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No. 46

## House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, April 3, 2001, at 12:30 p.m.

## Senate

MONDAY, APRIL 2, 2001

(Legislative day of Friday, March 30, 2001)

The Senate met at 5 p.m., on the expiration of the recess, and was called to order by the Honorable PETER G. FITZGERALD, a Senator from the State of Illinois.

### PRAYER

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

Almighty God, who has promised strength for each day, we ask You for a special provision for this busy week ahead. As the week stretches out before us, we realize that there is more to do than it seems there is time to accomplish it. However, our security is that we are here to do Your work, and therefore You will provide for what You will guide.

You have taught us that the secret of strength is thanksgiving: If we will give thanks for the very things that cause pressure, You will open the floodgates for a flow of Your energy into our souls, our minds, and bodies. So thank You, Father, for the long days of work ahead; thank You for the relationships that may be difficult, for the times when stress will mount and our bodies will tire. But most of all, thank You for the fresh supply of power to face each hour. You are our refuge and strength, a very present help when we need it most of all. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable PETER G. FITZGERALD led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Repub-

lic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, April 2, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable PETER G. FITZGERALD, a Senator from the State of Illinois, to perform the duties of the Chair.

STROM THURMOND,  
President pro tempore.

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

### RECOGNITION OF THE ACTING MAJORITY LEADER

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

### SCHEDULE

Mr. McCONNELL. Mr. President, the Senate this evening will have 30 minutes for debate on the campaign finance reform bill. At approximately 5:30 p.m. the Senate will vote on final

passage of the bill. Following the vote, the Senate is expected to begin consideration of the budget resolution. Votes in relation to the budget resolution are expected to occur this evening. Senators should be prepared for late nights and votes throughout the week. It is the intention of the majority leader to complete action on the resolution prior to the Easter recess.

That is the agenda for the coming week.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, the order calls for votes at 5:30, and I am going to request the vote be at 5:30. So there is not 30 minutes of debate. I ask the Chair if that is true.

The ACTING PRESIDENT pro tempore. The Senator is correct.

### BIPARTISAN CAMPAIGN REFORM ACT OF 2001—Resumed

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, this has been a long and interesting debate, and before I begin my final remarks I would like to thank my superb staff, the senior member of which is Tam Somerville. Now staff director of the Rules Committee, she is a long-time veteran of these wars going back to the filibusters of 1988—a good friend and a great colleague. I thank her for her outstanding work over the years on this subject. And Hunter Bates, my chief of staff, has done superb work on this and a great many other matters

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



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over the years, and an old friend going back well over a decade. And new members of the team: Andrew Siff, the general counsel of the Rules Committee, who Senator McCain and I would have to agree sort of staffed both sides at times during this debate and did an outstanding job; Brian Lewis, also of the Rules Committee, and John Abegg of my staff, who have been marvelous in this whole debate.

Now, Mr. President, the theory of this bill, the underlying theory, is that there is too much money in politics, in spite of the fact that last year Americans spent more on potato chips than they did on politics.

Then the other theory of the bill is, well, if we can't squeeze all the money out of politics, at least we can get at that odious soft money. Well, I think it is important for our colleagues to know that the average soft money contribution to the Republican Senatorial Committee last year was \$520. That is about one-tenth of 1 percent of the total amount of money we raised. The largest contribution to either the Republican National Committee or the Republican Senatorial Committee was \$250,000. Admittedly, that is a lot of money, but any one of those donations would only have amounted to one-half of 1 percent of what was raised by the committees.

Now if we were concerned about the appearance of a large contribution, we had an opportunity to address that when we had a vote on the Hagel amendment which would have capped non-Federal money, just as for many years we have capped Federal money. But, no, the Senate opted for prohibition, not moderation. Now we know what has happened when we have gone down that path before with prohibition. Of course, nothing would be prohibited.

We had an opportunity to recognize that there is nothing inherently evil about non-Federal money and that the only issue really the Senate was trying to address was the size of the contributions; we could have dealt with that in the Hagel amendment, but that was defeated.

Now other countries, many of them allies of ours, unburdened by the First Amendment, have squeezed the money all the way out of politics. A good example of that is the Japanese. The Japanese have gotten all the money out of politics.

Let me tell you what it is like to run for office in Japan. The Government determines how many days you can campaign, the number of speeches you can give, the places you can speak, the number of handbills or bumper stickers you can hand out, and the number of megaphones you get—one, one megaphone per candidate. This was all in response to the need, it was widely perceived, to get money out of politics so people's view of the Parliament would go up.

Well, after passing all of these draconian measures, now 70 percent of the

Japanese people have no confidence in the legislature and turnout continues to decline. So it is obvious that had no impact whatsoever.

What we have done here, in an effort to get money out of politics, is to take the parties out of politics, as I pointed out last week, and let me briefly touch again on what we have done.

In a 100-percent hard money world, this would be the impact on the party committees. Looking at the last cycle, last year, if you just applied the current system, the Republican National Committee had \$75 million in net hard money to spend on its candidates; under McCain-Feingold, it would have had \$37 million. The Democratic National Committee under the current system had \$48 million net hard money for candidate efforts; under McCain-Feingold, it would have had \$20 million. The Republican Senatorial Committee had net hard money to spend on candidates of \$14 million; under McCain-Feingold, it would have had \$1 million. The Democratic Senatorial Committee had \$6 million hard money; under McCain-Feingold, it would have had \$800,000. And over on the House side—a real disaster. Under the current law, the Republican Congressional Committee had \$22 million net hard money; the Democratic committee over in the House, minus \$7 million. Under McCain-Feingold both of them would have been substantially below water: \$13 million in the case of the congressional committee on the Republican side and \$20 million on the Democratic side.

In a 100-percent hard money world, as defined by McCain-Feingold, what we will do is take none of the money out of politics; we will just take the parties out of politics. And when we take the parties out of politics, what is the impact of that? Parties are the one entity in America that will support a challenger. Parties are filters. They will support a Republican whether he is a liberal Republican or a conservative Republican. Interest groups won't always do that. Parties will go to bat for their members no matter what.

If we look at the upcoming 2002 cycle, the coordinated expenditure limit for Senate campaigns will be \$15 million. Applying the new McCain-Feingold standard, the Republican Senatorial Committee and Democratic Senatorial Committee will be able to fund the coordinated expenditures in North Carolina. That is about it.

In addition to that, in this new world with substantially fewer Federal hard dollars, the national committees will have to do a lot more. To provide some examples: All the redistricting efforts by both national parties will have to be paid for with 100-percent hard dollars; new responsibilities paid for with 100-percent hard dollars. All national party get out the vote, voter registration and voter identification efforts will have to be paid for with 100-percent hard dollars. Any support from national party committees to State and local can-

didates will have to be 100-percent hard dollars. I would venture to say that the national conventions, which the press has declared boring for some time now, are probably a thing of the past.

Host committees for national conventions are abolished. Last year it took each party \$80 million to put on their national conventions. They got \$15 million from the Treasury. All the rest of it was this odious soft money which is going to be abolished. In order to continue to put on the national conventions in hard dollars, the two committees will have to come up with about \$60 million each in hard dollars to put on the national conventions.

My guess is they will decide they might as well let the national conventions become a relic of the past because they will not be able to afford to put on the conventions and also help the candidates. Given that choice, they clearly will want to help the candidates. The conventions may or may not happen again or they may be very short, maybe a half-day convention. I recommend they come to Louisville, KY. I think we could handle the size of the convention now. We haven't been able to apply for it in the past.

In addition to that, McCain-Feingold is so sweeping it is likely to preclude Senators from raising money for churches and charities because there is written into the bill an effort to restrict the ability to raise money for 501(c)s. A query: Will Senator McCain or myself be able to raise money for the International Republican Institute or Senator Kennedy raise money for the Special Olympics? I doubt it.

In addition to that, there is a very serious question of what to do with the soft money already raised. Both parties are having their dinners this year as if everything is pretty much the same. Typically at these party dinners, about 80 percent of the dollars raised are soft. Under McCain-Feingold, not one penny of soft money in any account controlled by either a Member of Congress or a national party committee can be directed to, donated to, transferred to, or spent. Let me say this again: All the non-Federal money already collected is going to be dead money. You can't do anything with it. You can't direct it. You can't donate it. You can't transfer it. You can't spend it. As I read that, it couldn't be transferred to a State party, donated to a charity, or even directed to the U.S. Treasury. So it is going to sit there, frozen, useless assets.

Who wins?

As I said the other day, who wins are people such as Jerome Kohlberg. This is the billionaire who has decided this is going to be his legacy. This is the full page ad he ran in the Washington Post the other day on behalf of this legislation. I suspect a lot of the lobbyists out in the hall right off the Senate floor are either on his payroll directly or indirectly. People such as Jerome Kohlberg and the big charitable foundations are underwriting the reform

movement, hand in hand with the editorial pages of the Washington Post and the New York Times, which have editorialized on this subject an average of once every 6 days over the last 27 months.

At least in the Senate, they are going to get their way shortly, but this new world won't take a penny out of politics, not a penny. It will all be spent. It just won't be spent by the parties. It will be spent by the Jerome Kohlbergs of the world and all of the interest groups out there. As everyone knows, the restrictions on those interest groups will be struck down in court, if we get that far.

Welcome to the brave new world where the voices of parties are quieted, the voices of billionaires are enhanced, the voices of newspapers are enhanced, and the one entity out there in America, the core of the two-party system, that influence is dramatically reduced.

I strongly urge our colleagues to vote against this legislation. It clearly moves in the wrong direction.

Mr. REID. Mr. President, I ask unanimous consent that each side be extended an additional 2 minutes.

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

The Senator from Connecticut.

Mr. DODD. Mr. President, will the Chair notify me when I have consumed 2 minutes.

The Senate today is taking long awaited action to approve legislation to address what the American people have come to believe is the single most egregious abuse of our campaign finance system. That is the unlimited flow of soft money. If the McCain-Feingold legislation did nothing else but close the soft money loophole, this is true reform and needed reform.

My colleagues have accomplished much more. I congratulate Senators MCCAIN and FEINGOLD for their vision in recognizing the powerfully negative influence that the money chase has had on our political system. I also congratulate their dogged persistence over these past number of years, and patience, in striving to craft a consensus on reform legislation that seeks to address the worst aspects of the current system.

I thank the Democratic leader TOM DASCHLE. No Member has done more or been more consistent in their support of this legislation or worked harder behind the scenes to hold the Democratic caucus together in support of this measure. Without those votes on the Democratic side, this matter would not become law.

I have been privileged and honored to serve as floor manager of this bill, along with the Senator from Kentucky. I thank my staff, Kennie Gill, Andrea LaRue, and others, along with the staff of my friend from Kentucky, for the very fine job they have done.

This has been a good debate. It has been one of the finer moments in the Senate.

One final point, the great Justice Learned Hand once spoke of liberty as the great equalizer among men. In his words:

The spirit of liberty is the . . . lesson . . . (mankind) has never learned, but has never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest.

That should be the ultimate test of whether any matter considered by this body is worthy of our support. The McCain-Feingold bill passes that very noble test.

I urge my colleagues to support the McCain-Feingold campaign finance reform bill.

Mr. GRASSLEY. Mr. President, improving the campaign finance system is an important priority. Without a doubt constructive criticism works to help cleanse the system. More importantly, good debate helps reduce public cynicism. That is why I would like to commend my colleagues for the good discussions we have had in the past 2 weeks.

My goals for campaign finance reform have long included improved citizen participation, enhanced public discourse, full public disclosure and safeguarding the right of Americans to organize and petition their government. To accomplish these objectives, I want reform to give individuals a bigger role in the political process, increase up-front participation of political parties, protect corporate shareholders and union members from being forced to bankroll candidates they oppose, discourage misconduct by political campaigns with swift and sure punishment, and require full public disclosure of contribution sources.

Therefore, in evaluating any campaign finance legislation I ask myself, does this bill accomplish these goals?

I believe that we made progress with the McCain-Feingold bill by providing for greater disclosure such as requiring all television and radio stations to include in their "public file" all media buys for all political advertising, by requiring additional disclosure for Federal candidates and national political parties, and requiring the Federal Election Commission to provide the information on the Internet within a reasonable amount of time. I also believe that it was prudent of us to increase the individual hard money contribution limit set back in 1974. Furthermore, we increased the penalties for election law violators.

On the other hand, I was disappointed that the Senate failed to agree to several amendments that I feel would have been good reform. Such amendments were those to provide disclosure and consent to corporate shareholders and union members regarding the use of their funds for political activities and the effort to limit soft money, instead of a complete ban which will likely be thrown out by the Courts.

However, there is a more egregious problem with this legislation. This bill

fails to protect an individual's right to organize and petition their government and engage in full public disclosure.

Virtually every American has a "special interest," whether its lower taxes, endangered species, education, or international trade agreements. To get individual voices heard above the din of American politics, individuals organize to exercise their first amendment rights of free speech. However, this McCain-Feingold bill severely restricts the groups which average citizens join to express themselves: issue advocacy groups and political parties. Therefore, wealthy individuals and the media have a larger role in the political process and the individual role is diminished.

I would like to point out three specific ways the McCain-Feingold bill violates our first amendments rights: 1. Issue Advocacy—This bill imposes limits on communications about issues regardless of whether the communication "expressly advocates" the election or defeat of a particular candidate and restricts the time that issue advocacy communications can be distributed. 2. Coordination—This legislation grossly expands the concept of coordinated activity between candidates and citizen groups. This regulates and prohibits all but the most insignificant contacts and actions from citizen groups as a "contribution" or "expenditure" to a specific campaign. 3. Political Parties—This reform measure limits the role of political parties to simply electing politicians. The restrictions on soft money restrict political parties in their ability to support grassroots activity, candidate recruitment and get-out-the-vote efforts.

In the 21st Century, it's easy to forget that America's Founding Fathers sacrificed all to give Americans political freedom. These patriots fought and risked their lives and everything they had to secure and protect free political speech, dissent or assent, of all kinds. Free political speech protects us from tyranny.

The first amendment forbids Congress to make any law "abridging the freedom of speech," especially political speech. I swore to uphold the Constitution. Therefore, I cannot vote for a bill that I believe violates our first amendments rights.

Mr. KOHL. Mr. President, I rise today to support S. 27, the Bipartisan Campaign Reform Act of 2001. I have been a consistent supporter and co-sponsor of campaign finance reform because I believe we must do everything we can to ensure that there is not even a perception of undue influence in Federal elections.

The debate of the last 2 weeks has provided us with a unique opportunity to examine a wide range of issues related to the financing of political campaigns. The result is a bill with strong bipartisan support. This landmark legislation, if signed into law, will succeed in banning soft or unregulated money in Federal elections. The unlimited

flow of money into party coffers creates the greatest opportunity for special interests to seek favor with politicians. The reality that businesses or organizations can be tapped for such vast sums has dramatically changed the atmosphere surrounding the work of our legislative and executive branches of Government.

With this legislation, we are also finally getting at one of the most troublesome areas of unregulated and unreported spending in Federal elections, so-called sham issue ads. This legislation does not ban issue advocacy or limit the right of groups to air their views. Rather, the disclosure provisions in the bill require that these groups step up and identify themselves when they run issue ads which are clearly targeted for or against candidates.

The Supreme Court's decision in *Buckley v. Valeo* in 1976 has left us with the difficult task of devising a system of financing campaigns without suppressing free speech. Our Founding Fathers were resolute in their defense of speech and we must continue to protect the first amendment right. We do so, however, with the understanding that we must reconcile free speech with a competing public interest. This interest, as articulated in *Buckley v. Valeo*, is preventing corruption of Federal elected officials or even the appearance of corruption. Let me be clear, I do not believe that our system is corrupt or that elected officials are corrupted by campaign contributions. However, I agree that we must combat the perception of corruption.

It isn't difficult to understand why a majority of American citizens are convinced that the presence of special interest money in politics buys influence. The vast majority of those citizens do not participate in contributing to political candidates—in a recent survey, 6 percent of the electorate said they gave any money to a political candidate and less than one-tenth of one percent even contribute at the current \$1,000 contribution limit—so it is no wonder that most Americans believe that they can't compete with the few who do give and who often gain access as a result. Many Americans believe that their voices are not heard.

Whether the presence of unlimited political contributions is corrupting or whether it just creates the appearance of corruption, the damage is done. Americans are disaffected with politics and political campaigns and have voted against the current system with their feet: For decades we've seen a gradual decline in voter turnout. In 1952, about 63 percent of eligible voters came out to vote. That number dropped to 49 percent in the 1996 election. We saw a minor increase in this past election with voter turnout at 51 percent of eligible voters, however, not a significant increase given the closeness of the election. Non-Presidential year voter turnout is even more abysmal.

Our representative democracy is harmed by eroding participation. As

elected officials, we have a responsibility to try to address the sources of voter disaffection. And, that is ultimately what campaign finance reform is all about, restoring the confidence of the American people in our elected government.

I am keenly aware of how fortunate I am to be able to finance my own campaigns. I do not accept contributions from political action committees and I am not burdened with the task of raising vast amounts of money to run for office. However, during debate on this bill I was willing to support amendments which would help level the playing field for all candidates. That is why I supported the DeWine amendment which raised the contribution limits for candidates whose opponents spend their own money to fund their campaigns. That is also why I was willing to support the Thompson-Feinstein amendment to increase contribution limits in a reasonable way, beyond the limits set back in the seventies. And that is why I supported the Torricelli amendment to give political candidates the opportunity to buy advertising time at the lowest unit cost, as originally intended in the Federal Election Campaign Act.

It is my hope that this legislation is signed into law. I fear if this bill becomes bogged down in a conference or if the President vetoes it, we will have missed a rare opportunity to achieve meaningful campaign finance reform. The unprecedented time we have spent debating this issue—and a wonderful debate it has been, fast-paced and unscripted—will not be repeated any time soon.

Finally, I want to commend my colleague from Wisconsin, Senator RUSS FEINGOLD. He has been dogged in his pursuit of campaign finance reform. For 5 years now, he has championed this issue, even when it was not always popular with his colleagues. He has forged a potent partnership with Senator MCCAIN and they have waged a campaign across the country and in the Senate to rally the American people for the reforms we are adopting today. While he has been unbending in his desire to move this forward, he has also compromised and adjusted so that we could address the worst abuses of the system. He has earned the respect of all Wisconsinites for his leadership on campaign finance reform.

Mrs. MURRAY. Mr. President, today I am pleased to vote to overhaul our nation's campaign finance system. The McCain-Feingold legislation represents a step forward that is long overdue. In recent years, it has become clear that our campaign finance system is broken. There's too much money in elections. It's too hard for average citizens to be heard. Their voices are being drowned out by big-money special interests and wealthy contributors. It's getting harder for citizens of average means to run for office. The system is too secretive. There are undisclosed groups giving money and trying to in-

fluence elections with no sunshine and no public disclosure. And especially after this last election, many people are wondering if their vote will count. As a result, Americans are cynical about elections and aren't participating. We need to turn that around.

Ever since I came to the Senate, I've fought for campaign finance reform. I've consistently voted to get the Senate to debate campaign finance reform. In 1997, I served on the Leadership Task Force on Campaign Reform. In 1998, I offered an amendment for full disclosure. And in my own reelection campaign in 1998, I went above and beyond the legal requirements, and I disclosed everyone who supported me, whether they contributed \$5 or \$500.

Given the problems in the system, I developed a set of principles for reform that have guided my decisions throughout this debate. My principles for reform are: First, there should be less money in politics. Second, I want to make sure that average voters aren't drowned-out by special interests or the wealthy. Third, we must demand far more disclosure from those who work to influence elections. When voters see an ad on TV or get a flyer in the mail, they should know who paid for it. There must be disclosure for telephone calls and voter guides. Citizens have a right to know who's trying to influence them. We've seen a disturbing increase in the number of issue ads, which are often negative attack ads. Too often, voters have no idea who's bankrolling these ads. Voters deserve to know and that is why I have called for far greater disclosure. Fourth, we need to keep elections open to all Americans. We need to ensure that average citizens not just millionaires can run for office. When I ran for the Senate in 1992, the most I'd ever earned was \$23,000 a year. I wasn't a millionaire. I wasn't a celebrity, but I was able to run for office and win a seat in the Senate because the system was open to anyone. That's getting more difficult today. Finally, we need to make it easier, not harder, for people to vote. We need to make sure that when citizens vote their votes are counted.

The bill now before the Senate makes some progress toward the principles I've outlined. I am disappointed this legislation does not go further. Some amendments have strengthened the bill. Other amendments, including raising the limits on hard money, have weakened the bill. The hard money limit in particular will inject more money into politics at a time when I, and most Americans, want to reduce the amount of money in politics. This bill also has the potential to give a disproportionately larger role in elections to third party organizations. I'd rather see citizens and candidates have a stronger voice than third party organizations.

I know my colleagues recognize that this is a carefully balanced bill. If, at some point in the future, the courts invalidate some portion of this bill, Congress should return to the legislation

to restore the balance of fairness in our nation's elections laws. Campaign finance reform should not be a gift to either party, but should instead return our democracy to its rightful owners, the American people.

Before I close I would like to remind my colleagues that our work on election reform is far from completed. Unfortunately, this legislation does nothing to ensure that every citizen's vote counts in an election, something that is sorely needed in the wake of the Presidential election. If Congress is to truly restore the people's faith in our election system, we must ensure that every vote counts. On that matter, this legislation stands silent.

On the whole, however, this bill is a significant step forward. It should help restore citizens' faith in our electoral process. It also illustrates the Senate's ability to address issues of concern to the American people.

I cast my vote in favor of this much-needed reform.

Mr. KYL. Mr. President, I rise to take a few moments to explain why I will oppose S. 27 on final passage. At the outset, however, I want to congratulate my colleague JOHN MCCAIN for bringing this matter to a successful conclusion in the Senate. He has fought long and hard to get to this point.

If this bill becomes law, we know that the Supreme Court will have the final say as to its constitutionality. Few doubt that the bill at least raises issues about the fundamental liberties guaranteed in the First Amendment. Having taken an oath to uphold the Constitution, I cannot vote for a bill I believe the courts are almost certain to strike down. Both the restrictions on issue advocacy contained in Title II of this bill, and the bill's total ban on soft money contributions to parties are, in my opinion, likely to be declared unconstitutional.

Like the proponents of the bill before us, I believe that it is too difficult to mount a viable challenge to an incumbent Member of Congress; that Members of Congress spend too much of their time raising funds for their campaigns; that voter turnout is lower than it ought to be; and that advertisements by outside groups often drown out the voices of candidates. Worst of all, there is the lingering concern that fundraising considerations can affect Members' decisions.

But, whereas the proponents of the bill before us contend that their reforms will promote participation, competition, and disinterested deliberation within our politics, I am concerned that passing this bill, if anything, will have the opposite effect. I am especially concerned about the bill's adverse effect on our two great political parties, which are the primary targets of S. 27.

It is political parties that help challengers to overcome the significant advantages incumbents enjoy, and help candidates, incumbent and non-incum-

bent alike to fight back against attacks from outside groups.

