreement. These include (1) the need to end huge uncontrolled ''soft money'' contributions to the national parties and their campaign committees, and to bar solicitation of ''soft money'' from all persons, parties and organized labor by federal officeholders and candidates for any political organizations; (2) the need to provide rapid and comprehensive discount of contributions and expenditures in support of, or opposition to, candidates for federal office; and (3) the need to repair the system of campaign finance law enforcement by assuring that it is effective and independent of politics.

A significant bi-partisan effort across party lines can achieve a legislative consensus in campaign reforms that will help to restore the confidence of our citizens in their federal government.

I commend you and former Vice President Mondale for your leadership on behalf of campaign reform.

Sincerely,

GERALD R. FORD.

Mr. FEINGOLD. Mr. President, I would like to mention just a sentence from President Bush's letter, who I don't think is usually considered a pawn of the liberal media. He says:

I would favor getting rid of so called ''soft money'' contributions but this principle should be applied to all groups including Labor.

Of course, our soft money ban in our bill is comprehensive and includes labor.

A letter from President Carter also indicates as follows:

The most basic and immediate step should include an end to ''soft money,'' whether in the form of corporate or union treasury contributions to federal campaigns, or large and unregulated contributions from individuals.

From President Carter.

President FORD indicated in a letter:

. . . the need to end huge uncontrolled ''soft money'' contributions to the national parties and their campaign committees, and to bar solicitation from ''soft money'' from all persons, parties and organized labor by federal officeholders and candidates for any political organizations . . .

Mr. President, how can these three Presidents, two from the Republican Party and one from the Democratic Party, be considered pawns of a solely Democratic effort to pass campaign finance reform? On its face it is absurd to suggest a bill led by the Senator from Arizona, a strong Republican, is such a bill. But here are two Republican Presidents saying we should ban soft money. Yet, the effort to kill this bill would prevent the core element of our bill to ban soft money.

Let me add, it is not just former Presidents, Mr. President, it is also former Members of this body and of the other body. Former Members of Congress have endorsed our bipartisan campaign finance reform bill and the end of soft money.

I ask unanimous consent that a statement of former Members of Congress, dated September 29, 1997, be printed in the RECORD.

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

STATEMENT OF FORMER MEMBERS OF CONGRESS

We are pleased to join former Presidents Bush, Carter and Ford in expressing the hope that the current Congress enact meaningful bipartisan campaign finance reform legislation.

The distinguished former Presidents have identified the indispensable core of reform: (1) a ban on ''soft money'' contributions to the national parties and their campaign organizations, applied equally to contributions of corporate and union treasury funds, as well as to large individual contributions in excess of those permitted by law; (2) complete and rapid disclosure of political contributions and expenses; and (3) effective and politically independent enforcement of campaign finance laws.

Some of us favor additional proposals, including provisions to assure that a ban on ''soft money'' is not circumvented through campaign advertisements that are thinly disguised as ''issue advocacy.'' Together we believe it is time to test the merits of different or competing ideas through debate and votes, but that any disagreement over further reforms should not delay enactment of essential measures, beginning with a ban on soft money, where agreement is within reach.

Our democracy will be strengthened when the Congress acts to assure the American public that the nation's campaign finance system honors our nation's ideals.

Nancy Kassebaum Baker (R-KS), Howard H. Baker, Jr. (R-TN), David L. Boren (D-OK), John C. Danforth (R-MO), Mark O. Hatfield (R-OR), Abner J. Mikva (D-IL), Patricia S. Schroeder (D-CO), Walter F. Mondale (D-MN), Henry Bellmon (R-OK), Bill Bradley (D-NJ), Thomas F. Eagleton (D-MO), Robert H. Michel (R-IL), Sam Nunn (D-GA), Alan K. Simpson (R-WY).

The original signers of the statement are joined by:

Bella Abzug (D-NY), Wendell Anderson (D-MN), Mark Andrews (R-ND), Bob Bergland (D-MN), Rudy Boschwitz (R-MN), John Brademas (D-IN), William Brock (R-TN), , Clarence Brown (R-OH), Jim Broyhill (R-NC), Beverly Byron (D-MD), Rod Chandler (R-WA), Dick Clark (D-IA), Tony Coelho (D-CA), Barber Conable (R-NY), Alan Cranston (D-CA), John Culver (D-IA), Hal Daub (R-NE), John Dellenback (R-OR), Butler Derrick (D-SC), Tom Downey (D-NY), Don Edwards (D-CA), Mickey Edwards (R-OK), Robert Ellsworth (R-KS), Karan English (D-AZ), James Exon (D-NE), Dante Fascell (D-FL), Geraldine Ferraro (D-NY), Sheila Frahm (R-KS), Bill Frenzel (R-MN), Clifford Hansen (R-WY), Fred Harris (D-OK), Thomas Hartnett (R-SC), Howell Heflin (D-AL), Peter Hoagland (D-NE), Carroll Hubbard (D-KY), Walter Huddleston (D-KY).

Martha Keys (D-KS), Melvin Laird (R-WI), Russell Long (D-LA), Mike Mansfield (D-MT), Marjorie Margolies-Mezvinsky (D-PA), Charles Mathias (R-MD), Ron Mazzoli (D-KY), Paul McCloskey (R-CA), John Melcher (D-MT), Howard Metzenbaum (D-OH), John Miller (R-WA), George Mitchell (D-ME), Frank (Ted) Moss (D-UT), Gaylord Nelson (D-WI), Dick Nichols (R-KS), Leon Panetta (D-CA), Claiborne Pell (D-RI), David Pryor (D-AR), Albert Quie (R-MN), John Rhodes III (R-AZ), Matthew Rinaldo (R-NJ), Peter Rodino (D-NJ), Warrent Rudman (R-NH), Lynn Schenk (D-CA), Richard Schweiker (R-PA), Philip Sharp (D-IN), Paul Simon (D-IL), Jim Slattery (D-KS), W.B. Spong (D-VA), Robert Stafford (R-VT), Al Swift (D-WA).

Mr. FEINGOLD. Mr. President, in that letter, a number of our former colleagues from both Houses of the Congress state:

We are pleased to join former Presidents Bush, Carter and Ford in expressing the hope that the current Congress enact meaningful bipartisan campaign finance reform legislation.

This includes the names of people like the distinguished former Member Nancy Kassebaum Baker, former Senator from Kansas; Howard Baker, Jr., former leader and Senator from Tennessee; former Republican Senator John Danforth of Missouri, who I had the honor to serve with briefly; former Senator Mark Hatfield of Oregon; former Senator Walter Mondale and former Vice President; former Senator Bill Bradley from New Jersey; former minority leader of the other body, Robert Michel; former U.S. Senator Sam Nunn; former Senator Al Simpson, the Senator from Wyoming with whom I disagreed frequently on the floor of the Senate who was among the toughest and most clever opponents you could have on the floor, but he cosponsored the McCain-Feingold bill last session after he made his retirement announcement, and he still supports it. And the list goes on.

Mr. President, I do not think these folks are merely pawns of the media. These folks have been here; they have seen it; they have done it. And they know that spending a tremendous amount of your time in raising money is the corrupting of this process. And many of them, as they announced their retirements, said they were sick and tired of spending their time as Members of Congress raising money. The

killing of the bill, the vain attempt to kill this bill, as it turns out, would prevent the first efforts to get our attention away from raising money and back to the business we were elected to do.

Mr. President, I ask unanimous consent to have printed in the RECORD an op-ed piece that appeared in the July 18, 1997, Washington Post authored by former Republican Senator Nancy Kassebaum, Baker, and former Vice President Walter Mondale calling for bipartisan campaign finance reform and a ban on soft money.

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

[From the Washington Post, July 18, 1997]

CAMPAIGN FINANCE: FIX IT

(By Nancy Kassebaum Baker and Walter F. Mondale)

President Clinton has challenged Congress to ''make this summer a time not of talk but of action'' in fixing our broken system of campaign financing. We agree wholeheartedly.

Earlier this year the president asked the two of us, a Republican and a Democrat, to assist in the cause of bipartisan campaign finance reform. Although pessimism about the will of Congress to reform campaign finance laws is widespread, we are optimistic that the task can be achieved through a clear focus on necessary and achievable reforms, leadership and determination.

Last month, we submitted an Open Letter to the President and Congress recommending four areas in which to begin, without delay, the task of ensuring that our nation's campaign finance system serves, rather than undermines, the interests of American democracy.

First, Congress should promptly ban ''soft money,'' the huge uncontrolled contributions to national parties and their campaign organizations that have so dismayed the public. This prohibition would do much to slow the flood of campaign money and enable the nation to adhere to the justified premise of earlier reforms, that massive amounts of money from powerful sources distort elections and government.

Second, we must ensure that ''soft money'' not continue its corrosive work under the this disguise of ''issue advocacy.'' The election law should be tightened to distinguish clearly between media advertisements that are campaign endorsements or attacks and those that genuinely debate issues. to make a ''soft money'' ban fully meangingful the election law should establish consistent rules for the financing of all electioneering advertisements.

Third, disclosure rules should be broadened to ensure that voters know who is responsible for the accuracy and fairness of campaign advertisements. Increasingly, candidates are bystanders in their own campaigns, not knowing the identity of sponsors of messages that dominate the airwaves close to elections. Also, with today's technology, even last-minute contributions and expenditures can be revealed before Election Day.

Fourth, no reform will be worth much without effective enforcement. The Federal Election Commission must be strengthened. This should include the appointment of knowledgeable and independent-minded commissioners. Additionally, changes are needed to allow for the full and timely resolution of issues through the courts when the commission is deadlocked or cannot act because of lack of funds.

Significant majorities might be found for other reforms. As the debate goes forward, Congress should be encouraged to consider further steps to provide relief from the incessant treadmill of fund-raising. However, we should not delay action on those measures that can pass now.

Time is of the essence. Congressional elections are coming up next year. The presidential campaign for the year 2000 will begin soon after. Each day these elections draw closer, the passage of reform becomes even more difficult. Now is the best time to advance legislation that will provide the American people with a more effective and more equitable election process.

It is no secret that the Senate will be the first battleground for reform. There are honest differences that warrant debate there but also votes on their merits. We are confident that the Senate's leadership will recognize its responsibility to schedule campaign finance reform for early and full debate. And speaking plainly, we further believe that the American public will deem unacceptable any tactic that prevents a majority of the Senate from coming to a final vote.

We appreciate the value of Senate rules on debate. But campaign finance issues are well known to every member. Whatever any senator's individual views on campaign finance issues may be, all senators should unite in one conviction. The future of our democracy requires them to address their differences in public debate on the Senate floor and for their votes on final passage to be recorded.

Most important is to set aside attempts to gain or maintain partisan advantage. The time is now to come together to address the integrity of our national government. Restoring that integrity demands honest, bipartisan campaign finance reform.

Mr. FEINGOLD. Mr. President, I also ask unanimous consent to have printed in the RECORD an opinion piece from last Sunday's Washington Post coauthored by former Presidents Carter and Ford, who actually ran against each other in 1976, calling for campaign finance reform and the end of the soft money system.

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

[From the Washington Post, Oct. 5, 1997]

AND THE POWER OF THE BALLOT

(By Jimmy Carter and Gerald Ford)

When we ran against each other in 1976, the modern campaign finance system was in its infancy; it was the first presidential election governed by strict limits and public financing. Looking back, it is easy to recognize why the reforms of the 1970s were so essential. Today it is disheartening to witness changes that have distorted those reforms and shaken Americans' faith in their democracy.

We have watched as elections have grown more controversial, more expensive, riddled with soft money and less understandable to the average voter. We have watched as participation in presidential elections has declined—plummeting during the last election to the lowest levels since 1924.

Less than half of the voting-age population cast their ballots for president in 1996, and while there are many factors that might contribute to this disturbing figure, we believe that a lack of public trust in government and in our system of democratic elections is a major part of the problem. When people feel disenfranchised from their political system, they stop participating in it. And when that happens, democracy suffers.

We have both worked in our public lives toward the goal of exporting our democratic system to other nations. Our model (or ''the U.S. model'') must be fundamentally reformed in terms of campaign financing to warrant the faith of other countries.

We can both personally attest that there is no greater honor than to serve your country. Yet the honor of public service is being tarnished by a system of campaign funding that has made many Americans lose faith in the concept of public service as a virtue. That service is diminished when elected officials are forced to spend so much time raising money instead of focusing on the many important issues they were elected to address.

We firmly believe that now is the time to restore Americans' faith in their democracy, their government and their democratically elected institutions. Meaningful, bipartisan campaign finance reform is needed to rein in a system that is out of control.

As a minimal first step, Congress and the president should approve legislation that bans soft money, enhances enforcement of existing campaign finance laws and creates a more accountable disclosure system that informs rather than obfuscates. These are the areas identified by former vice president Walter Mondale and former senator Nancy Kassebaum Baker in their effort to promote reform. It is particularly important to seize this opportunity for reform now so it can improve the next presidential election.

In order to accomplish this goal, both parties must lay down their partisanship and rise to meet this challenge together. Leaders of both parties have demonstrated their ability to work together on critical and contentious issues to do what is right for the country. This is another such issue where cooperation is the only road to results. It is impossible to expect one side to disarm unilaterally in this massive arms race for funds. Rather, both sides must agree that bilateral limits are the only rational course of action to preserve the moral integrity of our electoral system.

One item that we should all agree on is a ban of so-called ''soft money'' for national parties and their campaign committees. Soft money was initially intended exclusively for ''party building'' activities but has metamorphosed into a huge supplemental source of cash for campaigns and candidates. It is one of the most corrupting influences in modern elections because there is no limit on the size of donations—thus giving disproportionate influence to those with the deepest pockets.

According to the Federal Elections Commission, both parties raised a record-breaking $262 million in soft money during the 1996 elections. Recent news reports showed that figure will be shattered again in 2000 if current fund-raising rates continue.

These figures make it absolutely clear what is at stake. If Congress does not act now to stem this massive flow of soft money, Americans' cynicism and mistrust of government will only increase. And that step is only the beginning of needed fundamental reform.

We must demonstrate that a government of the people, by the people and for the people is not a thing of the past. We must redouble our efforts to assure voters that public policy is determined by the checks on their ballots rather than the checks from powerful interests.

Jimmy Carter was president from 1977 to 1981. Gerald Ford was president from 1974 to 1977.

Mr. FEINGOLD. Mr. President, I would like to place in the RECORD as well a couple of items from groups across the country that I think have independent judgment, who are not easily fooled by a media campaign in

favor of a bill that would otherwise not have merit. The suggestion that this is all that is going on here is on its face absurd, it is even a little insulting.

But I do not think you can say of the National Council of the Churches of Christ that they were somehow tricked into supporting something that isn't really reform. So I ask unanimous consent to have printed in the RECORD a statement by the National Council of the Churches of Christ endorsing comprehensive campaign finance reform which includes, Mr. President, specific references to a number of the provisions in the McCain-Feingold bill and specifically references the McCain-Feingold bill asking ''legislators to oppose amendments currently being offered to the McCain-Feingold measure in an effort to kill its passage.'' I think it is an unmistakable reference to the Lott amendments.

I ask unanimous consent that it be printed in the RECORD, and a statement by NETWORK, a national Catholic social justice group. The press release endorses the McCain-Feingold reform proposal.

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

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE USA,
Washington, DC, October 4, 1997.

The National Council of Churches joins with others today to urge legislators to break the logjam which has blocked campaign finance reform efforts for so long and to pass a meaningful bipartisan reform bill. Our long-standing commitment to campaign finance reform grows directly from profound religious faith: every human being is a person of dignity and worth as a child of God. In our democracy a signal of that dignity and worth is a fair and just electoral process where all people are included equitably and with respect.

