

financing congressional races. They are concerned about the rapidly escalating cost of campaigns and the "money chase" by candidates, and there is usually a "Just fix it" tone to their question. It can obviously be difficult for Members of Congress to change a system under which they were elected, but there are other, more fundamental reasons why campaign finance reform is so difficult—reasons arising out of a Supreme Court decision made more than two decades ago.

The Buckley case: The debate over campaign finance reform has become closely linked to the First Amendment rights of speech, expression, and association. In a famous 1976 decision, *Buckley v. Valeo*, the Supreme Court held that the giving and spending of campaign contributions were forms of political speech protected by the U.S. Constitution. The Court, however, distinguished between the constitutional protection afforded campaign contributions to a candidate by individuals, political action committees (PACs), or other groups and the protection afforded campaign spending by the candidate or others for direct communications with voters. Congress, the Court concluded, could place reasonable limits on campaign contributions to candidates because those contributions pose the possibility of corruption, or at least the appearance of corruption. Campaign spending by candidates or others, on the other hand, could not be so limited because the risk of corruption was less apparent and did not justify restrictions on the free speech rights of candidates.

The Buckley case has been a very large obstacle to meaningful campaign finance reform. The upshot of the decision is that Congress can properly limit the amount an individual or PAC can give to a candidate, but not the overall amount spent by any given candidate. Congress has the authority to limit campaign spending indirectly through a voluntary system of public financing, as is used in Presidential campaigns, but resistance to public financing makes that alternative unlikely. Buckley has helped spawn a campaign finance system where hundreds of millions of dollars are spent each year on federal elections.

Need for reform: I believe it is time for the Supreme Court to revisit the Buckley decision. I agree that campaign spending deserves some protection as free speech, but also believe spending can be restricted consistent with the Constitution. As the Court in Buckley acknowledged, campaign spending limits could be upheld if there were compelling governmental interests to justify such limits. The Court did not find those compelling interests existed in 1976. I believe they exist today with over 20 years of documented evidence.

Time fundraising: First, spending caps can be justified as a way to limit the harmful effects of fundraising on the legislative process and our system of representative government. Candidates today are engaged in an ever-escalating effort to raise money. In 1976 my campaign cost about \$100,000; in the last election it cost \$1 million. The practical effect of the money chase is that candidates spend more time raising money and less time meeting with constituents and doing their legislative work. They are not gathering information, analyzing policy, or debating the issues with their fellow Members. They are not learning what questions and problems most trouble the voters or going to public forums to hold their views up to public scrutiny. Consequently, the legislative process suffers.

Money wins: Second, spending caps can be justified as a way to reduce anti-competitive electoral practices. The simple fact is that

the candidates who spend the most usually, but not always, win. Wealthy or well-funded candidates have a decided advantage in seeking office. Too many talented and energetic people simply choose not to run because they don't have the stomach to get into the money chase or because they are dismissed as not being viable candidates without the money. Incumbents are fully aware of this dynamic and they exploit it. They amass large war chests to scare away the competition, and as a result many incumbents today run unopposed. The upshot is that political debate is curtailed, and people with large amounts of money drown out everybody else's speech.

Corruption: Third, spending limits can be justified as a way to go after the threat of corruption. Most voters today believe their elected representatives are beholden to people and interests with money, not to them. Many campaign contributions may come from the candidate's natural political base, but if he has to seek an unlimited amount of money he will have to tap money from outside his natural supporters. And that puts a lot of pressure on him to take positions he does not favor and do things he does not want to do. Every act an elected official takes, whether to vote one way or the other, to introduce a bill or not, to deliver a speech, to conduct a committee hearing, has to be assessed in terms of its potential to attract or repel campaign funds. This situation feeds voter cynicism and disillusionment with elected officials and with government.

Conclusion: A host of legislative proposals to address these problems are being shot down by references to the Buckley decision and the First Amendment. I have never understood the different treatment of contributions and expenditures in Buckley. My view is that if government is justified in restricting contributions it is justified in limiting spending as well. Democracy can be threatened by excessive activity on either the spending or the contribution side of campaign finance.