It is political parties that do much of the voter registration and get-out-the-vote organizing that bring new voters to the polls.

And because a party will provide support to any credible candidate who will run on its line, it provides a counterweight to single-issue committees which can spend large sums of money defining the candidate.

As has been widely reported, the bill before us targets political parties by prohibiting them from receiving so-called "soft money" donations. It imposes particularly severe restrictions on party organizations in the 50 states, preventing them from using funds, other than federally-regulated "hard dollars", even under state law for party-building activities and constitutionally protected issue advocacy during any time-frame that coincides with a federal election. To realize that most state and local contests are conducted concurrently with federal campaigns is to realize how stifling such restrictions are going to be.

To the extent that there is credible evidence of corruption of officeholders by unlimited soft money contributions, it might be constitutional to limit the amount of such contributions, as opposed to banning them altogether. For that reason, I supported Senator HAGEL's proposal to cap soft money contributions to parties at \$60,000. Imposing such a cap would achieve the objective of preventing a donor from potentially corrupting those to whom he donates while heeding the Supreme Court's warning that any such limitation be tailored as narrowly as possible to meet that objective.

Senator HAGEL's alternative, which I supported and the Senate rejected, would arguably also have weakened political parties, but it would not have marginalized them, the way S. 27 is likely to do. The Hagel bill, by combining its restrictions on parties with a hard-money limit increase, offered a reasonable bargain: moderate the influence of parties, while increasing the ability of candidates to get their own message out.

The bill before us imposes much more stringent limits on parties, while providing much more modest relief to candidates in the form of a hard-money limit increase.

By causing a contraction of the supply of money available to parties and candidates, this arrangement will lead to either an attenuation of political debate or the movement of funds into the coffers of outside single-issue groups. They and the media will take the place of the parties and the candidates in carrying the messages of the campaign.

Again, this is assuming that the Supreme Court upholds a soft money ban. There are several legal precedents that make this assumption difficult to sustain.

In 1976, in the landmark case of Buckley v. Valeo, the Supreme Court

held that restrictions on political donations and expenditures impinge on the rights of speech and association protected by the First Amendment, and, therefore, are subject to the most stringent level of constitutional scrutiny.

In a 1996 case, Colorado Republican Party v. FEC, the Court made it clear that these guarantees extend to political parties, as well as to independent citizens and groups, noting that, as Justice Thomas wrote in a concurring opinion, "political associations allow citizens to pool their resources and make their advocacy more effective, and such efforts are fully protected by the First Amendment."

It is true that a common manifestation of that protected advocacy is the type of communication that has, not altogether inaccurately, been described as the "sham issue ad." But the Buckley court anticipated that "the distinction between discussion of issues and candidates and advocacy of the election or defeat of candidates may often dissolve in practical application," yet insisted that "discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." "The First Amendment," said the Court, "affords the broadest protection to such political expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

In light of these holdings, it is difficult to imagine that the courts could find a prohibition aimed at preventing the parties from engaging in this type of advocacy to be anything but an infringement on the free speech rights of those organizations. If, as I believe they will, courts strike down these provisions of the bill, and unions, corporations, and other entities are allowed to use unregulated funds for issue advocacy, S. 27's soft money ban on contributions to parties could give rise to a very plausible equal protection claim.

Of course, activity by independent entities does not fall outside the scope of the bill before us. The proponents of the bill suggest that we who worry about its impact on parties and non-incumbents should be consoled by the restrictions it places on the ability of such citizen groups to advance their views and coordinate their activities with political parties.

These provisions provide me with no consolation. As I noted, these restrictions will not likely survive judicial scrutiny. That outcome is one that we should welcome, because these restrictions are misguided.

I have great respect for my colleagues who confronted the issue of constitutionality and tried to craft a way to permit "genuine" issue ads while cracking down on "phony" ones. They attempt to identify a permissible subcategory of issue advertisements

that constitute "electioneering" without expressly advocating the election or defeat of a candidate.

But I believe that using the threat of mandatory disclosure of donor information or outright bans on advocacy as a lever to regulate the quantity, timing, and content of issue advocacy communications is fundamentally at odds with the First Amendment's injunction to Congress to "make no law . . . abridging the freedom of speech . . . or of the right of the people . . . to petition the Government for a redress of grievances."

Congress cannot be in the business of outlawing criticism of itself. Of course, I do not appreciate the unfair attacks that are all too frequently presented in single-issue advertisements. But I think that we would do well to resist the urge to silence those who would criticize us, even those who criticize us when we are most sensitive to criticism—at election time.

Unfortunately, passage of this bill leaves us with three unappetizing possibilities: that our work may be struck down *in toto*; that it might be refashioned by the courts into something altogether different than what was intended; or that it might be left as it is, which would leave us with a democracy less vital than the admittedly imperfect one it is our privilege to be a part of.

It is my hope that this bill will be modified in the House of Representatives to avoid those three results.

Mrs. FEINSTEIN. Mr. President, the Senate is poised to pass S. 27, the McCain-Feingold bipartisan campaign reform bill. The momentum for the bill is building. The President has announced that he is disinclined to veto this bill. We could be on the brink of enacting the first significant campaign reforms in a generation.

I would like to make a few observations.

First, I want to salute the bill's sponsors, Senators MCCAIN and FEINGOLD. We are considering this bill only because of the sheer force of their collective will. They have suffered innumerable set-backs pushing for this legislation over the past several years. But they never got discouraged; they never let up. Their dedication to this cause has been extraordinary.

I also want to commend the majority and minority leaders and the bill's managers, Senators MCCONNELL and DODD, for crafting a way to consider the bill that has been a breath of fresh air here in the Senate. For the past 2 weeks, we have operated in a way the Senate was meant to operate. We have been the deliberative body the Founding Fathers meant for us to be. I hope the spirit in which we have conducted debate on this bill continues long after we vote on its final passage.

Numerous public opinion polls have indicated that the American people overwhelmingly support campaign reform, but don't rank the issue as a priority. I think that's because they have

grown discouraged about the likelihood of Congress passing such reform. Maybe—just maybe—we will show the American people that we are capable of beating the odds, of coming together and doing something difficult.

With regard to the bill, we have beaten back several amendments designed to cripple it or drive away its supporters.

We have defeated the so-called "pay-check protection" amendments that were aimed right at the heart of organized labor.

We have voted to ban soft money, convincingly. That is key.

We have defeated an attempt to strip the bill of the Snowe-Jeffords provisions regarding sham "issue advocacy" by independent, often anonymous, groups that face no donor contribution limits or disclosure requirements.

We have defeated an attempt to make the bill nonseverable.

Most important, we have come to a reasonable compromise with regard to raising some of the existing hard money contribution limits for individuals by modest amounts, and indexing those limits for inflation.

I am proud that I helped to negotiate that compromise, along with the senior Senator from Tennessee and several other Members from both sides of the aisle.

The Senate voted 84-16 to approve the compromise we worked out.

Our compromise: doubles the limit on hard money contributions to individual candidates from \$1,000 per election to \$2,000 per election; increases the annual limit on hard money contributions to the national party committees by \$5,000, to \$25,000; increases the annual aggregate limit on all hard money contributions by \$12,500, to \$37,500; doubles the amount that the national party committees can contribute to candidates, from \$17,500 to \$35,000; and; indexes these new limits for inflation.

The Thompson-Feinstein amendment will reinvigorate individual giving. It will reduce the incessant need for fundraising. It will give candidates and parties the resources they need to respond to independent campaigns. It will reduce the relative influence of PACs.

I know that some campaign reform advocates are uncomfortable raising any hard money contribution limits by any amount.

I would argue that modest increases are imperative for the simple reason that the current limits were established under the Federal Election Campaign Act, FECA, amendments of 1974, Public Law 93-443, and haven't been changed since. That was 27 years ago.

I have spoken previously about how the costs of campaigning have risen much faster than ordinary inflation over the past 27 years these limits have been frozen.

The advantage of modestly lifting some of the limits is that doing so will reduce the time candidates have to spend fund-raising, time better spent with, prospective, constituents.

During this past election, my campaign had over 100 fundraisers. That took time. Time to call. Time to attend. Time to say thanks. And that was time I couldn't spend doing what my constituents want me to do.

The task of raising hard money in small contributions unadjusted for inflation is just too daunting, for incumbents and challengers alike.

Particularly in the larger States like California, where extensive television and radio advertising is imperative, it is not uncommon for Senators to begin fundraising for the next election right after the present one ends and they often find themselves "dialing for dollars" instead of attending to other duties.

Let's be honest with each other and the American people: campaigning for office will continue to get more and more expensive because television spots are getting more and more expensive.

Meanwhile, independent campaigns conducted by groups that are accountable to no one threaten to drown out any attempt by candidates or the parties to communicate with voters.

Spending on issue advocacy by these groups, according to the Congressional Research Service, rose from \$135 million in 1996 to as much as \$340 million in 1998. Then it rose again, to \$509 million in 2000. Most of this money is used for attack ads that the American people have come to loathe.

It is likely that spending on so-called issue advocacy, most of which is thinly disguised electioneering, probably will surpass hard money spending, and very soon. It has already surpassed soft money spending.

Clearly, the playing field is being skewed. More and more people are turning to the undisclosed, unregulated independent campaign.

The attacks come and no one knows who is actually paying for them. I believe this is unethical. I believe it is unjust. I believe it is unreasonable and it must end.

We have to raise the limit on hard money contributions to individual candidates and the parties. The pressure on them has grown exponentially, especially now that we are about to ban soft money.

The Thompson-Feinstein amendment the Senate adopted last Wednesday makes S. 27 possible. It becomes easier for us now to staunch the millions of unregulated soft dollars that currently flow into the coffers of our political parties, and replace a modest portion of that money with contributions that are fully regulated and disclosed under the existing provisions of the Federal Election Campaign Act.

People aren't concerned about individual contributions of \$1,000, and I don't think they will be concerned about donations of \$2,000.

No, what concerns people the most about the current system are the checks for \$250,000, or \$500,000, or even \$1 million flowing into political parties.

These gigantic contributions are what warp our politics and cause people to lose faith in our Government and they must be halted. They give the appearance of corruption.

The Thompson-Feinstein amendment, by increasing the limit on individual and national party committee contributions to federal candidates, will reduce the need for raising campaign funds from political action committees, PACs.

Our amendment, therefore, will reduce the relative influence of PACs, making it easier to replace PAC monies with funds raised from individual donors.

The concern about PACs seems unimportant now, compared with the problems that soft money, independent expenditures, and issue advocacy present. But we shouldn't dismiss the fact that PACs retain considerable influence in our system.

I represent California, which has more people—34 million—than 21 other States combined. I just finished my twelfth political campaign. For the fourth time in 10 years, I ran statewide. Running for office in California is expensive: I have had to raise more than \$55 million in those four campaigns.

I can tell you from my experiences over the years that I am committed to campaign reform, and I am heartened that we are close to passing S. 27.

Is it a perfect bill? No. Will it be subject to challenges in court? Undoubtedly. But I think S. 27 is a strong bill and I am optimistic that it will withstand the Courts' scrutiny. And as I said earlier, it is our best chance at reform in a generation.

We have an electricity crisis in California and much of the West. Our economy shows serious signs of weakening. We definitely have to address these issues, and others.

But the last 2 weeks that we have spent considering S. 27 have been time well-spent. Campaign reform goes to the heart of our democracy.

The way we currently finance and conduct our campaigns is a cancer metastasizing throughout the body politic.

It discourages people from running for office and it disgusts voters. So they simply tune out, in larger and larger numbers.

Discouragement, disgust, frustration, apathy—these feelings don't bolster our democracy, they weaken it.

We have an opportunity here, a rare opportunity, to do the right thing here with S. 27. I hope we don't squander such a precious opportunity.

Mr. BAUCUS. Mr. President, I have long been a supporter of campaign finance reform. I appreciate the Leadership's willingness to so fully take up this issue. It is a debate that has been a long time in coming. And the need has never been more urgent. Money has a stranglehold on democracy under our current system. It is clear that we must take action now to restore the public's faith in our political system.

Every year we talk and talk about reforming the system. We bemoan the role of special interests. We're forced to spend an inordinate amount of time raising money. We have to worry about financing the next race the day after we get elected.

That's not why we're here and it's not what we were elected to do.

Ideally, I would like to wipe the slate clean. Start over with a clean campaign finance system and a level playing field. For now, let's start by addressing soft money and the abuse of issue advocacy advertising. Exactly what McCain-Feingold, as amended, does.

Soft money only serves to further taint the image Americans have about politics. As soft money contributions increase, so does the perception that special interests own us. As a result, cynicism towards Congress and its activities continues to grow.

The use of unregulated soft money contributions must be curbed in Federal campaigns. Soft money, as a percent of total funding, has more than doubled since 1992. This is not a partisan issue. Soft money has more than doubled for both parties.

My entire state of Montana could fit through the soft money loopholes. The last time Congress considered such a thorough overhaul of campaign finance law was 1974. We thought then that regulations placed on hard money would straighten up the system. Instead, the use of soft money to the parties and groups has exploded. We've all heard this number over these days of debate, but I think it warrants being mentioned again: Last year's election parties collected a record \$490 million dollars in soft money. That's obscene. With \$490 million, school construction projects could be completed so our kids aren't learning in overcrowded classrooms. With \$490 million, we could move towards implementing a prescription drug benefit. Let's straighten out our priorities and have folks contribute instead to the projects that really need it.

The problem we're really facing is how grey the campaign finance laws have become. McCain-Feingold, as amended, would make them black and white. Just take issue advocacy advertising as an example. In the last couple campaigns, the lines have been blurred between express advocacy, which requires federal disclosures, and issue advocacy.

We can all recall advertisements in our own state that just barely skirted the lines. In Montana, the unregulated soft money ads started early. Close to a year before the election, groups started attacking candidates with mud-slinging ads. Groups with benign sounding names that hid their partisan bent. Ads that attacked candidates, and even told people where to call, but somehow fell under the "issue advocacy" definition. And were exempt from campaign finance laws.

Aren't we missing the point? The spirit of the ad is what's important. By

attacking only one candidate, that leads to the obvious conclusion that the ad is supporting the opposition. And that should subject the money used to pay for the ad to regulation and disclosure.

A new, clear definition of issue advocacy is necessary—one that closes the loopholes. I supported the original bill language that would ban "grey" issue advocacy ads that fall within 60 days of the general election or 30 days of a primary and was specific to corporate and Union treasury funds. However, I believe the Wellstone amendment, extending coverage to all third-party expenditures, makes McCain-Feingold a better and more balanced bill.

Now, there is one area where I differ with McCain-Feingold, and that is in my support for a non-severability clause. The bill, as it now stands, is fair and balanced legislation. Non-severability is the only tool available to guarantee that the balance and fairness of McCain-Feingold stands. By allowing the Court to strike down individual parts of the bill, we run the serious risk of a final bill that is very different than what was voted on. I am hopeful that the final bill will not encounter opposition by the Supreme Court and that severability will become a non-issue.

I applaud Senators McCain and Feingold for continuing to raise this issue. I believe that we can pass a comprehensive bill and achieve true, bipartisan campaign finance reform.

Mr. NELSON of Florida. Mr. President, I rise today to express my belief that the campaign-finance reform legislation we have before us addresses one of the most important issues facing America today. The influence of special interests and the enormous amount of money required to effectively run a modern political campaign have created a rift between the Congress and the American people.

The fact is our political system today is dominated by huge contributions to the national parties of "soft money." Sometimes, these donations circumvent the parties and flow through other avenues that lack public disclosure under the guise of issue advertisements. These large donations and suspect advertisements have cast a cloud of doubt over the entire political process. And this doubt has caused many Americans to lose faith in the system.

Is the McCain-Feingold bill the answer? It's not the total answer, but it's a step in the right direction. What we need to do is take our best hold and step forward and reform the law, right now.

Banning "soft money" from the system will go a long way toward removing the appearance of corruption that plagues the system today; and, the legislation's new disclosure requirements will add much-needed sunshine to the process.

Candidates, and the American people have a right to know the identities of the groups and people behind the so-

called issue ads that increasingly dominate the airways during campaign time.

Although I favor public financing, we're not at the point that we can pass public financing. So what are we going to do? My preference is, we change the system with the legislation we have before us. The people want reform; the country needs it; we should do it.

Mr. NELSON of Nebraska. Mr. President, I rise today to express my opposition to the McCain-Feingold bill. To be clear, I am not opposed to the impetus behind this legislation, which is to reform our current campaign finance system. I concur with my colleagues—who support this bill—that the present system is inadequate and inherently flawed. But, unfortunately, this is where our parallel viewpoints diverge.

While I agree that the present campaign finance system is imperfect, I believe that the McCain-Feingold alternative to that system is even more so. This legislation, once enacted, likely will hurt the status quo more than it will help. And, ultimately, I predict it will foster campaign finance regression, rather than institute campaign finance reform.

From the beginning, I have worked with my colleagues to negotiate a more fair and balanced package that, I believe, would have achieved thorough reform. Key parts such as the Hagel amendment on soft money contributions and the amendment on non-severability are not included in this final bill. Had they been included, these amendments would have made the legislation much more effective and comprehensive, and consequently, much more likely to receive my support.

To be fair and consistent, certain aspects of this final bill are laudable and do have my support. I am pleased that the Snowe-Jeffords provision and the Hagel amendment regarding disclosure are included. Increased accountability and transparency for special interest groups are important to the overall reform effort. Moreover, the Wellstone amendment, which extends the Snowe-Jeffords provision to independent advocacy groups, will help remove the facades behind which these groups hide. For too long, special interest groups have funded so-called issue ads whose main objective is to distort the facts. It is encouraging that this bill, as amended, confronts that issue.

The ability of state parties to carry out traditional activities such as voter registration, is another issue addressed by the Levin amendment, which I was pleased to join as an original co-sponsor. State and local candidates rely on get-out-the-vote efforts and voter registration activities which are usually funded by the state party. Since this campaign finance reform bill, prior to the Levin amendment, would have severely limited state parties, it became apparent that we needed to ensure that such crucial activities are not abolished as well. Without question, I am encouraged by the inclusion of this

amendment. It, and the ones regarding increased disclosure, are definitive steps in the direction of genuine campaign finance reform.

That being said, any ground gained by these steps is lost through the ban on soft money and the defeat of the non-severability clause. McCain-Feingold bans soft money contributions only to the national parties. As I have said before, this measure is ineffective, an ultimately unproductive. The soft money ban in this bill will likely be more of a temporary road block than a true dead end. I believe that eventually soft money will find a detour, and it will flow into federal elections from another direction.

A more realistic approach to the unfettered flow of soft money that pollutes our current campaign finance system, would have been to include the Hagel amendment, which would have capped soft money contributions at \$60,000. The Hagel measure was pragmatic and essential to real reform. With the absence of this language in the final bill, we are left with a plan that falls short on efficacy and long on futility.

Without the inclusion of a cap, instead of a ban on soft money to national parties, my support for this bill declined, but the nail on the coffin, so to speak, was the defeat of the severability clause. The non-severability amendment was characterized by its opponents as the "poison pill" of campaign finance reform. Quite frankly, I think the total package before us today would have been easier to swallow if it had been included.

The non-severability amendment would have prevented the courts from striking down some provisions and leaving others. Once the courts act, it is possible that the McCain-Feingold campaign finance reform law as passed by Congress will look nothing like the McCain-Feingold finance reform law tweaked by the courts. For this reason, the severability provision only weakens the bill and extends the inequalities fostered by the present system.

My conviction that the current campaign finance system is flawed remains unchanged. Comprehensive reform is undoubtedly needed; however, I do not believe this legislation will achieve that goal. It's often been said that something is better than nothing. Well, in this instance, the reverse rings true. Nothing is better than something. Therefore, I will vote accordingly and reserve my support for a more comprehensive and equitable campaign finance reform package.

Mr. HOLLINGS. Mr. President, the thrust of McCain-Feingold was to eliminate soft money. Now, the final bill doesn't eliminate soft money but, rather, redirects it. Soft money has been taken away from the political parties and redirected to the special interests. The thrust of McCain-Feingold was to minimize the influence of the special interests. It has now become maximized. And finally, the thrust of

McCain-Feingold was to eliminate the obscenity of the outrageous amounts of money that it takes in politics to be elected. The final bill now doubles this obscenity. But Senator MCCAIN has become such a symbol. McCain-Feingold has become such a message that Senators, in disregard of the substance but totally on message, will vote for it. I said at the beginning that there was no doubt that under *Buckley v. Valeo*, the Supreme Court would find McCain-Feingold unconstitutional. While the Court hurt us in *Buckley*, perhaps this time the Court will save us by finding McCain-Feingold unconstitutional. At least I am sober enough to vote no.

Mr. HATCH. Mr. President, after two weeks of floor consideration, we are now approaching the final vote on the campaign finance reform legislation. I have taken the floor on several occasions over the past two weeks to express my serious concerns with the various provisions of the bill. Given my concerns, and the failure of this body to vote to correct some of the problems, I will be voting against final passage of this well-intended, but seriously flawed legislation.

The one silver lining in the legislation that will likely pass this evening is a provision I authored that passed, which will give expedited judicial review by the Supreme Court of challenges to the constitutionality of the legislation. All of us, supporters and opponents alike, stand to gain by a prompt and definite determination of the constitutionality of many of the bill's controversial provisions. Because the harm these provisions will cause is serious and irreparable, it is imperative that we afford the Supreme Court the opportunity to pass on the constitutionality of this legislation as soon as possible.

Let me say again that I commend and respect the authors of this legislation for their attempts to address a troubling and unfortunate public perception about our political system. However, we also must respect the freedom of speech granted to every American by our Constitution. While the bill may alter or change our system of campaign finance, I think it will do little in actually reform it or making it better. In fact, McCain-Feingold, if passed and enacted into law, will, in my opinion, exacerbate the very problems that it seeks to solve.

The primary provision of McCain-Feingold essentially bans soft money by making it unlawful for national political party committees and federal candidates to solicit or receive any funds not subject to the hard money limitations of the Federal Election Campaign Act. It also nationalizes the state party structure by subjecting state parties to the regulations of the Federal Election Commission when candidates for federal office appear on the general ballot. The net result of this soft money restriction on parties will be to emasculate the present two-party system and to increase the power

and influence of the special interests. Ironically, special interest power and influence is exactly what the bill's sponsors purport is wrong with American politics today.

Even more importantly, the party soft money ban is an infringement on the rights of free speech and free association protected by the Constitution's First Amendment. It appears to violate several decisions of the U.S. Supreme Court, particularly the holding of the seminal case of *Buckley v. Valeo*. The ban will severely weaken the ability of parties to engage in electoral advocacy.

Yet, political parties have the same First Amendment rights as any other group. The restrictions on political party speech, without any specific showing of a potential for corruption or other necessity for doing so, and not on the speech of other associations and individuals not only infringes the First Amendment, but it also violates the principle of equal protection of the laws that the Due Process Clause of the Fifth Amendment guarantees.

