The Senator from Iowa is correct; under his amendment there would be no taxpayer funding provided you complied with the Government speech limit. The problem is, if you do not, your complying opponent gets tax dollars from the Government to counter your excessive speech. That is the constitutional problem with the proposal of the Senator from Iowa.

I do not think that makes the spending limit voluntary if, when you encroach above the Government-prescribed speech limit, the Government subsidizes your opponent. That is more than a hammer, that is a sledgehammer.

Also, it is worthy to note that all of the challengers who won last year, as far as I can tell—and the Senator from Iowa can correct me if I am wrong—I believe all the challengers who won last year spent more than the spending limits in his amendment, further proving my point that a challenger needs the freedom to reach the audience. To the extent we are drawing the rules, crafting this in such a way that we make it very difficult for the challenger to compete, we are going to win even more of the time. Of course, incumbents do win most of the time, but we would win more of the time if we had a very low ceiling.

In any event, my view is this is clearly unconstitutional. It is taxpayer funding of elections, more unpopular than a congressional pay raise, widely voted against every April 15 by the taxpayers of this country.

We have had this vote in a slightly different way on two earlier occasions. The Wellstone amendment got 36 votes; the Kerry amendment got 30. I hope the amendment of the Senator from Iowa will be roundly defeated.

I do applaud him, however, for recognizing the importance of nonseverability clauses in campaign finance debates.

**BIPARTISAN CAMPAIGN REFORM ACT OF 2001—Continued**

**AMENDMENT NO. 150**

Mr. DODD. Mr. President, I saw my colleague from Kentucky, but I guess he is not now on the floor. We have a couple minutes. My colleague from Kentucky and I talked about this the other day. He makes a very good point about the declining participation in the checkoff, the dollar amounts have been raised. If my friend from Kentucky is correct, originally it was $1 for the checkoff. You are not paying more in taxes. It is the money you send in. The checkoff of $1 of your tax returns would be used for the public financing of Presidential races. That number then went up to $3 because there were fewer and fewer people who were actually doing the voluntary checkoff.

His numbers, I believe, are correct. We have seen a decline in the number of people who are voluntarily checking off that $3 of their Federal taxes they are sending in or that are being withheld to be used for these Presidential races.

I am worried about that because I think there is an underlying cause for this. The debate we are having about campaign finance reform, while we are not going to adopt public financing for congressional races despite the fact there is a lot of merit going that route in terms of dealing with the constitutional problems that exist in the absence of having some public financing, there is an underlying reason that I think contributes to that declining statistic, and that is the people are disgusted with the whole process.

I do not think it is people’s lack of patriotism or their lack of understanding how campaigns are to contribute to strengthening our democracy. People are getting fed up. Witness that last year despite the overwhelming amount of attention and advertising on a national Presidential race, a race that included Ralph Nader and the Green Party, there was Pat Buchanan and the Reform Party, the Democratic candidate, Al Gore, and his running mate from my home State, Joe Lieberman; President Bush and Richard Cheney. Out of 200 million eligible voters in this country, only 100 million participated. One out of every two eligible voters in this country decided they were not going to make a choice for President of the United States and Vice President, not to mention the congressional races, the Senate races, and gubernatorial races that occurred.

On the Federal election for the leader of the oldest continuous democracy in the world, one out of every two adults in this country, one out of every two adults were not going to participate. I know some may have had legitimate excuses, but I suspect a significant majority of those who did not participate knew it was election day, did not have some overriding family matter that caused them to miss voting. I think they made a conscious decision they thought they were not going to show up, and I cannot express in our native language adequately the deep, deep concern I have over that fact and what appears to be a growing number of people.

I hear it particularly among younger people. I visit a lot of high schools in my home State of Connecticut. I get a sense that too many of our younger people are embracing the notions held by one out of every two adult Americans in the last election, that they are not going to participate by showing up to choose the leader of our country. I suspect that a good part of the reason is that people are just disgusted by what they see in the election process, that they are not going to participate in the political process.

The Wellstone amendment got 36 votes; the Kerry amendment got 30. I hope the amendment of the Senator from Iowa will be roundly defeated.

The PRESIDING OFFICER. Objection is heard.

Mr. DODD. At this juncture, at this particular moment.

**UNANIMOUS CONSENT REQUEST—AUTHORITY FOR COMMITTEES TO MEET**

Mr. McCONNELL. Mr. President, I have 10 unanimous consent requests for committees to meet during today’s session of the Senate. They have all been approved by the majority and minority leaders. I ask that these requests be agreed to en bloc and printed in the Record.

Mr. DODD. Reserving the right to object, I ask my friend and colleague if he will withhold that request for a few minutes. I will share with him a message I am getting. I will let him know about it.

Mr. DODD. At this juncture, at this particular moment.
hopeful the adoption of the McCain-Feingold bill, if it is adopted, will at least turn people's opinion in a direction that does not least and we beginning to do something about these elections.

For those reasons, I commend, again, the principal authors of this bill and those supporting it. But I do not think it is enough. People are still turned off, to put it mildly, on how the races are run and on how politics is conducted. There will always be some; I am not suggesting we will get 100-per-cent participation. I oppose any laws that require people to vote as some countries do. We better do a lot better job in convincing more than just one out of two adult Americans they ought to participate in choosing the leaders of our Nation than we presently are.

If the reconsideration of amendment may be rejected, we could hopefully, centuries to come.

For our own time but that future generations will inherit, as we have inherited of a quorum, and ask that the time be charged against the bill.

The PRESIDING OFFICER (Mr. Bunning). Without objection, it is so ordered. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I rise today in support of the amendment being offered by my friend and colleague from Iowa, Senator HARKIN. Senator HARKIN, Senator BURBANK and Senator KERRY and I offered a similar amendment that called for voluntary spending limits and partial public financing. Senator HARKIN's amendment differs in some respects to the proposal that we offered, but it still seeks to alleviate the same problem: How can we reduce the obscene amount of special interest money that is being spent in Senate campaigns today? And while I know that Senator HARKIN's amendment will not pass, I nevertheless believe that it is truly needed to reform our campaign finance system.

Since 1976, while the general cost of living has tripled, total spending on congressional campaigns has gone up eightfold. For the winning candidates, the average House race went from $87,000 to $816,000 in 2000. And here on the Senate side, winners spent an average of $609,000 in 1976, but last year that average shot up to $7 million.

The FEC estimates that last year more than $1.8 billion in federally regulated money was spent on federal campaigns alone, and that doesn't even count the huge amount of soft money that went into attempts to influence federal elections. That has been roughly estimated to reach as high as nearly another $700 million.

I have been calling for public financing of congressional campaigns for a very long time: since 1973, my first year in this body. And, as my colleagues who have been here for a while know, I have taken to this floor again and again over the years to urge us to solve the public’s crisis in confidence and do the right thing.

To be clear, I would prefer full public financing of the campaigns that would reduce spending and completely eliminate the link between special interest money and candidates. I have long held that such a system is the only true, comprehensive reform that would help restore the American people’s faith in our democracy and allow candidates to compete on an equal footing where the merits of their ideas outweigh the size of their pocketbook.

But as the problems in our system have escalated in recent years, so too has my despair over our failure to see real reform enacted, not just debated. That is why I am here again to see that we take at least one step toward achieving these much needed reforms. Senator HARKIN’s amendment is one such step, and urge my colleagues to support it.

Mr. McCONNELL, Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 155. The clerk will call the roll.

The legislative clerk called the roll. Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii (Mr. AKAKA) would vote "aye."

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

The result was announced—yeas 32, nays 67, as follows:

[Vote count details]

NOT VOTING—1

Akaka
The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I ask unanimous consent that the Senator from Delaware be added as a cosponsor of the Harkin amendment.

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

Mr. LOTT. Mr. President, we have been prepared for 2 months now to have this full debate and votes on amendments, and to actually get to a conclusion. Senator MCCAIN and I have talked, and Senator McCONNELL and I have talked, and the agreement all along was that we would have amendments, full debate for 2 weeks, and then we would go to a conclusion.

I assure the Senate that we are going to do that. We can do it tonight at a reasonable hour, we can do it at midnight, or Friday, Saturday, or Sunday. But I think we have a responsibility to complete action on this bill.

I hope the concern I have now that maybe amendments are going to start multiplying when, in fact, there are no more than one or two amendments that really are still critical that are out there to be offered and debated and voted on—maybe there are more. And I don’t want to demean any Senator’s amendment, but we have been on this now for the agreed-to almost 2 weeks. Anybody who thinks that by just beginning to drag this out and coming up with more amendments, we will carry it over until next week, that is not going to be the case.

Everybody has labored—sometimes with difficulty—to be fair with each other and give this thing a full airing and get some results, and you can debate about whether they are good or bad as long as you want to. At some point, we have to vote and move on.

We have had serious problems in this country. We need to address them. We have to pass a budget resolution. We have to take into consideration the needs of the country in terms of funding for programs, whether it is education, agriculture, defense, health care. We need to take whatever actions we can to provide confidence and a boost in job security and the economy. We have an energy crisis that will not go away. We need to get on to those issues.

Again, not to demean this issue at all—it is very important—but we will have done what we promised to do, and now it is time we begin to look for the conclusion and be prepared to move on to other issues next week. I just wanted to remind Senators on both sides of our discussion and my commitment to follow up with the agreement.

Mr. MCCAIN. Will the majority leader yield?

Mr. LOTT. Yes.

Mr. MCCAIN. I thank the majority leader, and I thank Senator McCONNELL and Senator DODD, who have managed this bill, I think, with efficiency and, I believe, in a total environment of cooperation.

But as you know all during last week, a couple times when we only had two or three amendments, we intended to be done by tonight or the end of this week. We have disposed of some. We will have an amendment that I think is very important that is about to be addressed soon. After that, there are not any major issues. We should finalize this bill so that we can move forward and none of us has to stay here over the weekend.

I want to say the majority leader is correct. We all agreed that we could get this thing done in 2 weeks if we allowed the 2 weeks. So there is no reason whatsoever that we should not enter into time agreements on specific amendments and a time for a final vote on this.

Mr. LOTT. I thank Senator MCCAIN. That discussion was not just between Senator MCCAIN and me, but also with the Democratic leader, Senator FEINGOLD—we were all in the loop. We all had an understanding of how we would bring this to an eventual conclusion.

Mr. MCCONNELL. Will the leader yield?

Mr. LOTT. I am glad to yield to Senator MCCONNELL.

