

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

CAMPAIGN FINANCE REFORM

Mr. NICKLES. Mr. President, I thank my friend and colleague from North Dakota. Sometimes when we are here, we get a little impatient since we all have places we want to go. I appreciate his comments, and I very much look forward to debating the budget and tax bills on the floor of the Senate next week and, frankly, over the next couple of months, as we do our appropriations bills.

I enjoy those issues, and I would have preferred doing those instead of campaign finance for the last 2 weeks. I would have preferred doing the education bill. I, for one, was urging our caucus, and Senator MCCAIN and others, to defer on campaign finance so we could take up some of the higher priorities which, in my opinion, are education, tax reduction, and the budget. I didn't win that debate.

We have been on the campaign finance bill for the last couple weeks because of the tenacity, persistence, and stubbornness of our good friends, the Senator from Arizona, Mr. MCCAIN, and the Senator from Wisconsin, Mr. FEINGOLD. I compliment them. They have been persistent and tenacious in pushing this bill. I also compliment them for their efforts in working with many of us who tried to make the bill better. We had some successes and we had some failures. In some ways this bill is a lot better than it was when it was introduced and in some areas it got a lot worse. I will touch on a few of those.

I had hoped we would be able to improve the bill. I could not support the bill when it was originally introduced before the Senate. I had hoped we could make some improvements so that this Senator could support final passage. I was committed to try to do that. We had some success in a couple of areas, but we had some important failures as well.

I also compliment others who worked hard on this bill including Senator THOMPSON and Senator HAGEL. Senator HAGEL came up with a good substitute. Senator THOMPSON had a good amendment dealing with hard money, and I worked with him on that amendment.

I also compliment Senator MCCONNELL and Senator GRAMM, who were fierce, articulate opponents and spoke very well. Senator GRAMM's speech last night was one of the best speeches I have heard in my entire Senate career. He spoke very forcefully about freedom of speech and the fact that even though the editorial boards and public opinion polls say, let's vote for this, that we should abide by the Constitution.

The Presiding Officer, Senator BYRD, reads the Constitution as frequently, maybe more frequently than anybody in this body. When we are sworn into office, we put up our hand and we swear to abide by the Constitution.

The first amendment to the Constitution, one of the most respected and im-

portant provisions in the Constitution, states very clearly that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."

"Congress shall make no law . . ." Mr. President, that includes the McCain-Feingold bill. In my opinion, this bill restricts our freedom of speech, not only in the original version, but especially in the version that we have now.

Some of the different sections of this bill go by different names based on their sponsors. I have great respect for my colleagues, and I know Senators SNOWE and JEFFORDS worked on a section restricting speech before elections by unions, corporations, and by other interest groups. This bill restricts their ability to speak, to run ads. This bill prohibits them, in many cases, from being able to run ads less than 60 days prior to an election that mention a candidate's name. There are a lot of groups, some on the left, such as the Sierra Club, and some on the right, such as National Right To Life, for example, that may want to run ads about a bill before Congress. We may be debating partial birth abortion or ANWR, and we might be having this debate in September on an appropriations bill, less than 60 days before the election. This bill will say they cannot run an ad with an individual's name saying vote this way or that way, or don't support this person, because he is wrong on ANWR, or he is correct on the right to life issue. Their free speech would be prohibited. I find that to be unconstitutional.

I have heard a lot of debate on the floor saying they did not think that Snowe-Jeffords is unconstitutional, and other people saying that it was. Then Senator WELLSTONE came up with an amendment that said, let's expand that to all interest groups—the same restrictions we had on unions and businesses on running ads within 60 days. Let's make that apply to them as well. Senators MCCAIN and FEINGOLD said the Wellstone amendment was unconstitutional. If that was unconstitutional, then the underlying bill was unconstitutional because, basically, Senator WELLSTONE copied it.

Why would we pass a bill we know is going to be unconstitutional? And that relates to the nonseverability amendment, described as a killer amendment. Why? Because they know some of the bill is going to be declared unconstitutional. Why would we pass legislation we know is going to be unconstitutional? Yet, some of the proponents are basically admitting it is going to be unconstitutional.

The big fight was on severability. The sponsors had to have that because we more than suspect that parts of this bill will be declared unconstitutional. I think they are right, because the people sitting at the Supreme Court are going to say: does this bill restrict an

organization's ability to communicate and mention a Member's name, or mention an issue that is before Congress? It will restrict that right. So it will restrict their ability to have freedom of speech.

I think parts of this bill—not all of it, but certainly parts of it—will be determined unconstitutional. I think we should not be passing unconstitutional bills. I think we should not say, let's just pass it and let the courts do the homework on it. I guess you can do that, but I think we have the responsibility to uphold the Constitution, respect the Constitution, and not to be passing things we know are unconstitutional, that won't uphold a constitutionality test.