What a moral affront to buy or sell either the public trust or the individual vote! In our policy statements we have long held that unfair campaign financing violates the moral integrity of public life.

Our support for current campaign finance reform comes from seeing it as an important step in moral correction. Of course, even the proposed legislation is not perfect. Inequities will still need attention. But we believe that such reform can strengthen the control of corrupting processes that attack the very heart of democratic elections. The undue influence of money diminishes the voting power of ordinary citizens.

Further, we are very concerned about widespread disillusionment with public life, and especially political life. Religion means for us God's mandate for the well-being of all people. We have long sought ''the common good''. We have long stood against religious self-seeking or the private advantage of any religious group. It is not our ''good'' we seek; it is the ''common good''. Disillusionment and cynicism over politics and electoral processes must be addressed. We believe that campaign finance reform can be a step toward building ''the common good.''

Let me add one more piece to our public endorsement of campaign finance reform. In Protestant Christian heritage we have long affirmed what we call ''Christian vocation''. Many elected public officials see their works as a public trust, and go about it with a genuine sense of religious commitment—a ''vocation''. They serve God by serving the well-being of all people. When public officials are consumed by constant fund raising, they cannot adequately invest themselves in fulfilling the public leadership role with which they have been entrusted. Our current campaign financing practices inflict frantic demands and exhausting requirements on political leaders. Every sensitivity to them has to insist on reform.

So here we are—I on behalf of the National Council of Churches—to urge support for effective campaign finance reform. We call for prompt consideration and passage of such a reform bill, and urge legislators to oppose amendments currently being offered to the McCain-Feingold measure in an effort to kill its passage. It is rooted in our religious tradition of public morality and the pursuit of the common good. We call on people in churches and other religious communities across the land to support leaders in the Administration and the Members of Congress who have the wisdom and courage to enact genuine reform.

Rev. Dr. ALBERT M. PENNYBACKER,
Associate General Secretary, NCCC.

CATHOLIC LOBBY DEMANDS CONGRESS MOVE ON CAMPAIGN FINANCE REFORM NOW

NETWORK, a National Catholic Social Justice Lobby supports campaign finance reform that promotes greater participation in the election process for all and believes comprehensive reform must include a public financing component as well as spending limits. NETWORK is very disappointed and concerned about the lack of commitment by Members of Congress for real campaign finance reform and demands that Congress top its political maneuvering and bring campaign finance reform up for debate and a vote. ''To not deal with campaign finance reform would be an affront to the voice of the people of our country. Project Independence is a clear example of the desire people have for real campaign finance reform'' declares Kathy Thornton, RSM, NETWORK's National Coordinator.

NETWORK sees the stripped down version of the McCain (R-AZ)—Feingold (D-WI) campaign finance reform bill S. 25 as a positive incremental step, not as the final answer to reforming the campaign finance system. Therefore, NETWORK does support S. 25, but opposes Senator Lott's amendment because it sees it as a poison pill that is designed to kill meaningful campaign finance reform.

NETWORK, a National Catholic Social Lobby is a membership organization which lobbies, educates and organizes on the federal level from a faith-based perspective promoting economic justice for people who are poor and marginalized.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that statements by Jerome Kohlberg, founder of the Campaign Reform Project, Thomas S. Murphy, and Richard Rosenberg, and a list of two dozen former and current corporate chief executive officers who have endorsed bipartisan, comprehensive campaign finance reform be printed in the RECORD.

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

CRP BUSINESS ADVISORY COUNCIL
(By Jerome Kohlberg, Founder, Campaign Reform Project)

Thank you for joining us this morning, My name is Jerome Kohlberg. I founded the Campaign Reform Project (and its sister organization Campaign for America) for one purpose—to end the influence of money in politics.

Some of you may be more familiar with my past activities in the business world. Perhaps you are curious why a successful businessman is getting involved in this ugly debate. And what's more, why he is persuading other business leaders to follow suit.

Personally, I was never a major political donor. It was not until 1988 when Michael Dukakis ran for President that I began to make substantial political contributions. He was a fellow graduate of Swathmore, and I though he was an honorable man who would make a good President. During that race, I contributed $100,000 in soft money to the Democratic Party.

I continued to support the party through 1992, but became increasingly uncomfortable with the process. Although I wasn't looking for access, I was given the opportunity many times. I could only imagine what someone who was looking for access might get for his or her money. When decisions from the routine to the profound are shaped by who gave money and how much, who didn't and why, and who might in return for what, we have a problem. Clearly, money is undermining, rather than supporting democracy.

Therefore, while I continue to have a great deal of respect for those individuals who choose public service, and I continue to support individual candidates from both parties, I no longer give soft money.

I, and my colleagues on the Business Advisory Council of the Campaign Reform Project, believe these large money contributions distort the system giving unequal weight to the opinions of the rich, the corporations and the labor unions.

Our children and grandchildren deserve a better legacy—a legacy of a responsive and responsible federal government. Therefore, rather than just cease making donations, I want to insure that the campaign finance system is reformed for my grandchildren and, ultimately, for the country. Therefore, I am committing substantial personal resources to this effort because the stakes are too high not to.

I have dedicated funds to both the Campaign Reform Project and the Campaign for America. Both organizations are committed to fundamental campaign finance reform. The Campaign for America joined with Common Cause in Project Independence to collect the signatures of over one million citizens who support campaign finance reform.

With the Campaign Reform Project, we've worked to organize business leaders in support of this issue. Many of our members are elder statesmen from the business community. The presence here today of Mr. Murphy and Mr. Rosenberg illustrates the deep concern they have with this system.

Any many other individuals. Warren Buffett, Alan Hassenfeld, and Arjay Miller, to name just a few, have joined with us in this fight for reform.

I call it a fight because I know it would be one. While a very sensible and modest proposal toward reform has been offered in the Senate, I fear that there are many who would prefer the status quo.

All of us sitting around this table understand the process for making a deal. We've been deal-makers. We know that closing a deal on campaign finance reform isn't going to be easy. But, we do believe it is possible. The proposal that is pending now before the Senate is a reasonable one. It seems to us that it's a package everyone should support. However, we suspect there are those who may try adding amendments that are likely to make it unreasonable—in other words, kill the deal. We believe that is unacceptable.

Democracy is serious business. Campaign finance reform will help restore some public confidence in our democratic system of campaigns and elections. We are here today to

say the system must be changed. I have been pleased that so many business leaders have been willing to put their name to the call for reform as is evidenced by the ad we will run tomorrow. We will continue, over the next weeks, to further galvanize the business community in support of reform. Thank you.

CRP BUSINESS ADVISORY COUNCIL

(By Thomas S. Murphy, Retired-Chairman & CEO, Capital Cities/ABC, Inc.)

It is a pleasure to be here and join Jerry in this important endeavor. As members of the Campaign Reform Project's Business Advisory Council evaluated the prospects for reform this year, it became clear that doing something to curtail the explosion of soft money needed to be a top priority.

All of the improprieties being examined in the Senate Government Affairs Committee are related to soft money. It is a system that has gone out of control.

As you know, in the 1996 election cycle, the parties raised over $260 million in soft money—more than three times the $87 million raised in the 1992 election cycle. What's more, although a Los Angeles Times survey released earlier this week indicated that 26 percent of the nations largest 544 corporations made no political contributions, this percentage was even higher four years ago. Unfortuantely, more and more business leaders feel in order to come out on top, they must play the soft money game.

Therefore, a soft money ban would go a long way toward fixing the most egregious problem. But, it is not enough. It is also necessary to improve the system of reporting contributions. Electronic disclosure would be one step, expanding reporting requirements for independent expenditure campaigns might be another. An FEC with teeth would also be a major improvement.

Our group, the Business Advisory Council, has worked to solicit the support from several of our colleagues for this effort.

We began at the beginning of the year with only a few of us. As you can see from the ad, however, the number of business leaders calling for reform in 1997 has grown substantially.

And this list is a work in progress. Many others, as evidenced by the survey I cited earlier, support these modest reforms which will help restore public confidence in the political process.

We're not naive. We're pragmatic. We believe that Congress can no longer avoid taking action.

CRP BUSINESS ADVISORY COUNCIL

(By Richard Rosenberg, Former Chairman & CEO, Bank of America)

When I first became involved with the Campaign Reform Project it was around a broad set of principles—reducing special interest money in political campaigns, strengthening financial disclosure requirements, leveling the playing field between challengers and incumbents, increasing access to electronic media, and curtailing the cost of campaigns.

When members of the Business Advisory Council met this past spring and summer, we affirmed our support for these principles, but we also focused on what we could accomplish now.

As business executives, we know the value of both short and long term results. We recognize that business has a critical role to play in reforming the current campaign finance system. Nothing would revive reform faster than corporate America halting its soft money contributions. Many business leaders already feel the system has become an industry unto itself, caught up in a perpetual cycle that undermines both democracy and genuine business interests.

So what could we do in the short term? We decided to educate other business leaders and recruit them to join us. We also evaluated the prospects for reform and decided that something had to be enacted this year. We came to a consensus that any reform must include, at a minimum: a ban on soft money and stronger financial disclosure requirements and reporting rules.

Changes in both of these areas would constitute significant first steps. But, I must stress, only first steps. Our long-term agenda focuses on the principles I outlined earlier. I think they are important enough to mention again—leveling the playing field between challengers and incumbents, increasing access to electronic media in order to facilitate more direct communication from candidates, and curtailing the overall cost of campaigns.

BUSINESS ADVISORY COUNCIL

Jerome Kolberg, Founder.

Robert L. Bernstein, Former Chairman/President of Random House.

George T. Brophy, Chairman, President & CEO, ABT Building Products Corporation.

John H. Bryan, Chairman & CEO, Sara Lee Corp.

Warren E. Buffett, Chairman, Berkshire Hathaway, Inc.

William H. Davidow, General Parnter, Mohr, Davidow Ventures.

Walter Gerken, Chairman of the Equity Board, PIMCO Advisors, L.P.

Alan Hassenfield, Chairman & CEO, Hasbro, Inc.

Ivan J. Houston, Retired—Chief Executive Officer, Golden State Mutual Life Insurance Co.

Robert J. Kiley, President, New York City Partnership.

Melvin B. Lane, Former Publisher & Co-Chairman, Lane Publishing Co.-Sunset Magazine.

Morton H. Meyerson, Chairman & CEO, Perot Systems Corp.

Arjay Miller, Dean Emeritus, Graduate School of Business, Stanford University, Former President, Ford Motor Co.

Thomas S. Murphy, Retired-Chairman & CEO, Capital Cities/ABC, Inc.

Sol Price, Price Entities.

Sanford R. Robertson, Chairman, Robertson Stephens & Co.

Arthur Rock, Arthur Rock & Co.

Richard Rosenberg, Former Chairman & CEO, Bank of America.

Jane E. Shaw, Ph.D., Founder, The Stable Network.

Thomas W. Smith, President & Founder, Prescoft Investors, Inc.

Donald Stone, Former Chairman & CEO, MLSI.

Robert D. Stuart, Jr., Chairman Emeritus, The Quaker Oats Company.

Dr. P. Roy Vagelos, Former Chairman & CEO, Merck & Co., Inc.

A.C. Viebranz, Former Senior Vice President, External Affairs, GTE Corporation.

Thomas S. Volpe, President & CEO, Volpe Brown Whelan & Company, LLC.

Mr. FEINGOLD. Mr. President, this one makes an interesting point, that is, that in addition to the various church and other religious groups, in addition to former Presidents, in addition to former Members of Congress, in addition to the hundreds of editorials by liberal papers, conservative papers, moderate newspapers all across the country that have supported McCain-Feingold and believe it has merit, that what we have discovered, Senator MCCAIN and I, the Senator from Arizona and I have discovered, is that there are a whole lot of businesspeople that are tired of being the fall guys of this system.

Under the system, even with hard money, let alone soft money, where they can be asked for hundreds of thousands of dollars, a lot of these CEO's feel like they have become the fall guys of American politics.

I actually had the CEO of one of these companies, the Federal Express Co., come to visit me after last year's episode, where they were able to insert a provision into the Federal aviation bill that allowed them to not have a national union even though, as we very well know, their competitor, the United Parcel Service does have a national union, which they had to contend with recently, but they were able to place a provision in that bill, even though they had not won a vote on any occasion on the particular issue, shortly after they gave each of the two parties—I want to check my notes on this—but I believe they gave them each $100,000 of soft money just a few days—just a few days—before this provision was inserted into the bill.

When I met with the CEO, who is a tremendous entrepreneur in this country, he said he has no choice, in effect, that if this is the way the rules are set up, he has to represent his employees and his shareholders and he has to fight and make political contributions, and he has to play hardball in effect. He did. He won.

You know what? During that UPS strike, Federal Express, which has that protection against such national union advocacy, Federal Express picked up something like 10 to 15 percent of UPS's market share, something they had been trying to do forever.

My point in introducing this item from the business leaders is to suggest that even the business leaders, who many might associate with the other side of the aisle in many cases, are saying, we are sick and tired of being the fall guys of a system that essentially has the potential to shake them down, otherwise, they are afraid their competitor might get an edge.

It is almost exactly what Mr. Tamraz said when he indicated by paying $300,000 he got the room the other people got that paid $300,000. That is access, and that is how you get in the room, and that is in effect the American way. That seemed to be what he was saying. It is pretty sad that has become the American way.

Even some of the corporate leaders of this country do not want this to become what it has become, which is in effect a corporate democracy, a democracy dominated by big money, not by the average citizen's right to have their vote count the same as others.

Mr. President, I also ask unanimous consent to have printed in the RECORD a statement by Jay Lintner of the United Church of Christ calling for comprehensive campaign finance reform, and a statement from the Church Women United endorsing the McCain-

Feingold proposal, and a statement by the Religious Action Center of Reform Judaism in support of comprehensive campaign finance reform.

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

OFFICE FOR CHURCH IN SOCIETY
UNITED CHURCH OF CHRIST,
Washington, DC, October 6, 1997.

PRESS STATEMENT—THE REV. JAY LINTNER

Do we have a democracy or a dollarocracy? Do politicians represent people or money?

Our mythology is democracy. The reality, made very apparent in the elections last Fall, is that politicians are bought and sold in the open market. All efforts at reform have collapsed, and the Senate prepares to filibuster and confuse the issue.

Every other country in the world knows that money rules. Are we the last naive country on earth? Or are we the first country whose guiding ideology may lead us into a new reality? Is the Holy Spirit at work, empowering people to turn the political order upside down?

I'm speaking today on behalf of 18 major denominations and faith groups—AME, Methodist, Episcopal, United Church of Christ, Union of American Hebrew Congregations. We are here to say that campaign finance reform is not just some political, partisan issue. It is a moral issue.

The prophet Isaiah said it well: ''Your princes are rebels and companions of thieves. Everyone loves a bride and runs after gifts. They do not defend the orphan and the widow's cause does not come before them'' (Isaiah 1:23).

The front page today says that the Capitol Hill princes put 129 pork barrel projects in the recent military construction bill, more money given away in one bill than all the campaign contributions that bought the politicians. Is there some bill here where they've sneaked some money for the widows and orphans?

Can we get moral corruption out of the political process? Politicians count on public apathy, public cynicism, public awareness that this is the way rulers always rule.

This is more than a moral problem. This is a spiritual problem. Have we given up faith in government, in our common community shaping a moral order? No. We sent out 100,000 packets of petitions to our churches and synagogues, and now our petitions are laid at the feet of the capitol.