Mr. MCCONNELL. I say to the distinguished majority leader, nobody more passionately opposes this bill than I do. But I am prepared to move to final passage today. There is one important amendment left on nonseverability, which is about to be the pending business before the Senate.

I say to my friend from Arizona, we may have a few sort of cats-and-dogs amendments, as Senator Dole used to call them, but we are basically through on this side.

Mr. LOTT. Can I inquire of Senator DODD, does he have any idea what might be outstanding and when we can move to a conclusion on this legislation?

Mr. DODD. I will be happy to, Mr. President. First of all, the past week and a half has been a rather remarkable week and a half in the Senate. We have had very few quorum calls. I do not know the total number of amendments we have considered, but they have been extensive. In fact, I find it somewhat amusing that someone else’s amendment is a cat or a dog, but if it is your amendment, it is a profoundly significant proposal.

We dealt yesterday with the opposition’s efforts to raise the hard number limits, and now a severability amendment from the opposition. Those are fundamentally important amendments but amendments that may try to enhance and strengthen the bill from those who support the legislation are a cat or a dog.

Our list has not expanded, I say to the majority leader. The list of amendments is about the same as it has been. There are about 12 or 13 amendments. There is a list of 21, which has been the consistent number for the past week. Those do not require much time.

We are prepared to move forward. I say to the majority leader, and if it takes going into tonight, going into tomorrow to finish it up, Saturday, or Sunday, whatever it takes, because I know we want to finish the bill, we fully respect that. I support that.

I have an obligation—if I can complete this thought. There are those on this side who support McCain-Feingold, and have for years, who have ideas dealt with 24 amendments—a total that span this legislation. While this is an important amendment we are about to consider, there are other amendments that should be heard.

I hope my colleagues will respect the rights of Members to offer amendments and be heard on them. There certainly is no effort over here to delay this at all. We will stay here however long, I am told by the leadership. Unfortunately, the Democratic leader cannot be here at this moment, but I am told he takes the position that if it takes being here all weekend, we will be here all weekend to complete it.

Mr. LOTT. I want everybody to understand that I am prepared to do that, too. Instead of that being a threat, it is a promise. No. 1, but No. 2, it is to urge Senators to work with the managers to identify the amendments we are going to have to consider, and if it can be done by voice vote, let us get time agreements on them. We should be prepared to move to table, if that is what is required, too.

We have an opportunity to make progress and complete this bill. We are going to do that. I want to make sure everybody understands it, so everybody needs to start making plans, if we are going to have to stay here Friday and Saturday, and take actions to allow that to happen.

Mr. DODD. A point, if I can, Mr. President. I am informed that we have dealt with 24 amendments about equal divided; 24 left. I am sorry, both Democratic and Republican amendments.

I know, for instance, Senator LIEBERMAN and Senator THOMPSON have an amendment, one of the outstanding amendments. Maybe it can be worked out. Senator BINGAMAN has one that has been worked out. It is important to note there is a good-faith effort obviously to complete this work, but I do not want to waste any time on discussion now, having considered a lot of these amendments, that we are going to start telling people who have had amendments pending—Senator DURBIN
has been on me and talking to me for the past 10 days about when can he bring his amendment up; also Senator Harkin, Senator Levin, Mr. Breaux, propose an amendment numbered 156.

Mr. FRIST. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with. If the PRESIDING OFFICER, Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make certain provisions nonseverable, and to provide for expedited judicial review of any provision of, or amendment made by, this Act)

On page 37, strike lines 18 through 24 and insert the following:

(a) In General.—Except as provided in subsection (b), if any provision of this Act or amendment made by this Act, or the application of any such provision or amendment to any person or circumstance, is held to be unconstitutional, then all the provisions and amendments described in paragraph (2) shall be invalid.

(b) Nonseverable provisions.—A provision or amendment described in this paragraph is a provision or amendment contained in any of the following sections:

(1) EXPEDITED REVIEW.—Any Member of Congress, candidate, national committee of a political party, or any person adversely affected by any amendment made by, this Act, or the application of such a provision or amendment to any person or circumstance, may bring an action, in the United States District Court for the District of Columbia, and the Supreme Court of the United States to advance on the docket for years to come.

(c) JUDICIAL REVIEW.—

(1) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia granting or denying an injunction regarding, or finally disposing of, an action brought under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered.

(2) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under this paragraph.

(4) APPLICABILITY.—This subsection shall apply only with respect to any action filed under paragraph (1) not later than 30 days after the effective date of this Act.

Mr. DODD. Mr. President, can I have a copy of the amendment? We have not seen the amendment.

Mr. FRIST. Mr. President, I rise to speak to the amendment. I have been offered by myself and Senator Breaux that I believe gives us the opportunity—and I encourage my colleagues to pay attention to the debate over the next 2 or 3 hours because it gives us the opportunity to assess where we are today in the bill, as amended, and to understand the implications for each of us, for people who are interested in participating in the political process both today and also for years to come.

I try positive. Let me refer back, again, to set the big picture and then update my colleagues, to a diagram that I believe is important. It is simple, but sometimes when we look at all these lines, it is confusing, and that is the nature of the whole campaign finance apparatus. This chart summarizes that when you pull or push in one area, it has effects throughout the system. It is very important because the issue we are addressing is what is called the nonseverability and the severability clause in the underlying McCain-Feingold bill.

Money flows into the system from the top of my chart down to the bottom. This is the political process. At the top of the chart is where money comes from, and it is all these blue lines. My colleagues do not need to focus on what these blue lines are right now, but I do want them to focus on the funnels, where this money is collected and where it goes.

My chart, before the amendments, had seven funnels, when one looks at all the political money that comes in and where it goes to affect free speech, political voice.

We have the individual candidate who can receive money from individuals, and we will talk about what we did yesterday in increasing what I call the contribution limits in terms of the hard dollars, the Federal dollars.

There have been changes to the underlying McCain-Feingold bill that are very positive. What angers people the most is that the individual candidate is losing his or her voice today. It might be a challenger; it might be an incumbent. Over time, because of the erosion from inflation on the one hand, without any adjustments in the Federal dollars of the hard dollars, but also the increasing influence, this is what anges the American people, the influence issue groups, special interest groups have on the system, all of which, if it grows too much, will overshadow and overwhelm the voice of the individual candidate.

They might be talking education, Medicare reform, military defense of
the country, but the issue group, the unions, the corporations right now that have no longer are being heard. This has become increasingly powerful at the expense of the individual candidate who is out there doing his or her best.

Political action committees, we talked a little bit about that, as long as we understand that corporations, unions, issue groups can all channel money, political action groups, to the individual candidates. We argued yes-

That is where the party system has worked. Our party system has traditionally worked to accentuate or am-

That后的x of the chart is basic-

What have we done? This is where we are today having not passed the under-

Underlying this side of the chart is basi-

The third key point applying to our amendment, you can see we are wiping out the party soft money which gives voice to the individual candidate. The balancing act achieved in the under-

With the underlying McCain-Feingold and the amendments that have passed, we have the following: Yesterday, we increased the con-

It is not any more complicated than that, but I am building up to be able to answer why you have the nonsever-

Now I have dollar signs indicated on this chart and I will come back to that. They don’t mean anything in terms of overall quantity. Qualitatively, you can see the individual candidate spends money, the party spends money, the money goes to the individual candidate over to the corpora-

Again, this part of the chart—the party hard and party soft money, PACs, and individual candidates—has very little disclosure by corporations, unions, issue groups—very little in terms of accountability or regulation.

What have we done? This is where we are today having not passed the under-

What have we done over the last 10 days of the discussion? We have had good amendments today that have been debated in a very thoughtful way. We saw the earlier chart with the funnels still on the chart.

With the underlying McCain-Feingold and the amendments that have passed, we have the following: Yesterday, we increased the con-

It is not any more complicated than that, but I am building up to be able to answer why you have the nonsen-

Now I have dollar signs indicated on this chart and I will come back to that. They don’t mean anything in terms of overall quantity. Qualitatively, you can see the individual candidate spends money, the party spends money, the money goes to the individual candidate over to the corpora-

Again, this side of the chart is basic-

The next chart will show what would happen if all of a sudden we took the restrictions off here and said Snowe-Jeffords is unconstitutional, that is what the courts decided would happen. This is what, potentially, might happen if our amendment does not happen. Again, this side of the chart is basi-

Put restrictions on speech party soft money here, and you counterbalance that with restricting speech or ration-

The next chart will show what would happen if all of a sudden we took the restrictions off here and said Snowe-Jeffords is unconstitutional, that is what the courts decided would happen. This is what, potentially, might happen if our amendment does not happen. Again, this side of the chart is basically the same as McCain-Feingold. We have eliminated the party. As I have said, if you take this restriction on speech, the Snowe-Jeffords restriction on speech, off, the money is going to still come into the system and it can’t go this way. It can’t go to individual
candidiates because we have limits there, the hard money limits. It has nowhere to go out to flow to the area of least resistance, and the area of least resistance is corporations, unions, issue groups that all of a sudden have unregulated, no-limits, no-cap—for good constitutional reasons, I argue—see theollypicks. Ultimately, we do exactly what we don’t want to do. We increase the interest and the role and the power of the special interests versus the individual candidates and the parties.

That is the impact. That is the big picture. I think that linkage is critically important.

As to the specifics of the amendment, first of all, it addresses this balance. Second, it is narrow, it is targeted, and it is focused. The media has been saying this is a poison pill because if you strike down one part of McCain-Feingold the whole bill falls. That is wrong. That is false. This is narrow and targeted. It applies to the whole bill. It links just the two provisions, the Snowe-Jeffords provision with the ban on soft money—nothing else. The linkage is for a good reason. It is because the impact on one has an impact on the other. They are complementary; they are intertwined. That is why that nonseverability is absolutely critical to prevent the possibility of this happening.

The nonseverability clause ties together just those two provisions and nothing else. When I say it is narrowly tailored, a narrowly tailored nonseverability clause, it is basically because everything else will stand. If the Snowe-Jeffords provision is ruled to be unconstitutional and therefore the cap is released, the party soft money elimination will be invalid; again, coming back to the original balance. Other provisions in the bill stand. It is just those provisions, which will not be affected by this nonseverability clause, are provisions such as the increased disclosure for party committees, the provision clarifying that the ban on foreign contributions includes soft money, the clarification of the ban on raising political money on Federal Government property. All of that stands. We are talking about just these two provisions to which I have spoken.