The other main provision of the bill is the so-called Snowe-Jeffords provision. Under current law the only electoral speech that may constitutionally be regulated is so-called "express" advocacy, that is, speech that expressly advocates the election or defeat of a candidate. All other political speech is termed "issue" advocacy, which the government can almost never abridge.

Snowe-Jeffords blurs the distinction between the two categories of speech by creating a catch-all third termed "electioneering communications." Merely "referring to a clearly identified candidate" magically turns heretofore protected issue advocacy into regulated electioneering communication. This part of the McCain-Feingold would coerce disclosure of donors' identities, and this disclosure would destroy the right to free association recognized in various Supreme Court cases.

Snowe-Jeffords also completely bans corporate and union political "electioneering communication" speech. Again, this term sweeps in issue advocacy, which Congress may not ban, unless they meet the strict scrutiny standards prescribed by the Supreme Court, which in my opinion Congress has failed to do. Government has no business and no interest in banning the opinions of business or labor. They are already prohibited, and I bet most Americans do not know this, from directly contributing to candidates. This is important because the possibility of bribery, and even the appearance of a quid pro quo, is already ameliorated by law. Therefore, no justification exists for censoring the opinions of corporations and labor unions that this provision mandates. It too violates the Constitution's free speech requirements.

I believe there is also an equal protection problem in that the media is exempted from Snowe-Jeffords. Now, let me say that I love the media, as I

do any institution that brings knowledge to the American people. But the media should not have more rights to free speech than any other group, and McCain-Feingold gives the media a monopoly. Some Americans feel that the media is already all-powerful. Personally, I think this is an exaggeration. But if this bill passes, they very well might be.

I have often said that I am an advocate of Oliver Wendell Holmes' view of free speech as a competition in the market place of ideas. The remedy of the wealthy and powerful buying speech is not censorship. This is not the American way. The remedy is more speech. We Americans have always banded together and pooled our money to compete. Joining is the American way. Banning is not. Let's have competition, no censorship.

I do admit that a problem exists within our system of government. That problem, the real problem, is that people feel detached and disassociated from their government. They feel that others, whomever they are, the rich, the special interests, labor, business, just not them—have more access to their leaders and more influence with them. The American people want more. They want more access, more accountability, more of a say in the decisions that effect their daily lives.

I suggest that the solution is not making it more difficult for people to get involved in politics. It's not shutting down the parties, which represent the most accessible means for most people to engage in political activity.

Real finance reform will only come when the size of the federal is reduced. Until that happens, there will be a powerful incentive for special interests to seek a piece of the federal pie. Real campaign finance reform is passing a tax cut so that the people will be able to spend their own money instead of big government spending their money on behalf of special interests. That is what I have fought for in my 25 years of public service in the Senate.

My esteemed colleagues from Arizona and Wisconsin have spent countless hours doing what they believe is the right thing. Their efforts are laudable. I sincerely applaud them for the work that they have put into this debate. However, I must vigorously disagree with their solution. More speech—not less—is the answer. I believe that the correct way to solve the problem is to lift the limits on contributions; increase disclosure, and stiffen the penalties.

Unfortunately, my attempts to increase disclosures by corporations and labor unions were defeated, probably because of the pressures by the same special interest labor unions, that the authors of this legislation wanted to address. But today, instead of advocating these policies, I must oppose the McCain-Feingold bill. I must attempt to turn the so-called "reform movement" away from the very dangerous path down which it is now proceeding.

Hopefully, at some point, we can discuss some real, and I must say Constitutional alternatives.

Let me focus on Title I of McCain-Feingold and describe why I believe the bill is likely to have constitutional challenges. Title I of the McCain-Feingold is labeled "Reduction of Special Interest Influence." Indeed, this is the primary intent of the entire bill—to diminish the "influence" of so-called "special interest groups." While I cannot fault the bill's supporters for their genuine efforts, I do not believe that the bill effectively solves the problem that it seeks to. Indeed, passage of McCain-Feingold will increase the influence of special interests, and it will do so by effectively ruining the political parties. I will not support McCain-Feingold, in part, because it, in my opinion, unconstitutionally suppresses the voices of the political parties.

In its effort to regulate "soft money," McCain-Feingold has two dramatic adverse effects on political party activity. First, it dramatically limits the issue advocacy, legislative, and organizational activities of political parties. Second, it imposes federal election law limits on the state and local activities of national political parties.

It is important to recall the U.S. Supreme Court's comment in *Colorado Republican Party* that "[w]e are not aware of any special dangers of corruption associated with political parties. . . ." Political parties are merely the People associating with others who share their values to advance issues, legislation, and candidates that further those values. When they do these things, they are just doing their historic job as good citizens. The notion that they are somehow corrupt for doing so is both strange and constitutionally infirm.

Let me first describe the beneficial role of political parties in American democracy. I don't need to tell any of my fellow Senators what political parties do or how they do it. Nor do I need to tell them that the focus of political parties is to win elections. They also already know how the parties go about winning elections. For the most part the parties do it by spending money. They spend their money—their own money—to promote their views and convince others of them. They fund activities like voter registration drives, get out the vote activities, and advertising.

Political parties have many beneficial effects on American democracy. The Senate recognized their importance when it passed the FECA in the mid-1970s and expressed its desire to strengthen political parties. The Committee Report accompanying FECA observed then that "a vigorous party system is vital to American politics." It was true then, and it remains true today. The Committee Report noted that parties perform "crucial functions in the election apart from fund-raising."

In our country, while one man has one vote, inevitably citizens will gather to pool their votes into blocks. It has always been this way, and it will continue to be so regardless of whatever legislation we pass. The problem with these interest groups or voting blocks is that they focus on their own very narrow issues and not on what is best for the country at large.

James Madison identified these groups as "factions." He noted in *The Federalist 10* that there are no means of controlling the "evils of faction that are consistent with liberty. The only way to eliminate faction is to eliminate liberty, which is worse than the disease" of faction.

Madison's celebrated solution to the problem presented by factions—embodied in the Constitution—was to create a system that pitted interest groups against each other and so as to bring the best ideas to the top. The sheer size of the new republic—and its subsequent growth—expanded the number of participants in public debate. As a result, regional and other interest groups balance each other out to an extent. Political parties continue this process of moderation.

Parties moderate special interests because they must appeal to the entire nation. You will recall that the goal of parties is to win elections. They can only do this by laying out broad policy platforms that will appeal to wide groups of people. They offer a broad and encompassing vision of governance. Party leadership has to craft a message that will allow its candidates to win election in all 50 states. Contrast the role of parties to special-interest groups, which only want to pursue their specific goals. Their leadership is not seeking to win elections in states throughout the union, but typically only the passage of a narrow set of legislation.

Allow me to add that I am not disparaging these special interest groups. They play an extremely crucial role in our democracy as well. They are not the problem, as they are essential to our democracy. They heighten the public's and Congress' awareness of key issues. They have a role to play, but so do the political parties. I do not want to favor one over the other, and that is what McCain-Feingold will do. No soft money for political parties, but unlimited amounts to special interest groups.

However, political parties are not just about electing candidates, particularly federal ones. Political parties constitute a vital way by which citizens come together around issues and values expressed in the planks of their party platforms—at all levels of government. Parties advocate these issues in the public forum in addition to lobbying for legislation and engaging in efforts to elect candidates. Parties are just as focused on the promotion of issues as are ideological corporations, such as the National Right to Life Committee or The Christian Coalition

of America, and labor unions, such as the American Federation of Labor and Congress of Industrial Organizations, although with a broader spectrum of issues. McCain-Feingold ignores this reality and treats political parties as simply federal candidate election machines.

Now, the big point the supporters of McCain-Feingold make in support of the soft money party ban is that large contributions to political parties create undue influence or an appearance of impropriety. This is not even a gross exaggeration. It is simply wrong.

Philip Morris, the largest donor to the Republican National Committee during the 1998 cycle, gave approximately \$2 million in soft money, but this represented less than 1 percent of the total that the Republican National Committee raised. Similarly, the Communication Workers of America, the Democrat's largest soft money donor, gave \$1.5 million to the Democratic National Committee, but this too represented less than 1 percent of its total.

It doesn't make sense to conclude that an entity that contributes less than 1 percent of a party's funding could have any significant effect on the party's policies. The parties must keep in mind the goals of the other interests to which they also have to appeal. A more likely explanation for the largesse is that the donors to both parties support the policies they already espouse.

I would also like to note that whatever influence a large donation made to a political party gives the donor, and, yes, I am pragmatic enough to realize that it does grant the donor a certain amount of access, the effect of donations is diluted among all of the party's elected officials, the 200 plus Senators and Representatives in either party. Also, because soft money donors cannot direct to which candidate or race their money should flow, they sometimes support losers. I make these points to demonstrate that soft money donations are greatly diluted and do not pose the same "appearance of corruption" that direct contributions to candidates do. Importantly, the Supreme Court has clearly stated that First Amendment rights can only be regulated where there is corruption or an appearance of corruption.

As is apparent, McCain-Feingold will dramatically weaken political parties. In the last election cycle, the Democratic Party raised \$243 million in soft money—fully 47 percent of its total. The Republican Party raised \$244, 35 percent of its total. Under McCain-Feingold, the parties would lose this important source of funding, and this shortfall could not be filled by simply wishing into existence more hard money. It doesn't take a Fields Award winner in math to determine that this kind of reduction will dramatically hinder the parties' ability to effectively deliver their messages. Such a ban would accordingly weaken the abil-

ity of parties to participate in the public debate, while simultaneously enhancing the relative power of special interest to dominate that debate. I believe that McCain-Feingold will effectively end the system of two-party government that we now know. And this system has brought remarkable stability to the United States.

Political parties already complain that interest group spending threatens to marginalize parties as interest groups increasingly control the agenda, crowd out political party commentary, and confuse the electorate. A ban on political party soft money would exacerbate this situation. Voters would have a less clear idea of the party agenda, and parties would find it more difficult to translate election returns into public mandate. Effective government would suffer.

Parties fill a vital role in our political system. In the Information Age, narrow, specialized interest groups have an easier time of forming and organizing themselves. In times like these, we need to maintain the party system rather than weaken it, as McCain-Feingold will do.

Let me highlight why McCain-Feingold is unconstitutional as it relates to political parties. Let me begin by asking a question, "if individuals and narrow interest groups enjoy the basic First Amendment freedom to discuss issues and the position of candidates on those issues, how can political parties, which have wide bases of interests that are necessarily tempered and diffused, be deprived of the right to engage in such issue advocacy?" My answer is simply that they should not be deprived of their rights.

I note at the outset of this analysis that political speech and association are at the heart of the First Amendment protections. As the United States Supreme Court declared in *Buckley*, "the constitutional guarantee, of the First Amendment, has its fullest and most urgent application precisely to the conduct of campaigns for political office. The Court has also stated that free expression in connection with elections is "at the core of our electoral process and of the First Amendment freedoms." [*Williams v. Rhodes*, 393 U.S. 23, 32 (1968).] Thus, as the Supreme Court noted, "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates." [*Mills v. Alabama*, 384 U.S. 214, 218 (1966).]

Efforts by Congress, the FEC, and state election commissions to regulate issue advocacy have been repeatedly and consistently rebuffed by the Federal courts as violations of the First Amendment right to free speech. No fewer than two dozen court decisions have made clear that interest-group advertising or pamphleteering that does not expressly advocate the election or defeat of a candidate cannot,

consistent with the First Amendment, be subject to contribution or expenditure limits, or even reporting limits. Yet this is exactly what McCain-Feingold seeks to do.

In *Buckley v. Valeo*, the Supreme Court ruled that restrictions on political giving and spending interfere with political debate. Such restrictions survive under the First Amendment only if justified by a compelling government interest in preventing corruption or the appearance of corruption. Those restrictions must also be narrowly drawn to achieve that interest. Soft money cannot, under current law, be used by political parties to expressly advocate the election or defeat of a candidate. Rather, it is used in large part for issue advocacy, which the Supreme Court and numerous lower courts have helped may not be regulated. Thus, McCain-Feingold inhibits the ability of political parties to engage in issue advocacy by restricting the resources available to them. Thus, it infringes on the political parties' right to free speech.

However, proponents of abolishing "soft money" argue that this is simply a "contribution limit." The fallacy of that argument, of course, is that the Supreme Court has justified contribution limits only on the ground that large contributions directly to candidates create the reality or appearance of quid pro quo corruption. Soft money contributions are not contributions to candidates:

Indeed, the proposed ban on soft money contributions cannot be justified on the theory that political parties corrupt federal candidates, which the Supreme Court has already rejected. In *Colorado Republican v. FEC*, Fed. Election Comm. the FEC took the position that independent, uncoordinated expenditures by political parties ought to be treated as contributions to the benefited candidate. Such treatment would have resulted in allowing individuals, candidates, and political action committees to spend unlimited amounts of money on independent expenditures to advocate the election of a candidate, while limiting the amount a political party could spend for the same purpose.

The Supreme Court disagreed with the FEC, noting that "[w]e are not aware of any special dangers of corruption associated with political parties" and, after observing that individuals could contribute more money to political parties, \$20,000, than to candidates, \$1,000, and PACs \$5,000, and that the "FECA permits unregulated 'soft money' contributions to a party for certain activities," the Court concluded that the "opportunity for corruption posed by these greater opportunities for contributions is, at best, attenuated." The Court continued in this vein with respect to the FEC's proposed ban on political party independent expenditures, which has direct application to McCain-Feingold ban on soft money contributions.

[R]ather than indicating a special fear of the corruptive influence of political parties,

the legislative history [of the Act] demonstrates Congress' general desire to enhance what was seen as an important and legitimate role for political parties in American elections. . . .

We therefore believe that this Court's prior case law controls the outcome here. We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties.

The concurring justices also found little, if any, opportunity for party corruption of candidates because of their very nature and structure.

The Supreme Court found in the MCFEFL case that the prohibitions on corporate contributions and expenditures could not be constitutionally applied to non-profit ideological corporations which do not serve as a conduit for business purposes. *Fed. Election Comm. v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986) Similarly, political parties similarly pose no risk of corruption because people give money to parties precisely because they support what the political party stands for.

A contribution to a political party is for the purpose of enhancing advocacy of the issues the party represents. Any individual unhappy with the use of the money may simply quit contributing and leave the political party. In sum, the threat of corruption cannot justify a limit on issue advocacy and, even if it could, political parties pose no threat of corruption to their candidates.

In sum, in *Colorado Republican Fed. Election Comm.*, the Supreme Court found that, just as independent expenditures of interest groups pose no danger of corrupting candidates, neither do those of political parties.

A second constitutional infirmity with McCain-Feingold results from the proposed unequal treatment of political party speech in relation to speech of other entities. Whereas non-party group may use funds that it collects from its members to engage in issue advocacy, McCain-Feingold would extensively regulate and burden political party issue advocacy.

The final constitutional defect of McCain-Feingold's soft money ban on political parties is its insult to the federalist system. Under a provision of the bill, state and local parties are directly affected by the party soft money ban as a result of the bill's exceedingly broad definition of "federal election activity", which governs political party expenditures if even a single federal candidate appears on the general election ballot, no matter how many state and local candidates also appear on the ballot.

In simpler terms, under McCain-Feingold, in those even numbered years in which typically federal congressional elections occur, state and local parties may only use federally regulated hard money for: Any voter registration within 120 days of the election; All voter identification, get-out-the-vote or "generic campaign activ-

ity" before the election. The bill defines "generic campaign activity" as "an activity that promotes a political party and does not promote a candidate." Thus, it would even include yard signs that say "vote Democrat" or "support the GOP." Any TV, radio, newspaper, magazine, billboard, mass mailing, telephone bank, leafleting or other "public communication" that mentions a candidate for federal office—whether or not it also mentions a candidate for state or local office. The entire salary of any state, district or local party employee who spends 25% or more of the employer's compensated time in a single month on any of the above activities or any "activities in connection with a Federal election":

This constitutes an unprecedented federalization of the most basic party-building functions engaged in by state and local party committees.

Forty-five states hold elections for state and local candidates only during the even numbered years that federal elections occur. The only states that do not are Virginia, Kentucky, Louisiana, New Jersey, and Mississippi. Consequently, for these forty-five states, state and local party mechanisms become entirely federalized and subject to federal regulatory authority. Imposition of federal contribution limits on national parties would improperly arrogate authority over state campaign financing decisions to the federal government.

Again, recognizing that a prohibition of soft money donations to national party committees alone would be wholly ineffective, McCain-Feingold seeks to impose soft money restrictions on state parties as well, even though state party activity is thoroughly regulated by state campaign finance laws.

The money spent on elections has consistently increased over the years, and no one believes that McCain-Feingold is going to reverse this trend. Rather than stop soft money, the bill will simply divert it into other channels, ones that are more opaque, less accountable, and represent narrower interests than do the national parties.

What do you suppose the result of this bill will be? In a recent *New York Times* article, entitled, "Big Donors Unfazed by Prospect of Soft Money Limits," dated March 24, it was reported that if Congress banned party soft money, most big donors would evade the ban by writing big checks to advocacy groups allied with candidates and the national parties as a way to get their pet projects and issues before the public.

The problem with such a result is that these non-party groups are completely unregulated, as they should be. We cannot constitutionally compel them to disclose their activities, and so citizens will have no way of knowing who is actually behind the efforts. This is a perverse and unintended effect of McCain-Feingold. Money will be more hidden, and people will feel less responsible for their democracy, as they have

no control over these groups as they do over the parties. Despite the fact that it is unintended, it is nevertheless practically inevitable.

It is important to remember, that soft money donations to political parties do not go unregulated, as Bobby Birtchfield noted in the Senate Rules Committee hearings on Campaign Finance last year. First, both receipts and disbursements of soft money by political parties are currently reported to the FEC, and are available on the Internet. Second, much of the activity financed by soft money is regulated by state election law. Finally, political parties cannot use the soft money they raise—nor can candidates—to advocate the election or defeat of a candidate for federal office.

Let me conclude with wholeheartedly agreeing with these observations of Alan Reynolds of the Manhattan Institute. I quote.

On the face of it, the McCain-Feingold obsession with “soft money” looks fishy. Soft money accounts for less than 16 percent of federal campaign expenditures according to Common Cause. And campaign expenditures do not even include some of the most important ways of influencing policy, such as lobbying and issue ads. Lobbying cost \$2.7 billion in 1997-98, according to the Center for Respective Politics (CRP), while Common Cause counted soft money collections of merely \$193 million during those years. Lobbyists would be wise to lobby for a ban on soft money, because they would then have even more clout and more money.

Everyone in Washington knows who the most politically influential interest groups are, and most of them do not even appear on lists of top soft money donors. Fortune asks lawmakers and congressional staffers to name the most politically powerful organizations. In 1999, the top 10 were the AARP (American Association of Retired Persons), the NRA (National Rifle Association), the National Federation of Independent Business, the American Israel Public Affairs Committee, the AFL-CIO, the Association of Trial Lawyers, the Chamber of Commerce, the National Right to Life Committee, the National Education Association and the National Restaurant Association. What gives most of these groups political clout is not contributions to political parties, but old-fashioned lobbying, public policy advertising, and in some cases (such as AARP, the NRA and the AFL-CIO) the ability to influence a large number of members' votes.—Alan Reynolds, “The Economics of Campaign Finance Reform,” *The Washington Times*, March 22, 2001.

I believe, no, I know, that we are not a corrupt body. The United States Senate is made up of fine and exemplary men and women, with whom I am proud to associate. I also know that Americans are able to discern the truth of political matters, and that more speech, not less, will allow them to make the most informed decision. Finally, I know that the American people should be able to give money in support of whatever cause they choose. Whether it's a group of 10,000 or a single person, their right to speak should be unfettered. I urge my colleagues to vote against this bill.

Mr. DASCHLE. Mr. President, Mark Twain once noted that politicians' big-

gest objection to “tainted” money is, “tain't mine.”

My colleagues, today we stand on the verge of proving that saying wrong.

In the last two weeks, we've achieved some things in this Senate that few people thought, going into this debate, were possible.

We have had a real debate. We have reached bipartisan agreements. We have stood together, Republicans and Democrats, and rejected amendments that would have made this bill unworkable.

And we have accepted amendments that improve the bill.

Thanks to the hard work of Senator WELLSTONE, we broadened the Snowe-Jeffords provision to bar sham issue ads so that all outside groups are treated equally.

Thanks to the hard work of Senators TORRICELLI, CORZINE, DURBIN and DORGAN, we lowered the cost of campaigns by ensuring that the stations that enjoy the benefit of federally licensed airwaves give candidates the lowest unit cost for their political advertisements.

Thanks to the hard work of Senator SCHUMER, we put new teeth into the limits on the vast sums of money national parties may spend on coordinated expenditures for candidates.

Moreover, we turned back destructive amendments aimed at silencing the voices of working people.

I will be honest, this bill is not perfect.

It now includes increases in the amount of hard money that may be contributed to candidates and parties. I believe we must reduce the amount of money in politics—no matter the form. Still, I supported this amendment reluctantly, and only because it allowed this bill to move forward, and to reach this important vote.

The bill also includes an unworkable scheme for financing opponents of wealthy candidates that, in my view, favors incumbents and unwisely multiplies the amount wealthy individuals can contribute to candidates.

These flaws are not insubstantial, but the benefits of this bill far outweigh them. And when it comes to an issue as central to our democracy as the trust people place in their elected officials, we cannot let the perfect be the enemy of the good.

And make no mistake this is a good bill.

We owe that to the stewardship and commitment of Senators MCCAIN and FEINGOLD.

Throughout these last two weeks, Senators MCCAIN and FEINGOLD have shown the same steadfast leadership that brought us to this point.

They have refused to compromise the essential components of their bill in face of incredible pressure from all sides.

And they have acted in the national interest rather than their respective partisan interests.

I thank them for their service to our republic and to this Senate.

I also want to thank Senator DODD for his management of this bill for our side.

Senator DODD has managed to ensure that every viewpoint within our caucus is heard and accommodated. We would not be on the verge of passing this bill without Senator DODD's commitment to our caucus, to our nation, and to reform.

I also want to thank Senator MCCONNELL, who has been honest in his disagreement with this bill, and fair in his handling of it.

This is indeed the way the Senate should work. A Senate that brings up bill, gives members an opportunity to legislate, and entertains deep and meaningful debate—is a tribute to us all.

It is also a Senate that gets things done.

The McCain-Feingold bill does not address every flaw in our campaign system. But, as Senator FEINGOLD has said so often: “It does show the public that we understand that the current system doesn't do our democracy justice.” And it curbs some of the most egregious injustices in that system.

There are those who have argued, and will continue to argue, that in an attempt to make things better, we will only make things worse.

Since its founding, the goal of America has been to strive for that “more perfect union” our founders envisioned. To say that we shouldn't attempt to make things better begs the question, “Is what we have now good enough?”

I believe that if you look at the rising tide of money in politics, the influence that money buys, and the corrosive effect it has on people's faith in government, the answer is clearly no.

Ours is a government “of the people, by the people, and for the people.” It is not a government of, by, and for some of the people.

This bill will help put the reins of government back into the hands of all of the people.