We will not go away. The gates of hell will not prevail and the gates of Washington will not prevail. We demand a ban on soft money, and we demand much more comprehensive reform that breaks the power of big money buying our electoral process. We want our politicians back, accountable to we the people, not we the dollars.

CHURCH WOMEN UNITED SUPPORTS CAMPAIGN FINANCE REFORM EFFORTS

WASHINGTON, DC, October 6, 1997.—Church Women United (CWU) stands in solidarity today with all citizens concerned over the integrity of our democratic system. In particular, we support the efforts of Senators McCain, Feingold and Thompson and Representatives Shays and Meehan to reform the current system of raising and spending private money to finance election campaigns.

Church Women United is a 55-year-old, ecumenical movement of Christian women from Protestant, Catholic and Orthodox traditions. Since our beginnings, we have worked for a just and peaceful world, with a special concern for women and children. In 1986, CWU adopted a policy in support of campaign finance reform which calls for tougher restrictions on special-interest PACs and spending limits for congressional candidates.

CWU is aware of the increasing role special interest money plays in influencing politicians and policy. Members of Congress are rapidly losing their ability to represent the interest of the common good in favor of a more narrow, wealthy constituency. As such, we view campaign finance reform as one of the major challenges in ensuring that the needs of poor women and children are taken seriously in the formation and implementation of public policy. Until politicians are freed from the pressures of monied interests, it will remain difficult to have the needs of those without means heard.

The McCain-Feingold campaign finance reform bill is a first step at recognizing and correcting the imbalance of power in our political system. We applaud all members of the House and Senate who are co-sponsoring the bill. We encourage others who currently are not supportive to join in these efforts to help make the electoral process more representative of the interests of all U.S. citizens.

STATEMENT OF MARK PELAVIN—RELIGIOUS ACTION CENTER OF REFORM JUDAISM, OCTOBER 6, 1997

On behalf of the Union of American Hebrew Congregations and the Central Conference of American Rabbis, their 860 congregations and 1,800 rabbis, and the 1.5 million Reform Jews throughout the United States and Canada, I am proud to be here today to add our voice to those calling, urgently, for serious campaign finance reform.

Our call for comprehensive campaign finance reform is reflective of the views of many mainstream religious communities. From the pews and pulpits of our churches and synagogues across the nation, we hear that campaign finance reform is not an esoteric technical issue of election regulations, but one that goes to the essence of the ethical and moral life of our nation. We hear people asking:

How can we expect just results from an unjust system, one in which monied interests hold every advantage, and those who most need the helping hand of government—the poor, our children—cannot make their voices heard above the din?

How can we—whose religious calling includes the imperative to speak for the widow and the orphan, for the poor and the children—accept an electoral process which structurally and systematically favors the richest among us?

How can we acquiesce in a system which forces those who seek public office, or who wish to continue in public service, to spend so much of their precious time and energy not raising the nation's moral conscience but raising campaign funds?

If we are serious about seeking justice, *and we are*, then we cannot, *and we will not*, accept such a system.

We stand at the brink of a historic opportunity. Real reform is within reach. But first, the Senate must prove that it is committed to ending the status quo. The Lott Amendment, which the Senate will consider tomorrow, was designed as a distraction, crafted to protect politics as usual. (And how ironic, and revealing, that in attempting to derail vital legislation to open up our political system, Senator Lott and his supporters' first thought is to undermine the political voice of America's working men and women!)

We call on our elected leaders to reject the Lott Amendment and to work toward the creation of a more ethical campaign financing system, a system which will reinforce rather than tarnish the principles of American democracy, a system which can help salvage our collective faith in public service. We pledge our vigorous support in this historic effort.

Mr. FEINGOLD. Mr. President, at this point these are all the items I want to place in the RECORD at this time. But fortunately this debate will continue in one form or another. We will have an important cloture vote shortly on the overall bill.

Tomorrow, there will be two more cloture votes. And it will continue because it is absolutely essential that we do not disgrace ourselves by going home, certainly for the 1998 elections, and even more importantly just going home at the end of this session having displayed to the American people all the abuses of the current system, the areas where the law is insufficient, the areas where there are loopholes in the law, and then to return home and say to everyone, ''You know what? We didn't do anything about it. We didn't pass a single piece of legislation.''

I don't think any of us on either side of the aisle consider that to be an acceptable outcome.

I would like finally to say again to the Chair, I look forward to working to negotiate the kind of legislation that he can support. And I again thank him for his vote yesterday.

Mr. President, I yield the floor.

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. 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. Parliamentary inquiry, in a quorum call is the time equally charged to both sides?

The PRESIDING OFFICER. The time is charged to the side which puts in the quorum call, unless consent is granted to divide that equally.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that four letters from the American Civil Liberties Union, outlining the constitutional infirmities of the McCain-Feingold bill, be printed in the RECORD. I understand that the Government Printing Office estimates the cost of printing these articles in the RECORD to be approximately $2,500.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, October 1, 1997.

Hon. MITCH MCCONNELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR MCCONNELL: Ever since the very first version of the various McCain-Feingold campaign finance bills were introduced in the Senate, the ACLU has gone on record to assert that each version was fatally and fundamentally flawed when measured against settled First Amendment principles. Now the Senate is debating a new ''revised'' incarnation of the bill. While we are

pleased that the sponsors of the new version have abandoned some of the more egregious provisions that appeared in earlier versions, the ''pared down'' bill still cuts to the core of the First Amendment. We once again urge you to reject McCain-Feingold's unconstitutional and unprecedented assaults on freedom of speech and association.

Although the bill has a number of constitutional flaws, this letter focuses on those that impose restrictions primarily on issue advocacy. It is important to note at the outset that the recent letter from 126 law professors, commenting on McCain-Feingold, was silent on the issue advocacy restrictions in the bill, which are the subject of this letter.

1. The unprecedented restrictions on issue advocacy contained in the McCain-Feingold bill are flatly unconstitutional under settled First Amendment doctrine.

The Supreme Court in *Buckley* v. *Valeo* well understood the risks that overly broad campaign finance regulations could pose to electoral democracy because ''[discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.'' 424 U.S. at 14. The Court recognized that ''the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.'' 424 U.S. at 43. If any discussion of a candidate in the context of discussion of an issue rendered the speaker subject to campaign finance controls, the consequences for free discussion would be intolerable and speakers would be compelled ''to hedge and trim,'' *Id.*, quoting *Thomas* v. *Collins*, 323 U.S. 516, 535 (1945).

Accordingly, the Court reasoned, under the First Amendment, campaign finance controls had to be limited and could only apply to ''communications that in express terms advocate the election or defeat of a clearly identified candidate.'' Conversely, all speech which does not ''in express terms advocate the election or defeat of a clearly identified candidate'' must be totally free from permissible controls. ''So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views.'' 424 U.S. at 45. And they are free from reporting and disclosure requirements as well.

The Court fashioned the express advocacy doctrine to safeguard issue advocacy from campaign finance controls, even though such discussion might influence the outcome of an election. The doctrine provides a hard, bright-line, objective test that protects political speech and association by focusing solely on the content of the speaker's words, not the motive in the speaker's mind or the impact of the speaker's opinions, or the proximity to an election, or the phase of the moon. The doctrine marks the boundary of permissible regulation and frees issue advocacy from any permissible restraint.

The *Buckley* Court could not have been more clear about the need for that bright line test which focuses solely on the speaker's words and which is now an integral part of settled First Amendment doctrine. It was designed to protect issue discussion and advocacy by allowing independent groups of citizens to comment on and criticize the performance of elected officials without becoming ensnared in the federal campaign finance laws. And it permits issue discussion to go forward at the time that it is most vital in a democracy: during an election season.

The new version of the McCain-Feingold bill once again would obliterate the bright line test of ''express advocacy'' which the courts have fashioned over a period of 25 years to protect the broad range of issue discussion in America from campaign finance controls. Instead, the bill would impose unprecedented controls on issue advocacy in clear violation of settled First Amendment principles.

The new bill attacks issue advocacy on a number of fronts.

It abandons the bright-line test of express advocacy in favor of a permanent year-round restriction on issue advocacy redefined in an unconstitutionally vague, overbroad and watered-down fashion.

It imposes, in effect, a two-month, 60 day blackout before any federal election on any radio or television advertisement on any issue if that communication ''mentions'' any candidate for federal office.

It restrains any communication that expresses ''support for or opposition to'' anyone who is a candidate for office.

These unprecedented restrictions would effectively silence issue advocacy by the countless hundreds and thousands of groups that add to the political debate in America.

These proposals would all undermine the purpose of the ''express advocacy'' doctrine, which is to keep campaign finance regulations from overwhelming all political and public speech. They would do so by dramatically expanding the statutory definition of express advocacy and thereby impermissibly sweeping an enormous amount of protected issue advocacy within the net of campaign finance regulations.

The current version of McCain-Feingold takes a ''new'' approach to silencing issue advocacy, but it is no less flawed than its predecessors. Once again, the clear purpose and inevitable effect of the provisions in the revised McCain-Feingold bill will be to shut down citizen criticism of incumbent officeholders standing for re-election at the very time when the public's attention is especially focused on such issues.

Given the fact that the proposed restraints on issue advocacy are targeted primarily at criticism of incumbent legislators during an election season, the danger to the core purposes of the First Amendment posed by such legislation is clear and present.

2. The unprecedented and sweeping restraints on the ''soft money'' funding of issue advocacy and political activity by political parties raise severe First Amendment problems.

A central critical distinction has informed the Supreme Court's campaign finance jurisprudence. Contributions and expenditures made by federal candidates, or those who expressly advocate their election or defeat, may be subject to regulation. All other political and issue advocacy and discussion—even though it might influence the outcome of an election—may not be subject to governmental control. This constitutional Continental Divide is compelled by the First Amendment and is built upon the concept that only ''express advocacy'' of the election or defeat of specific federal candidates can be subject to regulation.

Accordingly, while candidate-focused contributions and expenditures and ''express advocacy'' can be subject to various restrictions or regulations, the Court in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) held that all speech which does not ''in express terms advocate the election or defeat of a clearly identified candidate'' is totally free of any permissible regulation: ''So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, *they are free to spend as much as they want to promote the candidate and his views.*'' 424 U.S. at 45 (emphasis supplied). The purpose of this profound distinction is to keep campaign finance regulations from overwhelming all political and public speech. And it is this distinction which defenders of the constitutionality of a ban on ''soft money'' continue to disregard.

The same principles that protect unrestrained advocacy by issue groups safeguard issue advocacy and activity by political parties. ''Soft money'' is funding that does not support ''express advocacy'' of the election or defeat of federal candidates, even though it may exert an influence on the outcome of federal elections in the broadest sense of that term. It sustains primary political activity by parties such as get-out-the-vote drives and issue advertising. Because it is not used for express advocacy, it can be raised from sources that would be restricted in making contributions or expenditures. Compare *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990) with *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978).

Indeed, the unrestricted use of soft money by political parties and non-party organizations like labor unions has been invited by *Buckley* (''So long as persons and groups eschew . . .''), authorized by Congress (see 2 U.S.C. sections 431 (8)(A)(I) and (B)(xii) which permit soft money for state elections and voter registration and get out the vote drives), sanctioned and enhanced by rulings of the Federal Election Commission and acknowledged by the Supreme Court last year in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 116 S.Ct. 2309 (1996), which upheld *unlimited* ''hard money'' independent expenditures by political parties on behalf of their candidates.

Most pertinently, the *Colorado Republican* Court reached that conclusion despite arguments that unrestrained soft money contributions were undermining the Act's limitations on hard money party funding:

''We recognize that FECA permits individuals to contribute more money ($20,000) to a party than to a candidate ($1,000) or to other political committees ($5,000). . . . We also recognize that FECA permits unregulated ''soft money'' contributions to a party for certain activities, such as electing candidates for state office . . . or for voter registration and ''get out the vote'' drives. . . . But the opportunity for corruption posed by these greater opportunities for contributions is, at best, attenuated. Unregulated ''soft money'' contributions may not be used to influence a federal campaign, except when used in the limited party-building activities specifically designated by statute.'' *Id.* at 2316.

And the Court's suggestion that Congress ''might decide to change the statute's limitations on contributions to political parties''—which has been taken out of context by defenders of McCain-Feingold's soft money ban—referred to hard money donations.

Accordingly, we submit that McCain-Feingold's sweeping controls on the amount and source of soft money contributions to political parties and disclosure of soft money disbursements by other organizations continue to raise severe constitutional problems. Disclosure, rather than limitation, of large soft money contributions to political parties, is the more appropriate and less restrictive alternative.

McCain-Feingold's labyrinth of restrictions on party funding and political activity can have no other effect but to deter and discourage precisely the kind of political party activity that the First Amendment was designed to protect.

The ACLU continues to believe that the most effective and least constitutionally

problematic route to genuine reform is a system of equitable and adequate public financing. While reasonable people may disagree about the proper approaches to campaign finance reform, this bill's restraints on political party funding and issue advocacy raise profound First Amendment problems and should be opposed. The bill has a number of other severe flaws, some old, some new, which we will address in a future communication. But we wanted to take the opportunity to share our assessment of two of the most salient problems with the bill now.

Sincerely,

IRA GLASSER,
Executive Director.
LAURA W. MURPHY,
Director, Washington Office.
JOEL GORA,
Professor of Law, Brooklyn Law School, and Counsel to the ACLU.

QUESTIONS AND ANSWERS ABOUT ISSUE ADVOCACY (WITH SPECIFIC REFERENCE TO THE REVISED MCCAIN-FEINGOLD BILL)

1. WHAT IS ISSUE ADVOCACY?

Issue advocacy can best be defined as any speech relating to issues and the policy positions taken by candidates and elected officials. It can be as simple as a statement like ''Senator Doe's position on school vouchers is grievously mistaken.'' Or it can be as involved as a multimillion dollar campaign of broadcast and print advertisements that spreads the same message. Any group or individual can engage in issue advocacy.

Under current law, a message stops being considered ''issue advocacy'' if it is accompanied by ''express advocacy'' or actual statements advocating the election or defeat of a clearly identified candidate for office, i.e. ''Senator Doe's position on school vouchers is grievously mistaken and anyone who cares about the separation of church and state should vote against him in November.''

Although issue advocacy can leave the impression that a listener should support or oppose a particular candidate, such messages cannot—under current law—be treated (and therefore regulated) as express advocacy by the Federal Elections Commission.

2. WHY IS CONGRESS TRYING TO REGULATE ISSUE ADVOCACY?

During the 1996 elections, groups across the political spectrum engaged in intense issue advocacy campaigns. Many members of Congress felt they lost control of their campaigns because of the unregulated and undisclosed advertising from issue groups. Their concern that elections are ''out of control'' seems to be the driving force in current efforts to regulate issue advocacy.

Because of this loss of control, some federal lawmakers seem to believe that candidates' interests should trump the right of citizen involvement and speech. Also, many members of Congress believe that issue advocacy became far too political and powerful during the last election cycle. They assert that these issue ads are really a subterfuge for express advocacy communications. Many lawmakers and advocacy groups think that all communications that could influence the outcome of elections should be regulated by statute.

3. HOW WILL THE REVISED MCCAIN-FEINGOLD LEGISLATION AFFECT ISSUE ADVOCACY?

The legislation that the Senate will most likely vote on during the next several days is a revised version of the McCain-Feingold bill. The ACLU will soon be releasing an analysis of the new legislation, but in the meantime, we continue to assert that the issue advocacy provisions of the revised bill are unconstitutional. Such unconstitutional provisions include:

A permanent, year-round restriction on issue advocacy achieved through redefining express advocacy in an unconstitutionally vague and watered-down manner. The key to the existing definition of express advocacy is the inclusion of an explicit directive to vote for or vote against a candidate. Minus the explicit directive or so-called ''bright line test,'' what constitutes express advocacy will be in the eye of the beholder, in this case the FEC. Few non-profit issue groups will want to risk their tax status to engage in speech that could be interpreted by the FEC to have an influence on the outcome of an election.