The provisions on independent versus coordinated expenditures by political parties are unaffected by this amendment. The coordination provisions of the bill, the portions of the bill such as tightening the definition of independent expenditures, the provisions providing increased reporting of independent expenditures—again, all of these provisions of the McCain-Feingold bill are not excluded as a part of our amendment today. It has to be one of the two provisions to which I have spoken.

Another point I want to mention, and it will probably be talked about over the next couple of hours, is the fact that this narrowly targeted nonseverability clause also provides a process for expedited judicial review of any court challenges to these two provisions. The purpose of that clearly is that challenges—we don’t want to be held up in court with a lot of indecision over the years.

All this does, as part of this nonseverability clause, its purpose, is to provide that if the provisions of this legislation that restrict the ever-louder voice of the issue ads—which, again, are poorly disclosed and poorly regulated—are declared unconstitutional, just the Snowe-Jeffords provisions, then the provision that weakens the voice of the individual candidate and of the party would not be enforeceable.

I simply put it that way. If this is held down: The person running for public office will not be left out here defenseless—without any voice, if our effort in McCain-Feingold as the Snowe-Jeffords provision fails, if the courts say no, we are going to lose them—there—which clearly just looking at the dollar signs, would put the individual candidates again at a point where they are almost helpless as they are trying to make their point.

The history of severability legislation I am sure we will go to. I will not address that.

Let me answer one question because we were talking as if this were a poison pill because people bring in editorials saying this is a poison pill. It is clear, a poison pill, to me, is if you give somebody a pill and they drop dead and they are gone. We are not adding a new entity or provision to the bill. All we are doing is removing provisions that are already in the bill. They are in the underlying McCain-Feingold bill. They are not amendments that have been added that are trying to poison the bill.

The only thing we are doing is working with two underlying provisions that are already in the bill, saying they are inextricably linked and have an impact one on the other.

Proponents of the bill—we heard it a lot this morning—told us time and time again that this is constitutional. Snowe-Jeffords is constitutional, the ban on party soft money is constitutional. If people really believe that, we need to convince the courts that bill have nothing to fear by this linkage in our nonseverability proposal.

As we look at what I have presented, we should take this opportunity to look seriously at what is happening in campaigns and campaign finance reform: The sources of money, how it is being spent, whether or not it is disclosed, and where the money is going. In all this we need to make absolutely sure we do not muffle the voices and diminish that role of the individual candidates out there while increasing the role of the special interests or the unions or the corporations.

I hope all my colleagues will study this particular amendment, will carefully consider this balanced and narrowly tailored amendment that addresses what I believe is a critical, critical issue.

Mr. DODD. Mr. President, I yield 15 minutes to the senior Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 15 minutes.

Mr. THOMPSON. Mr. President, I thank my colleague from Tennessee, Senator Frist, who has done his usual excellent job in laying out his case. I think the concern that is being expressed is a valid concern, in that we need to keep in mind the totality of the system as we are addressing this issue. That is one of the things that made me feel good yesterday, because I think that is exactly what we were doing.

If we, for example, had lost Snowe-Jeffords somewhere along the way and just had a soft money ban without any increases in the nonseverability, I think I would have good reason to think the potential problem that my colleague expressed would really have been a significant one. I do not think that this practical problem exists nearly as much as we feared, because even under a worst case scenario, if the disclosure and other provisions of the Snowe-Jeffords even were to fail and we lost soft money in the system—which I think would be a good happening—we have increases in the hard money limit. We have now doubled, under the original bill—we have doubled the amount of money the candidate can have for his own campaign, $1,000 to $2,000; $4,000 in a primary, $4,000 in a general election. We have also increased the amount of money that can go to parties. We did not increase it as much as I would like, but we increased it. We also increased the aggregate amount. We also increased and doubled the amount that parties can give to the candidates. We indexed all of it.

It is not that we are not in the same position we were when McCain-Feingold started. We have taken some significant steps in order to get some legitimate, controlled, limited, hard money into the hands of candidates and other provisions of the Snowe-Jeffords somewhere along the way. I think the system as we are addressing this needs to keep in mind the totality of the system as we are addressing this issue. That is one of the things that made me feel good yesterday, because I think that is exactly what we were doing.

The problem that is being addressed today is one of the very kinds of things we were trying to address yesterday. I think this body effectively and overwhelmingly addressed it in the compromise amendment that we have. The proponents of the current amendment for nonseverability, however, make the case that we shouldn’t risk the situation where the soft money limitations or abolitions and the Snowe-Jeffords requirements with regard to unions, corporations, and others would be struck down; that there would be an imbalance. My first point is that we
WELLSTONE pointed out, for example—no individuals, as Senator Jeffords in the past. For the moment, let's hypothetically say that a 60-day closure requirement. It doesn't have anything to do with money. A part of Snowe-Jeffords has to do with corporations and unions within the last 60 days and their expenditures, and that is a money situation.

Let's say that was knocked out, hypothetically. We are all talking hypothetically because obviously none of us know what a court will do. We have argued the constitutionality of Snowe-Jeffords in the past. For the moment, let's hypothetically say that a 60-day restriction with regard to what corporations and unions could do, and no one else—no individuals, as Senator William Cohen pointed out, for example—is a part of this. I compliment my friend for narrowly tailoring this legislation so we didn't have to deal with all of that. But that is knocked out.

Then we are looking out some corporate and union money in the last 60 days of the campaign. That is not insignificant. But I am not sure, in the total context of things, that it is all that important. It certainly doesn't justify doing what we may be doing here in terms of nonseverability.

The first thing we need to understand about nonseverability and Congress passing a bill with a nonseverability provision in this is that it is extremely rare. We are. We asked the Congressional Research Service about it. Their information is that there have been 10 bills introduced or considered in the last 12 years that have had a nonseverability provision in them. They further say that there has been one bill in the last 12 years where we have passed legislation that contained a nonseverability clause. It is extremely rare in the thousands of bills that passed during that period of time of 12 years. I said: How many public laws were there? They said 12,962. Out of 12,962 pieces of legislation, only 1 of them contained a nonseverability clause. It is extremely rare that people are using a nonseverability clause.

That is some indication of the rarity and the significance of what we are doing here today, or what is being suggested that we do.

There was a principle established a long time ago in this country that is nonexistent in our country. It is recognized by the judiciary—that in a piece of legislation, which more likely than not will contain several provisions, you can have some parts of it that are constitutional and maybe one part that is not. Strike the constitutional part, says the Court, and leave the rest intact.

That is the normal way we have handled things in this country. It is based upon a concept that I think all of us honor and adhere and we talk a lot about it. It is the concept of judicial restraint. We have recognized in this country for a long time—and our courts have recognized for a long time—that they should exercise judicial restraint and make constitutional issues or decisions necessary. The courts have adopted their own rulings that militate in that direction and cause them not to go off and even consider constitutional issues unless they really have to. It is for the reasons that I explained: Because of the concept of restraint and the benefit we get as a country and that the judiciary gets for adopting judicial restraint, not reaching out to take on more than it should and look for opportunities to strike down laws if there are not even really directly presented to them, and so forth.

I think the Court said it very well in the case of Regan v. Time, Inc., with the Supreme Court plurality decision in which Justice Scalia wrote, and I think it is important because it gets to the heart of what I am saying. The Court said:

In exercising its power to review the constitutionality of a legislative act, a Federal court should act cautiously. A ruling of unconstitutionality frustrates the intent of the elected representatives of people. Therefore, courts, including the Supreme Court, should not undertake to strike down more of the statute than is necessary. As this court has observed, whenever an act of Congress contains unobjectionable provisions separable from those found to be unconstitutional, it is the duty of this court to so declare and maintain the act insofar as it is valid. Thus, this court has upheld the constitutionality of a particular provision of a statute even though other provisions of a statute were unconstitutional. For the same reasons, we have often refused to resolve the constitutionality of a particular provision of a statute when the constitutionality of a separate controlling provision has been upheld.

I think that states it very well. In my judgment, I have seen the law and the practice of the United States for many years. It is a valid one. I think we would all agree that it is a valid one.

Those are the circumstances. No. 1, the extreme rarity of the situation; No. 2, these longstanding principles that our judiciary has. Those are the foundation blocks as we approach this issue this time as a Congress.

What will be the legal effects of a nonseverability clause? Not only has Congress not legislated a nonseverability clause once in the last 12 years, but there are no cases ever in the history of the country where Federal courts have been called upon to construe a nonseverability clause.

We really are in uncharted waters here in terms of how such a clause might be interpreted. I fear we are getting into an area of unknown consequences and we may very well conclude that we don't fully appreciate.

What will be the probable result? As you think it through, you can see situations very readily that are going to produce perplexities, shall we say, that maybe we can resolve here on the floor. That is one of the reasons why I am concerned about what intent the proponents have with regard to this amendment.

Article III of our Constitution says there must be a case in controversy before a person can bring a lawsuit, have it upheld. Any law professors out there, forgive me for my shorthand as I go through this. I want to touch on the general principles, and I hope I get them right.

If you are a litigant, someone challenging this act, you have to have standing. There is a criminal aspect to this statute; if you are a criminal and you are convicted, you have standing. As far as the civil aspects of it are concerned, in any kind of a situation, you have to have a case in controversy, and you have to have standing.

That means you have to be injured directly by the provision you are dealing with or have been convicted of. If the statute is in force, you will be in jeopardy. You sustain some injury by you face imminent injury, something like that, not just a general public kind of a potential injury. There was a case back in 1974 where some concerned citizens got together and sued the CIA because they were not disclosing their budget. The courts held that your interests are not any different from any other citizen. You have no standing in this lawsuit.

That little background has relevance because someone challenging these two provisions will refer to them as the soft money provision and the Snowe-Jeffords provision of the McCain-Feingold bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. THOMPSON. I request an additional 10 minutes.

Mr. FEINGOLD. Mr. President, I yield an additional 10 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator is recognized for an additional 10 minutes.

Mr. THOMPSON. It has to do with how the cases would come up. If someone, let's say, was convicted under the soft money provision—in other words, someone sent some money to somebody they weren't supposed to after this law was passed, and they got caught doing that and they got charged with and got convicted of it, if you had severability, then that person would clearly have standing with regard to the soft money provision they were convicted of. That is all that would be at issue.