In addition, I mentioned that we had some victories and some defeats. One of the victories, in my opinion, was when we increased the hard money limits, which have been frozen at the 1974 levels. I compliment Senators HAGEL and THOMPSON because they pushed that amendment. I helped them negotiate the compromise. We increased what individuals can do. They were frozen, since 1974, at \$1,000, and we doubled that amount and indexed that for inflation. So we improved that section. Individuals can now participate more fully and extensively. That was a good amendment. Not everything in this proposal is bad. There are good things and bad things. I came to this debate thinking I might be willing to ban so-called soft money, if it could be done constitutionally, if we could increase hard money, the money that is completely reported and that everybody says is legitimate. I wanted to stop the practice that both parties have used, used quite well on the Democrat side, with the so-called joint committees, where individuals exceed the individual amount, and contribute thousands and thousands of dollars more through a special committee, through either the Republican Senatorial Campaign Committee or the Democratic Senate Campaign Committee.

The Democrats did it to the tune of \$21 million last year, and the Republicans did it to the tune of \$5 million last year. In one race in New York, there was \$13 million of soft money directed toward one candidate. How can you have limits and then have other people contributing millions of dollars outside those limits? Everybody has heard about that Denise Rich contribution. She contributed over \$100,000 to one Senate candidate, and I thought the law was only \$1,000 for a primary and \$1,000 for a general election. But Denise Rich contributed over \$100,000 through the use of a joint committee. That was an abuse. It needed to be stopped.

Now, let me turn to the issue of coordination. I mentioned this last night on the floor. The coordination section in the underlying McCain-Feingold bill was grossly inadequate in its respect for free speech. The sponsors of the bill, Senators MCCAIN and FEINGOLD,

admitted as much and said we needed to fix it. The bill had a several-page definition of coordination, saying if a union or interest group coordinated with a campaign, they would have to report everything they did and consider it as a contribution. And if you didn't do so, there could be fines and penalties against that organization and against the candidate. You could make them criminal violations because they would be violating the law. We didn't want to make people criminals and put them in jail because, basically, they were exercising their constitutional rights.

Senators MCCAIN and FEINGOLD said they would fix that. I looked at the fix, and they fixed it for the unions, but not for everybody else. For the unions, they excluded the in-kind contributions. Unions don't have to report those, disclose them, and they are not considered coordination. That affects a lot of money, maybe to the tune of in excess of \$100 million or \$200 million. That in-kind contribution is excluded from the coordination fix we just adopted earlier today. But we didn't fix the expenditures side of that.

So if you have other groups, such as National Right To Life or the Sierra Club, and so on, that make expenditures and are working on campaigns and handing out leaflets and so on, that may well be considered a coordinated activity that has to be reported and disclosed both by the candidate and by the organization. Right now, they don't have to do that. We are going to say that could be illegal activity. What I am saying is that they took care of the unions, but not of these groups.

I don't like this coordinated section because I think it goes way too far. We are risking telling people who are exercising their constitutional rights engaging in campaigns, they better not do that or the heavy hand of the Federal Government might come in and say they violated the law. The people accused will say, what law? These are people that might be trying to convince people not to drill in ANWR, or maybe that we should. Maybe we want to change the mining laws, or maybe we should not change the mining laws. They should have a right to petition Congress. That is what the First Amendment says. We should not abridge anybody's right to petition the Government for a redress of grievances. But we do under this bill if it is during a campaign or within 60 days of an election. You are certainly going to be handicapping their ability to redress a grievance to the Government—their right to petition the Government.

Again, we have the Constitution, and we have this bill. I find this bill to be in violation of the Constitution. Under my reading of the Constitution—and I am not a constitutional scholar—I believe we are eliminating or reducing an individual's ability to be able to petition the Government, and an individual's ability to have freedom of speech

to say, "I agree with them," or "I disagree with them," or "I disagree with Senator so-and-so," or "I agree with Senator so-and-so," right before the election. This bill says, no, you can't do it. If you do it, you might well be in trouble.

But, oh, we have a little fix for the unions. We will just run it through on the last amendment of the day, which is what happened.

Do you know what else concerning the unions is missing in this bill? You would think in the year 2001 we would say that all campaigns contributions would be voluntary. Guess what? They are not in America today. There are millions of Americans who are compelled to contribute to campaigns they don't support. They would rather not. Some people say these people don't have to contribute because they don't have to join the union. In some States, they have to join, or if they don't, they have to join under an agency fee arrangement, and they have to pay dues. They may not want to, but they have to. They have to pay the dues or the agency fee. A lot of that money—maybe in excess of \$10, or \$15, or \$20 a month—is used for political activity. That individual may not want it to be used for that.