A two-month black out on all television and radio issue advertising before primary and general elections. The only individuals and groups that will be able to characterize a candidate's record on radio and television during this 60 day period would be the candidates, PACs and the media. It seems this ban would exclude issue advertising on cable, the Internet, in print and in ads on movie screens.

A misleading ''exception'' for candidate voting records. The voting records that would be permitted under this new statute would be stripped of any advocacy-like commentary. For example, depending on its wording, the ACLU (as a 501(c)(4) corporation) might be banned from distributing a voting guide that highlighted members of Congress who have a 100 percent ACLU voting record as members of an ''ACLU Honor Roll.'' Unless the ACLU chose to create a PAC to publish such guides, we would be barred by this statute even though we do not expressly advocate the election or defeat of a candidate.

Redefining ''expenditure,'' ''contribution'' and ''coordination with a candidate'' so that legal and constitutionally protected activities of issue advocacy groups would become illegal. If the ACLU decided to take out an advertisement lauding—by name—Senators for their effective advocacy of constitutional campaign finance reform, this ad would be counted as express advocacy on behalf of the named Senators and therefore prohibited.

The Senate is threatening to erect a Byzantine set of laws that pose a formidable barrier to citizen speech. This barrier to free speech and free participation in the electoral process is like a barbed wire fence. No individual or group should try to scale it unless they are willing to become ensnared in a complicated set of laws that have significant penalties.

These provisions of the new McCain-Feingold legislation would silence citizen speech to give candidates more control over what is said about them prior to an election and throughout the election year. Similar bans and disclosure requirements were contained in the original McCain-Feingold bill.

In addition, many of the pending reform bills in the House and Senate such as H.R. 2183, the *Bipartisan Campaign Integrity Act of 1997*, H.R. 493, the *Bipartisan Campaign Reform Act* (which has evolved into H.R. 1776 and 1777, the *Campaign Independence Restoration Act*, Parts I and II) and H.R. 600, *American Political Reform Act*, among others, would ban or impose burdensome and unconstitutional disclosure on issue speech.

4. WHAT ARE THE PROBLEMS WITH CONGRESSIONAL ATTEMPTS TO REIN IN ISSUE ADVOCACY?

The proposals being considered in the House and Senate have manifold constitutional and practical problems.

A. Constitutional Concerns

All of the proposals violate the First Amendment. Attempts to regulate and require disclosure of issue advocacy through statute and through FEC regulation have repeatedly been declared unconstitutional by the Supreme Court and lower federal courts. The Court has always viewed issue advocacy as a form of speech that deserves the highest degree of protection under the First Amendment. Not only has the Court been supportive of issue advocacy, the justices have affirmatively stated that they are untroubled by the fact that issue advertisements may influence the outcome of an election. In fact, in *Buckley* v. *Valeo*, the justices stated:

''The distinction between discussion of issues and candidates and advocacy of the election or defeat of candidates may often dissolve in practical application Candidates, especially incumbents, are often intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest. *Buckley* v. *Valeo*, 424 U.S. 1 (1976) at 42.''

Those of us who truly understand and defend the phenomenon of issue advocacy freely acknowledge that the advertisements and statements of issue groups do have political impact. In fact, many groups hope that the voters will take candidate positions and voting records into account when voters go to the polls.

For example, groups like the ACLU want to continue to discuss candidate positions on civil liberties issues before, during and after elections, even though we are barred by our own policies from endorsing or opposing particular candidates for public office. Forbidding us to do so would make much of our legislative advocacy irrelevant during large portions of the year. Would we, for example, be permitted to criticize Senator Doe for his position on vouchers after September 4?

The premise of the Federal Election Campaign Act and current campaign reform proposals is that Congress can control the quantity and qualify of all speech that influences the outcome of elections in an attempt to make elections ''fair.''

The Supreme Court has responded on repeated occasions to this attempt to regulate political speech by invoking the primacy of the First Amendment instead of deferring to the concept of ''political speech equalization'' asserted by Congress and FECA.

The only justification for any regulation of political speech upheld by the Court has been to guard against the reality or appearance of corruption. Although many have criticized issue advocacy, few, if any, are asserting that it fosters a *quid pro quo* form of corruption that the Court has allowed Congress to guard against.

Defenders of the First Amendment know that the freedom to engage in robust political debate in our democracy will be at risk if the Congress or the FEC is given the authority to ban issue ads close to an election, or evaluate the content of issue ads to determine if they are really a form of express advocacy. The Supreme Court recognized this danger long before it decided *Buckley*. In an opinion issued in 1945 in *Thomas* v. *Collins*, the Court stated:

''. . . the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning. Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. *Thomas* v. *Collins*,'' 323 U.S. 516 (1945).

Given the Court's concern about the chilling effect regulation has on speech, one

can better appreciate the need for a clear-cut standard for limiting the kinds of communications that can be regulated by campaign finance laws. While some are disheartened that the FEC only has clear authority to regulate communications that include express advocacy terms like ''vote for'' and ''vote against,'' ''elect Doe for Congress,'' etc., others are relieved that the FEC is not free to regulate all political speech.

It is noteworthy that none of these proposals seek to regulate the ability of the media to exercise its enormous license to editorialize in favor or against candidates. If the sponsors of these proposals to regulate issue advocacy have their way, the only entities that would be free to comment on candidates' records would be the press, PACs and the candidates themselves.

With no proven record of corruption, why are citizen groups being ejected from political debate during the crucial period before elections?

B. Practical Implications

The proposed McCain-Feingold statutory limitations on issue advocacy would force groups that now engage in issue advocacy—501(c)(3) and 501(c)(4)—to create new institutional entities—PACs—to ''legally'' speak within 60 days before an election. The groups would also be forced to disclose all contributors to the new PAC.

Opportunities that donors now have to anonymously contribute to issue groups would be eliminated. Not all members of non-profit organizations want to become members of PACs. Separate accounting procedures, new legal costs and separate administrative processes would be imposed on these groups, merely so that their members could preserve their First Amendment rights to comment on candidate records. It is very likely that some groups will remain silent rather than risk violating this new requirement or absorbing the attendant cost of compliance.

This new provision may trigger Internal Revenue Service review of the non-profit status of groups that elect to create PACs. The IRS may justifiably examine the primary purpose of the issue groups. Groups could face a loss of members and tax deductible gifts for exercising their First Amendment rights.

It is notable that the much ballyhooed Brennan Center constitutional law professors letter recently released by Senators John McCain (R–AZ) and Russ Feingold (D–WI) is conspicuously silent on the advocacy restrictions contained in the bill.

5. HAS CONGRESS PREVIOUSLY ENACTED LAWS REGULATING ISSUE ADVOCACY?

Yes, in 1974 Congress enacted a similar issue advocacy disclosure law that was struck down in federal court. The Federal Election Campaign Act of 1971 was amended in 1974 to require the disclosure to the Federal Election Commission of issue groups engaged in ''any act directed to the public for the purpose of influencing the outcome of an election, or publishes or broadcasts issues to the public any material referring to a candidate (by name, description, or other reference) . . . setting forth the candidates position on any public issue, [the candidate's] voting record, or other official acts . . . or is otherwise designed to influence individuals to cast their votes for or against such a candidate or to withhold their votes from such candidate.'' 2 U.S.C. Sec. 437A.

Such groups would have been required to disclose to the FEC in the same manner as a political committee or PAC. They would have to make available every source of funds which were used in accomplishing such acts.

This provision of the 1974 amendments was challenged by the ACLU as part of the *Buckley* case. When the challenge came before the U.S. Court of Appeals for the DC Circuit (prior to coming before the Supreme Court), the provision was struck down because it was vague and imposed an undue burden on groups engaged in activity that is, and should be, protected by the First Amendment. The D.C. Circuit Court ruling stated:

''To be sure, any discussion of important public questions can possibly exert some influence on the outcome of an election preceding . . . But unlike contributions and expenditures made solely with a view to influencing the nomination or election of a candidate, issue discussions unwedded to the cause of a particular candidate hardly threaten the purity of the elections. Moreover, and very importantly, such discussions are vital and indispensable to a free society and an informed electorate. Thus, the interest group engaging in nonpartisan discussions ascends to a high plane, while the governmental interest in disclosure correspondingly diminishes.''

It is noteworthy that the FEC did not appeal this aspect of the Circuit Court's ruling.

6. HAS THE FEDERAL GOVERNMENT AND THE FEDERAL ELECTIONS COMMISSION TRIED TO REGULATE ISSUE ADVOCACY IN A WAY THAT WOULD TREAT IT AS EXPRESS ADVOCACY?

It certainly has. In one early telling incident, three elderly citizens with no connection to any candidate or political party published an advertisement in early 1972 in The New York Times that condemned the secret bombings of Cambodia by the United States. The advertisement also called for the impeachment of President Nixon and printed an honor roll of those members of Congress who had opposed the bombings. The honor roll included Senator George McGovern.

Although the ad was a classic example of speech protected by the First Amendment, it violated a federal campaign finance law, which effectively barred such expenditures on the ground that they could influence the upcoming presidential election by criticizing President Nixon and applauding one of his possible opponents, Senator McGovern. On the basis of this law, the U.S. government sued the three in federal court, seeking to enjoin them from publishing such ads, and wrote a letter to the Times threatening them with criminal prosecution if they published such an ad again.

The ACLU represented the three citizens and won. But the FEC has tried to regulate issue advocacy repeatedly since then. As recently as October 5, 1995, and on March 13, 1996, the FEC attempted to issue regulations severely circumscribing the rights of issue advocacy groups to communicate information on candidates.

In fact, the FEC has a terrible track record of trying to broadly interpret current FECA statues to encompass issue advocacy speech. While it is impossible to go into the facts of every case, with the narrow exception of *FEC* v. *Furgatch*, 869 F.2d 1256 (9th Cir. Cal. 1989), the Supreme Court and the lower courts have repeatedly rebuffed the FEC in this area.

In addition to Buckley, we suggest you look at the following decisions: *United States* v. *National Committee for Impeachment*, 469 F.2d 1135 (2d Cir, N.Y. 1972); *American Civil Liberties Union* v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973); *FEC* v. *AFSCME*, 471 F Supp. 315 (D.D.C. 1979); *FEC* v. *Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45 (2d Cir. N.Y. 1980); *FEC* v. *NCPAC*, 470 U.S. 480 (1985); *FEC* v. *NOW*, 713 F. Supp 428 (D.D.C. 1989); *Faucher* v. *FEC*, 928 F.2d 468 (1st Cir. Me. 1991); *FEC* v. *Survival Education Fund*, 65 F.3d 285 (2d Cir. N.Y. 1994); *FEC* v. *Christian Action Network*, 110 F.3d 1049 (4th Cir. Va. 1997); *FEC* v. *GOPAC*, 917 F. Supp. 851 (D.D.C. 1996); *Maine Right to Life Committee* v. *FEC*, 98 F.3d 1 (1st Cir. Me. 1996); and *Clifton* v. *FEC*, 114 F.3d 1309 (1st Cir. Me. 1997).

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, April 14, 1997

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: On February 20, 1997, I wrote to you on behalf of the American Civil Liberties Union urging our strong opposition to S. 25, the Bipartisan Campaign Reform Act of 1997. In that letter, we set forth the reasons why we believe that bill is ''fatally and fundamentally flawed when measured against First Amendment values.''

Thereafter, a letter was sent to Senators John McCain and Russell Feingold by the Brennan Center for Justice at NYU School of Law. That letter asserted that the ACLU's analysis of the constitutionality of S. 25 was based on arguments which had been rejected in the *Buckley* case and would not command majority support on the current court. Despite the eminence of its author, however, the letter is incomplete and incorrect in a number of key respects. We appreciate this opportunity to demonstrate why and to respond to the charge that we presented ''distorted descriptions of existing constitutional law.''

Those provisions of S. 25 which seek to induce candidates to adhere to spending limits in Senate campaigns and penalize those who refuse, which severely restrict political action committees and which likewise restrain contributions to political parties are not justified by *Buckley* or later cases. They will not survive strict scrutiny. The provisions of the bill which assault independent political activity and invade the absolutely protected sphere of issue speech are precisely condemned by *Buckley* and its progeny and are all but *per se* invalid. The entire sweep of the bill, including the greatly expanded enforcement powers given to the Federal Election Commission, is worse than the sum of its parts. It is as objectionable an assault on political freedom as were the provisions of the Federal Election Campaign Act at issue in *Buckley*.

Preliminarily, we would note that our condemnation of three of the most extreme provisions of the bill—the total and complete ban on *any* political contributions by political action committees (Section 201), the sweeping new public disclosure requirements targeting people who give as little as $50 (Section 304) or even $20 (Section 101) to a Senate candidate, and the xenophobic ban on political contributions by lawful resident aliens—went unremarked in the Brennan Center letter. Nothing in *Buckley* would justify the constitutionality of these provisions, and we would welcome the Brennan Center's joining us in denouncing them.

I. S. 25: THE UNCONSTITUTIONAL OFFER YOU CAN'T REFUSE

Replying to our assertion that ''S. 25's coercive and punitive scheme designed to compel candidates to accept spending limits in Senate elections and to penalize those who refuse, violates First Amendment principles,'' the Brennan Center asserts that this is an argument that the ACLU lost in the *Buckley* case.

There are three reasons why this is not so and why *Buckley* does not control the validity of these provisions of S. 25.

First, we didn't lose that argument in *Buckley* because we never made it. The primary contention was that the Presidential public funding scheme discriminated against those candidates and parties whom it excluded, not that it exacted unconstitutional conditions and limitations from those whom

it benefited, nor that it coerced compliance by penalizing those who declined the offer.

Second, the *Buckley* Court did state that Congress could condition acceptance of public funds on a candidate's agreement to abide by specified spending limits, because a candidate may decide voluntarily to forego private fundraising and accept public funding. But a candidate or party was free to reject that offer and choose to try to raise and spend more money than the conditional limits would permit, without regard to what opposing candidates or parties did. The choice of one candidate did not affect the rights of others. Whether that conditional funding scheme would survive close scrutiny under the Court's unconstitutional conditions doctrine is a substantial question.

But the scheme in S. 25 is not just a conditional funding scheme which requires candidates to give up rights in order to get benefits and which penalizes non-complying candidates by denying them free television prime time, half-priced purchased and discounted mass mailings rates. S. 25 is also a contingent benefits scheme whereby the exercise of protected campaign spending rights by a noncomplying candidate triggers statutory fundraising benefits to his or her complying opponent. Thus, if any noncomplying Senate candidate exceeds the applicable spending limit by only 5% the complying candidate's spending limit is raised tenfold by 50%. Likewise, if a noncomplying candidate's expenditures exceed 155% of the limit, the complying candidate's ceiling is again raised tenfold to 200%. And in both instances, the contribution limits for the complying candidate, but not the noncomplying one, are *doubled* from $1,000 to $2,000, making it easier for the complying candidate to raise funds to ''drown out'' the noncomplying candidate. Adding insult to injury, noncomplying candidates are subject to more burdensome disclosure requirements in order to enforce the triggering mechanism that raises the spending limits and contribution caps for their complying opponents.