Presumably, if you had nonseverability the way that the proponents of the amendment want it, the person who is affected by the soft money provision that he is convicted of, presumably he could also challenge the Snowe-Jeffords part of the bill that
has no relevance to him. If so, are we telling the Court, by means of this amendment, to give standing to every person who claims to be overruled by Snowe-Jeffords when they are not affected by Snowe-Jeffords? If so, we are running afoul of article III because the Congress cannot give people substantive jurisdiction or grant constitutional standing for anyone other than the political branches. I say to my friends, even if this nonseverability provision is rare, it has been done a lot—in fact, three times on campaign finance reform, where you do bring people together and you have this rich interaction. Three times we voted for nonseverability clauses on this floor. No. 2—and other people will comment on this—nonseverability may be rare, I guess, in the big scheme of things, but it has been done a lot—in fact, three times on campaign finance reform, where you do bring people together and you have this rich interaction. Three times we voted for nonseverability clauses on this floor.

Mr. McCONNEL. Will the Senator yield for an observation?

Mr. FRIST. Yes.

Mr. McCONNEL. Not only is the Senator correct that the last three campaign finance reform bills that cleared the Senate had nonseverability clauses in them, the amendment we voted on a few moments ago—the Harkin amendment, which was supported by 31 colleagues on the other side of the aisle—had a nonseverability clause in it. In fact, the Senator from Tennessee is entirely correct.

When the subject turns to the first amendment and to the constitutional rights of Americans in these kinds of bills, it is the exception not to have a nonseverability clause in it. I am sure the other Senator from Tennessee was not suggesting that nobody would have standing to bring a case affecting so many different people's constitutional rights. I am confident, I say to my friend, the junior Senator from Tennessee, there will be some Americans who will have a standing to bring a suit against this case. I will be leading them. I thank the Senator from Tennessee.

Mr. FRIST. I thank the distinguished Senator from Kentucky for his comments.

I yield 15 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. McCONNEL. Will the Senator yield for an observation?

Mr. FRIST. Yes.

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say we are in uncharted waters, facing unknown results that we don’t fully appreciate. That is the theme of my comments.

I go back to another philosopher, Mark Twain. I can’t quote him exactly, but he has been quoted as saying something to the effect that “prophecy is a very iffy profession, particularly with respect to the future.” That is where we are. We are all trying to divine what is going to happen in the future if McCain-Feingold passes, as I expect it will, and if it should be signed and upheld by the Supreme Court. What would we face?

Well, I read in the popular press that on the Democratic side, one of their leading campaign attorneys is telling them if McCain-Feingold passes, the Democrats can kiss goodbye any chance of money, or we may see them in the 2002 election. That should cause everybody on this side of the aisle to stampede and vote for it. However, there is an equally qualified observer who has spoken to our Members and has said if McCain-Feingold passes, the Republican Party will go into the minority and stay there for 25 years.

Now, obviously, one or the other of these has to be wrong in terms of what is going to happen at the election. But neither one of these observers is an unqualified observer. The reason they have come to these two differing conclusions is that each one is looking at this issue through the prism of his own self-interest. If the Democratic campaign lawyer sees the destruction of the Democratic Party and the Republican campaign consultant sees the destruction of the Republican Party, I submit to you, as murky as our crystal ball may be, the chances are that they are both right—that we are going to see, as the passage of this bill, not the destruction of the party—I won’t go to that extent, but certainly a dramatic diminution of party influence in politics in this country.

One very practical example that we can expect in the scaling down, if not the elimination, of party conventions because party conventions now are financed entirely with soft money which, under this bill, would become illegal. So we may see party conventions disappear or become seriously truncated as a result of the passage of this bill, and if I were a special interest group with an unlimited wallet, I would anticipate holding a major convention of my own and invite certain favored speakers. I would gear it in such a way as to get maximum media attention, and those speakers could then get media attention that would come out of attending that convention.

I do believe that we are going to see an increase in political spending of soft dollars on the part of special interest groups in different and inventive ways that we at the moment cannot anticipate. Once again, in the newspaper there is a story of a fundraiser. He signed it himself. He said: ‘Those of us on K Street are already figuring out ways to get around McCain-Feingold and use our soft dollars in a fashion to influence the political situation.’

We are going to see, I am sure, an increase in Harry and Louise kind of advertising. Those of us who were on the floor during the debate on President Clinton’s health care plan know how effective that was. We know how many those soft dollars were, and we know how quickly the ambition of McCain-Feingold passed. If McCain-Feingold says you cannot give those soft dollars to a party to pay its light bill, well, OK, we will give the soft dollars to Madison Avenue to influence politics in other ways.

One of the other ways the parties are going to be seriously disadvantaged by this bill, and if we pass it, is candidate recruitment. Senator Frist is the chairman of the Republican Senatorial Campaign Committee. When he goes out and tries to convince a reluctant candidate to challenge a Democratic incumbent, one of the first things that candidate says is: ‘If I do this, will you be there for me?’ Senator Frist can assure you that if we pass McCain-Feingold, I will commit X amount of activity in your behalf. Please, come do this. Do this for the party. Do this for your country. Come do it, and we will be behind you.

Senator McConnell has already laid out the financial implications of McCain-Feingold in terms of the amount of money that would be available to the senatorial committee if we had nothing but hard dollars based on actual experience. As Senator Frist goes out to recruit candidates, or as Senator Murray goes out to recruit candidates on the other side, she is going to find her ability to attract candidates into this situation will be severely limited.

The ultimate answer is: We want you to run, but when it comes to financial support, you are on your own; you are not going to get any significant help from the national party in any way because we simply cannot do it. We have to use our hard dollars for things for which we used to use soft money. We simply are not going to have the resources that we would like to have to help you. We will see many outstanding candidates decide they do not want to run under those circumstances.

Make no mistake about it, those in the press gallery who have been talking about the present system being an incumbent protection act, wait until we pass McCain-Feingold and I guarantee you an incumbent will really have to foul his nest in order to lose. This virtually guarantees that no challenger of any consequence will be able to raise the money and produce the organization to take on an entrenched incumbent because the restrictions are so severe that they will not be able to do that.

What does this have to do with the amendment? Simply this: At least as a result of the Wellstone amendment for which I voted, there is a degree of equal damage to the special interest groups. With the Wellstone amendment in the bill, the bill does not unilaterally damage parties and leave special interest groups totally free. But it does leave special interest groups huge loopholes, but it at least, on the advertising phase, says the special interest groups have the same kinds of problems as the parties.

People said to me: Why in the world did you vote for the Wellstone amendment when it is clearly unconstitutional? I voted for it with my eyes wide open. I believe it is unconstitutional. I believe the other parts of the bill that don’t go near the Wellstone amendment are unconstitutional. But I thought if the time should come, through some dark miracle, that McCain-Feingold survives the White House, the Supreme Court,
and gets into the public stream, I do not want the loophole that the Wellstone amendment closed to stay open. If they are going to find some of it unconstitutional, I want them to find all of it unconstitutional. I want that loophole plugged.

If, indeed, we have the circumstance before the Court where the Court says the Wellstone amendment is unconstitutional, so the special interest groups are off the hook, but all of the corresponding pressures on parties are constitutional so that parties are under this kind of restriction, we are going to see a distortion in the political world that none of us is going to like.

I am supporting this amendment that says if the Supreme Court says, OK, we are going to strike down the Wellstone amendment, we will treat it alone as far as we hope they do, then we are going to strike down all the rest of it as unconstitutional because it all goes together, it fits together; it is a legitimate pattern.

I happen to think it is a total pattern of the violation of the first amendment. I have said before I think if James Madison were alive, he would be appalled at the debate, let alone the outcome. I have been ridiculed for that by members of the press who somehow think it is kind of funny to talk about the Founding Fathers, but I still believe the Federalist Papers are the best guide we can have as to how we make public policies around here.

As we look into our crystal balls, murky as they may be, we have to try to understand what the consequences will be if this bill passes and becomes law. I think the consequences are as I have stated: Parties will be seriously disadvantaged, special interest groups will be empowered. But I do not want that to be done by the Supreme Court. I want the Supreme Court to tell us, all or nothing.

If the Supreme Court says an intrusion on first amendment rights is legitimate when you are dealing with political parties, then that intrusion ought to be legitimate when you are dealing with special interest groups. If, on the other hand, they say, no, the first amendment is so precious that we are going to treat you one way, but if you assemble yourselves in your right to assembly and right to petition in a special interest group, we are going to treat you a different way?

The possibility exists that might happen if this amendment is adopted. If this amendment is adopted, then the Supreme Court will have to make the fundamental decision: Are they going to amend the first amendment by upholding McCain-Feingold, or are they not?

If they decide they are not, then they are not across the board. They cannot do it selectively. To me, that is the kind of outcome with which Hamilton, Madison, and John Jay would all agree. I make no apologies for calling them to this argument because I think this argument fundamentally is about the preservation of their handiwork which all of us in this Chamber have taken an oath to uphold and defend.

I do not take that oath lightly. I know my fellow Senators do not take that oath lightly. We should talk about the oath lightly. We should talk about it in those terms. I plead with my colleagues to think in those terms and, therefore, to support this amendment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. R. D. Mr. President, I yield 15 minutes to the Senator from Illinois.

Mr. DURBIN. The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. I thank the Chair.

Mr. President, the American people have had an incredible civics lesson these past few months. No novelist, no playwright, no movie director—not even the creator of the X-Files—could have dreamed up a more intricate, a more convoluted, or more fantastic plot than the one played out in our national political arena in last year's Presidential election.

For weeks on end, it seemed there was only one topic of conversation: the results of a disputed election. And the conversation focused on some of the most arcane aspects of constitutional law.

What if Florida cannot send a slate of electors to the electoral college? What if they send two slates? Are contested elections a State or a national issue? For that matter, a county by county issue? Who ultimately decides the results of a disputed election? Congress? The Florida Supreme Court? Federal district court? The Supreme Court?

What about the vote of the people? Does the President have an incredible civics lesson. Or for that matter, a county by county issue? Who ultimately decides the results of a disputed election? Congress? The Florida Supreme Court? Federal district court? The Supreme Court?

Woven through every one of these questions is a crucial feature of our American style of democracy—the separation of powers. This is perhaps our Nation's most critical feature, our backbone. If you will.

For without a clear cut separation of powers—a separation between the Federal branches of Government, and between the Federal Government and the States—our system of Government founders and fails.

Prior to the creation of the Federal courts, Alexander Hamilton envisioned in Federalist No. 78 that "the judiciary is beyond comparison the weakest of the three departments of power." Given the recent role the Supreme Court played in last November's Presidential election, Alexander Hamilton's vision was wrong.