He might disagree with the leadership of the union that money is going to candidates to whom he or she is totally opposed. We wanted to have a provision that says no one should be compelled to contribute to a campaign; they would have to give their permission before money can be taken out of their paycheck every month.

Oh, no, that amendment could not be accepted. To be fair, the amendment that was offered was not a good amendment, in my opinion, because it also included shareholders, and there is no way in the world you can include a shareholders provision, in my opinion. But the voices were clear: You are not going to win on that Paycheck Protection amendment.

Senator HATCH offered another amendment that said at least let's have disclosure on businesses and unions on how much money they are putting into campaigns. I thought surely that amendment was going to be adopted. That amendment was not adopted.

I will say right now that I believe organized labor put hundreds of millions of dollars into the campaigns last cycle, and we do not know and we will not know because this bill does not require that they tell us. Everybody else has to disclose contributions; organized labor does not. They do not have to disclose their independent activities. They do not have to disclose their indirect, in-kind contributions to campaigns. They have thousands of people making phone calls day after day that are paid full salaries, benefits, at a station set up for political activity, and most of that is not disclosed. We do not know and this bill does not help us know. Is this a balanced package? It

looks to me more and more that it is not.

Originally, this bill had language supposedly to codify Beck, Beck being a decision that if a union person did not want their money used for political purposes, they could file notice and get a refund. I never thought that case was satisfactory because their money would be used in ways with which they still would not agree, but it was better than nothing. They could get a refund.

If somebody does not want money used for political purposes, they should say no and not have to contribute.

The underlying bill purported to codify Beck, but it did not do that. I raised that issue with Senator MCCAIN and Senator FEINGOLD, and they concurred with me. We struck the language that weakened Beck, in my opinion, significantly. That made the bill a little better.

I want to give credit when credit is deserved. Certainly this bill is improved by the hard money increase. I think it was improved by striking the language, what I would call the false Beck. That language was taken out of the bill. That made it a little bit better.

Then there was another provision this Senator fought very strongly against, but only at the last minute because I just found out about it at the last minute, and that was the amendment by our friend and colleague from New Jersey, Senator TORRICELLI, that dealt with lower advertising rates for politicians.

I fought it, but we only had 30 votes against it. Under that amendment, broadcasters have to offer the lowest unit rate to candidates for each type of time over a 365-day period. That is an outlandish, enormously expensive subsidy for politicians. And while people say, this is great, we are limiting money in politics, and so on, what we have given politicians is an enormous multimillion-dollar gift through this amendment, a multimillion-dollar gift. We defeated a couple amendments that dealt with public financing of campaigns, but this amendment is indirect public financing of campaigns because it is going to allow politicians to get the rates cheaper than anybody else in America. It also has a little provision that says the politicians's ads cannot be preempted.

To give an example, prior to the election in October, it gets expensive because a lot of people are trying to buy time. There is a lot of competition. A lot of people watch "Monday Night Football." I like to watch it. I am sure commercial ads get expensive on Monday night or any night of high visibility.

We said: Politician, you get the cheapest rate of the year, and you can use that time on Monday night, you can use it on any great night. You get to have the cheapest time of the year. You get your time, and it may be one-tenth as expensive as normal rates for "Monday Night Football" or some other program. You get the lowest rate

of anybody throughout the entire year, and they cannot preempt you. You buy the time, you've got it.

Maybe the broadcaster is in rural West Virginia or Oklahoma and has a radio station or a TV station and is scraping to get by. They are going to get paid the lowest rate they charge on a hot summer night. The broadcaster may think: This is good, we have the new "ER" or some other new show that is really popular, so we can make some money. But they are going to have politicians swamping them saying: Give that time to me.

We passed an enormous subsidy for politicians. It is an enormous advantage for incumbents because incumbents usually outraise their challengers most of the time. We just increased the advantage incumbents have by millions of dollars. Thank you very much. We should pat ourselves on the back: Hey, this is good, and we were able to slide this through. People don't know—they think we are reforming campaigns, and we are giving politicians enormous subsidies and acting as if it is reform, and being proud of it. We are going to slap everybody on the back about our great reform. We did a little nice thing to which nobody paid attention. Politicians, you get the lowest rate of anybody all year long, and you get to use it the night before an election. That is our little gift to ourselves to which nobody paid attention. It is another good reason, in my opinion, that this bill should be defeated.