Further, the law mandates that 60% of all contributions must be raised in state in order to be eligible for the benefits. Residency requirements can be the basis for who can vote in an election but should not be the basis for who can speak about an election. See *McIntyre* v. *Ohio Board of Elections,* 517 U.S. (1995). Moreover, in-state limitations could deprive particular kinds of underfinanced, insurgent candidates of the kind of out-of-state support they need. Just as much of the civil rights movement was fueled by contributors and supporters from other parts of the nation, so, too, are many new and struggling candidates supported by interests beyond their home states. This proposal would severely harm such candidacies. Perhaps that is its purpose.

In addition, Congress is our national legislature, and although its representatives come and are elected from separate districts and states, the issues that are debated are, by definition, national issues that transcend district and state lines and may be of concern to citizens all over the nation. When such issues become central in certain campaigns, people and groups from all over the country should be entitled to have their views and voices heard on those issues. Any other approach takes a disturbingly insular and isolated view of political accountability and the obligations of a Member of Congress.

The clear purpose and patent effect overall of this conditional funding scheme is to chill and deter, dollar for dollar, any candidate from trying to mount an effective high-spending campaign. With this contingent limitation scheme, incumbents, who will almost always opt for the public funding, have arranged a way to have their cake and eat it too. That scheme, which coerces candidates to accept the limitations by penalizing them if they do not, is a far cry from anything sustained in *Buckley*. It is an offer that few can refuse.

II. S. 25'S ATTACKS ON PACS

The bill whose constitutionality the Brennan Center vouches for would totally and entirely ban PAC contributions to Senate candidates, a wholly unprecedented restriction of the rights of literally millions of Americans, most of them small donors in the $25 to $100 range, to pool their resources to amplify their voices. Such small-donor PACs affiliated with groups running the gamut from the National Abortion Rights Action League, the Human Rights Campaign Fund and Emily's List, on the one hand, to the National Right to Life Committee, the Christian Coalition and the National Rifle Association, on the other, would be denied the right to support the candidates of their choice.

Nothing in *Buckley* sustains such a radical restraint on the right of freedom of speech and association. *Buckley* upheld a $5,000 limit on political action committee contributions to individual federal candidates, not the $0 limit, total ban that Section 201 of S. 25 would impose on all Senate campaigns.

Even the ''fall back'' provision that would impose a 20% cap on the amount of PAC contributions that *any* Senate candidate could receive operates, effectively, as a $0 limit, total ban once that limit is reached. Once any Senate candidate has received PAC contributions totaling 20% of the applicable spending limit, all other groups are barred from supporting that candidate and effectively silenced. In *Buckley* the Court said that ''[g]iven the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy.'' 424 U.S. at 22. The Court found that the contribution limits there survived close scrutiny under that test, in large part precisely because the Act, though limiting individual contributions to $1,000, permitted PACs to contribute five times that amount, and provided for a proliferation of PACs to fill the fundraising gap. *Id.* at 23, 29–30. A total or near-total ban on PAC contributions would fail the *Buckley* test.

That is why reducing the PAC contribution ceiling to $1,000 is also extremely suspect. In 1976 dollars, that would be about a $350 ceiling on contributions. It is simply incredible to believe that the *Buckley* Court would have upheld that low a limit on individual or PAC contributions, especially when so many PACS are small donor PACs where the concern with corruption is attenuated. The Brennan Center letter is simply wrong in its assertion that ''in the years since *Buckley*, the Supreme Court has upheld every contribution limit that has come before it in an election context.'' (p. 2). In *Citizens Against Rent Control* v. *Berkeley,* 454 U.S. 290 1981), cited in our earlier letter, the Court, by a vote of 8 to 1, invalidated a $250 limit on personal contributions to local referendum campaigns. S. 25's limits would be similarly vulnerable.

III. S. 25'S ATTACKS ON ISSUE ADVOCACY AND SPEECH

One of the central tenets of the Supreme Court's campaign finance jurisprudence has been the critical distinction between contributions and expenditures made by federal candidates, or their campaigns or those who expressly advocate their election or defeat, on the one hand, and all other political and issue advocacy and discussion and activity, even though it might influence the outcome of an election, on the other. This constitutional Continental Divide is compelled by the First Amendment and is built upon the concept that only ''express advocacy'' of the election or defeat of specific federal candidates can be subject to regulation.

It is not that there is an inherent distinction between issue speech and electoral advocacy. Quite the contrary, as the *Buckley* Court recognized: ''For the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.'' 424 U.S. at 43. But *Buckley* held that if any mention of a candidate in the context of discussion of an issue rendered the speaker or the speech subject to campaign finance controls, the consequences for the First Amendment would be intolerable.

Accordingly, while candidate-focused contributions and expenditures and ''express advocacy'' can be subject to various restrictions or regulations, the Court clearly held in *Buckley* that all speech which does not ''in express terms advocate the election or defeat of a clearly identified candidate'' is totally free of any permissible regulation: ''So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, *they are free to spend as much as they want to promote the candidate and his views.*'' 424 U.S. at 45 (emphasis supplied). The purpose of this profound distinction is to keep campaign finance regulations from overwhelming all political and public speech.

The effect of the distinction has been manifold. It is the express advocacy concept that defines the notion of ''soft money'' which is political funding that is used for party-building, get-out-the-vote activities and generic advertising (''Vote Democratic''), all activities which do not ''expressly advocate'' the election or defeat of specific federal candidates. Because it is not used for such express advocacy, it can be raised from sources that would be restricted in making contributions or expenditures. It is the express advocacy concept that separates an illegal corporate expenditure advocating the election or defeat of a specific candidate from an allowed issue advertisement discussing public and political questions. Compare *Austin* v. *Michigan Chamber of Commerce,* 494 U.S. 652 (1990) with *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765 (1978). It is the express advocacy concept that defines and cabins the concept of independent expenditures and determines the permissibility of coordinated expenditures. It is the express advocacy concept that protects the myriad on non-partisan, issue-oriented groups like the ACLU in their right to comment on and criticize the performance of elected officials without becoming ensnared in the federal campaign finance laws. See *Buckley* v. *Valeo,* 519 F.2d 817, 832 (D.C. Cir. 1975).

And it is that critical constitutional distinction which S. 25 seeks to blur beyond recognition.

A. Soft Money

As indicated, soft money is funding that does not support ''express advocacy'' of the election or defeat of federal candidates, even though it may exert an influence on the outcome of federal elections in the broadest sense of that term. It sustains primary political activity such as get-out-the-vote drives

and issue advertising. That is why, contrary to the Brennan Center's letter, the relevant precedent is not *Austin* which involved express advocacy by corporations, but *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission*, 116 S.Ct. 2309 (1996), which upheld *unlimited* independent expenditures by political parties on behalf of their candidates.

Indeed, the unrestricted use of soft money by political parties and non-party organizations like labor unions has been invited by *Buckley* (''So long as persons and groups eschew . . .''), authorized by Congress (see 2 U.S.C. sections 431 (8)(A)(I) and (B)(xii) which permit soft money for state elections and voter registration and get out the vote drives), sanctioned and enhanced by rulings of the Federal Election Commission and acknowledged by the Supreme Court in last year's *Colorado Republican* case. In that case, and despite a brief filed by the Brennan Center with charts and graphs detailing large individual and corporate soft money contributions to the two major parties and contending that ''soft money contributions to local political parties have cascaded into a flood of dollars from corporations, labor unions, and wealthy donors that threaten the integrity of the Act's federal contributions restrictions. . . .'' (Brief, p. 8) the Court nonetheless stated:

''We recognize that FECA permits individuals to contribute more money ($20,000) to a party than to a candidate ($1,000) or to other political committees ($5,000). . . We also recognize that FECA permits unregulated ''soft money'' contributions to a party for certain activities, such as electing candidates for state office . . . or for voter registration and ''get out the vote'' drives. But the opportunity for corruption posed by these greater opportunities for contributions is, at best, attenuated. Unregulated ''soft money'' contributions may not be used to influence a federal campaign, except when used in the limited party-building activities specifically designated by statute.'' *Id.* at 2316.

Accordingly, S. 25's sweeping and convoluted limitations on the amount and source of soft money contributions to political parties (Section 211 to 213) and disclosure of soft money disbursements by other organizations (Section 211) are not justified by precedent. Disclosure, rather than limitation, of large soft money contributions to political parties, is the appropriate remedy.

Nonetheless, we recognize that during the last election cycle, many candidates for federal office spent as much time responding to issue advertising and independent expenditures as they did campaigning against the advertising emanating from their opponents. The solution to this problem is not to tamp down on issue advocacy, independent expenditures or soft money contributions in a vague, overbroad and unconstitutional manner. Rather, Congress should lift the individual and PAC contribution limits so that candidates have better control and access to the larger sums of money necessary to finance their own campaigns, subject, of course, to timely and appropriate disclosure.

B. Independent Expenditures

The Court has repeatedly stated that independent expenditures are at the core of the First Amendment's protection because they embody citizen commentary on government, politics, and candidates for elective office. See *Buckley* v. *Valeo, supra; FEC* v. *National Conservative PAC*, 470 U.S. 480 (1985); *Colorado Republican Federal Campaign Committee* v. *FEC, supra*. In our initial letter we identified a number of ways in which S. 25 burdens and restrains these core First Amendment rights.

First, S. 25 broadly expands the definition of ''coordination'' so that virtually any person or group who has had even the most casual interaction with a candidate or a campaign is therefore barred from making independent expenditures. Section 405.

Second, the bill imposes a number of new and burdensome reporting and disclosure requirements on those who would make such expenditures. Sections 241, 405. For example, *any* person or group who spends more than $1,000 to place a small political advertisement in *The New York Times*—a very small ad—within three weeks of an election must file a report with the government within 24 hours of when they *arrange* for the ad—before it even runs. Section 241. Failure to do so can result in civil monetary penalties or injunctive suits by the Federal Election Commission. And what triggers the application of these extensive new controls is any political content which the government might deem ''express advocacy'' under the patently unconstitutional definition of that concept contained in this bill. See *infra*.

Ignoring these serious concerns, the Brennan Center letter focuses solely on the question of coordination between a party and its candidate. Section 404. But even there the letter ignores the fact that the *Colorado Republican* case rejected the validity of a conclusive conclusion of impermissible coordination whenever a party made an expenditure in favor of its candidates. Yet S. 25 replaces the rejected automatic conclusion with an all but conclusive factual presumption of coordination and therefore limitation.

C. Issue Advocacy

S. 25's worst assault on settled First Amendment principles is its efforts to obscure the bright line test of ''express advocacy'' that has been fashioned by the courts for 25 years to protect the broad range of issue discussion in America from campaign finance controls. The *Buckley* Court could not have been more clear about the need for that bright line, objective test which focuses solely on the speaker's words. That test is an integral part of the First Amendment, no less than the ''actual malice'' rule of *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964) in defamation cases, or the ''incitement test'' of *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969) in subversive advocacy cases.

Indeed, the ACLU's initial encounter with campaign finance laws was to defend against their very first use to try to muzzle a small handful of dissenters who had published an advertisement in *The New York Times* criticizing the President of the United States. The government claimed that the ad was ''for the purpose of influencing'' the outcome of the 1972 Presidential election. The government was resoundingly rebuffed, and the courts ruled that the campaign finance laws could not be used in such an open-ended fashion to control issue speech. *United States* v. *National Committee for Impeachment*, 469 F.2d 1135, 1139–1142 (2d Cir. 1972); see also, *American Civil Liberties Union* v. *Jennings*, 366 F.Supp. 1041, 1055–57 (D.D.C. 1973, three-judge court); *Buckley* v. *Valeo*, 519 F.2d. 817, 832 (D.C. Cir. 1975, en banc); *Buckley* v. *Valeo*, 424 U.S. at 42–45 and 76–80. Instead, ''express advocacy'' would be the bright dividing line between campaign advocacy and issue speech.

Now, S. 25 attempts to replace that time-honored concept with the kind of vague and over broad formulas that *Buckley* and other courts rejected, and the circle has turned full round. *Buckley* said the First Amendment required that the law could only regulate ''expenditures for commutations that in express terms advocate the election or defeat of a clearly identified candidate for federal office.'' *Id.* at 44, 80. The very language and concepts that the *Buckley* Court rejected as permissible definitions of regulatable electoral advocacy have now reappeared in this bill. In *Buckley* the Court rejected a triggering provision that regulated advocacy speech ''relative to a clearly identified candidate.'' S. 25 regulates advocacy speech that ''refers to a clearly identified candidate.'' Section 406. and *any* communication by a political party to the public which ''refers to a clearly identified candidate'' would be subject to regulation, without more.

Beyond that, First Amendment rights would turn once again on such vague and subjective concepts as whether the communication ''conveys a message'' that advocates the election or defeat of a particular candidate or that ''a reasonable person would understand as advocating the election or defeat'' of a candidate and that is ''made for the purpose of advocating the election or defeat of the candidate as shown by . . . a statement or action by the person making the communication, the targeting or placement of the communication, or the use by the person making the communication of polling, demographic, or other similar data relating to the candidate's campaign or election.'' Publication of ''box core'' voting records would be allowed only if ''limited solely to providing information about the voting record of elected officials on legislative matters and that a reasonable person would not understand as advocating the election or defeat of a particular candidate.'' That's how incumbents would impede dissemination of information about their voting records and official actions.

In an effort to defend these suspect provisions, the Brennan Center letter distorts the meaning of the concept of ''independent expenditure'' as defined by the Court. A communication cannot be defined as an independent expenditure because it is ''designed to affect the outcome'' of a federal election or because the speaker's ''purpose and effect was to advocate the election or defeat of an identified candidate'' or because the speaker's ''predominant intent'' was to do so. The courts have rejected these subjective tests as treacherously dangerous boundary lines to mark First Amendment rights. Under the First Amendment, an independent expenditure is *only* one which ''expressly advocates the election or defeat'' of a specific candidate. And references to ''so-called 'issue ads'' '' or ''phony 'issue ads' '' (Letter, pp. 5, 6) cannot change that fact. It is not surprising that the letter cites no precedent for its support of a bill which would undue 25 years of bright line protection for issue-oriented speech.

S. 25 remains ''fatally and fundamentally flawed when measured against First Amendment values.'' It contains 87 pages of tortured twists and turns seeking more and more limits on political funding and therefore on political speech. As we all know, that approach has not worked, and we think it will not work, politically or constitutionally. We think it is time instead, to explore ways to expand political participation and opportunity that do not entail restricting political speech such as meaningful and constitutional public financing. We look forward to working with you to do so.

Sincerely,

IRA GLASSER,
Executive Director.
LAURA W. MURPHY,
Director, Washington Office.
JOEL GORA,
Professor of Law, Brooklyn Law School, and Counsel to the ACLU.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, February 20, 1997.

Hon. MITCH MCCONNELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MCCONNELL: I am writing this letter to set forth my views and those of the American Civil Liberties Union National Office with respect to the constitutionality of S. 25, the Bipartisan Campaign Reform Act of 1997. A year ago, I presented the opposition of the American Civil Liberties Union to S. 1219, last year's campaign finance bill. Once again, you have a bill before you which is fatally and fundamentally flawed when measured against First Amendment values. And one again we must oppose it.

The ACLU has long maintained that limitations on contributions and expenditures used for the purpose of advocating candidates and causes in the public forum violate the First Amendment. Under the First Amendment, as properly construed in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), Congress cannot ration or restrict the political funding that nourishes and sustains political speech. ''In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.'' 424 U.S. at 51.