Our delicate balance of power has tipped in favor of nine justices that have the power to legislate from the bench and have now asserted the Court as the most powerful of the three "departments of power."

Commenting on the Supreme Court's role in picking the President, Laurence Tribe noted that the Justices were "driven by something other than what was visible on the face of the opinions."

We will continue to ponder whether the Court's decision was derived from established legal and constitutional principles. Or whether the Court was "results oriented" and searched for a rationale to substantiate a decision more political than legal.

In our Government this question of the separation of powers never goes away. It is here before us today, in this bill, with this amendment, with the issue of campaign finance reform. Specifically, it confronts us with the issues of severability and nonseverability.

When the Congress of the United States creates a new law of the land, how difficult should it be for another branch of Government to strike it down?

For the executive branch of Government, the answer has always been clear. The President can veto any law we pass. Congress can override a Presidential veto with a two-thirds majority in each House. The balance of power between Congress and the executive branch is part of our national strength.

But what of the balance of power between Congress and the Judiciary?

Federal courts have the authority to decide on the constitutional legitimacy of the laws passed by Congress, and to dispose of any provisions of the law they find unconstitutional. It is an ultimate authority dating back to Marbury v. Madison. If the Supreme Court declares a provision of law to be unconstitutional, it is conclusive.

Short of changing the Constitution itself, a step we have taken only 17 times since the passage of the Bill of Rights, there are no options. A finding of unconstitutionality by the Supreme Court effectively voids congressional and Presidential action. This, too, is a vital part of the balance of powers. And I respect it.

A nonseverability amendment would alter, even if only slightly, the balance of power between the legislature and the judiciary. Is this a wise change to make?

I have been grappling with this question these past few days. And grappling, as well, with some of the profound and, I must say, unsettling changes that have occurred at the Supreme Court in recent years.
My perception and I confess this is my own, of where the Court is today, and the direction in which it is heading, with the present Court in my ultimate decision about the nonseverability issue.

A law professor at New York University wrote an interesting article on this very topic a few weeks back in the New York Times. The author’s name is Larry Kramer, and his article, which could hardly be more to the point, was titled “The Supreme Court v. Balance of Powers.”

His main point, which I think he makes quite convincingly, is that the current Supreme Court has a definite political agenda—one devoted chiefly to reallocating governmental power in ways that suit the views of its conservative majority. . . .

For nearly a decade, the court’s five conservative justices have steadily usurped the power to govern by striking down or weakening federal and state laws regulating issues as varied as gun sales, the environment and patents—as well as laws protecting women and . . . the disabled.

Many of the Supreme Court’s recent decisions have indeed been made by the conservative majority. Decisions are often carried on the basis of a single vote. Age discrimination—five to four. Gay rights—five to four. Warrantless police searches—five to four. The Federal role in death penalty cases—five to four. And of course, the selection of the 43rd Chief Justice of the United States—five to four.

Justice John Paul Stevens, in his dissenting opinion to this last decision, said:

Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the nation’s confidence in the judge as an impartial guardian of the law.

This is my own starting point for reflecting on the nonseverability question. I agree with Justice Stevens. My confidence in the impartiality of the Supreme Court has been shaken. The American judicial system has been increasingly politicized. Politicized by the unseemly rejection by the Senate of qualified nominees to the Federal bench. Politicized by the recent decision by the White House to end the half-century involvement of the American Bar Association in reviewing the qualifications of potential nominees to the Federal bench—a tradition that dates back to the Eisenhower administration.

With that as context—recognizing that for many the impartiality of the Supreme Court is being called into question—I return to the question of nonseverability. Is this a Supreme Court to whom we want to hand over the absolute authority to rewrite whatever campaign finance reform measure ultimately is enacted by Congress?

I am not enamored by the idea of granting to the Court—particularly this Court—such authority. Maintaining severability denies them the opportunity to sink the entire law on the basis of the constitutionality of one provision.

At the same time, I am not enamored by the prospect of allowing this Supreme Court to selectively dismantle our campaign finance reform measures, picking and choosing among the different provisions to find ones that suit their visions of reform, and rejecting the rest.

The last time we tried this in Congress and sent the law across the street, it had a pretty disastrous outcome. The Supreme Court at that time decided they would limit how we raise money for campaigns. They would not limit, as Congress wanted to, the ultimate amount of money spent on campaigns, and then they came in with a decision in Buckley v. Valeo in 1976 and said, incidentally, millionaires in America, when it comes to campaign financing, are above the law. Now that preposterous outcome was rationalized by them and has been capitalized on by candidates since.

Campaign finance activist Ben Senutaria compared the Buckley decision by the Court relating to campaign finance reform to that of a large tree in the middle of a ball field. The game can still be played, he says, but it has to be played around the tree.

Despite my serious misgivings about this Supreme Court, the opportunity severability will give it to move beyond the role of constitutional arbiter, to actually craft their vision of campaign finance reform, I will vote against the Frist amendment for three reasons.

First, for the good of our Nation, the strength of our Government, and the future of the Court, I must still retain some hope that the future Supreme Court will rise above any political consideration to judge this law on its constitutional merits.

Second, taking my misgivings about the distribution of the Court to their logical conclusion, Congress would have to raise this matter on every legislative issue we face. That would invite confrontation and chaos that would not serve our Nation.

Third and finally, I have supported McCain-Feingold and now oppose the Frist amendment. I was prepared to set aside my heartfelt concerns over the issue of severability rather than jeopardizing this good-faith effort to clean up the tawdry campaign climate in America.

I support the severability provision in this bill and oppose the Frist amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before the Senator from Illinois leaves the floor, I express my personal appreciation for his speech. I say that, recognizing that he and I have been in Congress the same length of time. We came together to the House of Representatives. During this period of time, I have gotten to know him well and I recognize his history as being a real legislator, a parliamentarian as he was in the State of Illinois.

This debate has been a very good debate. During the past couple of weeks, we have had some very fine presentations made. But when we look back on the presentations made, there will not be any better than the one just made by the Senator from Illinois. Not only did he deliver it well, as he always does, the Senator from Illinois has no peer, in my estimation, as someone able to present facts. But here, not only did he do a great job in his delivery, the substance of what he said is nonseverable, end of story.

For someone such as who struggled with this issue of severability, he certainly laid the foundation, in effect poured the cement. I have no question the Senator from Illinois is right on this issue. I am personally very grateful for having been present to listen to this brilliant presentation. The PRESIDING OFFICER. Who yields time?

Mr. REID. I yield to the Senator from Wisconsin for 15 minutes.

Mr. FEINGOLD. Mr. President, let me join in the comments the Senator from Nevada made about the presentation of the Senator from Illinois. I know he thought long and hard about this. I am grateful, not only for his decision on this but also for the rationale and presentation he made. I thank him for it.

I appreciate very much the way the Senator from Tennessee, Senator Thompson, kicked off the debate. During the past couple of weeks, we have had some very fine presentations made. But when we look back on the presentations made, there will not be any better than the one just made by the Senator from Illinois. Not only did he deliver it well, as he always does, the Senator from Illinois has no peer, in my estimation, as someone able to present facts. But here, not only did he do a great job in his delivery, the substance of what he said is nonseverable, end of story.

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together if any part of it is challenged in court or on constitutional grounds. So, if this amendment passes, and the bill passes into our hands in that form, it will be as if we had never passed a campaign finance reform bill at all.

Our bill contains an explicit severability clause, added only for emphasis. We pass hundreds of bills in each Congress, and each of them is deemed implicitly to be comprised of severable parts, unless it contains "nonseverability" language. Two weeks ago we passed a bankruptcy bill, that ran on for hundreds of pages. I thought it was a bad bill, I wish it were not about to be voted on today, but I understand that some part of its hundreds of pages is struck down on constitutional grounds, the rest will stand. The same is true of nearly every bill we have passed or will in the future pass in this body. In fact, I am told during the last 12 years only 10 bills have been introduced, let alone passed, that contain a nonseverability clause. It is incredibly unusual.

The Supreme Court has repeatedly held that even without a severability clause, the presumption is that Congress intends for each provision of a bill to be evaluated on its own merits and severed from the bill if it is found to be unconstitutional. In Alaska Airlines v. Brock, for example, the Court said:

A court should refrain from invalidating more of the statute than is necessary .... Whenever an act of Congress contains unconscionable provisions, one separable from those found to be unconstitutional, it is the duty of the court to so declare, and to maintain the act in so far as it is valid.

That is the general rule. In order to overcome that presumption there has to be specific evidence that Congress would not have passed the constitutional provisions without the unconstitutional provisions.

Senator McCain and I have drafted a bill that we believe is constitutionally sound. My record is not the record of a legislator who is casual about the first amendment, but some people, out of legitimate concern, and some other people, seeking strategic advantage in their effort to kill reform, have raised first amendment questions about the Snowe-Jeffords provisions of the bill, which would place restrictions on the use corporate and union treasury of phony issue ads run on radio or TV within 60 days of general election. Similar questions have been raised about the Snowe-Jeffords restrictions that would strike down our federal court finds one provision of either the soft money ban or the Snowe-Jeffords provision to be unconstitutional, then both of those provisions will be struck down, and it will be as if we had never passed a campaign finance reform bill at all.

But this amendment goes much farther. It would mean that if the Supreme Court finds a defect in the Snowe-Jeffords provision, and strikes it down, then the soft money ban will be invalidated as well. This makes no sense. It respects neither the proper role of the Court, nor the proper role of the Congress. We have a Congress to pass laws, in this case a set of laws. We have a Supreme Court to tell us which one of those laws is unconstitutional and must cease to have effect.

I try to avoid cliches in debate, but here I must implore my colleagues, don't vote for an amendment that obliges this Senate and the Court to throw the baby out with the bathwater. In this case, the bathwater is the Snowe-Jeffords provision that we have always known will face a constitutional challenge. We believe that judicial review is an essential part of our system of checks-and-balances. If this amendment passes, we will have a Supreme Court to tell us which one of those laws is unconstitutional and must cease to have effect.

So I urge my colleagues to vote against this amendment, and I add these words of caution: If you vote for this amendment, you are voting to place on the President's desk a reform measure in this bill. If you vote for this amendment, you vote for a gross departure from ordinary legislative procedure. If you vote for this amendment, you vote to distort the constitutional relationship between the courts and this Congress. If you vote for this amendment, you vote, and will be seen to vote, for maximizing the chances of the enemies of reform to prevail against the decisions of this Senate and against the will of the American people.