It is time for the Supreme Court to review and modify the Buckley decision. The government has a strong interest in restoring the health of our democracy. The very essence of representative government is challenged by the present regime of money raising. Money has produced a crisis in our democratic system. Voters perceive that money too often controls who runs and who wins and that candidates spend too much time chasing money rather than listening to them. They become disillusioned and their disillusionment leads to disengagement.

Surely the Court can find a way under our Constitution to prevent money from skewing electoral results or from disproportionately influencing the priorities, the activities, and the decisions of our elected representatives. We simply have to find a way to preserve democracy without sacrificing free speech. If we are to find a way to reinvigorate our democracy, we must reexamine the Buckley case.

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STARR'S PREVIOUS DENIAL OF  
LEAKS MAY HAVE VIOLATED  
THE LAW

**HON. JOHN CONYERS, JR.**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, June 24, 1998*

Mr. CONYERS. Mr. Speaker, I enter into the RECORD the following article from the National Law Journal concerning legal issues that have been raised by Mr. Starr's previous denials of

allegations of improper disclosures by his office to the press.

[From the National Law Journal, June 29, 1998]

LIES, NOT LEAKS, REAL STARR ISSUE? CRITICS SAY HIS LEAK DENIALS MAY HAVE VIOLATED U.S. LAW

(By David E. Rovella)

Kenneth W. Starr's critics say the White-water independent counsel should be investigated for leaking grand jury information. But if he's found to have done anything wrong, it may not be for leaking, but for lying—the very offense Mr. Starr is trying to pin on the president.

Such thinking has gained some currency among lawyers connected to the investigation, but not because of Mr. Starr's recently published admission that he gave information to reporters—information some say may be protected by grand jury secrecy laws. Instead, defense lawyers are focusing on statements Mr. Starr made in the past six months, statements that gave the impression that he never commented about such matters.

For example, a defense lawyer involved in the investigation says confidential memos sent by the Office of the Independent Counsel to him and to the Justice Department deny such leaks. As a result, he argues, Mr. Starr's recent statements could make him vulnerable under 18 U.S.C. 1001(a)(2), which punishes false statements made to executive branch officials, such as U.S. Attorney General Janet Reno.

In short, Mr. Starr and Bill Clinton are accused of unseemly acts most people don't care much about. For Mr. Clinton, the allegation is sex with a White House intern. For Mr. Starr, it is allegedly illegal leaking. But if either man is brought down, it would not be because he committed an illicit act, but conceivably because he lied about it.

Just as Mr. Starr has been allowed to chase evidence of Mr. Clinton's lying or suborning perjury to cover up alleged sexual peccadilloes, lawyers representing possible targets of the Whitewater investigation say Ms. Reno should appoint a special prosecutor to investigate alleged leaks and any possible false statements made by Mr. Starr. Justice officials would only say that the Office of Professional Responsibility is reviewing the article in Brill's Content magazine, published June 15, in which Mr. Starr made his so-called leak confession.

The independent counsel has said in at least three separate public statements that information he provided to reporters did not violate Rule 6(e)(2) of the Federal Rules of Criminal Procedure, which requires grand jury secrecy. But observers say even the possibility that he lied increases pressure on the Justice Department to launch an unprecedented probe of the independent counsel.

"It's very parallel to Clinton and Lewinsky," says former Iran-Contra associate independent counsel Gerard E. Lynch. "The question of leaks, like the question of consensual oral sex, is something only two people know about, and neither one wants to tell."

THE DEFENSE OF STARR

In a June 16 letter to Mr. Starr, Clinton lawyer David E. Kendall listed various points during the six-month Lewinsky investigation when Mr. Starr had publicly declined to comment on grand jury matters, citing secrecy concerns. One lawyer close to the investigation, who requested not to be identified, says that when complaints about alleged leaking by Mr. Starr were filed with Deputy Attorney General Eric Holder Jr., Mr. Starr responded with scathing denials. "He had made statements to Justice that he

had not done these things," the lawyer says. Neither Mr. Starr nor the Justice Department would comment on whether such memos were sent or what they may have contained.