I look at groups who are active in campaigns, and they will say: You are infringing on our ability to get our message out, to communicate, to run ads, to mention names, vote for, vote against. We are making it very difficult, in some cases illegal, under this bill. It is wrong and unconstitutional. We also greatly increase subsidies for politicians. I think that is absolutely shameful. We should not have done it, but we did it.

While this bill may be an improvement over present law on the whole, it is unconstitutional and it includes an egregious subsidy for politicians. It should be defeated, and I will vote no on this measure when we vote on Monday.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The Senator from Massachusetts is recognized.

Mr. KENNEDY. I thank the Chair.

THE BUDGET

Mr. KENNEDY. Mr. President, it is midway through Friday afternoon. We know most Americans are heading

home from a busy day working and providing for their families. They may be looking forward over the weekend to some of the basketball championships that are going to be played on Saturday and again on Monday evening. They are looking forward to attending services on Sunday and then spending some time with their families.

Then perhaps on Monday, when they go to work, they may hear on the radio or on television that the Senate is involved in what they broadly term "a resolution on the budget." By and large, many are going to wonder exactly what that means and what is its relationship to their lives. They are going to wonder, what is it going to mean to my children's education, what is it going to mean to my parents' prescription drugs, what is it going to mean as far as investing in housing or in law enforcement, or any of the areas of national priority, or what is it going to mean in terms of the security of Medicare and Social Security? They are going to wonder about this.

I heard over the last several months the President of the United States talk about the fact that he is going to urge the Congress to pass a very sizable tax cut. He talks about \$1.6 trillion tax cut. We know the real figures are far in excess of that because they do not include other factors, as others have pointed out in earlier debates. Senator CONRAD has done such a wonderful job not only in educating the Members of the Senate but also in helping the American people understand what is at stake with the President's tax reductions and the real economic impact it will have on the economic stability of our Nation.

People are hearing our President say we can have a very sizable tax cut, and even with that tax cut, still be able to preserve Social Security and Medicare and fulfill the kinds of commitments that were made in the course of the campaign on prescription drugs, on education, on national security and defense.

Citizens will wonder when they hear others speak in the Senate, principally from this side, when the Democrats say we cannot afford it all. They are going to hear those voices and wonder how do we really put all of this into some perspective. They are hard working and this doesn't make a great deal of sense. Maybe there is some sense that the budget resolution will result in an outcome that perhaps, over the course of this week, citizens will think, if I pay careful attention I will better understand.

There are two very obvious conflicting statements we are receiving. One says we can afford the tax cuts. I think the American people are somewhat skeptical of that. They should be.

I remember being here in 1981. I was one of 11 who voted against the Reagan tax cut that had similar kinds of support. As a matter of fact, many of those individuals who have been working on this current tax reduction are

the same people who worked on President Reagan's tax reduction. At that time, we heard it all. It is the same record. I almost believe it's the same speech.

I can hear it then: We can afford to have these major tax cuts. We can afford that and still provide billions and tens of billions in defense, and we are going to meet our national security, and we are going to be able to afford all of this and still see an expanding and growing economy.

Of course, that was not the case. We saw the direct result of those tax cuts when this country went into a deficit of \$4.6 trillion. People's eyes kind of glaze over when we talk about those figures. For the average family, it means they will pay several hundred dollars a year more on their student loan programs because it will be higher interest rates. They will pay several hundred dollars more on their car payments when buying a new car. They will spend several thousand dollars more, if fortunate enough, in purchasing a new home.

That is what happened with the Reagan tax cut. That is the hidden cost that every working family and middle-income family is paying for every single year when we have those very sizable deficits. Those are the facts.

I think they understand it. They understood over the period of the last 8 years that we had the longest period of economic growth and price stability. In my part of the country, in New England, in 1992, we were close to 8 percent unemployment, and we were looking at the future with a great sense of trepidation. There was reduction in types of defense, the real estate market was flat. Many of the innovative and creative computer companies had not worked out. We were wondering what the future would hold.

Then we put in place an economic program, fiscal policy, monetary policy, investment incentives for the private sector, investments in people, and we saw economic progress.

We shouldn't lose track of the fact that the proposal of 1981 was characterized by our current President's father as being voodoo economics. The American people were warned it was voodoo economics. Those are not my words, they were the characterization of President Bush, father of our current President.

Now we have a very similar program. The American people are torn, with all these surpluses they keep reading and hearing about, 80 percent of which are estimated to be coming 3½ to 4 years from now. What family would be betting their own kind of future on what may happen 3½ years from now in terms of their income? But here we are talking about the future of our nation with all of its implications in terms of the economic policy, with what that means, whether we will have jobs, can you afford a home, or student loans. That is what we talk about in terms of economic policy.