I was an ACLU staff attorney who helped shape our pleadings and argued before the Court in the *Buckley* case, which was a landmark of political freedom. And, as a Professor of Law at Brooklyn Law School, I have worked with the ACLU on these issues ever since. Just last year, the continuing validity of the First Amendment principles recognized in *Buckley* was reaffirmed by the Supreme Court, by a wide 7 to 2 margin, in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 116 S. Ct. 2309 (1996), a ruling which struck down limitations on independent expenditures by political parties.

In a number of critical respects, S. 25 runs afoul of these cherished principles. For example:

S. 25's coercive and punitive scheme, designed to compel candidates to accept spending limits in Senate elections and to penalize those who refuse, violates First Amendment principles.

The ban and severe limitations on political action committees cuts to the heart of freedom of association.

The unprecedented restrictions and controls on raising and spending ''soft money'' by political parties and even non-partisan groups trammel the First Amendment rights of parties and their supporters in a manner well beyond any compelling governmental interest and violate the ruling in the *Colorado Republican* case.

The radically expanded definition of ''coordinated'' expenditure will improperly restrict the core area of independent electoral speech and wreak havoc on freedom of association.

Worst of all, the new definitions of what constitutes ''express advocacy'' are so vague and overbroad that they transgress the great Constitutional Divide between partisan electoral advocacy, subject to some regulation, and the absolutely protected sphere of issue discussion, subject to no permissible restraint. For twenty-five years courts have fashioned and fostered that bright-line distinction in order to protect the core values of the First Amendment. S. 25 seeks to undo those carefully crafted categories and obliterate those constitutionally compelled distinctions.

The reduced record keeping threshold for contributions and disbursements, from $200 down to $50, or for ''eligible'' candidates as low as $20, is a gross invasion of political privacy.

The ban on political contributions by persons not eligible to vote is an insult to the First Amendment which guarantees free speech to all within our shores.

Last, but by no means least, the new enforcement powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin ''a violation of this Act'' pose an ominous and sweeping threat of prior restraint and political censorship.

Let me elaborate briefly on these concerns.

1. S. 25's coercive and punitive scheme designed to compel candidates to accept spending limits in Senate elections and to penalize those who refuse, violates First Amendment principles.

Title I of the bill, providing ''spending limits and benefits'' for Senate campaigns, is an attempt to coerce what the law cannot command, a backdoor effort to impose campaign spending limits—which almost always benefit incumbents—in violation of essential free speech principles and the doctrine of unconstitutional conditions. The provisions for ''voluntary'' expenditure limits and other campaign funding controls, imposed in order to induce candidates to accept ceilings and restrictions on political speech and penalize and disadvantage those who will not do so, raise serious First Amendment problems.

The receipt of public subsidies or benefits should never be conditioned on surrendering First Amendment rights. That would penalize the exercise of those rights. See *Perry* v. *Sindermann,* 408 U.S. 593, 597 (1972); *FCC* v. *League of Women Voters,* 468 U.S. 364 (1984); *Board of County Commissioners* v. *Umbehr,* 116 S. Ct. 2342 (1996). Since candidates have an unqualified right to spend as much as they can to get their message to the voters, and to spend as much of their own funds as they can, and to raise funds from supporters all over the country, they cannot be made to surrender those rights in order to receive public benefits.

In *Buckley* the Court suggested that Congress might establish a system where candidates would choose freely and voluntarily between public funding with expenditure limits and private spending without limits, so long as the non-participating candidate remained free to engage in unlimited private funding and spending. In that setting, the purpose of the public financing of Presidential campaigns was ''not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.'' 424 U.S. at 92–93.

S. 25 fails this test, for its overall purpose and effect are to limit speech, not enhance it. The bill imposes substantial penalties on those disfavored, non-complying candidates who will not agree to limit their campaign expenditures, while it confers significant fund-raising benefits upon those privileged candidates who adhere to the limits. Privileged candidates get free broadcast time, and sharply reduced broadcast and mailing rates. Disfavored candidates must pay double promotional costs for the very same communications. The bill contains triggers which dramatically raise the spending ceilings and the contribution caps for privileged candidates whenever disfavored candidates threaten to mount a serious, well-funded campaign, or whenever independent groups speak out against a privileged candidate.

In effect, the bill tries to insure that privileged candidates will always be able to counteract the messages of disfavored candidates and their supporters. The law stacks the deck against the candidate who will not agree to limits, which will usually be the challenger trying to defeat an incumbent. In short, this scheme does everything possible to enable the candidate who agrees to spending limits to overwhelm the candidate who does not. That is not a level playing field. Lower courts have been quick to invalidate such one-sided, lopsided ''voluntary'' schemes. See *Shrink Missouri Government PAC* v. *Maupin,* 71 F.3d 1422, 1426 (8th Cir. 1995) (''We are hard-pressed to discern how the interests of good government could possibly be served by campaign expenditure laws that necessarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage.''); *Day* v. *Holohan,* 34 F.2d 1356 (8th Cir. 1994).

2. The various limitations on PAC contributions violate freedom of speech and association.

Section 201 of the bill would ban all political contributions by political action committees. This would cut to the heart of the First Amendment's protection of freedom of political speech and association. The bill would give a permanent political monopoly to political parties and political candidates, and would silence all those groups that want to support or oppose those parties and candidates. PACs come in all sizes and shapes and provide vehicles for millions of Americans to amplify their voices. There is not a word in *Buckley* or any case which suggests that the Court would uphold a total ban on PAC contributions to federal candidates and still all those voices. Frankly, this is just political grandstanding. That's why there is a ''fall back'' provision which would impose a $1,000 cap on PAC contributions, which is also of very doubtful constitutionality. See *Committee Against Rent Control* v. *Berkeley,* 454 U.S. 290 (1981); *Meyer* v. *Grant,* 486 U.S. 414 (1988); *Carver* v. *Nixon,* 72 F.3d 633 (8th Cir. 1995). In any event, this provision is fatally overbroad because it treats all PACs alike, even those made up only of small contributors.

Likewise, the ban on ''bundling'' of individual PAC contributions would abridge the freedom of association which the Supreme Court has recognized as a ''basic constitutional freedom.'' *Kusper* v. *Pontikes,* 414 U.S. 51, 57 (1973). As the Court has pointedly observed, ''the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.'' *Citizens Against Rent Control* v. *Berkeley,* 454 U.S. 290, 294 (1981).

Finally, the cap of 20% on PAC contributions that may be received will simply make it harder for candidates to raise funds, intrude upon freedom of speech and association and act like yet another backdoor effort to limit overall campaign expenditures, all in violation of *Buckley's* core principles.

3. The unprecedented controls on ''soft money'' are unjustified restraints on political parties and other organizations, as are the restraints on coordinated expenditures.

Sections 211, 212, 213 and 221 of the bill would severely limit and restrict the sources and use of soft money by political parties and other organizations. The new sweeping limitations and controls on ''soft money'' contributions to and disbursements by political parties and other organizations, federal, state or local, would expand the reaches of the FECA into unprecedented new areas, far beyond what any compelling interest would require. The reach of these proposals is breathtaking and unprecedented.

Indeed, just last June, the Court cast grave doubt upon the constitutionality of these various provisions. By a 7 to 2 margin, the Court ruled that even candidate-focused, ''hard money'' expenditures by political parties were fully protected by First Amendment principles and the *Buckley* precedents.

In *Federal Election Commission* v. *Colorado Republican Federal Campaign Committee*, supra, the Court gave full constitutional protection to unlimited party independent expenditures and invalidated the FEC rule that treated all candidate-focused, independent party expenditures as though they were ''coordinated'' with the candidate and therefore subject to limitations. In language powerfully relevant here the Court held: ''We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties.'' 116 S.Ct. at 2317. The case for thorough protection for ''soft money'' is even stronger, since it is used by definition for voter registration, get-out-the-vote, ''generic'' advertising like ''Vote Democratic'' and other party-building activities.

Equally significant, the Court squarely rejected the sweeping claims that soft money spent by political parties was ''corrupting'' the system and had to be stopped: ''We also recognize that the FECA permits unregulated 'soft money' contributions to a party for certain activities. . . . But the opportunity for corruption posed by these greater opportunities for contributions is, at best, attenuated.'' 116 S.Ct. at 2316.

Finally, Section 404, the new provision that tells political parties that they can continue to make ''coordinated'' expenditures on behalf of their candidates only if they forfeit their *Colorado Republican Committee* right to make independent expenditures supporting that candidate is yet another example of how this bill coerces the surrender of one constitutional right in order to exercise another. That kind of coercion should be rejected out of hand.

4. The new restrictions on independent expenditures improperly intrude upon that core area of electoral speech and impermissibly invade the absolutely protected area of issue advocacy.

Two basic truths have emerged with crystal clarity after twenty years of campaign finance decisions. First, independent expenditures for ''express'' electoral advocacy by citizen groups about political candidates lie at the very core of the meaning and purpose of the First Amendment. Second, issue advocacy by citizen groups lie totally outside the permissible area of government regulation. See *Buckley* v. *Valeo*, 424 U.S. at 14–15, 78–80, *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978); *FEC* v. *Massachusetts Citizens For Life*, 479 U.S. 238, 249 (1986). This bill assaults both principles.

First, Section 405 of the bill vastly expands the concept of ''coordinated'' expenditures so that virtually any person who has had any interaction with a candidate or a campaign is therefore barred from making independent expenditures. These definitions and limitations embody an impermissible kind of ''gag order by association.'' See *De Jonge* v. *Oregon*, 299 U.S. 353 (1937). Second, if significant independent expenditures are made ''in support of another candidate or against'' an eligible, privileged candidate, the spending limits of the latter are raised to make it easier to counteract the independent. speech. Finally, new and expanded reporting requirements are imposed on independent speakers. All of this is designed to chill and deter core electoral advocacy.

Worst of all is S. 25's blunderbuss assault on issue-oriented speech. The weapon is an unconstitutional expansion of the definition of ''express advocacy'' in order to sweep classic issue speech within the zone of regulation as independent expenditures. The bill abandons the bright line test of express advocacy (words which in express terms advocate the election or defeat of a candidate, such as ''Vote for Smith,'' ''Vote Against Jones,'' ''Elect,'' ''Defeat''), a test which the Supreme Court held was mandated by the First Amendment. Instead, Section 406 of the bill would treat as express advocacy any communication ''that conveys a message that advocates the election or defeat of a clearly identified candidate'' or, worse, ''that a reasonable person would understand as advocating the election or defeat or a candidate.'' A safe harbor provision, for a communication that ''is limited solely to providing information about the voting record of elected officials on legislative matters and that a reasonable person would not understand as advocating the election or defeat or a particular candidate'' is circular and no safe harbor at all. Indeed, the prospect of subjecting free speech rights to the post facto assessment of a ''reasonable person'' test would undo decades of First Amendment jurisprudence designed to protest First Amendment rights against the vagueness and uncertainly of such a standard.

This provision attacking issue ads and legislative advocacy would sweep in the kind of essential issue advocacy which *Buckley* and cases predating *Buckley* by a generation, see *Thomas* v. *Collins* 323 U.S. 516 (1945), have held immune from government regulation and control. It seems to be targeted exactly against the kind of voting record, ''box score'' discussion that emanates from the hundreds and thousands or issue organizations that enrich our public and political life. In *Buckley*, the Court adopted the bright line test line test of express advocacy in order to immunize issue advocacy from regulation: ''So long as person or groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spends as much as they want to promote the candidate and his views.'' Id. at 45.

Most significantly, the Act at issue in *Buckley* contained a similar provision regulating issue-oriented groups because of their ''box score'' ratings of public officials and comparable activities. That provision was unanimously held unconstitutional by the en banc Court of Appeals, without any further appeal by the government. See *Buckley* v. *Valeo*, 519 F.2d 817, 832 (D.C. Cir 1975). Circuit Judges running the gamut from Bazelon and Wright to Robb and Mackinnon were unanimous in their condemnation of that effort to control issue speech. The new and expanded definition of ''express advocacy'' in S. 25 is similarly, grievously flawed.

5. The bill gives unacceptable new powers of prior restraint and political censorship to the Federal Election Commission.

With all of these problems with the bill, particularly those that pertain to issue advocacy and independent expenditures, giving the Federal Election Commission sweeping new powers to go to court to seek an injunction on the allegation of a ''substantial likelihood that a violation . . . is about to occur'' is fraught with First Amendment peril.

Where sensitivity to the core constitutional protection for issue advocacy is concerned, the Commission has, in the words of one appellate judge, ''failed abysmally.'' See *Federal Election Commission* v. *CLITRIM*, 616 F.2d 45, 53-54 (2d Cir. 1980)(Kaufman, C.J. concurring). And ever since then, non-partisan, issue-oriented groups like the ACLU, the National Organization for Women, the Chamber of Commerce, Right-to-Life Committees and many others have had to defend themselves against charges that their public advocacy rendered them subject to all the FECA's restrictions, regulations and controls. The kind of ''chilling effect'' that such enforcement authority generates in the core area of protected speech makes the strongest case against giving the Commission additional powers to tamper with First Amendment rights.

S. 25 is not the way to reform campaign finance. It is bad constitutional law and bad political reform. True reform would expand political participation and funding, without limits and conditions, not restrict contributions and expenditures by which groups and individuals communicate their messages to the voters.

Thank you for the opportunity to set forth these views.

Sincerely,

JOEL M. GORA,
Professor of Law,
Brooklyn Law School.

Mr. MCCONNELL. Mr. President, there was an editorial in Friday's Wall Street Journal entitled ''The Beltway's Hale-Bopp'' with regard to the bill before us today. And I ask unanimous consent that that be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 3, 1997]

THE BELTWAY'S HALE-BOPP

Campaign finance reform, also known as McCain-Feingold, isn't merely a legislative proposal. Campaign finance reform is now a religion.

Somehow in the past several years, campaign finance reform transmuted from a cause into a belief system. It is the Beltway's version of the Heaven's Gate cult, in which the powers attributed to the Hale-Bopp comet have been transferred to the McCain-Feingold bill. It has become the mothership that will transport the American people away from the failings of modern politics and toward a purer system of government. One can almost hear the pundits' plaintive chorus preparing for the bill's passage: ''Knock, knock, knockin' on heaven's door.''

Interestingly, most of the McCain-Feingold cult's adherents aren't run-aways or overworked computer programmers. Instead, they hold down jobs in the print and electronic media. Articles and editorials evangelizing for McCain-Feingold pour forth like a river. An acquaintance of ours had the misfortune of finding herself flying cross-country recently seated next to a McCain-Feingold fundamentalist. It was an arduous six hours.

We raise these matters not in a spirit of rank partisanship (the Anti-Partisans being another aborning Beltway cult, incidentally), but out of concern for these loved ones. By nature, our media brethren are a skeptical lot. A managing editor once told us that some of his reporters declined his entreaties to get involved in the life of their local communities because ''it might compromise my objectivity.'' Normally, excepting the occasional marches on behalf of abortion rights, these are hard cases.

So how else, other than religious belief, to explain why so many have become so attached to a legislative proposal that is objectively unconstitutional, that would cheerfully allow federal bureaucrats to regulate political speech while shrinking from, as if from sunlight, the regulation of pornography?

One of the two most important components of McCain-Feingold would explicitly forbid ''issues ads'' that mention a candidate's name within 60 days of a federal election. The Supreme Court made no dent with a whole series of decisions starting in 1976 with Buckey v. Valeo, which held that

the law may be able to limit contributions, but that limits on expenditures, even from the personal fortune of an actual candidate, violate the Constitution. But the crusade rolls on even in the face of a Supreme Court decision as recent as last year's Colorado Republican Party v. Federal Election Commission, in which the court struck down limitations on official party spending on behalf of its candidates. That is to say the second half of McCain-Feingold, the ban on ''soft money,'' is also unconstitutional. Justice Breyer wrote for the court: ''The independent expression of a political party's views is 'core' First Amendment activity.''