But Mr. Starr's carefully worded statement tracks his defense against such charges. In the magazine article, he stated that his talks with reporters did not violate grand jury secrecy because the information provided stemmed from interviews with grand jury witnesses before they testified.

If there ever is an investigation, there remains some question of how Justice would probe the OIC without compromising its independence. "Most 6(e) cases tend to be [Freedom of Information Act] cases, media requests to open the court—not dealing with the behavior of the prosecutor," says former Iran-Contra associate independent counsel John Q. Barrett.

Experts say Ms. Reno could use her general powers to appoint a "Regulatory Special Prosecutor," similar to those appointed prior to the independent counsel law. This, they say, is preferable to seeking another independent counsel—which would likely be denied by the Special Division of the U.S. Circuit Court of Appeals for the District of Columbia—or to asking Mr. Starr to expand the mandate of former DOJ official Michael Shaheen, who is probing alleged payoffs of Whitewater witness David Hale by right-wing groups.

#### THE "DOW JONES" CASE

Both the leaking and lying charges hinge on a May 8 ruling by the D.C. Circuit that dealt with media access to hearings spawned by the Whitewater grand jury. A passage in the ruling, which may be a nonbinding dictum because it doesn't directly involve media access, contradicts Mr. Starr's initial assertions that he did not breach 6(e). In *Re: Motions of Dow Jones & Co.*, 98-3033. Circuit Judge A. Raymond Randolph addressed 6(e)(2), which requires secrecy for "matters occurring before the grand jury."

"This phrase . . . includes not only what has occurred and what is occurring, but also what is likely to occur," he wrote. "Encompassed within the rule[is] . . . the substance of testimony [and the] strategy or direction of the investigation."

Some experts who say that using 18 U.S.C. 1001's prohibitions of lying against Mr. Starr would be a stretch also say they doubt the potency of Dow Jones on 6(e). "If I were a special prosecutor assigned to pursue this theory, it wouldn't be a slam-dunk," says Mr. Lynch.

Another facet of Mr. Starr's defense deals with charges that his alleged leaking violates Justice Department policies. Under 28 U.S.C. 594(f)(1) of the independent counsel act, Mr. Starr must obey the "established policies" of the Justice Department, "except to the extent that to do so would be inconsistent" with the act.

One of those policies is Rule 1-7.530 of the U.S. Attorney's Manual. While barring media contact concerning ongoing investigations, the rule makes an exception for "matters that have already received substantial publicity, or about which the community needs to be reassured." Mr. Starr says he was obligated to correct misinformation in the press, and therefore his press comments fell under that exception. (Mr. Lynch says that this argument is "a little lame.")

However, the independent counsel law may relieve Mr. Starr of having to follow 1-7.530 at all, if he feels that doing so would be "inconsistent" with the act.

But Mr. Lynch says this provision of the law isn't a free ride. Mr. Starr "is not a total free agent; he's a substitute for a regular prosecutor," he says. "You're not supposed to make up your own rules along the way."

## INTRODUCTION OF THE VIRGINIA FLOOD CONTROL BILL

### HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 24, 1998

Mr. GOODLATTE. Mr. Speaker, I rise today to introduce a bill that is designed to alleviate a serious problem for flood victims. In 1996, much of the southeastern region of our country took the brunt of the punches hurricane Fran could muster. Soon thereafter, Congress reacted by sending emergency aid to help rebuild the lives of those caught by this natural disaster. Many of my constituents were recipients of that aid and were grateful for it. However, the bureaucracy that accompanied some of Congress' best intentions was not as welcomed.

The people of the 6th district of Virginia are good, hard working, self-reliant people. Their first reaction was not to look for government intervention when calamity struck. Instead, they turned to their families and neighbors and told each other that it was time to go to work.