I hope that we pass it, I hope that our colleagues in the House will follow suit, and I hope the President will sign it.

It has taken us a long time to get to this point.

The last time Congress tried to strengthen our political system by loosening the grip of special interest money was 1974, more than a generation ago.

Congress may not have another chance to pass real campaign reform for another generation, long after most of us will have left here.

The decision we make today, whether to pass this bill or not, will likely have a profound impact on each of us for the rest of our time here.

More importantly, this decision will have a profound impact—for better or worse—on the kind of system, and the kind of America, we leave to our children.

As a wise man once said on another occasion: “We cannot escape history.”

This is a critical moment in our nation's history.

What we do will be remembered for years to come.

Success is within our reach.

Let us remain united. Let us pass this final test. Let us take the power away from the special interests and give it back to the American people, where it belongs.

We can do it. The time is now.

Mr. THURMOND. Mr. President, I rise today to express my opposition to S. 27, the so-called Campaign Finance Reform bill. My opposition is based on three conclusions I have reached regarding this measure. First, the legislation is unconstitutional; second, the legislation will hinder rather than encourage citizens from participating in the political process; and third the legislation will push more political money into the shadows of undisclosed special interest spending.

This bill, on its face is unconstitutional on at least three counts. The measure restricts free speech, the right of association, and the right of persons to petition their government for redress of grievances.

The underlying premise of their campaign finance reform legislation is the proponents claim that there is too much in political campaigns, and the increasing reliance on and influence of third-party interests groups. While there is a legitimate concern regarding the fairness of elections and the need to eliminate the actual or perceived buying and selling of elections, this bill take the wrong approach.

To address concerns of the reality or appearance of improper influence stemming from candidates dependence on larger campaign contributions, a number of campaign and election reforms were enacted during the 1970s. These reforms imposed limits on contributions, required disclosure of campaign receipts and expenditures, and set up the Federal Election Commission, FEC, as a central administrative and enforcement agency. This framework has been upheld by the Courts and works well. Campaign contributions and expenditures are fully reported, giving all voters the opportunity to know the basis of support of a particular candidate.

I supported the amendment to raise the limit of campaign contributions. The increase in the limit was appropriate, given the limit was established in 1974, and inflation has lessened the value of the 1974 dollar to about 35 cents. More importantly, regulated and disclosed contributions of a reasonable amount assist candidates in publicizing their message. Democracy can only be improved by more political discussion and participation. Yet, supporters of this bill apparently seek to reduce political funding and associated political discourse.

The bill's limitations on political expenditures are similar to prior expenditure limits struck down by the Supreme Court's landmark *Buckley v.*

*Valeo* ruling [424 U.S. 1 (1976)]. In that case, the Supreme Court invalidated limitations on independent expenditures, on candidate expenditures from personal funds, and on overall campaign expenditures. These provisions, the Court ruled, placed direct and substantial restrictions on the ability of candidates, citizens, and associations to engage in protected First Amendment rights.

The legislation that will likely be adopted by the Senate includes limitations on independent groups who wish to publicize and advocate their positions on matters of public policy. Attempts to regulate political speech, even the requirement for limited disclosure, will have a chilling effect on issue oriented speech.

The bill restricts the right of citizens to associate and coordinate their activities of the group as a political party. The limitations on party funding and activities extend to voter registration drives, get-out-the-vote drives, and public communications, including advertising, mass mailings and phone banks.

The purpose of political parties is to identify and elect candidates who support policy choices shared by members of the party. Members of political parties have a constitutional right to gather together and to petition their government for the redress of grievances. The pending legislation restricts the ability to associate, to raise needed funds for legitimate party activities, and to adequately publish the message of the party. Again, this impedes political participation and only helps incumbents maintain their advantage in the electoral process.

The bill will have the consequence of pushing political spending from the regulated and disclosed "hard money" side into the unregulated, undisclosed world of third-party independent expenditures. I do not believe this measure will reduce the amount of money spent on campaigns. But I do fear it will result in candidates losing control of their own campaigns. As direct candidate and party support are limited, I believe there will be a move by independent groups to exercise their constitutional right to speak on political matters. Candidates and parties will be left defenseless against the onslaught of such advertising. This will likely result in less open political discourse, and an increase in the "noise" level of attack ads and unsubstantiated political claims.

My campaign days are over. I have no personal interest in the manner in which campaigns will be financed or run in the future. But I do have an interest in defending the liberty and constitutional rights of my constituents. This legislation restricts those rights and will discourage their participation in the political process.

For these reasons I will not support final passage of S. 27. I express my appreciation to the Senate, for the manner in which the debate has been con-

ducted. In particular, I thank the Chairman of the Rules Committee, Mr. MCCONNELL, for his leadership in protecting the Constitution and defending the rights and liberties of all Americans.

Mr. DODD. Mr. President, I yield for the Senator from Wisconsin.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, we have had a full two week debate on the Bipartisan Campaign Reform Act of 2001. It has been a good debate, and the bill has been improved and perfected in many respects. Thirty-eight amendments were offered, and 17 were adopted. Our vote this evening will be the 27th roll call vote of the debate. All Senators have had an opportunity to make a mark on the bill, and I think the Senate and the country have benefited from this full and fair debate.

The sponsors and supporters of the bill have done everything we can to address legitimate concerns about its provisions. In some cases, amendments were offered and adopted, in others, sections of the bill were dropped. Still, this is a complex area of the law, and we know that questions remain about how certain provisions are intended to work. We want to try to answer as many of those questions as we can.

Mr. MCCAIN. Mr. President, two weeks is a long debate in the Senate. I want to thank all my colleagues for their participation and their cooperation. We hope that many of the questions that might arise about the intent of our bill have been answered in this extraordinary exchange in which so many Senators have taken part. But other questions will undoubtedly come up. To the extent we can anticipate those questions, we want to make sure that our intent is clear.

I therefore ask unanimous consent on behalf of myself, Senator FEINGOLD, Senator THOMPSON, Senator LIEBERMAN, Senator JEFFORDS, Senator LEVIN, Senator SNOWE, Senator SCHUMER, Senator COCHRAN, Senator COLLINS, Senator CANTWELL, Senator EDWARDS, and Senator DURBIN, that a document entitled Statement of Supporters of the Bipartisan Campaign Reform Act of 2001 Concerning Intent of Certain Provisions be printed in the RECORD.

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

STATEMENT OF SUPPORTERS OF THE BIPARTISAN CAMPAIGN REFORM ACT OF 2001 CONCERNING INTENT OF CERTAIN PROVISIONS

As supporters of S. 27, the Bipartisan Campaign Reform Act of 2001, we want to make clear our intent with respect to certain questions that have been raised concerning the effect and operation of the bill. We intend this statement to be guidance for our colleagues in the House, the Federal Election Commission, and the courts should there be any misunderstanding about these provisions in the bill.

New section 323(c)—We intend that this restriction on the use of non-federal money for fundraising costs should not apply to an authorized campaign committee of a candidate for state or local office.

New section 323(d)—We intend that this restriction on the raising of non-federal money by the parties, their officials, or entities controlled by parties or their officials for tax exempt organizations should only apply to 501(c) organizations that have made or intend to make disbursements in connection with a federal election, including Federal election activities as defined by the bill. Thus, charitable contributions to groups like the Red Cross are not restricted as long as those groups do not use money donated by the party for Federal election activities. Furthermore, the 527 organizations referred to in new section 323(d)(2) are not intended to include state or local party committees or authorized campaign committees of state or local candidates. Finally, nothing in this provision is intended to affect the prohibition of national parties and federal candidates and officeholders raising or spending non-federal money.

The definition of "Federal election activity" in section 101(b) was modified by the Specter amendment. That amendment is intended to provide that if subclause (iii), which describes a certain type of public communication, is held to be unconstitutional, then an additional limitation on that type of public communication is to be added, narrowing the reach of the definition.

The reporting requirements in the new section 304(d) added by section 103(a) of the bill are not intended to apply to authorized campaign committees of state and local candidates whose only expenditures on Federal election activities do not refer to a Federal candidate.

Only the direct costs of producing and airing electioneering communications is intended to be included in determining whether a person reaches the \$10,000 aggregate amount of disbursements that triggers the reporting requirements of Snowe-Jeffords.

The reference to a clearly identified candidate is intended to mean a candidate who is up for election in that two-year cycle. Therefore, if one Senator is up for election in a cycle, an ad that appears within 60 days of an election and mentions only the second Senator for that state is not an electioneering communication, even though the second Senator is also technically a candidate for election some years hence.

With respect to the requirement that an advertisement be targeted to the electorate of the candidate who is mentioned in the ad for it to be an electioneering communication, if the ad reaches only an incidental number of members of the electorate for that race, the ad would not be an electioneering communication. (This might theoretically happen, for example, because the station on which a true issue ad is broadcast happens to reach a small number of households in another state, or because a few people from the candidate's state happens to be traveling in the state where a true issue ad is run.)

A communication that mentions candidates' names only in the context of announcing or promoting a non-partisan candidate debate or forum is not intended to be considered an electioneering communication.

The Snowe-Jeffords provision is intended to have no effect on the determination by the Internal Revenue Service of what kinds of activities tax-exempt organizations are permitted to engage in under the Internal Revenue Code.

John McCain; Russ Feingold; Thad Cochran; Carl Levin; Fred Thompson; Joe Lieberman; Susan Collins; Chuck Schumer; Olympia Snowe; John Edwards; Jim Jeffords; Maria Cantwell; Dick Durbin.

Mr. FEINGOLD. Mr. President, I rise to reflect on the road this legislation

has traveled, and thank the many Members of this body, past and present, who have helped to bring us to this moment.

It has been a long road to this moment, and we wouldn't even have begun this journey without the tenacity, dedication and the courage of my good friend from Arizona. He is a great legislator, a great leader, and, above all, a great friend. He and I have been in this fight for many years, and my respect for him has grown with every challenge we have faced together.

We have gotten to this moment because of his leadership first and foremost, but also because of the leadership of so many distinguished colleagues who have given this bill their support along the way. I want to take a few moments to recognize some of the Members have contributed to this legislation.

I want to thank our earliest supporters, who gave their support to the McCain-Feingold bill when it was first introduced in the 104th Congress, Senators such as John Glenn, Paul Simon, Nancy Kassebaum-Baker, and Alan Simpson, who gave us crucial bipartisan support when this effort was just getting off the ground. This kind of bipartisan bill wasn't totally unprecedented but it was pretty unusual, and the support of those distinguished Senators lent important credibility to our effort in its early days.

I thank Senator LIEBERMAN, who has been a steadfast supporter of reform, and who helped to build crucial momentum for this legislation with his leadership on the 527 disclosure bill in the last Congress. The success of that legislation was a great breakthrough after so many years when any reform effort was stonewalled by our opponents. The day that that bill passed the Senate, I remember thinking that enactment of the McCain-Feingold bill was not going to be far behind.

And of course the great breakthrough at the beginning of this Congress was the day when Senator THAD COCHRAN joined us in introducing this bill. I have great respect for Senator COCHRAN, and his support on this issue has been invaluable. I cannot thank him enough for his commitment to this legislation. Once he joined our effort, he was with us with every ounce of determination and grace that he brings to all of his work here in the Senate.

One of our newest Members, Senator MARIA CANTWELL also gave us important momentum when she made campaign finance reform a central issue in her campaign, and gave this bill her strong support. After her victory, the oft-repeated claim that no Senator has ever lost an election over this issue could simply no longer be made.

Senator JOHN EDWARDS and Senator CHUCK SCHUMER have both been a terrific asset on this issue, especially right here on the Senate floor. Both of them have devoted a great deal of their time, and their skill as debaters, to this bill, and I am very grateful for their efforts.

The efforts of Senator OLYMPIA SNOWE and Senator JIM JEFFORDS to craft the phony issue ad provision have been essential to this legislation. They worked tirelessly to put together a balanced provision that gets at the root of the issue ad problem, and I thank them for their tremendous contribution. The Snowe-Jeffords provision is an integral part of our bill, and their mastery of this topic was invaluable to us.

I want to particularly thank Senator CARL LEVIN for his leadership and support, during the last 2 weeks, indeed during every debate we have had on this bill since 1996. His insight on the substance of the issue, and on the workings of this body have been absolutely crucial to the advancement of this legislation. Senator LEVIN is as tenacious and committed as any Member of this body. We truly would not be here today if he were not on this team.

I am deeply grateful to Senator FRED THOMPSON for this longstanding and steadfast support of this bill, and for his great skill and fairness in negotiating an agreement on hard money limits that the vast majority of this body could support. Without that agreement, we would not be poised to pass this bill. I also want to pay special tribute to Senator THOMPSON for the work he did investigating the 1996 campaign finance scandals.

I also thank our distinguished colleague Senator SUSAN COLLINS for her invaluable contributions to this effort. She came on board our bill as a freshman Senator in 1997, in spite of tremendous pressure from her caucus. Over the years, we have met together with many of our colleagues. She has been a tireless advocate for reform, a terrific ally in this fight, and I'm proud to call her a friend and a colleague.

I thank Senator CHRIS DODD for his tremendous work as floor manager on the Democratic side. He led us through these past 2 weeks with grace and humor and a fierce passion for reform that I deeply respect and for which I am deeply grateful.

And finally, I thank the Democratic Leader, Senator TOM DASCHLE, for everything he has done to bring about the success of this legislation. In the fall of 1997, the entire Democratic Caucus united behind this legislation, and that unity has been crucial to our success.

But when this debate began 2 weeks ago, a skeptical press corps wondered whether Democrats really wanted to pass reform. We are about to cast this vote on final passage because TOM DASCHLE was true to the principles of this party and led our caucus to follow through on the commitment we made to reform 3½ years ago. I am proud of the bipartisan effort we have made, but I am also proud to be a Democrat, and I deeply appreciate the solid support of my caucus on many crucial votes over the past two weeks.

That is a long list of thank you's, but they are all well deserved.

In closing, Mr. President, five and a half years after Senator MCCAIN and I

first introduced this bill, we are about to have the first up-or-down vote on final passage of this legislation. I have been so proud to be part of a bipartisan coalition of Senators who have brought this bill to this moment and, of course, I am especially proud to be associated with JOHN MCCAIN. I say to the Senator, this has been a heartening experience.

With every test over the last 2 weeks, our coalition has grown stronger and more determined to end sham issue ads, improve disclosure, and, most of all, ban soft money which makes this Senate so vulnerable to the appearance of corruption. I urge each and every Member of this body to support this bill. It isn't comprehensive reform. It is a modest beginning, and I hope in the future we can do much more to improve the way we finance campaigns.

But this bill, however modest, is also monumental. This is the best chance we have had in more than two decades to rebuild the election laws that have been nearly washed away by the influx of soft money. The system that came from the Federal Election Campaign Act, and was altered by the Buckley decision, has never been perfect, and I am sure it never will be. But the system once served the Nation well, and it can be reformed to serve the Nation well again if we pass the legislation before us.

When we stand in this Chamber, we all know that what we say here, and how we choose to cast our votes, becomes a part of the record. All of us have that privilege, to be a part of that history, to add our own words to that indelible record of democracy. We have that privilege because the American people sent us here to be stewards of this system of government. The record is the testament to how well we fulfill that duty, and today I think the record will reflect that we served the people.

In this moment, we can show the American people that we are the Senate they want us to be. We can pass this legislation and put our lasting mark on the record of democracy, for ourselves and, most of all, for the people we serve.

Mr. President, this is a rare moment. I hope this body will seize this opportunity to enact real reform. My colleagues, I thank you for your support and for your work, and I especially thank the people of Wisconsin for supporting me throughout this effort. I thank my very able staff for their work.

My colleagues, I ask all of you now to vote in favor of this bill, S. 27, on final passage.

I yield the floor.

Mr. DODD. Mr. President, I yield for the Senator from Michigan, Mr. LEVIN.

Mr. LEVIN. Mr. President, it is now time for the Senate to step up to the plate, as we open this baseball season, to do what needs to be done—to bring an end to the soft money loophole that has destroyed the law that is supposed to place limits on campaign contributions.

Passage of McCain-Feingold will bring an end to solicitations and contributions of hundreds of thousands of dollars in exchange for access to people in power—"lunch with the committee chairman of our choice for \$50,000," "time with the President for \$100,000," "participation in a foreign trade mission with Government officials for \$50,000."

The moment of truth is now—with this vote—because this is the first time we are voting with the real possibility that what we do here can become law.

Mr. President, I also want to talk about two concerns about the impact of this legislation that I have heard from some of my colleagues—that the parties will be weakened and that the soft money will now flow to the outside groups. It is true, of course, that no one can predict with certainty just what will happen once the soft money loophole is closed and provisions with respect to issue ads are in place. There is some of the unknown to what we are doing here today. But I'd like to remind those concerned about the parties and the increased strength of outside groups that there are provisions in the bill to ameliorate those concerns.

First, with respect to the parties, while the bill eliminates soft money, it also increases the hard money limits to the parties and makes those limits subject to indexing. The bill also contains an amendment I sponsored along with Senator ENSIGN, that will allow State parties to raise and spend non-Federal money subject to the State contribution limits for voter registration and get-out-the-vote activities in a Federal election year. The bill as introduced prohibited any money not subject to the federal limits from being used even by State parties for voter registration or get-out-the-vote activities in a Federal election year. Many of us thought that provision went too far, since these activities are often the heart of what State parties do. The provision we added by amendment has a number of limits. Federal candidates and National Party Officials can't be involved in soliciting the State party money, the State party can't refer to a Federal candidate in conducting these activities, and a State, district or local committee can't raise more than \$10,000 from any one person for these activities in a calendar year and the activities must be paid for with a formula of federal and non-federal money established by the Federal Election Commission. This provision will enable State parties to engage in important voter registration and get-out-the-vote activities.

With respect to the flow of money to outside groups, the bill contains several brakes on that happening. First, Federal candidates are barred from soliciting non-federal money not only for the parties but also for these outside groups. Many people who make large contributions do so because we personally ask them to do so. Without that personal involvement, most large con-

tributors will not contribute, and the large sums of soft money that are now being given to the parties, will simply not be raised or spent anymore. The bill also prohibits unions and corporations from running issue ads in the last 30 days of a primary election and the last 60 days of a general election. That will significantly reduce the amount of sham issue ads run in the days before an election. Finally, the national parties which in the past have contributed significant sums of money to these outside groups will not be in a position to do that with the absence of soft money.

So, Mr. President, while I understand these concerns, and realize to some extent we are all stepping into unknown territory with the enactment of this legislation, there are a number of moderating influences in the bill that should avoid the draconian effects suggested by some of our colleagues.

I would also, Mr. President, like to address a statement made by my colleague from Texas, Senator GRAMM, the other night. He said in his statement opposing this legislation on the Senate floor, that this legislation would prohibit him from selling his house and using all of the money from that house to support a candidate of his choice. The Senator was passionate about how wrong such an outcome could be. But, Mr. President, the legislation would not create such a prohibition. Senator GRAMM and any other individual in the United States could sell everything he or she owns and use it to promote such a candidacy. This bill would not prevent that. The Supreme Court has said that is a right guaranteed to everyone under the Constitution. What this legislation does and what the Supreme Court says is permitted under the Constitution, is prohibit Senator GRAMM from using the proceeds of the sale of his house to contribute to a candidate or a political party in amounts that exceed the limits established by the Federal Election Campaign Act. An individual can spend an unlimited amount of money in support of a candidate, so long as those expenditures are not coordinated with a candidate. But an individual cannot contribute an unlimited amount of money to a candidate, because, as Congress has determined and the Supreme Court has affirmed, unlimited or large contributions can create the appearance of corruption which can damage the institution of democracy.

Mr. President, I also want to say a few words about the so-called Millionaire's amendment we adopted that was sponsored by Senators DOMENICI, DEWINE and DURBIN. It is a complicated proposal and one with which we had insufficient time to work. It needed more consideration in order to achieve the fair result that I believe we intended. I am afraid that the amendment as drafted, although improved by the Durbin Amendment, is still too advantageous to incumbents and too

cumbersome to administer. I hope this can be addressed at a later stage or even in subsequent legislation, and I hope the Federal Election Commission proceeds carefully and with extensive public comment when implementing the statutory language. The intent of the Durbin amendment was to reduce the incumbency advantage that the original amendment created when it allowed a well-funded incumbent to use the increased contribution limits even though the incumbent's expenditures and cash on hand far exceeded the millionaire challenger's. The Durbin amendment tried to reduce the effect of the original amendment by requiring the millionaire to reach one-half of the amount of expenditures plus cash on hand that the incumbent has before the higher limits are triggered. While this is an improvement, I think we need to work with the numbers to see if another approach would be preferable.

Mr. President, 25 years ago this Congress passed a pretty decent campaign finance law.

Individuals aren't supposed to give more than \$1,000 to a candidate per election, or \$5,000 to a political action committee, or more than \$20,000 a year to a national party committee or \$25,000 total in any one year for all contributions combined.

Corporations and unions are prohibited from contributing anything to a candidate except through carefully prescribed political action committees. The limit of a corporate or union PAC contribution is \$5,000 per candidate.

Presidential campaigns are supposed to be financed just with public funds.

That's the law on the books today.

The Supreme Court upheld those contribution limits in the case of Buckley v. Valeo and reasserted that position in the recent case of Nixon v. Missouri Government Shrink PAC. In those cases the Supreme Court held that limits on contributions in campaigns do not violate free speech guarantees in the First Amendment.

In Buckley v. Valeo, the Supreme Court upheld contribution limits as a reasonable and constitutional approach to deterring actual and apparent corruption of federal elections in the Buckley case. Let me read what the Court said:

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. . . . To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern is . . . the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . . Con-

gress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent."

The Court went on to say:

And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

The Buckley Court at several points in the opinion endorses the concept that unlimited contributions are enough, by themselves, to create the appearance of corruption and to justify the imposition of limits.

In Nixon v. Missouri Government Shrink PAC, decided in January of last year, the Supreme Court was presented with a challenge to campaign contribution limits established by the state of Missouri. In that case, Justice Souter, speaking for a majority of the Court clearly upheld the Buckley decision.

But the soft money loophole that has evolved over the past 15 years or so has effectively destroyed the contribution limits. The loophole is huge—since you can't give more than a limited amount to a candidate, give all you want to his or her party—and of course the party uses the money to elect that same candidate.

Soft money has blown the lid off the contribution limits of our campaign finance system.

Look at the most recent data with respect to soft money contributions. In the 1996 election—a Presidential election year—Republicans raised \$140 million in soft money contributions; Democrats raised \$120 million. In 1998, even without a Presidential election—Republicans raised \$131 million in soft money contributions and Democrats raised \$91 million. The 1997–98 combined soft money total was 115% more than the 1993–1994 total. And in the 1999–2000 campaign cycle, the Congressional Research Service reports that Republicans and Democrats both raised about \$240 million. That's money from corporations and unions—who are not supposed to be giving any money at all. Approximately \$280 million of the almost half billion in soft money to the parties came from corporations and unions and \$175 million from individuals. And that's money from individual contributors in sums often in six figures—hundreds of thousands of dollars. According to the Center for Responsive Politics, in the 1999–2000 campaign 365 individuals gave the parties \$120,000 or more for a total amount of over \$98 million—when the limit on individual contributions is supposed to be \$1,000 per election. The soft money loophole has eaten the law.