I must also point out to those of my colleagues who have told me privately, or have stated in public that they support a ban on soft money but cannot vote for the bill because they believe the Snowe-Jeffords amendment is unconstitutional, you should vote against this amendment. If you would vote for a bill that includes a soft money ban and no provision on issue ads, you should vote for the bill that does both, and let the Supreme Court to uphold a soft money ban and strike down the Snowe-Jeffords amendment.

I made this clear in the last few days. I believe this is the vote. This vote is the ultimate test for the Senate in this debate on campaign finance reform. It might be called the campaign finance reform test. The American people are standing by, waiting to see whether this body will pass or fail that test. Do not let them down my colleagues.

There are no makeup exams.

This is the vote that will decide if we are going to be able to get rid of this awful soft money system—to really get rid of it, not just pass a bill in the Senate and just pass a law—no, not just have the President sign it, but actually have it survive a court challenge and become the law of the land.

Before yielding the floor, I ask unanimous consent a letter sent to our Democratic colleagues of the Senate by Representative Meehan and Representative Frank of the other body on March 22 be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,

DEAR SENATE DEMOCRATIC COLLEAGUE: We are writing to urge you to oppose any amendment to S. 27—the bipartisan campaign finance reform legislation introduced by Senators John McCain and Russ Feingold—to avoid invalidating provisions of the bill were one such provision declared constitutional by the courts.

House confronted amendments of this nature during its debate on similar Shays-Meehan campaign finance reform legislation in 1998 and 1999. These amendments were soundly defeated—in 1998 by a vote of 155 to 254 and in 1999 by a vote of 167 to 259. 188 of 194 House Democrats voted against a non-severability amendment in 1998, and 202 out of 216 House Democrats voted against this amendment in 1999.

The pro-reform majority in the House权利 perceived non-severability to be lacking in public policy justification and precedent. This amendment cedes enormous power to the courts to undo Congress’s work in instances where that work is of unquestionable constitutionality. Under non-severability, if a court found one provision of a comprehensive bill to be unconstitutional, the entire bill would be invalidated. While we recognize that a court’s review of an essential part of our system of checks-and-balances, non-severability tilts the scales too far towards judicial domination. Indeed, we fear that just one more amendment would destroy the prospect of so-called “activist judges” overriding the will of officials elected by the people apparently endorse such an assault on Congress’s power and authority.

The inclusion of non-severability provisions in enacted legislation is extremely
rare. At the time the House considered the Shays-Meehan bill in 1999, only three bills had passed in the last decade that had nonseverability clauses. Indeed, Congress has often inserted severability clauses in legislation to ensure that constitutional provisions remain intact. For example Telecommuni-
cations Act of 1996 contained a severability clause. If Congress had instead inserted a non-severability clause in the Act, the entire Act would have been invalidated when the U.S. Supreme Court unanimously struck down its so-called “Communications De-
cency Act.” The Brady Bill was also protected by a severability clause.

Finally, non-severability is an unjustified threat to the laudable effort to clean up our campaign finance system. We believe that soft money contributions to the national po-
litical parties should be banned and that campaign ads masquerading as issue discus-
sion should be subject to the same laws gov-
erning uncloaked campaign ads. Moreover, we believe that both of these elements of the McCain-Feingold bill pass constitutional muster. I believe, however, that-
tying the fate of one to a court’s view of the other—or tying either’s fate to a court’s view of other provisions of McCain-Feingol-
g—justified, and money contributions at a minimum have risen to a appearance of corruption. That will be the case whether or not other provisions of McCain-Feingold—ul-
timate provision in judicial review. Accord-
ingly, the public policy merits weigh strong-
ly in favor of cleaning up as much of our dis-
graceful campaign finance system as we can. Non-severability may compromise our abil-
ity to do so, as well as create an incentive for opponents of reform to offer patently un-
constitutional amendments in the hope of poisoning the prospects for reform’s survival in the courts.

Thank you for your consideration.

Sincerely,

MARTY MEHRA, Member of Congress.
BARNEY FRANK, Member of Congress.

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

Mr. MCCONNELL. Mr. President, how much time remains on the Frist amendment?

The PRESIDING OFFICER (Mr. Fitz-
GERALD). The proponents have 33 min-
utes and the opponents have 44 min-
utes.

Mr. MCCONNELL. Mr. President, I have been listening carefully to the speeches on the other side of this issue. With all due respect, they are some-
what misleading.

The last three campaign finance reform bills that passed out of the Senate included nonseverability clauses—in 1990, 1992, and 1993. Members of the Senate who voted for that include 23 current Members who supported the bill with a nonseverability clause in it in 1990; 24 of the current Members sup-
ported the bill in 1992 with a nonsever-
ability clause in it; and 28 of the cur-
rent Members supported the bill in 1993 with a nonseverability clause in it.

It is wholly irrelevant whether most bills do or don’t have nonseverability clauses. What we are talking about is campaign finance reform bills which are fraught with first amendment con-
stitutional principles, and it has been almost always the rule rather than the exception that they include nonsever-
ability clauses in them.

It is so common that the Harkin amendment we just voted on and was supported by 31 Members of the Senate on that side of the aisle had a non-
severability clause in it. It needed to. Snowe-Jeffords; also, the amendment we had a couple of hours ago in which 31 Members of the Senate on the other side supported.

So this notion that somehow it is in-
appropriate and unwise to have a non-
severability clause in a campaign fi-
nance bill is utterly and totally base-
less and without merit. In fact, that is what is typically done.

I say to my friends who support the underlying bill, what are you afraid of?
There have been numerous discussions and hearings about how constitutional Snowe-Jeffords is. We have had lengthy discussion on the floor by various Members of the Senate.

Senator SNOWE of Snowe-Jeffords fame, says it is constitutional. It is common sense. It is not speech ration-
ning but informational, and so on. Sen-
ator SNOWE referred to 70, as she put it, constitutional experts.

Senator JEFFORDS says: My focus will be on reassuring you that Snowe-Jeff-
ords is constitutional. He says they took great care in drafting their lan-
guage.

Senator McCAIN is, likewise, totally confident that Snowe-Jeffords is con-
stitutional. Senator THOMPSON, the same.

Senator EDWARDS is on the floor now. He said he is totally confident that Snowe-Jeffords is carefully crafted to meet the constitutional test of Buck-
v. Valeo.

Senator DeWINE offered an amend-
ment to take Snowe-Jeffords out ear-
erly today. That was defeated. It is a part of the bill.

Those who want to keep that in the bill are totally confident that it is con-
stitutional.

What are they afraid of?

As the author of the amendment, Senator Frist pointed out there is a rationale for linking Snowe-Jeffords and the soft money ban. And it is this, I say to my friend from North Carolina: What if I am right and they are wrong, and Snowe-Jeffords is struck down, the Democratic Senatorial Committee loses 35 percent of its budget, and the Democratic National Committee loses 40 percent of its budget? If candidates are under attack by conservative groups from the right, who is going to rush to their defense?

The party is the only entity in Amer-
ica that will certainly support the can-
idates that bear its label. There is no-
body else you can totally depend on to be there to defend you when you are under assault.

There is a rationale for linking Snowe-Jeffords and the party soft

money ban; that is, if we eliminate it, and if all of the Senators who are con-

fident, including the Senator from North Carolina that constitutional pro-
tional are wrong, every group in Amer-
ica—conservative, liberal, vegetarian, and libertarian—will all have a right to come after our candidates and our par-
ts will be largely defenseless.

I asked consent later this afternoon to have some time at 4 o’clock to de-
scribe to the Members of the Senate the impact of McCain-Feingold on our political parties. I am going to take the opportunity to do that at 4 o’clock. It will be chilling to learn what will happen to our parties under this under-
lying bill.

Let me sum up because I see the co-
author of the amendment is on the floor.

I don’t think this is in any way inap-
propriate. In fact, it is common. If the proponents of Snowe-Jeffords are con-

fident it will be upheld, I don’t know what they are afraid of. We will need the political parties to defend our can-
didates if Snowe-Jeffords is struck down.

I yield the floor. I see the Senator from Louisiana is here.

The PRESIDING OFFICER. The Sen-
ator from Louisiana is recognized.

Who yields time to the Senator?

Mr. FRIST. Mr. President, I yield 15 minutes to the Senator from Louisi-
ana.

The PRESIDING OFFICER. The Sen-
ator from Louisiana.

Mr. BREAUX. Mr. President, I thank the author of the bill, the Senator from Tennessee, for yielding time to me.

We have just heard a good expla-

nation of the situation from the Sen-
ator from Kentucky about the concern of so-called severability. The most people in America scratching their heads and asking: What in the world is the Senate talking about—
nonseverability, severability, and ev-

dience.

We have learned the mistake we make when we craft a carefully con-
structed compromise that people are

allowed to vote for because it is care-

fully balanced with amendments through the legislative process and then have that legislation go to a court which says that one part of this bill we will take out and we are going to leave everything else, or the court will say they will take out half of it and leave everything else. We tried that in 1971 when we wrote the landmark Federal elections law.

I was running for Con-

cress then and was watching it very carefully, not knowing what in the world the results would be. But I looked at it at that time, as the people helped write it, as a carefully crafted

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compromise. It did not have a nonseverability clause in that legislation. When it left this body and it left the House, a lot of people said: This is a good balance; I got this in it; I got that in it; I got limits on contributions but we got limits on how they can spend it; therefore, I think this is a good package; it is a good compromise. But then that bill goes to the Senate and the Senate adds a right before the election were not restricted in this bill. What do we say to those people who voted for it because of Snowe-Jeffords being part of it: That somehow it may not be there in the end? They would not have voted for the legislation.

It is so significant that we have this nonseverability clause. It is very restrictive, and I want to expand it. I will ask unanimous consent to offer an amendment to the Frist-Breaux amendment which will include the soft money ban plus the Snowe-Jeffords amendment plus the Thompson amendment which increased the hard dollar contributions, that if any one of those three would be found to be unconstitutional, all three would fall.

It makes no sense, I agree, to have the ban, for instance, on soft dollars to be declared unconstitutional, which it probably is not, but if it should be, then we would be left with a hard dollar increase. It makes no sense to say that, well, we could ban or declare unconstitutional the Snowe-Jeffords prohibition but yet still have the hard dollar increase. All three are integral parts of this compromise. I think the Frist-Breaux amendment should be amended to say that if either of those three essential ingredients is knocked down as unconstitutional, therefore, all three of them would fall. That would be the right thing to do.