Then, of course, there is the phrase with which the First Amendment closes, about making no law abridging the right ''to petition the Government for a redress of grievances.'' That is, lobbying. Now admittedly the Founding Fathers were rationalists who lived in the shadow of the long-ago Enlightenment. In our newer age no stronger article of faith abides around the Beltway than that anyone who ''lobbies'' the Congress about their grievances against, say, the Clean Air Act, is corrupting the vestal virgins who inhabit that place. McCain-Feingold, according to Senator McCain, would thwart the lobbies from interfering with the deliberations of Congress. That is to say, the politicians who command a third of all the money in the Gross Domestic Product want to pass laws against taxpayers trying to influence them.

At the end of the day we remain skeptics, less so of McCain-Feingold than of its advocates' professions of nonpartisanship. The problem with campaign finance as it exists is not so much the inevitable corruptions, but that these corruptions are so secret, as the tortuous hearings of the Thompson Committee have proven. Full disclosure—daily, publicly, electronically—of contributions from whatever source, from cloistered Buddhist nuns to ethanol fanatics, would let voters decide for themselves which imperfect soul they wished to vote into office.

Mr. MCCONNELL. Further, Mr. President, there was an op-ed piece in the Washington Times by Peggy Ellis of the Cato Institute entitled ''10 Big Lies About Campaign Finance Reform. . . .'' I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Times, Oct. 7, 1997]

10 BIG LIES ABOUT CAMPAIGN FINANCE REFORM . . .

(By Peggy Ellis)

Lie No. 1: The American people are clamoring for campaign finance reform. Outside of Washington and the political elites, campaign finance reform finishes at the bottom of the list of issues people care about (3 percent). Most voters believe that whatever reforms are passed, politicians will find a way around the new rules (73 percent). By huge margins, voters are less likely to vote for their member of Congress if they vote for reforms that are unconstitutional (88 percent), make it easier for them to get re-elected (71 percent), make it more difficult for citizens' groups to inform voters of candidates' voting records (80 percent) or increase the relative power of the media (69 percent) (Tarrance Group, June 1997).

Senator Mitch McConnell, the Kentucky Republican known as the ''Darth Vader of campaign finance reform,'' won re-election last year with a 160,000 vote margin—without the endorsements of the two largest newspapers because of his stance on ''reform'' and with the maximum contributions allowed by law from the tobacco companies. Rep. Linda Smith, Washington Republican, won her first election while being hugely outspent by the incumbent. She then became the darling of campaign finance reformers and almost lost.

Lie No. 2: Only wealthy special interests have access to members of Congress. Poppycock. The first item on all members' calendars is, and will always be, constituents. Members of Congress meet with lobbyists and policy experts all day long and then go vote the way they want to. Further, it is part of every legislative aide's job to meet with all sides to best prepare their boss for whatever the issue might be. As Senator Bob Bennett, Utah Republican, said at a recent hearing, ''I'll tell you who has access to me—anyone registered to vote in the state of Utah.''

Lie No. 3: Banning soft money is the only way to ensure that the scandals of the '96 presidential election don't happen again. The best way to make sure the abuses of '96 don't happen again is to punish those who have broken the law. Soft money was banned in the original 1974 rules and the 1976 election was run without soft money. Parties were so strapped for cash that traditional activities such as bumper stickers and get-out-the-vote drives were sharply curtailed. One of the primary purposes of the 1979 amendments to federal election law was to restore soft money. Traditional party-building activities are clearly not what the reformers want to control. It is the issue ads run by the parties—which are the essence of First Amendment protected speech. To eliminate this distortion, eliminate the limits on party contributions to their candidates. It is bizarre that political parties cannot give directly to their candidates as much as they want. No claims can be made of a corrupting relationship between a candidate and his or her political party. And for those who want to open up the political process and loosen the grip of incumbents political parties are the one group that will always support a challenger.

Lie No. 4: You can constitutionally control issue advocacy. It is often forgotten that in the original 1974 amendments to the Federal Elections Campaign Act, Congress sought to limit issue ads, just as many do now. The Supreme Court overturned these rules. Nothing is more central to the core of what our country was founded on than the ability of private individuals and groups to discuss, criticize and protest their elected officials and those that seek office. A 20-year string of court decisions reaffirm that free and unencumbered political speech enjoys the highest First Amendment protection and cannot be regulated by the federal government.

Lie No. 5: Most issue ads are ''thinly veiled campaign ads'' and, therefore, can and must be regulated by the Federal Election Commission. Nothing is more central to the First Amendment than the rights of individuals and groups to participate openly and freely in our nation's political debate. Reformers and misinformed senators claim that, since issue ads are clearly intended to influence an election, they should be regulated. Buckley vs. Valeo anticipated this argument. Of course, the Court held, these ads are intended to influence elections, but our First Amendment rights are so central to our political freedom that unless the words ''vote for'' or ''vote against'' are used, these ads are issue advocacy and cannot be regulated by the government.

Lie No. 6: McCain-Feingold will open up the system. In fact, McCain-Feingold could be renamed the Incumbent Protection Act. The stratospheric incumbent re-election rate we have today is a direct result of the 1974 rules. Contribution and spending limits and tighter controls on issue advocacy are blatant incumbent protection. All the distortions in the current system are results of the 1974 rules—the 90 percent incumbent re-election rate, the explosion of issue advocacy and soft money and the increase of millionaires in office, the amount of time candidates have to spend raising money, the increase in the relative power of the media and celebrities. More of the same is not the answer.

Lie No. 7: Buckley was a 5-to-4 decision and ''a close call,'' vulnerable to future court tests. On the contrary—we have years of court decisions reaffirming the central findings of the Buckley decision. In the area of issue advocacy alone, in the years since Buckley was decided, both the Supreme Court and lower courts have, time and time again, reaffirmed the reasoning and holding of that decision as it pertains to the protection of issue advocacy. The 126 ''constitutional scholars'' currently said to endorse McCain-Feingold do not endorse the issue advocacy restrictions at all—only the soft money and spending limits. In fact, the Fourth Circuit was so disturbed by the FEC's attempts to redraw the lines defining issue advocacy that the court demanded in April that the FEC pay Christian Action Network's court costs.

Lie No. 8: Campaign costs are spiraling out of control. This ''explosion'' is outside of candidate spending. Candidate spending was virtually flat from 1994 to 1996, with an explosion of issue ads outside of the campaigns themselves. The answer, however, is not to trample the First Amendment rights of private individuals, but to lift the contribution limits on parties and candidates. Let the money spent on many of the issue ads flow directly to the candidates. As for the anger many members have at private groups expressing their views and—absolutely—trying to influence their election: too bad! Politics and political campaigns belong to the people, not to the candidates and certainly not the federal government. The right to seek to persuade fellow citizens at election time is as fundamental as the right to vote itself.

Lie No. 9: Obscene amounts of money are spent in political campaigns. Congressional candidates spent approximately $740 million in 1996. This is only slightly higher than the approximately $700 million spent in 1994. It's a lot of money—but not when compared to what we spend as a society in other areas. These congressional totals average less than $4 per eligible voter. If you look at every race in the country, from dog catcher to president, the amount spent is less than $10 per eligible voter. As a society, we spend more on potato chips, Barbie dolls, yogurt and a host of other commodities than we do on politics. While many of us may like Barbie dolls and potato chips more than we like politics, only politics has control over every aspect of our lives.

Lie No. 10: We must control the amount of money spent in campaigns because candidates and members of Congress have to spend all their time raising money. It is the ridiculous $1,000 contribution limit that has limited the ability of challengers to raise the money they need to mount a successful campaign—and the reason members of Congress have to spend so much time raising money. The answer is not to control the amount candidates can spend, which would only further entrench incumbents, but to eliminate the contribution limits. Let the money flow directly to the candidates and, with almost-instant electronic disclosure, let the voters decide.

Mr. AKAKA. Mr. President, today at noon, we have another opportunity to invoke cloture on S. 25, the McCain-

Feingold campaign finance reform bill, which I support. I am sorely disappointed that yesterday, the Republican majority once again successfully blocked going to the bill.

After yesterday's two votes, the majority leader said that campaign reformers should just give up—that the bill's chances for enactment in this session of the 105th Congress were dead.

I do not believe that the American people should be denied the benefit of campaign finance reform that would, in my opinion, level the playing field so that running for Federal office would not be so strongly influenced by money.

It is amazing to me that after several months of public hearings by the Senate Governmental Affairs Committee that anyone doubts the critical need to rewrite our campaign funding laws. Throughout the course of the hearings we have witnessed example after example of the misuse of our campaign finance laws.

And yet there remains a real crisis in the Senate over our inability to enact any campaign finance reform legislation. Moreover, this wholesale disdain for ending the money chase through substantive finance reform fuels the distrust held by the American public of Congress and their belief that Congress does not wish to clean up its own house.

Our committee has examined allegations of foreign money influencing Federal campaigns, the use of Federal facilities to raise funds, contributors donating in another's name, and access to Congress and the White House linked to campaign donations. Like my colleagues, I support prosecution by the Department of Justice of these allegations if it is appropriate. We have also had an opportunity to hear from expert witnesses on how they would reform the funding of elections.

Mr. President, we can no longer allow the mad hunt for money to drive our elections. Nor can we ignore the dramatic increases in soft money donations, the problems associated with unregulated independent expenditures and issue advocacy, and the improper use of tax-exempt organizations.

And yet, despite the tremendous explosion in campaign expenditures and the dismay over the political system expressed by the voters, there remains steadfast opposition to reforming our Nation's campaign finance laws, as evidenced by yesterday's votes.

I was hopeful, although perhaps too optimistic, to believe that S. 25, the McCain-Feingold campaign finance reform bill would be embraced by most Members of the Senate. I was wrong.

With less than 50 percent of voting age Americans going to the polls in the last election, so much is at stake. The public's deep distrust of this Nation's elected officials by the voters will continue if the only thing that comes from the Senate's investigation into campaign finance abuse allegations and the abbreviated debate on S. 25 is political rhetoric and finger-pointing.

The Republican majority has seen fit to stifle the efforts of those Senators who support reforming the Nation's campaign finance laws. The only hope I see in passing such reform at a future date lies with the American voter. It will be up to the people of this great democracy to demand that their Senators support campaign finance reform. There will be no campaign finance reform until there is a nationwide movement to stop the campaign finance abuses uncovered by the Senate Governmental Affairs Committee.

S. 25, the Bipartisan Campaign Reform Act of 1997, was modified in good faith, in an attempt to craft a bill more acceptable to the opposition. Unfortunately, it did not pass muster with those opposing it. In spite of yesterday's defeats, we have another chance to proceed to S. 25 by invoking cloture today.

Americans deserve a Government that works hard for their interests and not just the interests of monied contributors. Our citizens deserve a more responsive, efficient, accountable and representative Government.

Mr. CHAFEE. Mr. President, the Senate has the opportunity to improve the system by which we finance our elections. Yesterday, the Senate had before it two proposals: one sponsored by Majority Leader LOTT and Senator NICKLES; the other sponsored by Senators MCCAIN and FEINGOLD. Much of the discussion of these proposals, both here in the Senate and in the media, characterized them as mutually exclusive. For the most part, Republicans were expected to support the Lott proposal, and all 45 Democrats and a handful of Republicans were committed to voting for McCain-Feingold.

The paramount goals of any true effort to reform the system of financing elections for Federal office must be to reduce the influence of special interest money on elected officials and to level the playing field between incumbents and challengers. The partisan division that has created the procedural situation in which the Senate found itself yesterday suggests that these goals are not yet at hand. Although the proposals before us are not the final resolution to the problems that afflict the current system of campaign fundraising, they do provide a good starting point.

I voted for cloture on both the Lott proposal and on the underlying McCain-Feingold bill. Do I think that the majority leader's proposal is flawless? Of course I don't, no more than I think the McCain-Feingold bill provides all of the solutions to the outrages of the 1996 elections. But, I also do not agree with those on the other side who have called the Lott amendment a poison pill. The truth is that together these proposals establish a sound starting point for a reasonable debate on campaign finance reform. It's time to let the process go forward. The Lott amendment should be opened up to improvements, just as the McCain-Feingold bill should be amendable.

As I see it, the goal of the Lott amendment is meritorious. It is to give union members some say over the political uses of their money. Today, union dues are used to support or oppose particular candidates without any authorization from the dues payers. McCain-Feingold takes a small step to address this problem, which amounts to compulsory contributions to candidates. Under the McCain-Feingold bill, dues paying, non-union members would be eligible for a refund if they disagreed with the political uses of their dues. That takes care of an estimated one million workers, but 16 million union members are left without any control over the political uses of their funds. That seems fundamentally unfair.

Senator LOTT's amendment seeks to address this unfairness. According to the Lott amendment, unions would be prohibited from using dues for political purposes, including lobbying, unless individuals gave prior written consent. As I understand it, the prior consent requirement is viewed by opponents to be onerous, and, I think, the limitation on lobbying simply doesn't apply to the issue at hand—Federal election campaigns. As many know, Senator SNOWE and others—who feel as I do, that this debate should move forward in an effort to find common ground—have been working to refine this proposal. A vote for cloture on the Lott amendment is a vote in favor of moving the process forward. It is a vote in favor of opening up the Lott proposal to improvements.

I also voted for cloture on the McCain-Feingold bill. Senators MCCAIN and FEINGOLD have made considerable improvements to their bill. They have worked to accommodate the concerns of other Senators, particularly Senator COLLINS who has worked hard to move this process forward. I continue to have concerns about some of the provisions of the bill. The treatment of independent expenditures is not wholly satisfactory to me, although Senator MCCAIN assures me these provisions were suggested by top experts on Federal elections. I filed amendments that I believe could improve the McCain-Feingold bill, but, of course, the Senate cannot get to the point of debating the merits and flaws of the bill unless cloture is invoked.

As far as I am concerned, the most important problem to be addressed this year is one that barely existed a few years ago, the explosion of soft money in the process. Not too many years ago, many of us were here debating whether PAC's, political action committees, should be able to contribute $5,000 per candidate, per election. We worried that these PAC contributions might appear to give special interests too much influence. But the soft money explosion has made those amounts seem like pocket change. I believe that if all else fails, we must deal with the soft money problem, and we must take steps, at least, to impose disclosure requirements on the money that is spent

on so-called ''issue ads.'' We also should seek common ground on the Lott amendment. The Senate has the opportunity to make these important changes in the current fundraising system by invoking cloture on both the Lott amendment and the underlying McCain-Feingold bill.

Mr. MACK. Mr. President, the key issue in this debate is a simple one: Will we enforce the campaign laws already on the books or not? Will we concoct some new layer of confusing and complex rules and regulations to distract the voters from the real issue, or will we do the right thing? Are we going to insist that campaigns and candidates follow the current rules, or are we going to keep changing the laws each time there is a new scandal? If we can't—or won't—even enforce the laws we have now, what makes us think that a new set of laws will be more effective?

The Senate and the American people have witnessed a flood of testimony in recent weeks and months about illegal foreign contributions, influence peddling, and money laundering at the highest levels of our Government. The Attorney General has finally called for an investigation in the face of mounting evidence that, to many of us, clearly warranted a special investigator months ago.

Now, here we are debating a bill on the floor of the Senate that will not only add new regulations and restrictions to the people's ability to participate in the election of their own representatives, but which ignores the violations of campaign laws that apparently have already taken place.