As many commentators, colleagues and constituents have said, practically

speaking, there are no limits. And the truth is, Mr. President, the public is offended and disgusted by this spectacle of huge contributions and well they should be. We should be, too. Because in order to get these large contributions, access to us is often openly and blatantly sold. We sell lunch or dinner with the Committee Chairman of your choice for \$100,000 bucks. We sell pictures with the President, access to insiders meetings and strategy sessions, participation in a Congressional advisory group or a trade mission. The open solicitation of campaign contributions in exchange for access to people with the power to affect the life or livelihood of the person being solicited creates an appearance of impropriety and a misuse of power. People who are in power are asking for large sums of money for access to them.

This is done openly. Marlin Fitzwater, Press Secretary to former President Bush said it clearly in 1992 when he said, "It's buying access to the system, yes. That's what the political parties and the political operation is all about." Former Senator Paul Simon made a similar observation a number of years ago on the Senate floor. That's why over 25 persons—corporations and individuals gave over \$100,000 each to both parties. They didn't contribute because of shared values, obviously. They contributed to cover their bets—to make sure they had access to the winner. They had enough money to do that. That's how far this system has fallen. The parties advertise access. It's blatant. Both parties do it. Openly.

Invitation after invitation sells access for large contributions. From 1996: For a \$50,000 contribution or for raising \$100,000 a contributor gets:

Two events with the President.

Two events with the Vice President.

Invitations to join "Party leadership as they travel abroad to examine current and developing political and economic issues in other countries.

Monthly policy briefings with "key administration officials and members of Congress.

An invitation to the 1997 RNC Annual Gala says a contributor who raises \$250,000 will be entitled to have lunch with the Republican Senate and House Committee Chairman of the contributor's choice.

That's what we're openly offering for sale for large contributors and that's what contributors are often buying. Both parties do it, and there are dozens of examples.

One invitation in 1997 to a Senatorial Campaign Committee event promised that large contributors would be offered "plenty of opportunities to share [their] personal ideas and vision with" some of the top leaders and senators. Failure to attend, the invitation said, means that "you could lose a unique chance to be included in current legislative policy debates—debates that will affect your family and your business for many years to come."

One letter from a Senatorial Campaign Committee invited the recipient to be a life member of the party's Inner Circle. It said that \$10,000 will "bring you face-to-face with dozens of our Senators, including many of the Senate's most powerful Committee Chairmen."

Another solicitation offered, for a contribution of \$10,000, the choice of "attending one of 60 small dinner parties, limited in attendance to 20 to 25 people, at the home of a Senator, Cabinet Officer, or senior White House Staff member."

One offer for membership in a Senatorial Trust said, "Trust members can expect a close working relationship with all [of the party's] Senators, top Administration officials and other national leaders. Personal relationships are fostered at informal meetings throughout the year in Washington, D.C. and abroad."

Another solicitation offers lunch at the White House with the President and his wife. It also goes so far as to say that "Attendance at all events is limited. Benefits based on receipts." That means you don't get the benefit until the cash is in hand. Pledges of contributions are not enough. That's how blatant these offers to purchase access have become.

The sale of access to small, private meetings is the product of the soft money loophole. The amounts we see on these solicitations aren't \$1,000 and \$2,000 contributions. They're large—\$50,000 or \$100,000 contributions in soft money. The soft money loophole has increased and intensified the sale of access. The soft money loophole is swallowing our political system whole.

Do these large money contributions create an appearance of personal access and improper influence by big contributors? Yes. Look at the kinds of articles that are being written about the ups and downs of pending legislation. Many of them draw links—in my mind unfairly—between large soft money contributions and legislative activity. Here's one from the Wall Street Journal on the bankruptcy legislation. It even has a chart of all the organizations in the Coalition for Responsible Bankruptcy Laws and the amount each contributed to the Democrats and Republicans. Here's a similar one from the New York Times. The opening paragraph reads: "A lobbying campaign led by credit card companies and banks that gave millions of dollars in political donations to members of Congress and contributed generously to President Bush's 2000 campaign is close to its long sought goal of overhauling the nation's bankruptcy system."

Here's another recent article from the New York Times linking large soft money contributions to ambassadorships. Here's another Wall Street Journal article from last year talking about the so-called "wish list" of large contributors to the Bush campaign. And, of course, we are all well aware of the stories linking President Clinton's pardons to campaign contributions.

These articles are the evidence of the appearance of impropriety created with large soft money contributions.

In *Buckley v. Valeo*, the Supreme Court also answered "yes" to the question whether large contributions create the appearance of impropriety. It found an appearance of corruption created from the size of the contribution alone, without even looking at the sale of access.

It noted, "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated."

Add to the equation the actual sale of access for large contributions, and you have an even greater "opportunity for abuse" and the appearance of corruption.

These soft money contributions are not used just for get out the vote or voter registration activities, which is how the loophole got started in the first place. The truth is they are most often used for television ads that appear in thousands of spots in support of and against individual candidates. The truth is, while the parties claim these ads are issue ads, they clearly have one purpose—to help elect or defeat a particular candidate.

The Brennan Center analyzed all of the ads from the 1998 election ads paid for with hard money (candidate ads), and ads paid for with soft money (sham issue ads) and they found practically no difference. Although the Supreme Court in *Buckley* attempted to define a candidate ad as one actually promoting the election or defeat of a candidate through the use of words such as "vote for" or "vote against," the Brennan Center found that over 90% of the candidate ads, didn't do that—they didn't say "elect" or "defeat" or "vote for" or "vote against" a particular candidate. They were, it appears, virtually indistinguishable from the sham issue ads directed at a particular candidate and paid for with soft money.

In the 1996 Presidential campaign, the Democratic National Committee ran ads on welfare and crime and the budget which were basically designed to support President Clinton's reelection. At our hearings on the campaign finance system, Harold Ickes was asked about these DNC ads and the extent to which the people looking at the ads would walk away with the message to vote for President Clinton. "I would certainly hope so," he said. "If not, we ought to fire the ad agencies."

Listen to this ad from the Republican National Committee on behalf of then Presidential candidate Bob Dole.

Mr. Dole: We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in.

Voice Over: Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility. So when his country called, he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations.

Mr. Dole: I went around looking for a miracle that would make me whole again.

Voice Over: The doctors said he'd never walk again. But after 39 months, he proved them wrong.

A Man Named Ed: He persevered, he never gave up. He fought his way back from total paralysis.

Voice Over: Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending.

Mr. Dole: It all comes down to values. What you believe in. What you sacrifice for. And what you stand for.

That ad was paid for with soft money contributed to the Republican National Committee. And that's argued as permissible under current law, because that ad doesn't explicitly ask the viewer to vote for Bob Dole. It spends its whole time talking positively about him just before the election. If it added 4 words at the end that say what the ad is all about, "Vote for Bob Dole," it would be treated as a candidate ad, not an issue ad, and would be subject to the hard money limits. Well, any reasonable person who hears that ad knows it is an ad supporting the candidacy of Bob Dole. It is not an ad about welfare or wasteful government spending. And in my book, it should have to be paid for with regulated or hard money contributions. That isn't the case today.

So, Mr. President, the truth is that this kind of candidate advertising, which should clearly be subject to contribution limits, escapes those limits through the soft money loophole. And it's that soft money loophole that the bill before us would close. It would ban the solicitation or receipt of soft money by the national parties; it would ban the solicitation or receipt of soft money by the candidates or their representatives.

Mr. President, the large majority of the American people want campaign finance reform. The large majority of the American people want us to clean up our act. We're the only ones who can do it.

As the Supreme Court said in *Buckley*, an appearance of corruption is "inherent in a system permitting unlimited financial contributions." And permitting the appearance of corruption undermines the very foundation of our democracy—the trust of the people in the system. We have the right to protect our democratic institutions from being undermined by the open sale of access for large contributions which people believe reasonably translates into influence. It's time to step up to the plate.

Mr. President, I want to extend my deepest thanks and appreciation to the two Senators who made this moment possible Senator JOHN MCCAIN and Senator RUSS FEINGOLD. They have been warriors in this fight for campaign finance reform. They have pushed this when it wasn't popular to do so, and they have made what many thought impossible a reality. It took guts and

savvy, and I commend and congratulate them. I also commend our Democratic Leader, TOM DASCHLE. Without his strength and vision, this legislation would not have happened. Senator DASCHLE steered a course for our side that kept us on the road to reform. I don't know if anyone else could have done what he did—and, as always, he does it with grace and wit and charm. I commend Senator MCCONNELL for his very strong and fair fight. He is as dedicated to his position as we are to ours. He is an intimidating opponent and has our respect for his dedication and perseverance. I know he is not happy with the outcome, but I believe his dire predictions will be unrealized. I also want to congratulate Senator DODD on his tireless and brilliant service as the Democratic floor manager. His ability to capture the essence of an issue and related it to real life so we can all understand it is impressive. He served the Senate well in this open-ended and somewhat unpredictable debate.

I also want to thank the staff who worked so hard and so diligently on this effort. Bob Schiff and Mark Busse did a terrific job serving at the center of this great spinning wheel of legislation; they combined both excellent legal and political skills to keep the bill on track. Kennie Gill served everyone well as the staff floor manager. Laurie Rubenstein provided excellent legal advice, and Andrea LaRue did a great job keeping the Democratic Leadership represented and informed. I also want to thank Linda Gustitus and Ken Saccoccia of my staff for their endless time and truly extraordinary effort. It is certainly rewarding that this good work has paid off with the passage of this bill.

#### LOAN PAYBACK PROVISION

Two weeks ago the Senate passed an amendment to this bill that allows an increase in the individual contribution limits when a candidate is challenging a "so-called" millionaire candidate. Included in that amendment was a provision that prohibits candidates from repaying personal loans over \$250,000 with contributions from other persons. This provision was enacted on a prospective basis; in other words, this provision would not apply to any candidate loans incurred before the enactment of this legislation.

I want to ask my good friend from Arizona, Senator MCCAIN, whether it is his understanding that the underlying intent in making this provision prospective is because this is the only fair and reasonable approach in this situation. Does the Senator from Arizona agree that it would be unreasonable and unfair to expect a candidate who conducted a campaign according to one set of rules to have to retroactively attempt to apply new rules? Isn't applying this provision on a prospective basis the only fair and reasonable approach?

Mr. MCCAIN. The Senator's understanding is correct on the interpreta-

tion of the loan payback provision. It is intentionally prospective because it would be unfair to do otherwise.

Mr. LEVIN. This vote counts. It is real, it is not a signal or a message.

I thank the Chair and commend our good friends, Senators MCCAIN and FEINGOLD.

Mr. DODD. Mr. President, I yield 1 minute to the Senator from Mississippi, Mr. COCHRAN.

Mr. COCHRAN. Mr. President, while many Senators have had a very active and effective role in bringing us to this point on this legislation, I think we should not forget that there are two Senators who really deserve real credit—Senators MCCAIN and FEINGOLD. Because of their perseverance, determination, and effective leadership, they have brought us to the point where we are nearing passage of this legislative reform effort of the Federal Election Campaign Act.

While nobody can be really certain exactly what the implications of all of the provisions will be, I am convinced we are going to see this effort as a major step toward improving the Federal election campaign system and restoring the confidence of the American people in the integrity of the political process. That is very important, and I am very glad to have been a part of it.

Mr. DODD. Mr. President, I yield 1 minute to the Senator from New York, Mr. SCHUMER.

Mr. SCHUMER. Mr. President, at the beginning of this debate I pleaded with my colleagues to not let the perfect be the enemy of the good, and praise God they have. We have. Is this bill perfect? No, far from it. Is it good? A heck of a lot better than the present system, you bet it is.

I thank our leader, Senator MCCAIN, particularly for his courage, and Senator FEINGOLD, particularly for his integrity and leadership, and Senator DASCHLE and Senator DODD for keeping our party together.

I also thank all my colleagues in the Senate. Today and these past 2 weeks represent the Senate at its best. Every time a crippling amendment came up, we rose to the occasion and defeated it. This is the Senate the Founding Fathers envisioned.

Mr. President, my guess is, if Jefferson or Madison or Washington were looking down on this Chamber today, they would smile.

Mr. DODD. Mr. President, I yield for the Senator from Tennessee, Mr. THOMPSON.

Mr. THOMPSON. Mr. President, this is a good day for the Senate. It demonstrates once again that this body can respond to its public's needs. Even the casual observer must agree that our change from a system of the small contributor to the huge contributor is not good for this country. To those who say we are launching off into uncharted waters, that we are unsure how this might affect us as politicians or our political committees in Washington, I say that we as elected officials can

never be harmed if our country is benefited. We as elected officials can never be harmed if we are doing something that increases the public trust. And if we are, Mr. President, so be it, because we must know that we are doing the right thing.

Mr. President, twenty-seven years ago Congress decided to fix a campaign finance system that was clearly broken. The American public was scandal-weary and increasingly cynical about the integrity of the political process. In 1974, the President signed into law the Federal Election Campaign Act. Unions and corporations had long been prohibited from contributing to campaigns, and that year Congress decided to limit the amount of money an individual could give to candidates and parties to avoid corruption, and just as important, the appearance of corruption, in our system. Those limits on contributions were upheld by the Supreme Court in *Buckley v. Valeo*. The Court stated, "[T]he Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—[provides] a constitutionally sufficient justification for the \$1,000 contribution limitation." The Court also upheld the constitutionality of limits on contributions to political parties. The Court found such limits serve to prevent evasion of the \$1,000 limitation on contributions to candidates by an individual "who might otherwise contribute massive amounts to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate or huge contributions to the candidate's political party."

Just last year, the Supreme Court reaffirmed the position it took in *Buckley*. In *Nixon v. Shrink Missouri PAC*, the Court upheld an individual contribution limit of \$1,050 under Missouri law and found, "[T]here is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters."

In the years following the passage of FECA, amendments to the Act and certain FEC regulations and rulings attempted to clarify the law, particularly as it related to state parties. Mr. President, I ask unanimous consent that the a statement by campaign finance expert and scholar Tony Corrado, a professor at Colby College, that explains thoroughly the origin and rise of soft money, be printed in the RECORD.

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

(See Exhibit 1.)

Mr. THOMPSON. Mr. President, in short, in the late 1970s, Congress and the FEC attempted to address concerns by state parties regarding their use of non-Federally regulated funds in elections involving both state and federal candidates. The Commission determined that state parties could use non-

Federal money, also known as soft money, to fund a portion of activities related to federal elections. The national parties soon argued that those rules applied to them as well since they also participated in state and local elections. By the mid-1980s, both parties were actively raising soft money in the millions of dollars, primarily for voter registration drives and turnout programs conducted by state party committees. By 1992, the national party committees raised about \$80 million in soft money and were spending the funds on activities that were designed to influence both federal and non-federal elections such as generic television advertising that did not mention a specific candidate. I ask unanimous consent that a November 5, 1984 letter from Fred Wertheimer to the FEC regarding soft money be printed in the RECORD.

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

(See Exhibit 2.)

Mr. THOMPSON. Mr. President, in 1995, the Clinton-Gore campaign began using soft money to fund candidate specific issue ads. They argued that because these ads did not use "magic words" such as "vote for" or "vote against" that they were not campaign ads and thus could be funded with soft money. The Republican Party soon followed suit, and the demand for soft money increased exponentially. Soft money receipts by the two major parties exceeded \$260 million in 1996.

There was little doubt at that point that the soft money raised by the parties was being used for campaign purposes. While addressing a group of DNC donors in 1996, President Clinton made clear that their contributions were helping his campaign,

[W]e even gave up one or two of our fundraisers at the end of the year to try to get more money to the Democratic Party rather than my campaigns. My original strategy had been to raise all the money for my campaign this year, so I could spend all my money next year being president, running for president, and raising money for the Senate and House Committees and for the Democratic Party. And then we realized we could run these ads through the Democratic Party, which meant that we could raise money in twenty and fifty and hundred thousand dollar lots, and we didn't have to do it all in thousand dollars, and run down—you know what I can spend which is limited by law. So that's what we've done. But I do have to tell you I'm very grateful to you. The contributions you have made in this have made a huge difference.

In addition, the President participated in strategy meetings, helping to develop ads that were funded both by his campaign and the DNC. The Final Report of the Special Investigation of the Governmental Affairs Committee contains examples of some of the sham issue ads which were clearly intended to influence the presidential campaign.

The ability to use soft money to fund sham issue ads created a money chase that resulted in contributions of tens and hundreds of thousands of dollars

being exchanged for access to the highest levels of government. The Final Report of the Senate Governmental Affairs Committee's year-long Special Investigation documents numerous examples of actual and apparent corruption resulting from the solicitation and contribution of soft money. I also refer my colleagues to a September 21, 2000 memorandum written by Lawrence Noble, then-General Counsel for the FEC Agenda Document No. 00-95, recommending new rules prohibiting the receipt and use of soft money by national party committees and explaining the reasons for such a proposal, including an explanation of the real and apparent corruption resulting from soft money.

Revelation of the campaign finance scandals did nothing to stem the tide of soft money and its use for electioneering. In the 2000 election cycle, the parties raised nearly half a billion dollars in soft money. One study by the Brennan Center for Justice revealed that only four per cent of hard money, candidate ads in 2000 used the "magic words" outlined in Buckley. So the sham issue ads purchased with party soft money became virtually indistinguishable from the campaign ads paid for by hard money. In fact, according to one study, soft money has become the primary source of funding for party ads that promote the election or defeat of federal candidates. In addition, soft money was used for get-out-the-vote, voter registration, and virtually every aspect of the parties' campaign efforts in connection with federal campaigns.

In short, soft money is now such an integral part of federal elections that it has effectively subverted the hard money limits in the Federal Election Campaign Act. Mr. President, I refer my colleagues to a study entitled "The End of Limits on Money in Politics: Soft Money Now Comprises the Largest Share of Party Spending on Television Ads in Federal Elections" by Craig Holman for the Brennan Center for Justice which further emphasizes this point.

As in 1974, Congress is about to fix a campaign system that is clearly broken. The McCain-Feingold bill will restore a campaign finance system that has been completely thwarted by loopholes created in the late 1970s. Once again, Congress will prohibit union and corporate money from being used to fund campaigns. Once again, Congress will require individual contributions to be capped at reasonable levels and require disclosure. We as a Congress will once again ensure that unlimited corporate, union and individual funds will not compromise the integrity of the political process. In short, we are about to restore the campaign finance system to what was intended prior to the appearance and exploitation of the soft money loophole.

In order to fix this problem, this bill contains three essential components in establishing an effective soft money ban. First, national parties are banned

from soliciting, receiving, directing, transferring or spending soft money. Second, state parties are prohibited from spending soft money on federal election activities, such as "issue ads" that promote or attack a federal candidate and get-out-the-vote activities on behalf of a federal candidate. Third, Federal officeholders and candidates are prohibited from raising or spending soft money, or directing soft money to a party or other entity.

These three provisions work together: each of them is an essential part of closing the soft money loophole and ensuing that national parties, federal officeholders and federal candidates use only funds permitted in federal elections to influence federal elections, and that state parties stop serving as vehicles for channeling soft money into federal races to help federal candidates.

In the last election, for example, Republican and Democratic Senate candidates set up joint fundraising committees, joining with party committees, to raise unlimited soft money donations. The joint committees then transferred the soft money funds to their Senate party committees, which transferred the money to their state parties, which spent the soft money on "issue ads," targeted get-out-the-vote and other activities promoting the federal candidates who had raised the money. As a result, soft money is currently raised by federal officeholders and candidates for political parties and then used by these parties on expenditures to help elect the candidates to federal office.

In order to prevent corruption and the appearance of corruption, the bill breaks the nexus between soft money donors and federal officeholders and candidates by banning these federal officeholders and candidates, and their national party committees, from raising these funds.

Under this bill, there are no restrictions on state parties raising funds under state law and using them solely to effect state elections. The only restrictions apply to circumstances where money is being used to affect federal elections and where absent those restrictions soft money would continue to pour into federal races through the state parties.

In addition, McCain-Feingold includes a provision colloquially known as Snowe-Jeffords which requires disclosure for some groups running ads which mention a candidate within a certain number of days of an election. In addition, it prohibits such ads from being funded from the general treasury funds of corporations and unions. As has been pointed out by Senators SNOWE and JEFFORDS, these sham issue ads are clearly intended as election ads and just as clearly have that effect. I refer my colleagues to the following studies which demonstrate that sham issue ads have the effect of express advocacy and should be regulated by Congress: "Dictum Without Data: The

Myth of Issue Advocacy and Party Building” by David Magleby of the Center for the Study of Elections and Democracy at Brigham Young University; and “A Narrow and Appropriate Response to Cloaked Electioneering: Measuring the Impact of the 60-Day Bright-Line Test on Issue Advocacy” by Craig B. Holman for the Brennan Center for Justice.

#### EXHIBIT 1

##### THE ORIGINS AND GROWTH OF PARTY SOFT MONEY FINANCE

(By Anthony Corrado, Associate Professor, Department of Government, Colby College, Waterville, Maine, Mar. 30, 2001)

The financing of political parties has been a source of controversy for the better part of the last two decades. As major party revenues have grown from \$60 million in 1976 to more than \$1.2 billion in 2000, advocates of reform have issued increasingly sharp and well-grounded critiques of party fundraising practices. Most of this criticism has been directed toward party soft money finance, a specific form of funding that was not anticipated by the Federal Election Campaign Act, but emerged in the 1980s in response to a series of regulatory decisions. In recent years, soft money contributions have become a staple of national party fundraising, reaching a total of more than \$487 million in 2000, or ten times more than the amount received in 1988. This type of fundraising occurs outside of the scope of federal laws, so it provides national party organizations with a means of soliciting unlimited contributions from individuals, or gifts from sources such as corporations and labor unions that have long been banned from giving money in federal elections. In recent elections, federal elected officials and national party leaders have aggressively solicited large contributions of \$100,000 or more from such sources, including more than 100 gifts of more than \$1 million in 2000 alone. These large sums have fueled the growth of soft money and its importance in national elections. They have also encouraged party committees to find new ways of spending soft money, including methods that Congress has not sanctioned.

The flow of money in the 1996 and 2000 elections demonstrates how dramatically the world of party fundraising has changed since the amendment of the Federal Election Campaign Act (FECA) in 1974. Regulatory changes have created a new legal environment in which parties once again have access to the types of unlimited contributions that were supposed to be eliminated after Watergate. Innovations in party campaign strategies have created new approaches to spending that have encouraged national party organizations to spend unlimited amounts on election-related activities. Most important, parties have moved beyond the kinds of “party-building” activities specified in the FECA to place greater reliance on television and radio advertising, especially candidate-specific issue advocacy electioneering, that is financed in large part with soft money that is channeled through state party committees. Parties have thus adapted to the act’s regulatory approach in unanticipated ways. These innovations and the success party committees have had in avoiding financial restraint is best understood by reviewing the evolution of the law and the ways national party committees have reacted to the new regulatory regime.