That doesn't mean the whole bill falls. Everything else is still there: The millionaire's amendment, the lowest unit rate for television would still be there, the ban on foreign contributions, the ban on solicitations. Those are all still improvements in the current system.

When I try to explain nonseverability to people, it gets very confusing. I am probably as confused as anyone trying to explain it to our colleagues and to the general public who have to cover all of this. I try to use the analogy of ANWR which I think makes sense. The question of whether we drill for oil in the Arctic National Wildlife Refuge is a very controversial and sensitive issue. Suppose we came to the floor of the Senate and someone said: All right, I am willing to allow for drilling in ANWR if you double the environmental requirements that would apply to that part of the United States. That amendment is adopted. People say: Well, with that amendment, I can support drilling for oil in ANWR because we have an amendment that doubles the environmental protections in that part of the world on.

But then that bill goes to the Supreme Court and the Supreme Court says: Oops, sorry, you are all wrong, you can't do doubling of the environmental protections in only one part of the country. That part of the bill is unconstitutional. But the drilling for oil is OK.

How would that treat all the Members of Congress who said: Well, I can vote for the carefully crafted compromise because at the same time we have doubled the environmental protections and therefore it is a comprehensive package and therefore it makes sense? To have the Court strike down the environmental protections while leaving the right to drill would be a sham for the Members of Congress who voted for the carefully crafted compromise.

The same is true with regard to this controversial, complicated, emotional issue of how we handle campaigns in this country. All of the ingredients are essential to the compromise. To allow the Court to knock out one or two and leave the rest is to put into effect through law something that was never intended by the people who voted on it to ever occur. When you vote for all of the parts of the bill, you have the right to expect that all of the parts will survive.

Someone said: Maybe we should do that for every piece of legislation. I say: Well, it may not be a bad idea, but certainly not a bad idea for things that are complicated and carefully crafted and subjected to numerous compromises that are part of the package.

I am extremely concerned that we have a situation where we are going to ban soft money to the two political parties and somehow leave all of these groups and organizations that are running ads, special interest groups, basically single-interest groups, who will be able to continue to use all of the soft money they want to attack candidates for 2 years prior to our elections. None of these groups represents, I argue, the people who are moderate parts of both parties; they tend to be more extreme. Not all of them, some of them are moderate, but most are single-issue, one-issue groups that generally run only negative advertising against candidates.

Addressing this with the Snowe-Jeffords amendment, saying that corporate and union contributions cannot fund any of these groups within 60 days of an election, is an important step. If we don't have the nonseverability and Snowe-Jeffords is knocked out, all of these groups could use corporate money to continue to blast candidates without us having the same ability to help our parties respond to those accusations.

I am talking about groups such as those that ran the Flo ads on Medicare. None of the people on my side liked those at all. I am talking about groups that ran the Harry and Louise ads which used corporate contributions to run negative ads all the way up to 60 days before the election, if this amendment goes down. I am talking about
the National Rifle Association. To people principally on my side of the aisle, how many times do we have to see Charlton Heston talking about why Democrats should not be elected and having corporate contributions pay for those ads?

Those principally on my side who are saying we want to vote for this because it is a carefully crafted compromise ought to recognize that without the Frist-Breaux amendment, that carefully crafted compromise could cease to exist. What we have done is to abdicate our responsibility to legislate in a package, not with blinders on, and not looking at reality.

I strongly support the nonseverability amendment. I plan at the appropriate time to ask that the amendment be modified in order to add a third category in addition to the soft money prohibition to parties and the Snowe-Jeffords amendment. I would add the Thompson amendment reflecting the increase in hard dollars, that any one of those three being declared unconstitutional would bring down all three of those.

I yield the floor.

Mr. DODD. Reserving the right to object, I would like to get a copy of the modification.

Mr. BREAUX. Mr. President, if it is all right, I will hand a copy to my colleague, since he is managing the bill, and allow him the chance to review it.

Mr. DODD. Mr. President, if I may, Senators have the right to modify their amendments. I thank my colleague. Mr. President, I am prepared to yield 5 minutes to my colleague from North Carolina, Senator Edwards.

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

Mr. EDWARDS. Mr. President, let me speak in opposition to this amendment. I'll talk briefly about why I oppose the amendment, and respond to the comment by the Senator from Kentucky and the Senator from Louisiana, who has just modified his amendment.

First, it is very important for my colleagues who aren't on the floor, in looking at the precise language of these amendments, to recognize there are really only three provisions, with the modification, that are covered by this amendment. The soft money ban is number one; the Snowe-Jeffords ban on broadcast ads paid out of union and corporation treasury funds 60 days before the election is number two; number three is the raising of the hard money limit.

No one who has looked closely at this question would argue that either the soft money ban or the hard money limit increase is subject to serious constitutional challenge. The only thing the soft money ban has to do under the Buckley case is for the Court to find that there was a compelling State interest to support that ban. The Court, in fact, in Buckley, and there is such an interest. So as these other Senators have recognized during the course of this debate, there is no serious question about the soft money ban. The soft money ban—if it passes from this Chamber, and is signed by the President and passed by the House—is going to become law.

The raising of the hard dollar limit also is not subject to any serious constitutional challenge. So what we are talking about is Snowe-Jeffords.

Now my friend from Kentucky points out that during the course of this debate I have argued that Snowe-Jeffords is constitutional. I don't want to repeat that argument, but I, in fact, believe that the Court would sustain the constitutionality of the Snowe-Jeffords unless there is a compelling State interest to support it. But I want my colleagues to understand, and not get caught up too much in the morass of this debate, that there is only one issue raised by this amendment as modified, and that is if Snowe-Jeffords is found to be unconstitutional by a Court at a later time, do we want the soft money ban and the raising of the hard money limits to stand? That is the simple question raised by this amendment.

Now I don't believe a Court will find Snowe-Jeffords to be unconstitutional. But the U.S. Supreme Court has done many things in the past that I didn't expect, including some things in recent times. So I have no way of predicting with certainty what the Court will do when confronted with this question. I do believe Snowe-Jeffords meets the constitutional requirements. So the argument that is made is, if Snowe-Jeffords is found to be unconstitutional, we create a strategic imbalance in our electoral process—these single-issue special interest groups—is that not an important amendment, that if it were to be declared unconstitutional, the rest of the bill would go into effect? Does this not bother the Senator that without the Snowe-Jeffords amendment all of these groups would be able to continue to use corporate dollars to attack candidates with no ability for the parties to defend them?

Mr. EDWARDS. My answer to that question is, first, what we do, even without Snowe-Jeffords, is we prohibit candidates for political office from raising large soft dollar contributions for these very groups to which the Senator from Louisiana is referring.

If our focus is on restoring integrity to the process and the public's perception of ourselves, then getting us out of the process of raising soft money dollars, getting soft money, period, out of the system is a positive thing. And my view is that it helps restore integrity.

Mr. BREAUX. Does the Senator think that the Health Insurance Association of America, or the National Rifle Association really needs any help
from Members of Congress in raising corporate money to run those types of ads? My point is that those groups don’t need Members of Congress to help them raise money to do the Flo ads, and the Harry and Louise ads. Those are corporate dollars. The pharmacy industry doesn’t need Members of Congress to raise money to pay for ads attacking and buying their drugs.

Mr. EDWARDS. Mr. President, reclaiming my time, my answer is the very answer I just gave the Senator from Louisiana. We can’t stop these entities from running ads. What we can do, is stop Members of Congress from raising huge amounts of money and creating a public perception that we are involved in what is wrong with the system. You are absolutely right. As a matter of pure strategic balance, that would not be—well, the strategic imbalance, I would not argue for a minute about that. But that is not what campaign finance reform is about.

What campaign finance reform is about is restoring integrity to the system and causing the American people to believe, once again, that the system has integrity, that it works, and this democracy belongs to them, and that it is their Government. That is the fundamental difference. Anything we do, I strongly suspect, with or without the Snowe-Jeffords, or any of these other provisions, as we have learned from experience, may turn out a year, 5 years, 10 years from now to create some result that we don’t expect. I think that is just realistic.

But the one thing we know for certain is that the public believes this system is awash in money. These huge, unregulated contributions that are being made to political campaigns are wrong, and we need to make a clear and unequivocal statement that we will not allow that to happen.

This debate is not about us. It is about the American people. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I will take a couple of minutes, if I may. I think the Senator from North Carolina has eloquently framed what the present amendment would do. I would urge my colleagues to keep this in mind, that if, in fact, they have a hard time accepting it in exchange for that we get the two reforms of getting rid of unregulated money and the Snowe-Jeffords provisions. I believe, based on those who know far more about this than I do, Snowe-Jeffords should not fall for constitutional reasons, although my friend and colleague from North Carolina properly points out that we have been surprised lately by Supreme Court decisions where experts have told us they would rule one way and they ruled another. I urge my colleagues which I believe, is that we are all very much aware of this. My colleague from Utah spoke eloquently about the fact that none of us can say with any certainty exactly where all of this is going to end up. If you took the McCain-Feingold as modified up to now, the basic issue is my colleagues in Congress, those of us who are going to be attacking our candidates, and our parties are going to have no funds—none, none—to protect them from attack from outside groups.

Mr. President, I yield the floor.

Mr. BREAUX. Mr. President, theBreaux amendment modifies the Frist amendment, then so would, as I understand it, the Thompson-Feinstein amendment, which allowed for the increases in hard money.

With all due respect to my friend from Tennessee, who is also opposing this amendment—not the author of the amendment but the opponent of the amendment—and my friend from California, Senator FEINSTEIN, Thompson-Feinstein, and my friend from Arizona, Senator THOMPSON, the Thompson-Feinstein was the price we paid to have the votes together on the banning of soft money.

There is no illusion about this. That was not a reform. I know they want to call it a reform, but it is not. In having spoken against the increases in hard money. My friend from Wisconsin and my friend from Arizona also took similar positions that they did not endorse or support those increases except that it was necessary to keep the votes together for the two reforms in this bill: Snowe-Jeffords, disclosure elements, and the ban on soft money. Those are the only two reforms in this bill.

Thompson-Feinstein is the price we paid for those two reforms politically. I will stand corrected if someone wants to tell me I am wrong.