The flooding caused by Hurricane Fran in Allegheny, Augusta, Rockbridge, and Rockingham Counties dumped tons of rock and other debris in fields, pastures, living rooms and basements. My constituents, the farmers and landowners, wanted simply to start their tractors, put their gloves on and begin moving rocks. However, federal bureaucrats told them they needed to apply for a permit to put their lives back together.

If the farmers and landowners came crying to the government for help to move the debris, one might understand the federal cries for delay. But these folks were simply doing what they were always taught; if you want to get a job done right, do it yourself. Imagine their frustration when someone, probably from Washington, DC, came by and threatened to fine them if they continued to move the rocks without a permit.

Homer Allman, a landowner in Rockingham County, told me the so-called "repairs" the government so readily provided left nothing to be spoken for. "The work they did is already eroding," he said. "they provided me with six people who took three or four days to work on a plot of 1500 square feet of land that needed attention. In result, they made no banking and bore out a 50-foot channel. I could have done that in one afternoon with my bulldozer, and saved the taxpayer money."

Another landowner and constituent of mine, Page Will, observed that once the Army Corps of Engineers relaxed some permitting requirements, regular folks dug in and the work was completed. This is the impetus and spirit of my bill. Once we get the federal bureaucrats and their political way of prioritizing emergency projects out of the way, stream beds were cleared, banks were stabilized, and debris removed from pastures."

My bill prohibits the Secretary of Agriculture, or other executive branch officials, from preventing a State or local government to remove any rocks or other debris from land or water when the primary purpose of the removal operation is to reduce the risk and severity of subsequent flooding. I fail to see the need for federal intervention in what is seemingly their right to fix as landowners.

It's as simple as that. Why does the federal government have to get involved if it isn't

being asked to supply the equipment or human resources to get the removal projects underway? My constituents and I strongly believe that they should not be.

I urge my colleagues to support this legislation.

## ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACT, 1999

SPEECH OF

### HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, June 22, 1998

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4060) making appropriations for energy and water development for the fiscal year ending September 30, 1999, and for other purposes.

Mr. SERRANO. Mr. Chairman, I would like to express my support for the Energy and Water Development Appropriations bill that we are voting on today on the House floor. With limited resources, this bill funds a diverse array of programs, everything from flood control projects to renewable energy technologies, in a truly bipartisan way.

I would also like to take this opportunity to recognize the outstanding contributions of two statesmen, Chairman MCDADE and the Ranking Member VIC FAZIO. Both of these Members have served this institution with distinction and have managed to once again carefully balance the diverse needs of our nation in a carefully crafted bill. VIC FAZIO and JOE MCDADE have been my friends, as well as colleagues, and their sense of fairness and ability to listen will be missed.

The people in the South Bronx are particularly grateful that funding was provided in this bill for the Corps of Engineers to initiate and complete a reconnaissance report for flood control, environmental restoration and other related purposes of the Bronx River. The restoration of the Bronx River is very important to the community that I represent, and this reconnaissance study will give the community the valuable information that it needs as it proceeds with its numerous efforts on behalf of the Bronx River.

Secondly, the Bronx community is deeply appreciative of the funding that was provided for the Corps of Engineers to continue design and construction activities at Orchard Beach in New York. More than two million people, many low-income and minority, visit Orchard Beach every year. Unfortunately, the beach is suffering from severe erosion and the sand needs to be replenished. In their March 1992 report, the Corps of Engineers New York District referred to this project as "environmentally acceptable with the potential to serve as a demonstration for tidal wetland restoration, provide direct environmental benefits and indirect educational value to the local population."

In conclusion, I would like to reaffirm my strong support for this legislation and for the way in which it both carefully balances the needs of our nation and takes into account the very specific needs of the residents of the South Bronx. Also, I would like to again express my deep appreciation for the fine work and many contributions of VIC FAZIO and JOE