##### THE RISE OF SOFT MONEY

FECA limits on party funding were first put into effect in the 1976 elections, and questions about the legal status of different types of party financing immediately arose.

Traditionally, party organizations had spent significant sums on activities such as voter identification efforts, get-out-the-vote programs, generic party advertising (messages like “Vote Democratic” or “Support Republican Candidates”), and the production of bumper stickers, buttons, and slate cards, that might indirectly benefit federal candidates but did not constitute direct assistance to a particular candidate. Were these expenditures governed by the new spending ceilings?

Under the act’s original guidelines, the costs of many of these activities, especially grass-roots campaign materials such as bumper stickers, lawn signs, and slate cards that mentioned particular federal candidates, could be considered in-kind campaign contributions subject to the law. This became a particular concern in the 1976 presidential race, because the public funding program established by the FECA prevented the party nominees from accepting campaign contributions in the general election period. As a result, party leaders had to rely on presidential campaign funds for election-related paraphernalia. Yet both presidential campaigns chose to concentrate their limited resources on media advertising rather than grass-roots political activities. As a result, party leaders complained after the election that the FECA had indirectly limited traditional grass-roots and party-building activities, thus reducing the role of party organizations in national elections.

##### *The 1979 FECA amendments: Expanding hard money spending*

Congress responded to these concerns by accepting a recommendation made by the Federal Election Commission to ease the restrictions placed on party contributions and expenditures. The new rules, which were included in the 1979 FECA amendments, changed the legal definition of “contributions” and “expenditure” to exclude the amounts spent on certain “grass-roots” political activities, provided that the funds for those activities were raised in compliance with FECA. This change was designed to allow state and local party organizations to pay for certain specified activities that might indirectly benefit a federal candidate without having to count this spending as a contribution or expenditure under the act. Its purpose was to encourage state and local parties to engage in supplemental campaign activity in hopes of promoting civic participation in the elections process.

In changing the law in 1979, Congress sought to allow party committees to spend unlimited amounts of hard money on certain, limited types of election-related activity, which were clearly specified in the law. It did not allow national party organizations to receive unlimited contributions or to accept corporate or labor funds. It did not allow “soft money.” Any gifts received by a national party committee were still subject to the limits established in 1974. The 1979 revision thus did not create “soft money”; it simply exempted any federal monies (“hard dollars”) a party committee might spend on certain political activities from being considered a contribution to a candidate under the law. Furthermore, the activities that were to be considered exempt under this provision were narrowly defined. Basically, the 1979 law specified three types of state and local party activity that committees may undertake and noted certain restrictions that govern the conduct of these activities. These activities did not include the use of mass public political advertising.

First, state and local party committees were allowed to pay for grass-roots campaign materials, such as pins, bumper stickers, brochures, posters, yard signs, and party

newspapers. These may be used only in connection with volunteer activities and may not be distributed by direct mail or through any other general public advertising. These materials may not be purchased by national party committees and delivered to the local committees or paid for by funds donated by national committees for this purpose. Nor may a donor designate funds for this purpose to be used to purchase materials for a particular federal candidate.

Second, state and local party committees were allowed to prepare and distribute slate cards, sample ballots, palm cards or other printed listings of three or more candidates for any public office for which an election is held in the state.

Third, state and local party committees were allowed to conduct voter registration and turnout drives on behalf of their parties’ presidential and vice-presidential nominees, including the use of telephone banks operated by volunteers, even if they are developed and trained by paid professionals. However, if a party’s House or Senate candidates are mentioned in such drives in a more than incidental way, the costs of the drives allocable to those candidates must be counted as contributions to them.

Congress clearly noted that this exemption did not extend to broadcast advertising. In permitting the production of certain types of campaign materials and in sanctioning expenditures on voter drives, the act specifically noted in Section 431 that these activities could not involve the use of any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. In other words, the Congress specifically did not allow the use of mass public political advertising under the exemption established in 1979.

Congress thus gave party organizations broader leeway to spend federal funds with respect to election-related activities. In addition to direct contributions and coordinated expenditures, party organizations could spend unlimited amounts on voter registration and identification, certain types of campaign material, and voter turnout programs. Congress supported this revision because these tasks were considered important “party-building” activities that would help develop organizational support for party candidates and promote citizen participation in electoral politics.

##### *FEC Regulatory decisions: Opening the door to soft money*

So in 1979 Congress authorized a circumscribed realm of unlimited party expenditures. But it did not sanction unlimited spending on activities designed to assist a particular candidate for federal office. Nor did it open the door to unrestricted fundraising or party committee receipt of corporate or labor donations. Instead, it was the Federal Election Commission, the agency empowered to enforce the law, that changed the rules governing party fundraising and gave birth to a new form of funding: soft money.

The provisions of the act had raised another major issue with respect to party financing: how to accommodate the federal and nonfederal roles of party organizations. The act imposed limits on party financing for all activities conducted in connection with federal elections. But party organizations also play a significant role in non-federal elections—gubernatorial races, state contests, legislative elections, and campaigns for major local offices. Their financial efforts in these races are governed by state campaign finance laws, which are generally much more permissive than federal law. For example, most states allow parties to accept

corporate and labor union contributions, and, as of 1992, sixteen states had placed no limit on individual gifts, while nineteen had no limits for PAC giving. National party organizations could thus receive contributions for nonfederal purposes that are not allowed in federal elections.

The issue of nonfederal party funding first arose in 1976. The Illinois Republican State Central Committee asked the FEC for guidance on how to allocate nonfederal and federally regulated funds in paying some of their general overhead and operating expenses, as well as the expenses of voter registration and get-out-the-vote drives that would benefit both federal and nonfederal candidates. The party sought the FEC's opinion in part because Illinois allowed corporate and labor contributions that were not permissible under federal law.

In its Advisory Opinion 1976-72, the FEC clearly stated that corporate or labor union money could not be used to finance such federal election-related activities as a voter registration drive: "Even though the Illinois law apparently permits corporate contributions for State elections, corporate/union treasury funds may not be used to fund any portion of a registration or get-out-the-vote drive conducted by a political party." However, the Commission did approve the use of nonfederal funds to finance a portion of the party's overhead and administrative costs, since these costs—for example, rent, utilities, office supplies, salaries—supported the administration of activities related to both federal and nonfederal politics. The agency approved an allocation formula based on the proportion of federal to state elections being held that year, with greater weight given to federal races. To pay these costs, the Illinois party had to establish separate federal and nonfederal accounts; the federal account could be used only to accept contributions permissible under the act, and the nonfederal account solely for monies allowed under state laws. The proportionate share of administrative costs would be paid from the relevant account; that is, the federal election-related share of the costs would be paid from the federal account, and vice versa.

The FEC's attempt to hold the line on corporate contributions was short-lived. Less than two years after their 1976 advisory opinion, the Commission again faced the issue of corporate and labor funding of party voter mobilization efforts. This time the Republican State Committee of Kansas sought the Commission's approval to use corporate and union funds, which were legal under Kansas law, in a voter drive that would benefit both federal and state candidates. Specifically, the Kansans asked the Commission how they should allocate funds between federal and nonfederal funds for their voter registration and get-out-the-vote efforts. In a surprising ruling, two Republican commissioners switched their earliest positions and joined two Democrats in approving Advisory Opinion 1978-10, which reversed the 1976 decision. Instead of prohibiting the use of corporate and union money, the agency declared that the Kansas party could use these funds to finance a share of their voter drives, so long as they allocated their costs to reflect the federal and nonfederal shares of any costs incurred. The decision thus opened the door to the use of nonfederal money on election-related activity conducted in connection with a federal election.

Commissioner Thomas E. Harris, a Democrat, believed so strongly that the ruling violated both the letter of the law and Congress's intent in framing the act that he took the unusual step of filing a written dissent. In it, he noted that there would normally be more state and local races than fed-

eral races taking place in a state, so most of the costs of voter drives could be financed from monies not permissible under federal law. His point was not lost on party leaders, who quickly began to adapt their financial strategies to take advantage of the new opportunities inherent in the FEC's decision.

The FEC's 1978 ruling was issued in response to a state party request. The idea was to recognize the role of state party committees in federal elections and the different contribution rules that might apply to state parties under state laws. But the national party committees argued that the ruling should apply to their activities also, since, like state party committees, they were involved in both federal and nonfederal politics. National parties serve as umbrella organizations that work with party leaders and elected officials at all levels of government. They make contributions and provide campaign assistance to federal, state, and local candidates. They work with state and local party organizations on a variety of party-building and election-related activities. National party leaders therefore argued that they too could allocate administrative costs and other expenses between federal and nonfederal funds, so long as they maintained federal and nonfederal accounts to handle the different types of money. In this way, they could use nonfederal funds for their nonfederal election activity.

So just at the time that Congress was allowing party organizations to spend unlimited amounts of money raised under federal rules on voter programs and other activities, the FEC was allowing them to pay a share of such costs with funds not subject to federal limits. These two streams of regulatory change converged in the 1980 election, leading to widespread use of nonfederal money at the federal level.

#### THE GROWTH OF SOFT MONEY

During the 1980 election cycle, national party organizations began to raise soft money from corporations, labor unions, and individuals who had already given the maximum amount allowed under federal law. A share of these funds were used to defray a portion of the national party committees' administrative costs, as well as the expenses incurred in raising nonfederal monies. They were also used to pay a proportionate share of the costs of voter targeting and turnout programs designed to assist the presidential ticket or federal candidates engaged in strategically important state contests. In many instances, the national party organizations raised the funds needed to pay for these programs and transferred the amounts to state party committees that actually conducted the voter drives, sometimes with assistance from organizers recruited by the national party committees.

This nonfederal funding quickly became known as "soft money," because it was not subject to the "hard" limits of federal law. National committees could solicit unlimited amounts from donors throughout the country, and then use the money to pay their own costs or redistribute these funds to those states where they were considered most necessary. As long as the contributions were legal under state law, the gifts were permissible. So a national party fundraiser could solicit \$1 million from a donor and use the monies for a variety of purposes, or even transfer the entire amount to a state that had no limits on political contributions. In essence, the new rules gave party organizations a green light to engage in unrestricted fundraising.

National party committees quickly took advantage of the relaxed regulatory environment. The only question remaining for party officials was how to allocate soft money with

respect to different activities. The FEC took the position that party committees could allocate funds on any reasonable basis. By 1982, when the DNC requested the FEC's guidance on how to pay for a party midterm conference, the agency had approved at least four methods of allocation and afforded party committees notable leeway in selecting their approach. Party committees could thus increase their use of soft money by selecting the allocation method that permitted the greatest nonfederal share.

As a result, soft money became a substantial component of national party finance in the 1980s. How substantial a component is difficult to determine, because these funds were not subject to federal disclosure laws. National party committees were only required to report their soft money receipts and expenditures in the states where the money was spent, where disclosure requirements were often either nonexistent or wholly ineffective. It is therefore impossible to determine the exact amounts raised and spent by the national party organizations. The best available estimates suggest that the two major parties spent \$19.1 million in soft money during the 1980 election cycle, with the Republicans spending \$15.1 million and the Democrats \$4 million. In 1984, they received an estimated \$21.6 million, with the Republicans once again outpacing the Democrats by a margin of \$15.6 million to \$6 million. Most of this money was spent on voter registration drives and turnout programs conducted by state party committees. These efforts were targeted to focus on key battlegrounds in the presidential race.

By 1988, soft money had become a focal point of public attention, as both parties escalated their soft money fundraising. The two national parties raised a total of \$45 million in soft money, more than twice the amount raised in 1988. The Democrats raised \$23 million and the Republicans \$22 million. This success was largely due to the emphasis both parties placed on donors of \$100,000 or more. In voluntary disclosures made after the election, the Republicans claimed to have received \$100,000 gifts from 267 donors, while the Democrats counted 130 donors who gave \$100,000 or more.

In 1992, both parties generally followed the approaches established in 1988. They continued to raise soft money funds aggressively and sought contributions of \$200,000 or more from their top donors. They also placed substantial emphasis on the solicitation of corporate gifts, with the largest corporate donors often giving money to both parties. As a result, the amount of soft money continued to grow at a dramatic rate. In all, the national party committees raised about \$80 million in soft money. This included substantial amounts of soft money that were raised by the national senate and congressional campaign committees. While the Democratic Senate Campaign Committee continued to raise soft money only for its building fund, the other committees began to mount extensive soft money operations. In all, these committees raised more than \$20 million in soft money, including \$4.7 million by the Democratic Congressional Campaign Committee, \$6.3 million by the National Republican Congressional Committee, and \$9 million by the National Republican Senatorial Committee.

Both national committees adopted strongly centralized approaches in administering these funds in an effort to maintain control over the ways soft money was spent. Even in the case of monies transferred to state and local party organizations, the national committees allowed little autonomy with respect to how the funds were to be spent. In most instances, transferred funds were to be used on projects approved by the national organization.

Most of the soft money spent in 1992 was spent in ways designed to support the election of federal candidates. The major share of the soft money raised in both parties was devoted to joint activity, that is, to activities that were designed to influence federal and nonfederal elections. Examples of such activities include the costs of fundraising efforts designed to raise soft and hard money; the administrative expenses associated with soft money operations; the monies paid for generic campaign materials and advertisements that say "Vote Democratic" or "Vote Republican"; and expenses for phone banks and other voter identification and turnout projects that assist party candidates at all levels.

The most prominent form of joint activity was generic advertising, especially television advertising. While voter turnout programs remained the most important component of the party activities, both parties invested heavily in generic television ads that were designed to bolster the prospects of their candidates. These ads were financed with a combination of hard and soft money. Overall, the Democrats spent about \$14.2 million on ads and the Republicans spent about \$10 million. The Republicans basically followed the strategy employed in previous elections, since they had previously spent substantial sums on generic advertising. For the Democrats, however, this emphasis on party advertising represented a new approach to general election campaigning. While the party did broadcast some ads in 1988, the total amount spent was only \$1 million.

Many of the ads broadcast by the party committees were designed to reinforce the message of the party's presidential nominee. The Democrats, for example, used soft money to finance ads that did not mention Bill Clinton directly (since this was thought at the time to be a violation of federal law) but did hammer home the message on the economy that was the foundation of Clinton's campaign. These ads also helped to free up resources that the Clinton campaign could use for other purposes. During the last week of the campaign, for instance, the Clinton campaign was running tight on money and thus decided to use campaign resources to buy a half-hour of national television time as opposed to additional broadcast time in the highly competitive state of Texas. The campaign, however, did not leave Texas unattended; instead, the national committee broadcast generic ads in the state to spread the party's message. The Bush campaign adopted a similar strategy, relying on party ads to shore up support in traditional Republican strongholds and in crucial battleground states like Texas and Florida.

Parties also raised soft money as a vehicle for providing direct financial assistance to state and local committees. In 1992, about a quarter of the funds raised nationally by the two major parties were transferred to state and local party committees. These funds provided state and local party organizations with the resources needed to conduct activities that they would otherwise not be able to afford. These funds are often used to purchase, update, and computerize voter lists; to develop targeting programs; to pay fundraising expenses; and to hire party workers and poll watchers on election day. While both parties spent money on these types of activities in 1992, the bulk of the funds transferred to state parties were used for generic phone bank programs designed to identify party supporters and turn out the vote.

According to FEC disclosure reports, most of the state party organizations received a share of the soft money funds raised by their respective national party committees. The Democrats transferred almost \$9.5 million in nonfederal funds to 47 states. Federal funds

were sent to all 50 states. With this hard money added, the total amount sent to state committees was \$14.3 million. The Republicans sent about \$5.3 million in nonfederal monies to 42 states and about \$3.5 million in federal funding to 43 states, for a total of about \$8.8 million.

Most of the soft money sent to state committees was focused on a small group of targeted states that were considered essential to a presidential victory. The Democrats disbursed two-thirds of the nonfederal funds sent to states in ten key electoral battlegrounds. These ten states, which contained 219 electoral college votes or 81 percent of the total needed to win, included most of the large electoral states and three crucial Southern states that the Democrats thought they could win—Georgia, Louisiana, and North Carolina. The Republicans also disbursed two-thirds of their transfer funds in ten states. These states, which contained 190 electoral votes or 70 percent of the number needed to win, also included a number of large states and three key Southern contests. The Republican senate and congressional committees transferred about \$3.2 million to state party committees, as compared to less than \$34,000 transferred by the Democratic senate and congressional committees, most of which was sent to states with open Senate races.

#### THE FEDERALIZATION OF SOFT MONEY FINANCING

By the end of the 1992 election cycle, both national parties had become adept at raising soft money and using these funds to assist federal candidates. While some comparatively minor sums of soft money were used to make contributions to state and local candidates or assist state parties in their efforts to mobilize voters for nonfederal contests, the vast majority of these monies were being raised and coordinated by the national party committees and spent in ways that would influence the outcome of federal elections in targeted states. The parties had learned to use soft money as a central component of their federal campaign efforts. They relied on these funds to supplement the public funding in presidential races and the hard monies solicited by Senate and House candidates. For all intents and purposes, soft money primarily had become part of a system of federal election financing that included a state and local component, rather than a method of state and local political finance that also influenced federal elections.

In 1996, the importance of soft money in the financing of federal elections became even more important as parties changed their strategies and began to place great emphasis on the use of candidate-specific issue ads. This type of advertising provided parties with a way of using soft money to pay for broadcast advertisements that featured specific federal candidates. The parties claimed that such ads are not federal campaign expenditures and thus may be paid for with a combination of hard and soft money funds. In 1996, the use of such ads, which was spurred by the efforts of the Democratic Party to bolster President Clinton's prospects for reelection, was a bold innovation. It represented an aggressive effort to push the limits of the FECA restrictions and circumvent the contribution and spending limits established by the law. In the intervening four years, this innovation has become the standard practice, the new norm for how party committees conduct their federal election campaigns, and a major factor in the continued growth in soft money fundraising.

While the national party organizations had engaged in issue advocacy advertising before the 1996 election cycle (most notably during the debate over Clinton's health care pro-

posal in 1993 and 1994), they had never before used such advertising in a significant way to promote a presidential candidate in an election year. But the Democrats quickly recognized the potential benefits of this tactic. The ads could be used to deliver the President's basic message, policy proposals, and accomplishments, and criticize Dole's views and record. As long as they avoided the "magic words" that would trigger the definition of express advocacy, none of the monies spent in this way would be considered "campaign spending" under the law. It was a loophole in the federal regulatory scheme that the Democrats aggressively exploited.

For a year, July 1995 to June 1996, the Democratic National Committee (DNC) and state Democratic party organizations spent millions of dollars on ads designed to promote Clinton's reelection. These spots were mostly aired in smaller media markets where broadcast time is less expensive. The party avoided states where Clinton had won by large margins in 1992, and also stayed away from those states where they felt Clinton had no chance—Texas, the Great Plains states, and Southern Republican strongholds like South Carolina and Virginia. In the fall of 1995, the Democrats ran ads attacking the Republican budget that covered 30 percent of the media markets in the country. By the end of December, they had run ads presenting Clinton as a leader seeking tax cuts, welfare reform, a balanced budget, and protection for Medicare and education programs. In all, the Democrats had aired pro-Clinton ads in 42 percent of the nation's media markets by January 1, 1996, at a cost of \$18 million, none of which was drawn from Clinton's campaign committee accounts.

According to estimates by Common Cause, the Democrats spent \$34 million on pro-Clinton ads during this period. This included \$12 million in federally regulated "hard money" and \$22 million in soft money. The DNC managed to spend such a large proportion of soft money by transferring funds to state party committees and having these communities purchase the ad time. In other words, they were able to pay for the ads mostly with soft money because the FEC has different payment regulations for national and state party organizations. This perfectly legal act of subterfuge allowed the party to conserve its hard money, which is particularly valuable because it is more difficult to raise than soft money.

The Democrats focused their ad campaign on twelve key general election battleground states. The party spent over \$1 million in each of these states, including over \$4 million in California. Combined, these twelve states represented a total of 221 electoral college votes. Clinton eventually won all of them except for Colorado.

The DNC's spending and Clinton's financial advantage entering the final months of the campaign encouraged the Republican National Committee (RNC) to adopt a similar strategy as soon as its presidential nominee was determined. In May, one day after Dole decided to resign from the Senate to devote himself to full-time campaigning, RNC Chair Haley Barbour announced a \$20 million issue advocacy advertising campaign that would be conducted during the period leading up to the Republican national convention in August. The purpose of this campaign, said the chairman, would be "to show the differences between Dole and Clinton and between Republicans and Democrats on the issues facing our country, so we can engage full-time in one of the most consequential elections in our history." In essence, the campaign was designed to assist Dole, who had basically reached the public funding spending limit, by providing the additional resources needed to match Clinton's anticipated spending in

the remaining months before the nominating conventions.

By the end of June, the RNC had already spent at least \$14 million on ads promoting Dole's candidacy, including an estimated \$9 million in soft money. Like the Democrats, the Republicans focused their spending on key electoral college battlegrounds. Indeed, the "target" list looked very similar to that of the Democrats; eight of the top twelve states were the same for both parties.

This innovative form of party spending essentially rendered the contribution and spending limits of the FECA, at least as far as the party nominees were concerned, meaningless. So long as the party committees did not coordinate their efforts with the candidate or his staff, and did not use any of the "magic words" that would cause their spending to qualify as candidate support, they were free to spend as much as they wanted from monies received from unlimited sources on activities essentially geared towards influencing the outcome of the presidential race. Given the availability of polling data and other sources of political information, it was simple for the parties to develop ads that reflected their respective candidates' major themes and positions or presented the most effective attacks against the opponent.

Moreover, this use of soft money gave the party organizations a strong incentive to solicit greater and greater amounts of soft money. Instead of spending one dollar in hard money for a dollar in advertising done as a coordinated expenditure, a national party committee could spend one dollar in hard money to trigger, on average, an additional two dollars in soft money spending. So they were able to get more advertising out of their hard money by relying more heavily on soft money. The tactic thus placed a premium on soft money fundraising. A party could spend as much soft money as it could raise because these funds could be used for television advertising that featured the candidate and essentially advocated his election.

In 1996, the national party committees raised over \$260 million in soft money, more than three times the sum amassed in 1992. Yet this substantial sum paled in comparison to the \$487 million garnered in 2000. The parties raised such large sums because the bold innovation undertaken in 1996 was essentially sanctioned by the events following that election. Although the FEC audit division and general counsel's office found that the party issue advertising campaigns should be considered campaign expenses and counted against the presidential campaign's spending and contribution limits, the FEC failed to accept their recommendations and did not take action against the parties or the presidential candidates for their acts of subterfuge. Consequently, the parties had even greater incentive to engage in issue advertising efforts financed with soft money. And they made the most of this opportunity.

Exactly how much soft money was spent to assist federal candidates through advertising or other means is difficult to determine due to the inadequacy of the disclosure requirements applicable to national party committee soft money finances. But it is certainly true that the vast majority of the soft monies raised in 2000 were used to assist federal candidates and that the largest expenditures took the form of issue advertisements that featured federal candidates and were broadcast in close proximity to Election Day.