How does that play with the American people? I doubt it goes over too well. Sure, Americans are distrustful of all the money in campaigns. They are right to be suspicious when they read about Buddhist nuns being used to funnel foreign money into a Presidential campaign or the Lincoln bedroom being used to cozy up with big-money campaign contributors.

And they are also right to be dubious of what is going on here, because I think they understand and we are not tackling the real issue at hand. We are trying to divert their attention away from the simple fact that our campaign laws are not being enforced. This is the kind of cynicism that justifies the American people's distrust and apathy toward Washington politicians.

History teaches us that when any law is not enforced, whether campaign law or any other law, the people lose confidence in the system, whether it is the criminal justice system or the electoral system. When violations of the law go uninvestigated and unpunished, we send the message that the law doesn't matter. We destroy one of the core principles of our government—that we are a nation of laws, not of men—and the law applies equally to everyone—not just to some and not others.

We aren't doing anything to restore the American people's confidence in their Government until we begin to deal with this fundamental issue: Do the current campaign laws matter enough to be enforced or are they just an arbitrary system that can be followed or ignored depending on what is convenient for a campaign? The answer to this question must be emphatic—the laws that are here to protect our political system must be enforced vigorously. Nothing less is acceptable.

Mr. President, there is a second reason the voters are dubious about our seriousness for cleaning up campaign finance violations. Many of these voters are angry that their hard-earned money goes to candidates they don't agree with. This happens through what essentially is extortion by the unions. Many hard-working union workers have part of their paycheck sent to political campaigns they don't support.

Yes, by codifying the Beck decision, this bill tries to make sure that non-union members don't have their paychecks extorted for political use. But union members are left in a position of having to choose between their job or their first amendment right to support the candidate of their choice. With more and more union members voting Republican in recent years, it's no wonder that the liberal union bosses are working to make sure this form of political blackmail is protected.

Some will say this is no different than PAC's using their money to support candidates that a contributor may not agree with. Well if the Sierra Club or the National Rifle Association or any other similar group uses your money to support a candidate you disagree with, you can stop giving your money to that group and its PAC. It's a voluntary choice. But that's not possible in a union—at least not without putting your job at risk.

No, Mr. President, this effort does nothing to fix what's broken. There are all sorts of schemes to make television stations give candidates free air time, and to regulate what can and can't be said in political commercials. And there are even provisions that would have the Federal Government establishing State and local campaign restrictions. All of this adds up to putting chains around our fundamental first amendment rights.

The courts have repeatedly held that communications which do not expressly advocate the election or defeat of a candidate are not subject to regulation by the Government. But the proponents of this bill would make the Federal Election Commission into the politics police. They would determine whether a reasonable person would know that an ad is advocating the election or defeat of a candidate or not. This would send a chill through our political process. Now the Government would decide what is reasonable or not. It is exactly the kind of temptation to tyranny that the Founding Fathers were protecting the American people from when they adopted the first amendment.

Supporters of this bill contend there is too much money in politics. What they're saying is, they think there's too much free speech, too much involvement by free people expressing their views. But isn't that exactly what we want—more involvement and more participation? More candidates are running for office now than ever. Voters now have more options than ever. Placing further limits on speech will effectively drive more citizens from the process.

We should stop this misguided effort and do what the American people really want—and that is to enforce the laws that have been on the books for years. Only by doing so will we restore their confidence in the political and electoral system that is supposed to send us here to do their bidding.

Mr. President, I urge all my colleagues on both sides of the aisle to make enforcing our current laws the No. 1 priority and put aside this effort to construct yet another monstrosity of bureaucracy and complexity that will add to American's skepticism of Washington.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the quorum call time be equally charged to both sides.

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

Mr. MCCONNELL. 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. DORGAN. 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. DORGAN. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. There remains 5½ minutes on each side.

Mr. DORGAN. If I might, claiming the time remaining on our side, just make a comment about the pending business.

We will shortly be casting another vote on cloture on the issue of campaign finance reform. The vote is going to be whether we invoke cloture on the McCain-Feingold campaign finance reform bill.

Now, it is interesting, as we have been watching this develop over the recent days, we have seen a form of legislative cholesterol clogging and plugging the system so that at the end some can say, ''Well, we have considered campaign finance reform but they have, in effect, killed it.'' That has been the plan all along.

I mentioned yesterday that the great illusionists in America are those who can convince people they have seen something that doesn't exist. We had that yesterday in which there was an assertion that we were presented with a debate on campaign finance reform, but the debate didn't really exist because no one was able to offer any

amendments on campaign finance reform. The bill was brought to the floor by someone who wanted to kill it, so he bound it up with a tight rope—what he called filling the tree with amendments, a tree of amendments—so that no one else could offer any amendments, and then filed a cloture motion designed to kill campaign finance reform.

The fact is this system doesn't work. The campaign finance system in this country is broken. There is too much money in campaigns. I have showed the chart out here on a number of occasions when I have spoken about it. The red line on the chart on campaign spending goes straight up. And yet we have people in this Chamber and across the Capitol who believe the problem is we don't have enough money in politics, there is not enough money in campaigns. What on Earth are they thinking about? We need to reduce the amount of money in campaigns.

One of the issues that is involved in this legislation is soft money. We ought to abolish soft money, the legal form of cheating from the old campaign finance reform. For every rule there are people who try to figure out how to get around it, over it or under it. In soft money, the growth in the explosion of so-called soft money is the growth and explosion of legal cheating in campaign finance, and we ought to change it.

There are only two sides to this issue: Those who want to reform the system, and those who are insisting the current system is just fine.

There are a majority of us in this Chamber, we believe, who will vote for McCain-Feingold, for campaign finance reform, if only we can get it up on the floor of the Senate for a vote. I hope today, or perhaps tomorrow if further votes on cloture occur, that we will have an opportunity to demonstrate that, if we can get the bill to the floor of the Senate, it will have a majority vote.

On my side of the aisle, 45 Members, every single Member, has signed a letter saying we support this kind of campaign finance reform. We had three, four, five Members on the other side of the aisle who have supported it. If we can get it up for a vote, we will pass campaign finance reform. But there are those who have tried to ride this into a box canyon somewhere from which there is no escape because they by design want to kill campaign finance reform because they believe there is not enough money in politics. They want more money in American politics. I have no idea where they get that sort of notion.

The American people know better. The American people support with an 80-percent margin the need to pass campaign finance reform by this Congress. I urge my colleagues to vote for cloture. Vote for cloture on the McCain-Feingold bill and breathe some life into campaign finance reform and let's do what the American people know we should and what the American people know we must—reform the system by which we finance American campaigns, because the current system is broken.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we are about to vote on a cloture motion on what is, without question, a very important issue to all of us and to the country at large. In fact, it is so important that this morning the President of the United States cried out, ''Save me from myself. Save me, please. I'm off to Philadelphia to raise money, and if you don't save me by passing the new law, I may do something wrong, or I'm going to have to do what I'm going to do anyway.''

Well, Mr. President, I'm sorry, but all I ask you to do is to abide by the law that is on the books of the land today. That is what I do. That is what the Senator who just spoke does. I doubt that Senator DORGAN ever has attempted to violate campaign law. I know he hasn't. He is an honest man. He makes sure he doesn't because he hires an attorney and he hires an accountant and he keeps himself legal because what we live under today is a well-regulated campaign finance system.

I am absolutely amazed that when the American family sits down at night the first topic of the dinner table is not what about that campaign finance reform they are talking about on the floor of the Senate; I suspect that family is talking about what happened to the child who was lost on the streets of America today, or that classmate of your son or daughter whom you found out got arrested for drugs, or some other issue like that. That makes a heck of a lot more sense to the average American than the phenomenal, political, and media hype that has been built over the last 3 or 4 months about campaign finance reform.

Mr. President, if I have heard it once, I have heard it 100 times, spoken from the other side of the aisle, ''Oh, they all do it.'' No, we don't all do it. I just came out of a campaign and I didn't violate a law nor was I accused of violating a law. I raised money legally. I'm sorry if you have to use a smoke cloud or subterfuge to argue your political point of view. It is wrong.

Mr. President of the United States, it is wrong to say that everybody does it, because not everybody does. I am not about to save you, Mr. President, from yourself and from going to Philadelphia today to raise money. Last I checked, you touched out of here voluntarily. You left this city voluntarily. And yet that was the argument that was used by the President of the United States today. ''Well, the Senate yesterday didn't pass a law so I got to go do it again.'' Sorry, Mr. President, that isn't the issue here.

The Supreme Court yesterday spoke out very, very clearly when they said you can't deny the right of a citizen to speak out, you can't deny advocacy in a free speech society. This Senate can talk all of the politics it wants. It can line up all of the 30-second sound bites it wants, but it cannot violate the Constitution nor will the Court allow us to.

In this instance, I would love to quiet the voice of an advocate who disagreed with me, and I had many of them last year in my campaign. I had over a quarter of a million spent against me, and I will tell you, I don't think the ads were right. In fact, I think they were wrong. I think they failed to tell the truth. But in a free society, doggone it, now and then you have to withstand somebody who doesn't agree with you and you have to withstand somebody who may tell a lie about you. If you are in public life, that is a darn fact, the sureness of what will happen, and we all know that.

What is wrong about it? Nothing is wrong about it. Oh, I could see where we should adjust some things, but I will tell you right now, if we are going to say to a certain citizen in our society, ''You are going to provide money whether you want to or not, and that money is going to make it into the political system whether you want it to or not,'' and our colleagues on the other side of the aisle will not allow that to happen, they will not allow the average citizen to have full, voluntary participation, then there will be no reform for this Senator to vote for.

That will not happen if I have the ability of most Senators to block issues from coming to the floor. If we are going to talk about major campaign, we must talk about fairness, we must talk about equity, and we must talk about the right of the citizen in free speech and voluntarism.

So today I stand with pride in my defense of the Constitution and the right of the citizen. I will oppose cloture on this bill, not out of an embarrassment or not out of shame, but out of pride for the system that can work when you play by the law.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BUMPERS. Mr. President, let me just say McCain-Feingold may be dead as most people around here seem to believe. I have always believed the American people can have anything they want any time they are unified. The time is fast approaching when the American people are going to demand that we change a system that is rotten to the core. McCain-Feingold goes a long way in that direction. It doesn't go nearly far enough to please me personally, but at least it will be a beginning.

The two things you can do to restore people's faith in the American Government and Congress, the two things you can do that will instill more confidence than anything else would be to balance the budget and change the way we finance campaigns.

I have heard all the sophistry about the constitutionality of this bill. I just

want to tell you, when it comes to free speech, you can hang your hat on free speech if you want to, but the thing that makes this system rotten is that a guy who can afford to belly up for $100,000 gets a lot more free speech than some guy giving $25. The reason he doesn't give $25 is because he knows it gets him nothing—not even good government.

So I plead with my colleagues, for God's sake, let's do something that the vast majority of the American people want us to do—that is, to level the playing field for all parties. You don't have a democracy when the people we elect and the laws we pass depend on how much money we raise for it.

I yield the floor.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on S. 25, as modified, the campaign finance reform bill:

Thomas A. Daschle, Carl Levin, Joseph I. Lieberman, Wendell Ford, Byron L. Dorgan, Barbara Boxer, Jack Reed, Richard H. Bryan, Daniel K. Akaka, Christopher J. Dodd, Kent Conrad, Robert G. Torricelli Charles S. Robb, Joe Biden, Dale Bumpers, Carol Moseley-Braun, John Kerry.

CALL OF THE ROLL

The PRESIDING OFFICER (Mr. SESSIONS). By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on S. 25, a bill to reform the financing of Federal elections, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Florida [Mr. MACK] is necessarily absent.

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—52

Akaka	Feinstein	McCain
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Breaux	Hollings	Reed
Bryan	Inouye	Reid
Bumpers	Jeffords	Robb
Byrd	Johnson	Rockefeller
Chafee	Kennedy	Sarbanes
Cleland	Kerrey	Snowe
Collins	Kerry	Specter
Conrad	Kohl	Thompson
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	
Feingold	Lieberman	

NAYS—47

Abraham	Faircloth	Lugar
Allard	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hagel	Sessions
Coats	Hatch	Shelby
Cochran	Helms	Smith (NH)
Coverdell	Hutchinson	Smith (OR)
Craig	Hutchison	Stevens
D'Amato	Inhofe	Thomas
DeWine	Kempthorne	Thurmond
Domenici	Kyl	Warner
Enzi	Lott	

NOT VOTING—1

Mack

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997—MOTION TO PROCEED

Mr. LOTT. Mr. President, I move to proceed to Calendar No. 188, S. 1173, the so-called ISTEA legislation.

The PRESIDING OFFICER. The question is on the motion. Is there debate?

Mr. LAUTENBERG. Mr. President, was that a unanimous-consent request?

Mr. LOTT. No. Mr. President, if the Senator would yield, it is a motion. But it is debatable. I understood the Senator from New Jersey intended to debate the motion.

Mr. LAUTENBERG. Yes.

Mr. LOTT. Could I inquire of the Senator from New Jersey how long he thinks that he would need to do that?

Mr. LAUTENBERG. I can speak for myself, I think, about the bill that I want to explain but I can't certainly speak for any other colleagues.

Mr. LOTT. I am not asking for a specific hour, just some general—an hour or two.

Mr. LAUTENBERG. It is not my intention to tie the Senate up with this for some indefinite period—not at all—but I do want to discuss some of the problems that I see with the bill.

Mr. LOTT. Does the Senator think an hour is about what he is thinking about?

Mr. LAUTENBERG. I am not going to enter into a time agreement.

Mr. LOTT. I am not asking for an agreement—just for the information of all Senators so we know when there might be some further action—just some general idea of the time expected.

Mr. LAUTENBERG. In fairness to the majority leader, who I have found to be an understanding person, I would take the time necessary; probably—I do not know—an hour or so.

Mr. LOTT. That would be fine. Will the Senator require a rollcall vote?

Mr. LAUTENBERG. No.

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

The PRESIDING OFFICER. Who seeks recognition?

Ms. MOSELEY-BRAUN. Will the Senator yield?

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, if we can achieve order in the Chamber, it would be easier for us to communicate.

The PRESIDING OFFICER. Will the Senate come to order?

The Senate will come to order.

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the Chair.

Mr. FORD. Mr. President, I make a point of order that the Senate is not in order.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Kentucky is correct. The Senate is not in order.

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, once again, I thank you.

Mr. President, we are about to consider a radical departure from the structure as we have known it to take care of our highway and transportation needs for the next 6 years. But I view this approach as somewhat premature and want to discuss what some of the problems are with it. As a member of the Environment and Public Works Committee, and also, Mr. President, as having been the chairman of the Senate Transportation Subcommittee of Appropriations, and currently the ranking member, I view it from a particular vantage point.

So I want to use this opportunity to alert my colleagues to some of the problems that I see with the bill and those opportunities perhaps to change it. I know, Mr. President, that when I discuss concerns with this bill that I also reflect——

Mr. BAUCUS. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. Will the Senate please come to order? The Senator from New Jersey has the floor and has the right to be heard.

Mr. LAUTENBERG. Mr. President, I thank you and the Senator from Montana.

Mr. BAUCUS. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. Will the Senator from New Jersey hold for a moment? Will those having conversations please take them to the Cloakroom so we can hear the Senator from New Jersey?

The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, once again I thank you. I sense that the excitement about the comments that I want to make has just overtaken the Senate and it is hard for people to settle down. But if they will settle down and listen, their fondest dreams will be realized.

Mr. President, I think we ought to take some time to pause before we talk