The national party committees together spent \$79.1 million on television advertising in the presidential campaign in the top 75 of the nation's 210 media markets, as compared to \$67.1 million spent by the candidate them-

selves. According to an analysis by the Brennan Center for Justice of these top 75 media markets during the period from June 1 to November 7, the Bush campaign devoted \$39.2 million to television advertising, while the Republican National Committee spent \$44.7 million. On the Democratic side, the Gore campaign spent \$27.9 million on television advertising, while the Democratic National Committee expended \$35.1 million. As in 1996, most of the funding came from soft money that the national party transferred to state parties, since under FEC guidelines, state parties were able to use a greater percentage of soft money when buying television time if it was purchased by state party committees. This was in accord with FEC rules, which place different allocation requirements on state party committees. These expenditures, therefore, were not designed to strengthen state and local parties; they were simply made through state or local party financial accounts to take advantage of the opportunity to spend soft money.

The Democrats were the first to resort to issue advocacy spending, airing their first ad in early June, despite the fact that Gore had earlier said the Democrats would not run soft-money financed advertising unless the Republicans did so first. In announcing the advertising strategy, the Democrats cited what they estimated to be \$2 million in anti-Gore advertising by political groups that favored Bush, including a group called Shape the Debate and a missile defense organization called the Coalition to Protect America Now. The ad, which touted Gore's commitment to fight for a prescription drug benefit for seniors, ran in 15 states and was financed with a combination of hard and soft money.

Once the Democrats had begun their assault, the Republicans were quick to follow. Only a few days after the Democrats launched their ads, the Republicans announced a campaign of their own. On June 10, the Republican National Committee unveiled a \$2 million ad campaign targeted mainly in the same presidential battlegrounds as the Democratic television buy. The only difference was that the Republicans also purchased time in Maine and Arkansas. This first commercial presented Bush's proposal to allow workers to invest part of their Social Security payroll taxes in the stock market.

What was most notable in 2000, however, was the significant rise in the use of soft money by the national senate and congressional campaign committees. Almost half of the soft money raised in this election, almost \$214 million, was raised by the congressional committees. This sum is ten times greater than the \$20 million in soft money raised by these committees in 1992. The Democratic Senatorial Campaign Committee raised \$63 million in soft money, while the Democratic Congressional Campaign Committee raised almost \$57 million. The National Republican Senatorial Committee solicited \$43 million in soft money and the National Republican Congressional Committee, about \$51 million.

About half of the soft money raised by the senatorial and congressional committees, \$108 million, was transferred to state and local party committees to pay for issue advocacy advertising and voter turnout programs conducted in connection with targeted House and Senate races. According to the Brennan Center analysis, in the top 75 media markets, the parties spent nearly \$40 million on advertising in House races, with the Democrats spending \$22.7 million and the Republicans, \$16.8 million. In connection with Senate races, the parties spent an additional \$39 million, including \$21.4 million by the Democrats and \$17.7 million by the Republicans. Tens of millions more was spent on voter

identification and turnout efforts. Most of the money spent on these activities was in the form of soft money. So even the national party committees formed for the purpose of electing candidates to the House and Senate have become soft money operations.

#### CONCLUSION

By the election of 2000, national party soft money was being used to finance every aspect of a party's campaign efforts in connection with federal contests. It is being used to produce candidate-specific ads and broadcast them on television and radio. It is being used to produce campaign materials such as posters and slate cards that feature federal candidates. It is being used to register, identify, and mobilize voters who support federal candidates. It is therefore not surprising that the party committees have made soft money fundraising a major component of their financial efforts. In every election cycle since its advent, the majority of soft money has been allocated to finance activities that are primarily designed to influence the outcome of federal elections.

#### EXHIBIT 2

##### COMMON CAUSE,

*Washington, DC, November 5, 1984.*

LEE ANN ELLIOTT,  
*Chair, Federal Election Commission,*  
*Washington, DC.*

DEAR COMMISSIONER ELLIOTT: I am writing on behalf of Common Cause to express our deep concern about the improper role that "soft money" has been playing in federal campaigns and about the Federal Election Commission's inattention to this very serious problem.

It appears that "soft money" is being used in federal elections in a manner that violates and severely undermines the contribution limits and prohibitions contained in the federal campaign finance laws. While these practices and abuses have received considerable public attention, the Federal Election Commission to our knowledge has failed to take any formal action in this area.

In using the term "soft money" we are referring to funds that are raised by Presidential campaigns and national and congressional political party organizations purportedly for use by state and local party organizations in nonfederal elections, from sources who would be barred from making such contributions in connection with a federal election, *e.g.* from corporations and labor unions and from individuals who have reached their federal contribution limits.

According to various press reports and public statements, including statements by campaign and party officials, it appears clear that "soft money" in fact is not being raised or spent solely for nonfederal election purposes. Such funds are being channeled to state parties with the clear goal of influencing the outcome of federal elections. [The complaint filed by the Center for Responsive Politics, for example, sets forth a clear example of the use of "soft money" for federal purposes in the 1983 special Senate election in the State of Washington.]

Under the federal campaign finance laws "soft money" is prohibited from being spent "in connection with" federal elections. There is no question that "soft money" currently is being spent "in connection with" federal elections, if that term as used in the federal campaign laws is to be given any realistic meaning. If the Commission leaves such "soft money" practices unchecked it will be implicitly sanctioning potentially widespread violation of the current federal campaign finance laws.

Soft money practices are facilitating the reemergence in national political fundraising of campaign contributions from sources such as corporations and unions that

have been prohibited for decades from providing such funds for federal elections. They are similarly facilitating the reemergence of large individual campaign contributions that have been prohibited since 1975.

These contributions are highly visible to national campaign and party officials notwithstanding their purported use by state party organizations for nonfederal election purposes. When national campaign and party officials who work with federal candidates raise and coordinate or channel the distribution of "soft money" to state organizations, the potential for corruption is exactly the same as it was when those national campaign and party officials directly received that kind of money. If the Commission leaves soft money practices unchecked, it will directly undermine a core protection against corruption in the federal campaign finance laws.

Soft money practices are also undermining the disclosure provisions of federal campaign finance laws. Very substantial sums of money are being channeled to and through state parties in order to influence federal elections without these sums being disclosed as contributions or expenditures under the federal law. A primary purpose of the federal campaign finance laws is to open the political financing process to public scrutiny. If the Commission leaves soft money practices unchecked, it will allow the national campaigns and political parties to potentially hide millions of dollars in federally related campaign funds from public view, thereby creating widespread opportunities for actual and apparent corruption.

Furthermore, in presidential campaigns, "soft money" returns private funds to a potentially prominent role and thereby subverts the purpose of the presidential public financing system. In 1979, Congress amended the federal campaign finance laws to permit state parties to spend money in connection with presidential campaigns, but only for certain limited purposes and only with funds subject to the limitations and prohibitions of the federal law. Congress did not intend to authorize centralized national fundraising of private funds from proscribed sources to supplement the presidential public financing system. If the Commission leaves soft money practices unchecked, just that will continue to occur.

Common Cause believes that it is essential for the Commission to make the "soft money" problem a top priority in carrying out its statutory responsibility to enforce the federal campaign finance laws. The Commission's current approach, which appears to be limited to sporadic policing of political committee account allocation rules, is totally inadequate.

We therefore strongly urge that the Commission promptly take the following steps:

(1) initiate on a priority basis its own broad-ranging factual investigation into soft money practices, with a view toward prosecuting actual past violations;

(2) initiate a rulemaking proceeding to establish what broader administrative tools, such as additional disclosure requirements, are needed to facilitate the Commission's effective enforcement of the current laws; and

(3) undertake a review of the current laws to determine what additional statutory remedies may be required to assure that soft money abuses are most effectively curtailed.

"Soft money" is a very serious problem. The Commission must address it aggressively. It is not sufficient for the Commission, in this or other key areas, to sit back and wait for the private parties to bring these matters of enforcement responsibility to its attention. The Commission must be out in front of, not forced into, these issues.

Sincerely,

FRED WERTHEIMER,  
*President.*

Mr. WELLSTONE. Mr. President, the Senate today takes a historic step toward fairer elections, and I rise to join many of my colleagues in urging a vote for final passage of the McCain-Feingold legislation. The bill that will be passed by the Senate is in some ways better, and in other ways weaker, than the legislation we started the debate on two weeks ago. In two instances I believe the Senate took a step backward. Still, on balance, this is a positive reform bill and I support it.

Debates about campaign finance reform should be debates about who is at the table. Looking back at the last two weeks from this perspective highlights not only the importance of the bill that we will vote on today, but also its severe limitations. I say importance, because if you believe that reform of our federal elections is essential for the reasons I believe, restoring the centrality of one person, one vote, then you need to get soft money out of the system because it allows too much political power to flow from too few. But I also say severe limitations because even if we ban soft money, even if we ban sham issue ads, we will still have too much money in politics in America. The investors, the heavy hitters, the players will still have an all too prominent role in our elections.

It is unfortunate that the Senate voted to raise the hard-money contribution limits. Nearly 80 percent of the money in our elections is hard money, more and more of which is being raised in checks of \$1000. During the last election, only 4 out of every 10,000 Americans made a contribution greater than \$200. Only 232,000 Americans gave contributions of \$1000 or more to federal candidates—one ninth of one percent of the voting age population. By raising the hard money limits, the Senate voted to increase the amount of special interest money in politics and entrench candidates' dependence on a narrow, political, elite made up of wealthy individuals. That is not reform.

The Senate also adopted an amendment to allow candidates facing self-financing opponents to raise even more big money. Again, this is a step backward and is blatant incumbent protection.

I am pleased that the Senate twice voted to include, the second time overwhelmingly, a reform amendment I offered, which significantly strengthens the McCain-Feingold bill. The amendment ensures that the sham issue ads run by nonprofit special interest groups fall under the same rules and prohibitions that the legislation rightly imposed on corporate and union soft money sham issue ads. Previous versions of McCain-Feingold had covered such ads as did the Shays-Meehan bill passed by the House.

Limiting the ban only to corporate and union soft money practically invited a shift in spending to private special interest groups in future elections, suggesting that in future years, even

with enactment of this bill, Congress will be predestined to revisit sham issue ad regulation to close yet another loophole in federal election law.

These often virtually unaccountable groups engage regularly in electioneering communications. Make no mistake, we are not talking about ads that are legitimately trying to influence policy debates. This amendment targets those ads that we all know are trying to skew elections but till now have been able to skirt the law.

At the same time, this amendment does not prohibit these groups from running electioneering ads. It merely requires that they comply with the same rules that unions and corporations must comply with under the bill. Groups covered by my amendment can set up PACs, solicit contributions and run electioneering ads. This amendment simply prevents them from using their regular treasury money to run such ads in a secret and unaccountable way. Spending on genuine issue ads is completely unaffected, as it should be.

The amendment directly addresses constitutional concerns. A February 20, 1998 letter signed by 20 constitutional scholars, including a former legislative director of the ACLU, which analyzed underlying bill's sham issue ad provision, argued that even though that provision was written to exempt certain organizations from the ban on electioneering communication, such omission was not constitutionally necessary. In other words, the restrictions on corporations and unions need not have been limited to corporations and unions. In any case, the amendment is severable. If courts find it to be unconstitutional, it will not jeopardize the rest of this bill.

This is what was at stake in the last two weeks: a government where the people are the priority, not the powerful. The anti-reform crowd has tried to cast this debate in terms of regulating political speech and limiting political freedom. I reject the argument that freedom, freedom of speech, freedom to participate in the election of one's government is served by the current system or that it is undermined by efforts to reform that system. On the contrary, freedom is on the side of reform, and indeed the more comprehensive the campaign finance reform we enact, the more we empower every American to capture control of his or her own destiny.

While I will vote in favor of McCain-Feingold, I do so with my eyes open. Fundamentally, this legislation seeks to patch a badly broken system, one that is likely past saving through minor repair, and stops far short of the complete overhaul of the financing of elections that are required. Ultimately, an approach that seeks to stop a leak here, and block a loophole there but does not meaningfully remove the demand for private, special interest money from candidates and parties—either through reducing costs to campaigns, providing public sources of

funds, or a combination of the two—will be doomed to failure.

It is for this reason that I am a supporter of comprehensive public financing of federal campaigns, what is known as the Clean Money, Clean Elections approach. The McCain-Feingold bill includes important reforms. It would get some of the money out of politics. Not all of the money, but the under-the-table money, the largest contributions, the grossest examples of favor currying and access buying. With my amendment, it will ban most sham issue ads. Such unregulated funds have made a mockery of the current campaign finance reform system. However, there is no question that we should go much further, that most Americans would like to see us go further and that it is not truly comprehensive campaign finance reform. During debate on this bill, 36 senators supported an amendment I offered which would have allowed states to establish voluntary spending limits in exchange for full or partial public financing for federal candidates. I am hopeful that the numbers here in the Senate in favor of public financing of federal elections will increase.

Now that the Senate will finally go on record in favor of the modest reform that McCain-Feingold represents, I believe the time is right to begin the fight for fundamental reform: public financing of elections. This week I will reintroduce, my Clean Money, Clean Elections legislation. This legislation attacks the root cause of a system founded on private special interest money, curing the disease rather than treating the symptoms. I look forward to working with my colleagues on this new phase. Again, passage of this bill is not the end of the reform debate but merely the beginning.

I ask unanimous consent that the text of an editorial in last Friday's Boston Globe be printed in the RECORD.

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

#### A STEP TOWARD REFORM

By rejecting a malignant non severability amendment, the US Senate has moved the nation significantly closer to real political reform. "This is where the Senate takes a stand," Senator Russell Feingold said near the end of a dramatic two-week debate. And the Senate stood for reform, 57-43.

If a solid version of the McCain-Feingold bill is agreed to by the House and signed by President Bush, as now seems more likely than ever, Americans will receive something as valuable as any proposed tax rebate—the return of a portion of the democracy that has been snatched away by the growing influence of big money in the political system.

McCain-Feingold does not offer the sweeping reform that the system desperately needs, but it is a large step forward and a prerequisite to more basic changes. The bill's targets are the major abuses that have grown since the Watergate reforms of 1974. Largely unregulated "soft money" donations, ostensibly for party-building but often used to advance specific candidates, would be eliminated. And "independent" expenditures, by groups supposedly not linked to campaigns, would be restricted close to voting dates.

The key vote yesterday means that if a constitutional flaw is found in one part of the law the remainder will survive. Several opponents of reform last week helped pass an amendment offered by liberal Senator Paul Wellstone of Minnesota that would further curtail independent expenditures, in the obvious hope that the provision would be found unconstitutional and scuttle the whole effort.

We support the Wellstone amendment and believe it is constitutional. If not, yesterday's vote will keep the rest of the law intact.

The road for campaign reform has been long. The House has approved similar measures, but must now take the bill up again, this time playing with live ammunition—the increased likelihood that it will become law. Bush added to the momentum this week by indicating for the first time he might sign it.

On this bill and other political reforms, Congress should give primacy to the rights and needs of voters. Reform should not have to wait for a tangled election like the one just concluded—or a Watergate.

Mr. WELLSTONE. Mr. President, I don't agree with my colleague from Kentucky, though I have great respect for him. I think our parties will be stronger not dependent on soft money, to get away from the obscene money chase, and we will be more connected to the people. I also think the provisions on the sham issue ads across the board will make a huge difference, with less poison politics and bringing people back.

I hated the increase in the hard money limits. I think it is a mistake. But this bill is a step forward. I am proud to vote for it. This is all about representative democracy. This will be a great vote, and I hope it whets the appetite of people in the country for even more. I thank Senators MCCAIN, FEINGOLD, DODD, DASCHLE, and a lot of other Senators as well.

Mr. DODD. I yield 1 minute to Senator EDWARDS of North Carolina.

Mr. EDWARDS. Mr. President, I will first thank my friends Senator MCCAIN and Senator FEINGOLD for their extraordinary leadership. It has been a wonderful honor for me to participate in this very important debate in our history. The American people deserve a democracy where their voice is heard above the megaphone of big money and powerful interests. That is what this debate has confronted. It is not about Members of Congress; it is not about Senators or Members of the House. It is about the American people. It is not about Democrats or Republicans and who is advantaged by this bill. It is about the American people—once again, restoring their faith in the integrity of their Government, once again making the American people believe that their voice is what matters. When they go to the polls and vote, it is their vote that matters.

Mr. President, I urge my colleagues to support this legislation. It is a huge step in the right direction.

Mr. DODD. I yield 1 minute to the Senator from Washington, Ms. CANTWELL.

Ms. CANTWELL. Mr. President, rare-ly in life—and even more rarely in poli-

tics—can you say after fewer than 90 days in a new job that you are able to see one of your primary goals accomplished.

My hat is off to Senators MCCAIN and FEINGOLD for their many years of working on this legislation.

I ran for the Senate because I wanted to see meaningful campaign finance reform, to reduce the influence of special interests in our political process, and to amplify the voices of individual ordinary citizens. Final passage of McCain-Feingold will be a dream come true for me and a major first step. That is what is most significant about this reform—the first reform we have really had in almost a quarter century. Watching my colleagues, Senators MCCAIN and FEINGOLD, and also Senators LEVIN, THOMPSON, SNOWE, SCHUMER, DODD, and WELLSTONE, bring such force of will to ensuring that this bill passed. And that it not only emerged from the amendment process, but that it was improved in that process. Finally, we will be able to slow the virtual arms race that campaign fundraising has become.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, each of us at one point in the well of the Senate raised our right hand and swore to uphold the Constitution of the United States. On 21 occasions in the last 26 years, efforts to restrict issue advocacy by outside groups have been struck down, including just last summer when the second circuit struck down the precise language in Snowe-Jeffords.

This bill is fatally unconstitutional. I hope Senators will uphold the oaths they have taken and oppose this unconstitutional bill.

I yield the floor.

Mr. DODD. Mr. President, I yield the remaining minutes on the proponents' side to the principal author of this bill, the person who deserves enormous credit, JOHN MCCAIN of Arizona.

Mr. MCCAIN. Mr. President, in a few moments the Senate will vote on final passage of the Campaign Finance Reform Act, and I respectfully ask all Senators for their support. I want to speak very briefly, mainly to express my appreciation to my colleagues, on all sides of this issue, for the quality of our debate.

I thank first two men who were as good as their word: The majority leader, for the commitment to an open debate and for keeping the amendment process both fair and expeditious, and the Democratic leader for so effectively safeguarding his party support for genuine campaign finance reform.

I also show my respect for the skill, grit, and honesty of the formidable Senator from Kentucky and his able staff. There are few things more daunting in politics than the determined opposition of Senator MCCONNELL. I hope to avoid the experience more often in the future.

I thank Senator DODD, the Democratic manager of the bill, and his staff. His leadership was as critical to our success as his unflinching good humor was to our morale.

The majority and minority whips, Senators NICKLES and REID, worked hard to ensure a fair and complete debate and to encourage both sides to reach for good-faith compromises whenever it was possible.

Words cannot express how grateful I am to the cosponsors of our legislation. But for the willingness of Senators THOMPSON and FEINSTEIN to find common ground on the issue of increasing hard money limits, I fear our efforts would have proved as futile as they have in the past.

I cannot exaggerate how big a boost Senator THAD COCHRAN's support was to our cause and how important his wise and courteous guidance was to our success.

I appreciate the wise and experienced leadership of Senator CARL LEVIN.

Senators SNOWE, JEFFORDS, COLLINS, SPECTER, SCHUMER, EDWARDS, KERRY, and all the sponsors worked tirelessly and effectively to reach this moment and more than compensated for my own deficiencies as an advocate.

I am also much indebted and inspired by the community of activists for campaign finance reform. The faith, energy, and never-say-die spirit they have shown in a fight they have waged for so many years are the best attributes of patriots. Although we have a few more miles to travel, they have given good service to our country, and my admiration for them is only surpassed by my gratitude.

I owe a special thanks to the many thousands of Americans who lent their voice to our cause this year, many who supported my campaign last year and many who did not but who believe that reforming the way we finance Federal election campaigns is a necessary first step to reforming the practices and institutions of our great democracy.

I also thank my staff for their extraordinary support, particularly Mark Buse who has worked by my side on this issue for many years and whose industry and creativity will never fail to impress me.

Mr. President, I ask unanimous consent for 2 additional minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. What is the request?

The ACTING PRESIDENT pro tempore. For 2 additional minutes. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent to print in the RECORD a list of the staffers of the Senators who were very helpful and critical to our success.

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

Senator Cochran—Brad Prewitt;  
Senator Collins—Michael Bopp;  
Senator Daschle—Andrea LaRue;

Senator Dodd—Kennie Gill, Veronica Gillespie;

Senator Feingold—Mary Murphy, Bob Schiff, Bill Dauster;

Senator Feinstein—Gray Maxwell, Mark Kadesh;

Senator Hagel—Lou Ann Linehan;

Senator Jeffords—Eric Buehlmann;

Senator Levin—Linda Gustitus, Ken Saccoccia;

Senator Lieberman—Laurie Rubenstein;

Senator Lott—Sharon Soderstrom;

Senator McCain—Mark Buse, Ann Choiniere, Lloyd Ator, Ken LaSala;

Senator McConnell—Tamara Somerville, Hunter Bates, Andrew Siff, Brian Lewis;

Senator Schumer—Martin Siegel;

Senator Snowe—Jane Calderwood, John Richter;

Senator Thompson—Bill Outhier, Hannah Sistare, Fred Ansell.

Mr. MCCAIN. Mr. President, were I limited to thanking one individual, it would be Senator RUSS FEINGOLD of Wisconsin, a man of great courage and conviction. His partnership in this effort is one of the greatest privileges I have ever had in public life. He is in every respect the better half of McCain-Feingold. I want him to know, Mr. President, that I will never forget it. I might also add that he is well served by his staff as I am by mine.

Lastly, I thank every one of my colleagues, those who supported our bill and those who did not, particularly my friend Senator HAGEL, for the good faith and fairmindedness that all have brought to this debate.

I believe the events of the last 2 weeks have been a great credit to this body, and that is tribute to every Senator. Indeed, as we approach what I believe will be a successful outcome for the proponents of this legislation, I can say I have never been prouder to be a Member of the Senate. Because of my failings, I might not always show it, but I consider myself blessed to serve in the company of so many capable leaders of our fair country.

I asked at the start of this debate for my colleagues to take a risk for America. In a few moments, I believe we will do just that. I will go to my grave deeply grateful for the honor of being part of it.

I yield the floor.

Mr. DODD. Mr. President, have the yeas and nays been ordered?

The ACTING PRESIDENT pro tempore. They have not been ordered.

Mr. DODD. I ask for the yeas and nays on the McCain-Feingold bill.

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

There is a sufficient second.

The question is, Shall the bill pass? The clerk will call the roll.

The legislative clerk called the roll.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 41, as follows:

[Rollcall Vote No. 64 Leg.]

YEAS—59

Akaka	Bayh	Bingaman
Baucus	Biden	Boxer

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

NAYS—41

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

The bill (S. 27), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. LOTT. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I support the effort by Senators MCCAIN and FEINGOLD to try to rein in some of the rampant spending that takes place in political campaigns. Today I voted for S. 27, the Bipartisan Campaign Reform Act of 2001.

While I voted for final passage of S. 27, I do not feel that it goes far enough. The only way that we will ever get control over the money in politics is if we put limits on campaign spending, and the only way to achieve that goal is to address the Constitutional hurdles raised by the Supreme Court. Unfortunately, by equating free speech with campaign spending, the Supreme Court placed a substantial roadblock in the path to campaign finance reform. We will not have true campaign finance reform until Congress and the States approve a Constitutional Amendment which clearly articulates that Congress can regulate fundraising and expenditures for campaigns. That is why I supported the constitutional amendment offered by Senator HOLLINGS.

I understand that the sponsors of this bill worked to craft legislation that would maintain the support of a majority of Senators, and, at the same time, would also stand up to the certain Court challenges it will face. I hope that this bill will make some progress in limiting the power and influence of money in our elections, but I believe that we still have a long way to go.

Mr. MCCONNELL. Mr. President, occasionally, that massive soft money machine, the New York Times, runs something accurate about campaign finance. Such as the op-ed I authored

which appeared in the April 1 edition. The focus of the piece is the tremendous harm enactment of the McCain-Feingold bill would do to our democracy, by severely weakening the two great political parties.

I ask unanimous consent that my op-ed be printed in the RECORD.

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

[From the New York Time, Apr. 1, 2001]

IN DEFENSE OF SOFT MONEY

(By Mitch McConnell)

WASHINGTON—It now appears that among the legacies of the Bill Clinton presidency will be a “reform” of a campaign financing that devastate the national political parties. The 1996 Clinton campaign’s courting of illegal foreign contributions for the Democratic National Committee and the Clintons’ use of the Lincoln Bedroom to entertain contributors, followed by Mr. Clinton’s pardons for criminals championed by big donors to the Democrats, have cast a pall over national party committees. And all of this propelled the prohibition of soft money—donations made to political parties and not subject to federal contributions limits—to the top of the reform agenda.

Earlier, the centerpiece of reform efforts had been limits on candidates’ own spending. In 1997 Senators John McCain and Russ Feingold dropped these spending limits from their reform bill, along with bans on political action committees and on “bundling”—when individuals and groups collect multiple contributions.

Hard money, in Washington parlance, is the funds and activities targeted to electing specific candidates to federal office. These funds are already subject to severe contribution limits, set in 1974 and never adjusted for inflation, and to requirements for disclosing the names of donors and the amounts they gave. The national parties themselves also raise money, which they need for issue advocacy, for helping state and local candidates, for paying overhead expenses like the costs of computers and lawyers (to comply with the array of election laws), and for get-out-the-vote efforts that benefit all of a party’s nominees on Election Day. This “non-federal” money is subject to regulations in the States. But because it has often been used in ways that do help federal candidates, it has come to be called “soft money.”

The Republican and Democratic National Committees, and the Republican and Democratic senatorial and congressional committees, are national in scope. Gubernatorial and state legislative elections are among the highest priorities of the national parties, so they help candidates in those races accordingly—with funds governed under the relevant state laws and spent in consultation with state party committees. But federal candidates are a focus of the national committees, too. And with campaigns for federal offices starved for hard money by the antiquated 1974 limits, the national parties have become increasingly resourceful in utilizing soft money to fill the void in federal elections.

In recent years, the parties have used soft money to run ads defending their nominees from attacks by special interest groups and to help challengers compete against well-financed incumbents. Help from the parties often provides the only chance nonincumbent and nonmillionaire candidates have to be competitive in Congressional elections.

The McCain-Feingold bill now working its way through Congress would prohibit the national committees from raising or spending any soft money—that is, any money not covered by federal contribution limits—at any time for any purpose. It would also federalize campaign-related spending by state parties in even-numbered years, thus forcing even the state parties to rely on far more scarce hard money, with results that are likely to be devastating.

Even if only one federal candidate were on the ballot in a state where the chief voter interest was in the governor’s race, a mayoral contest or control of the state legislature, all party voter registration and turnout activities in that state within 120 days of the election would be subject to the severe limits on contributions set by Congress—and therefore underfunded and diminished. Special-interest group issue ads would go unanswered by the parties. Challengers, historically shunned by political action committees but boosted by parties, would be on their own. Incumbents and self-funded millionaire candidates would flourish.

Speculation rages over which party would get the greater advantage from the ban on soft money. Many Republicans, believing that liberal-leaning news outlets will favor Democrats and noting that much of the political activity of the biggest Democratic ally, the A.F.L.-C.I.O., is largely unimpeded by McCain-Feingold’s provisions, fear Democrats may be the greatest beneficiary. Conversely, there is concern among some Democrats that forcing the parties to rely solely on the limited and relatively puny hard-money contributions may benefit Republicans.

One result of McCain-Feingold is certain: America loses. The parties are vital institutions in our democracy, smoothing ideological edges and promoting citizen participation. The two major parties are the big tents where multitudes of individuals and groups with narrow agendas converge to promote candidates and broad philosophies about the role of government in our society.

If special interests cannot give to parties as they have, they will use their money to influence elections in other ways: placing unlimited, unregulated and undisclosed issue advertisements; mounting their own get-out-the-vote efforts; forming their own action groups. Unrestrained by the balancing effect of parties, which bring multiple interests together, America’s politics are likely to fragment. “Virtual” parties will be able to proliferate—shadowy groups with innocuous-sounding names like the Group in Favor of Republican Majorities or the Citizens for Democrats in 2012 that will hold potentially enormous sway in a post-McCain-Feingold world where the parties are diminished for lack of money.

Under McCain-Feingold, the power of special interests will not be deterred or diminished. Their speech, political activity and right to “petition the government for a redress of grievances” (that is, to lobby) are protected by the First Amendment. Political spending will not be reduced; it just will not flow through the parties.

Do we really want the two-party system, which has served us so well, to be weakened in favor of greater power for wealthy candidates and single-issue groups? McCain-Feingold will not take any money out of politics. It just takes the parties out of politics.

Mr. McCONNELL. Mr. President, it’s a little late, but hopefully not too late, that the Washington Post runs a page one story exploring the McCain-Feingold’s destructive impact on vital democratic institutions: the two great political parties.

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 the Washington Post, Apr. 1, 2001]

CAMPAIGN BILL COULD SHIFT POWER AWAY FROM PARTIES

(By Ruth Marcus and Juliet Eilperin)

If the campaign finance bill nearing final passage by the Senate becomes law, it could dramatically alter the practice of modern politics, curtailing the influence of political parties and potentially enhancing the power of outside groups that would not be subject to strict contribution and disclosure rules.

Campaign consultants and senior lawmakers said the biggest immediate impact would be the slashing of the budgets of the Democratic and Republican parties, which together raised nearly half a billion dollars in the last election in “soft money,” the unlimited contributions from corporations, unions and wealthy individuals that would be banned under the Senate bill.

That money, accounting for one-third of Republican Party committees’ funds and nearly half the budget of Democratic Party committees, financed get-out-the-vote drives, television ads praising or attacking specific candidates, and basic administrative costs.

Although the parties would suffer under the new system, political experts say, the beneficiaries could be independent groups that have proliferated in recent years to press their agendas on gun control, the environment, abortion and other issues.

The bill, sponsored by Senators John McCain (R-Ariz.) and Russell Feingold (D-Wis.), puts significant new restrictions on such groups. Corporations, labor and ideological groups on the left and right would not be able to use their own soft money to run issue advertisements that name candidates within 60 days of a general election or 30 days of a primary. The use of such advertising, often indistinguishable from ordinary campaign commercials, has skyrocketed in recent elections.

However, unlike the political parties, outside groups could still collect unlimited checks from any source. They could also run whatever ads they wanted up to the deadline and after that could engage in other forms of political activity, such as telephone banks and mailings.

In addition, the legislation would not end all issue advertising, even close to an election. For example, wealthy individual donors—who cannot constitutionally be stopped from spending their own money—are not covered. Moreover, the restrictions on outside groups are the part of the legislation most likely to be thrown out by a court.

“The world under McCain-Feingold is a world where the loudest voices in the process are third-party groups.” Republican election lawyer Benjamin Ginsberg said. “My fear is that the parties will just wither and essentially people will be motivated to get out to vote by the groups which champion the issues they care about.”

A top democratic operative offered a similar assessment. “The fear here is all you’re doing is opening up a very large, underground flow of money in national politics,” said David Plouffe, who headed the House

Democrats' campaign operation in the last election.

But Fred Wertheimer of Democracy 21, which is lobbying for the bill, said there would be "far less leakage" of soft money to outside groups than some anticipate, especially from corporations. "People are missing the fact that a large number of soft-money donors are tired of being hit up and tired of facing the equivalent of political extortion," he said.

If the Senate approves it Monday, the McCain-Feingold bill will still have numerous hurdles to surmount. It must pass the House, which has voted for similar measures, but now—with campaign overhaul far closer to reality—Republican leaders are vowing opposition. It must also be signed by President Bush, who disagrees with a number of provisions but has indicated that he cannot be counted on to veto the bill. And perhaps most important, it must survive the constitutional challenge that will immediately be mounted in the courts.

Nonetheless, the prospect of Senate approval brings the bill a huge step closer to reality. As its most ardent foe, Sen. Mitch McConnell (R-Ky.), said last week: "There is nobody to come to the rescue. This train is moving down the track."

That momentum has left elected officials, political strategists and election lawyers of both parties trying to predict what life would be like under the new regime—and whether Republicans or Democrats would be better off. Both sides insisted that the measure would benefit their opponents but also acknowledged that the ultimate winners and losers would not be clear for some time.

Experts disagreed about whether the measure would help challengers or incumbents. Many said the bill would help incumbents because parties would not have the same ability to mount extensive advertising campaigns on behalf of challengers and because it allows incumbents to raise additional money against challenges by millionaire candidates. But others said challengers would be helped by the increase in the limits on direct contributions to candidates and parties known as "hard money." The limit on how much an individual can give to a single candidate would double to \$2,000.

Some effects of the bill were not disputed. Because it raises the overall amount of hard money that individuals can contribute in an election cycle from \$25,000 to \$37,500, Washington lobbyists are already wincing at the effect on their bank accounts. Because many lobbyists give the maximum allowed for a married couple, that would mean the total amount they and a spouse could give would grow \$25,000, to \$75,000 an election.

In addition, parties would have to dramatically change their operations, which have become dependent on using a combination of soft and hard dollars to do everything from paying the light bill to running ads.

"What we are doing is destroying the party system in America," said House Democratic Caucus Chairman Martin Frost (Tex.). "The political parties would be neutered, and third-party groups would run the show."

"We both lose," McConnell said. "This is mutual assured destruction of the political parties."

Some campaign finance experts said such concerns were overstated, nothing that the parties took in nearly \$720 million in hard money in the last election and would be able to raise even more under McCain-Feingold, which slightly increases the individual contribution limits to political parties, from \$20,000 to \$25,000.

"I do not think that a ban on soft money will cripple the parties," said Colby College political scientist Anthony Corrado. "The parties now raise twice as much hard money

as they were raising 10 years ago, and the parties were very active in the late '80 and early '90 in election campaigns without really any reliance on soft money."

Because Republicans have built up a larger base of small donors and therefore vastly out raise Democrats in hard-money contributions operatives on both sides agreed that, at least in the short term, the Democrats would be at a significant disadvantage. During the last campaign, Republicans and Democrats raised equivalent amounts of soft money, but Republicans took in \$447 million in hard money to the Democrats' \$270 million.

"The best example of why Republicans will do better than Democrats is to look at the Bush campaign last year," Democratic National Committee spokeswoman Jerry Backus said, citing the more than \$100 million the Bush primary campaign raised in hard money.

Democrats also voiced concern that they would be targeted in the waning days of the campaign by well-funded independent Republican groups.

"We have established interest groups that have been very effective on our behalf," a Democratic strategist said. "What we have never had are the instant groups that spring up for the specific immediate purposes of influencing elections and that are encouraged to form under this bill. . . . Democrats are going to be shuffling around dramatically more limited resources and not able to provide air cover for their members against those attacks."

Yet Republicans say democrats would be helped because they would benefit from continued heavy union spending and because wealthy Democrats would simply write checks to outside groups.

Two academics who are sympathetic to McCain-Feingold said the Democrats' shortfall in hard money would be offset by the greater number of advocacy group ads supporting Democrats. "The experience of the last two elections suggest that neither Democrats nor Republicans would be disproportionately harmed," said Kenneth Goldstein and Jonathan Krasno. "Indeed, neither party stands to gain or lose much against their counterparts."

Michael S. Berman, a veteran Democratic political strategist, said any predictions are foolhardy. "Of one thing I'm certain," Berman said. "Whatever we think the effect will be, whoever we think it will help, we will be wrong, because we've always been wrong."

Mr. McCONNELL. Mr. President, the courts have repeatedly struck down issue advocacy restrictions.

I also ask unanimous consent that this list of cases be printed in the RECORD.

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

See Buckley v. Valeo, 424 U.S. 1, 44, n. 52 80 (1976); FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249 (1986); Vermont Right to Life Comm. v. Sorrell, 221 F.3d 376, 386 (2d Cir. 2000); North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999); Iowa Right to Life Comm., Inc. v. Williams, 187 F.3d 963, 969-70 (8th Cir. 1999); Virginia Society for Human Life v. Caldwell, 152 F.3d 268, 274 (4th Cir. 1998); Brownsburg Area Patrons Affecting Change v. Baldwin, 137 F.3d 503, 506 (7th Cir. 1998); FEC v. Christian Action Network, 110 F.3d 1049 (4th Cir. 1997); Maine Right To Life Comm., Inc. v. FEC, 914 F. Supp. 8, 12 (D. Me. 1996), aff'd per curiam, 98 F.3d 1 (1st Cir. 1996); Faucher v. FEC, 928 F.2d 468, 472 (1st Cir. 1991); FEC v. Central Long Island Tax Reform Immediately Comm., 616 F.2d 45, 53 (2d Cir. 1980) (en banc);

Kansans for Life, Inc. v. Gaede, 38 F. Supp.2d 928, 935-37 (D. Kan. 1999); Right to Life of Mich., Inc. v. Miller, 23 F. Supp.2d 766 (W.D. Mich. 1998); Planned Parenthood Affiliates of Mich., Inc. v. Miller, 21 F. Supp.2d 740 (E.D. Mich. 1998)(same); Right to Life of Duchess County, Inc. v. FEC, 6 F. Supp.2d 248 (S.D. N.Y. 1998); Clifton v. FEC, 927 F. Supp. 493, 496 (D. Me. 1996), aff'd on other grounds, 114 F.3d 1309 (1st Cir. 1997); West Virginians for Life, Inc. v. Smith, 919 F. Supp. 954, 959 (S.D. W. Va. 1996); FEC v. Christian Action Network, 894 F. Supp. 946, 958 (W.D. Va. 1995), aff'd per curiam, 92 F.3d 1178 (4th Cir. 1996); FEC v. Survival Educ. Fund Inc., 1994 WL 9658, at \*3 (S.D. N.Y. Jan. 12, 1994), aff'd in part and rec'd. in part on other grounds, 65 F.3d 285 (2d Cir. 1995); FEC v. Colorado Republican Fed. Campaign Comm., 839 F. Supp. 1448, 1456 (D. Colo. 1993), rec'd., 59 F.3d 1015 (10th Cir. 1995), vacated and remanded on other grounds, 116 S. Ct. 2309 (1996); FEC v. NOW, 713 F. Supp. 428 (D. D.C. 1989); FEC v. AFSCME, 471 F. Supp. 315, 317 (D. D.C. 1979); Elections Bd. of State of Wis. v. Wisconsin Mfrs. & Commerce, 597 N.W.2d 721, 731 (Wis. 1999).

#### AMENDMENT NO. 171

Mr. DOMENICI. Mr. President, I ask unanimous consent that a series of technical amendments to S. 27, which are at the desk, be agreed to and the motion to reconsider be laid upon the table. These technical changes have been agreed to by the chairman and ranking member of the Rules Committee.

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

The amendment (No. 171) was agreed to, as follows:

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DAYTON. Mr. President, I spent the past three days with a number of my colleagues on a fact-finding trip to the Arctic National Wildlife Refuge. I took this trip to help prepare myself for one of the most important environmental and energy issues before us: whether or not to permit drilling for oil in the 1002 Area of ANWR. I wish to thank my distinguished colleague, Senator MURKOWSKI, for arranging and hosting our tour.

This trip was reportedly scheduled several weeks ago in consultation with the Majority Leader, who at that time did not expect the trip to conflict with votes in the Senate. Unfortunately, two votes did occur last Friday on amendments to S. 27, the campaign finance bill, and I was not present for them. Last Thursday evening, after reviewing the nature of these two amendments, I was advised by Democratic leaders to keep my commitment to undertake the trip.

Had I not been necessarily absent last Friday, I would have cast my vote in support of the Reed Amendment Number 164, as modified, because it would improve the ability of the Federal Election Commission to enforce the law. I would also have voted in favor of the McCain Amendment Number 165, because it would make more workable the bill's restrictions on the coordination of independent expenditures. Both of these amendments would

have strengthened the underlying bill, which I strongly support.

CONGRESSIONAL BUDGET FOR  
THE UNITED STATES GOVERNMENT  
FOR FISCAL YEARS 2001–  
2011—MOTION TO PROCEED

Mr. LOTT. Mr. President, I now move to proceed to H. Con. Res. 83, the House budget resolution, and my motion to proceed be limited to 10 minutes—5 minutes under the control of Senator CONRAD and 5 minutes under the control of Senator DOMENICI—and, following that debate, the Senate proceed to the adoption of the motion and that the motion to reconsider then be laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. In light of this agreement, then, Mr. President, there will be no further votes today. However, votes will occur throughout the day and into the evening tomorrow and probably Wednesday and Thursday also.

I thank my colleagues for helping work out this agreement.

I yield the floor.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Mr. President, I note the presence of the ranking member of the Budget Committee, Senator KENT CONRAD. What we have agreed to in the unanimous consent is that he and I will each speak for 5 minutes, after which we will adopt the House-passed budget resolution, after which the Senator from New Mexico will send a substitute to the desk which will be the Bush-Domenici amendment. We will get that much done tonight.

For Senators who might want to speak, we should be there rather quickly, do what I have just described, and we will be here if Senators want to come down and speak. I understand there is at least one Senator on our side who would like to make a speech tonight, and we have talked with Senator CONRAD, if there are any on his side who would like to speak.

It looks as though the magic hour tonight is certainly somewhere around 9 o'clock because it seems like it would be very uncomfortable after 9 o'clock for Senators to be around here, and we will not be doing any voting until tomorrow. So that looks like a nice time to shoot for, as far as how much time we will use. I will certainly save for tomorrow a more detailed analysis of why we are here.

I will say tonight that it is very important to most Republicans—I think I

speak for almost every Republican Senator; I am not overstating the case, almost every Republican Senator—that this President, George W. Bush, deserves to have his budget and his tax plan considered by the Senate. That is what the arguments have been about thus far. Should he have a chance? What I am saying tonight is, yes, he should and, yes, I am grateful now that, after a lot of back and forth, the other side of the aisle has agreed that we can call up the budget that we heretofore talked about, the Bush-Domenici budget.

Everyone should know that budget has a couple of things different than the one I proposed maybe a week ago. Those things are that the reconciliation instruction on the taxes is not in the budget resolution. The reason for that is simple and does not require much finger pointing or much time.

Essentially, it was determined, parliamentary-wise, that would not work, putting the reconciliation instruction on a budget resolution at this time. We intend to offer it at a later time in an up-or-down vote on the floor of the Senate, and I am certain that while some might want to delay that—I haven't heard that from my friend, Senator KENT CONRAD—we will have that vote. We are hopeful by then we will have 51 votes for that, and we will be back where we were originally. It will be in our budget resolution as it goes on its way to the House for conference.

Having said that, in the few minutes I have, I will say that the President of the United States and a very brand new staff, who did not have very much time, put together a rather good budget, which the Senator from New Mexico has looked at—at least the profile of it, the plan for it. I have looked at that, and I have modeled the budget after that.

Let me tick off what our new President wanted us to do that we are going to try to do in the next few days: One, save Social Security; two, save Medicare; three, provide, in the opinion of the President, adequate defense until and unless he gets his top-down review; and to provide new and increased spending for education. And he did that, and we proposed that within the discretionary funding in this budget resolution.

In addition, the President of the United States proposed that we should have a major tax bill. Frankly, in due course, the tax-writing committee will work their will. This is not a Senator putting something off; it is just stating the facts and the law. In a budget resolution, you just use dollar numbers. So you tell the Finance Committee where they have latitude to cut taxes. They will determine how, what kind, and we will be saying in this budget resolution you have permission to do up to \$1.6 trillion over a decade.

Before we are finished—since some of my friends have gone on television and talked about how big this \$1.6 trillion

is—I want to use a whole series of numbers as to what that looks like over 10 years to eventually convince people that it is not a very big number—whether you consider the total gross domestic product, total tax take—whatever you want to look at—it is a pretty modest number. The President would like us to consider that. We want to give him the right to consider that in this budget resolution.

My last comments have to do with what else is in this budget of a high priority and a big substance; that is, we reduce the national debt by \$2 trillion over the decade. We think that is the right amount. We think that is a fair amount. We also think, considering the size of the surpluses, that probably is what we ought to do. We prescribe that in this budget resolution.

I have given a summary tonight, as brief as it was. We will ultimately talk about more detail. We have done this budget with this kind of spending in it. The President has a 4-percent increase, year upon year, over the last year's budget for discretionary spending. In my opinion, that is a pretty good amount.

Mr. President, we won't adopt the House measure. We will make it pending, after which we will offer a substitute. I note that the Parliamentarian was nodding his head.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. CONRAD. I thank the Chair and I thank the Senator from New Mexico. I thank all of my colleagues who have worked hard to bring us to this position today.

However, we don't believe we ought to be on the budget resolution tonight. We don't believe we ought to be on the budget resolution because we don't have a budget from the President. Not only do we not have a budget from the President, because he has not even provided sufficient detail for the Joint Committee on Taxation or the Congressional Budget Office to give us an independent review of what his tax proposal costs, but we believe we should have waited until that analysis was available.

Third, there has been no markup in the Budget Committee. Always before, with one exception, we have had a markup in the Budget Committee. And always we have at least tried in the Budget Committee to mark up a budget resolution for our colleagues on the floor. This year, there was not even an attempt.

Fourth, there will be an attempt in the budget resolution to use reconciliation for a \$1.6 trillion tax cut, which we believe threatens the constitutional role of the Senate.

Now "reconciliation" is a word that I am certain many of our listeners really have no idea of its meaning. I must confess I didn't fully understand reconciliation until a detailed review of that process. What it provides is that