Basically that is the deal. We have this increase in hard money, which I have a hard time accepting it in exchange for that we get the two reforms of getting rid of unregulated money and the Snowe-Jeffords provisions. I believe, based on those who know far more about this than I do, Snowe-Jeffords should not fall for constitutional reasons, although my friend and colleague from North Carolina properly points out that we have been surprised lately by Supreme Court decisions where experts have told us they would rule one way and they ruled another. I urge my colleagues which I believe, is that we are all very much aware of this. My colleague from Utah spoke eloquently about the fact that none of us can say with any certainty exactly where all of this is going to end up. If you took the McCain-Feingold as modified up to now, the basic issue is my colleagues in Congress, those of us who are going to be attacking our candidates, and our parties are going to have no funds—none, none—to protect them from attack from outside groups.

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Mr. President, I yield the floor.

Mr. BREAUX. The Breaux amendment modifies the Frist amendment, then so would, as I understand it, the Thompson-Feinstein amendment, which allowed for the increases in hard money.

With all due respect to my friend from Tennessee, who is also opposing this amendment—not the author of the amendment but the opponent of the amendment—and my friend from California, Senator FEINSTEIN, Thompson-Feinstein, and my friend from Arizona, Senator THOMPSON, the Thompson-Feinstein was the price we paid to have the votes together on the banning of soft money.

There is no illusion about this. That was not a reform. I know they want to call it a reform, but it is not. In having spoken against the increases in hard money. My friend from Wisconsin and my friend from Arizona also took similar positions that they did not endorse or support those increases except that it was necessary to keep the votes together for the two reforms in this bill: Snowe-Jeffords, disclosure elements, and the ban on soft money. Those are the only two reforms in this bill.

Thompson-Feinstein is the price we paid for those two reforms politically. I will stand corrected if someone wants to tell me I am wrong.

Basically that is the deal. We have this increase in hard money, which I have a hard time accepting it in exchange for that we get the two reforms of getting rid of unregulated money and the Snowe-Jeffords provisions. I believe, based on those who know far more about this than I do, Snowe-Jeffords should not fall for constitutional reasons, although my friend and colleague from North Carolina properly points out that we have been surprised lately by Supreme Court decisions where experts have told us they would rule one way and they ruled another. I urge my colleagues which I believe, is that we are all very much aware of this. My colleague from Utah spoke eloquently about the fact that none of us can say with any certainty exactly where all of this is going to end up. If you took the McCain-Feingold as modified up to now, the basic issue is my colleagues in Congress, those of us who are going to be attacking our candidates, and our parties are going to have no funds—none, none—to protect them from attack from outside groups.

Mr. President, I yield the floor.
Mr. BREAUX. I ask the Presiding Officer whether it would be appropriate for me now—I have two requests. First, would it be appropriate for me to now ask unanimous consent for a modification to the Frist-Breaux amendment? The PRESIDING OFFICER. That would be appropriate. Mr. BREAUX. Further parliamentary inquiry: If there is an objection to the unanimous consent request to modify the Frist-Breaux amendment, would it not be in order at a later date to reoffer a Frist-Breaux amendment with that modification? The PRESIDING OFFICER. That would be in order under this agreement. Mr. BREAUX. Mr. President, I ask unanimous consent that the modification to the Frist-Breaux amendment that is pending at the desk be offered. Mr. THOMPSON. Reserving the right to object. The PRESIDING OFFICER. Objection is heard. Mr. THOMPSON. Reserving the right to object, and I do intend to object, I know my friend can bring this after—if this amendment survives a motion to finally dispose of my objection, it is so ordered. Who yields time? Mr. DODD. I yield to my colleague from Tennessee 1 minute. Mr. THOMPSON. Mr. President, I withdraw my objection. AMENDMENT NO. 156, AS MODIFIED Mr. MCCONNELL. I renew the consent request of the Senator from Louisiana that his amendment and the amendment of Senator Frist be modified. The PRESIDING OFFICER. Without objection, it is so ordered. The amendment, as modified, is as follows: On page 37, strike lines 18 through 24 and insert the following: (a) In GENERAL.—Except as provided in subsection (b), if any provision of this Act or amendment made by this Act, the application of a provision or amendment to any person or circumstance shall not be unconstitutional, then the remainder of this Act and amendments made by this Act, and the application of the provisions and amendment to any person or circumstance, shall not be affected by the holding. (b) NONSEVERABILITY OF CERTAIN PROVISIONS.— (1) IN GENERAL.—If one of the provisions of, or amendments made by, this Act that is described in paragraph (2), or if the application of any such provision or amendment to any person or circumstance, is held to be unconstitutional, then all the provisions and amendments described in paragraph (2) shall be invalid. (2) NONSEVERABLE PROVISIONS.—A provision or amendment described in this paragraph is a provision or amendment contained in any of the following sections: (A) Section 101, except for section 323(d) of the Federal Election Campaign Act of 1971, as added by such section. (B) Section 103(b). (C) Section 201. (D) Section 203. (E) Section 308. (c) JUDICIAL REVIEW.—(1) EXPEDITED REVIEW.—Any Member of Congress, candidate, national committee of a political party, or any person adversely affected by any provision of, or amendment made by, this Act, or the application of such a provision or amendment to any person or circumstance, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that such provision or amendment violates the Constitution. (2) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia granting or denying an injunction regarding, or finally disposing of, an action brought under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 calendar days after such order is entered; and the jurisdictional statement shall be filed within 30 calendar days after such order is entered. (3) EXPEDITED CONSIDERATION.—It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to give a higher priority to any action filed under this subsection and to expedite to the greatest possible extent the disposition of any matter brought under paragraph (1). (d) AUTHORITY.—This subsection shall apply only with respect to any action filed under paragraph (1) not later than 30 days after the effective date of this Act. Mr. DODD. Mr. President, I suggest the absence of a quorum and ask that the time be divided equally. The PRESIDING OFFICER. Without objection, it is so ordered. Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered. Mr. FRIST. Mr. President, I yield 15 minutes to the Senator from New Jersey. The PRESIDING OFFICER. The Senator from New Jersey. Mr. TORRICELLI. Mr. President, I thank the Senator from Tennessee for yielding. For nearly 2 weeks, the Senate has been engaged in an exhaustive but illuminating debate on reforming the campaign finance system of the Nation, the foundation of the rules by which a free people choose their government. The consequences could not be more enormous. I believe the Senate has met the best expectations of the American people in this debate. It has been thoughtful, civil, and far reaching. Indeed, rather than simply engaging in a narrow changing of the rules, what has emerged from the Senate is genuinely comprehensive campaign finance reform. It may not have been our intention, I don’t believe it was planned, but in the best traditions of the Senate, Members from both political parties, with good ideas, took some basic reform legislation and made it into a workable, comprehensive system. That is what brings this question before the Senate. If these were simply individual changes in the campaign finance system, where some were enacted and some failed, it would be interesting but not of overwhelming consequence. That is not what the Senate has done. This is a series of reforms intrinsically dependent on each other. If one or more is removed, the Nation will have a radically different campaign finance system and our system of choosing candidates, and even the people whom we elect, will be altered. I understand in the rush to judgment there are some who are prone to reform for reform’s sake. It is a question of pass anything, get something done, and we will live with the consequences. But the truth is, the campaign finance system of this country is changed only once in a generation. These rules will last, not simply for us but for those who follow us, not just in this decade but in decades to come. The fact that we have seized this opportunity in these 2 weeks to write
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comprehensive changes, far-reaching in nature, is not only to the credit of the Senate but it is a genuine contribution to the campaign finance consideration. But in some ways it is the most profound question because ultimately the question is whether we have simply decided on a series of ideas that will be thrown out to the American people to challenge in the courts where others will make the decision or whether we have really designed a new campaign finance system in the Senate, where it is our responsibility.

It is important to look at how each of these provisions is linked because, as one Member of the Senate, I am only voting for McCain-Feingold because of the different provisions and how they are linked to each other. We also eliminate soft money for the political parties. We also eliminate it from outside interest groups. But we do not want to deny the American people political debate, so we raise the hard money limits. We want to end the monopoly on candidates' time and the growing expense of campaigns, so we lower the cost of television advertising. Those are all related and they are all important.

My colleagues, what is to happen if the Supreme Court of the United States decides the Senate has decided upon six interrelated provisions but we do not like one—or two? Then the Senate is no longer writing campaign finance reform; we simply made a few suggestions, enacted them into law, and we will let someone else write them. This would not be so perplexing to this Member of the Senate, that we might be yielding in our responsibilities of our constitutional authority, if not for the fact that the Senate has been at this moment before. This is exactly what happened in 1974. If you do not like the campaign system now in the United States of America, if you object to what has happened in public confidence, the rising expense, the dominance of powerful interests, the rise of soft money expenditures, then you have a responsibility to ensure these provisions are inseparable, or the Supreme Court will write this law just as they did in 1974.

Here is the most remarkable thing about the campaign finance system in the United States: No one ever proposed it, no one ever wrote it, and no one ever voted for it. Because the Supreme Court of the United States created it, and that is exactly where we are going again.

In 1974—a year in which I did not serve in government, but I remember the debate, and some of my colleagues were there—and the Senate has been presented with the following proposition: We will limit contributions to $1,000 but we will allow unlimited soft money to political parties and we will allow outside groups to spend their money and we will allow wealthy candidates to spend unlimited amounts of money in their own election campaigns. As chairman, I would have received no votes. There is not a member of the Democratic or Republican Party who would have voted to limit themselves to $1,000 contributions while wealthy individuals could spend unlimited money and outside groups had no restrictions at all, with no control on expenditures. No one would vote for such a system. But that is the law of the United States of America. It has governed our country for 25 years. If we fail today, it will continue to govern our country.

That has created all this outrage, and that is the product of not having a nonseverability clause. That was an atrocity; it is unconstitutional. But when the Court ruled provisions unconstitutional, rather than meeting our responsibilities, returning to the floor of the Senate to rewrite the legislation consistent with constitutional principles, they accepted the political purpose and met our national objectives, the Senate failed to meet its responsibilities and this problem was created.

By what logic do we solve this problem now by returning to the same rules, the same yielding of responsibility, to ask the same Court to write campaign reform legislation once again? I ask my colleagues to think of the system that may not evolve from McCain-Feingold as we have voted upon it but which might evolve from a reasonable action by the U.S. Supreme Court.

I believe every provision we have agreed to in this Senate, absent possibly the Wellstone amendment, is constitutional. My Republican opponent does not put the Wellstone amendment in his nonseverability amendment that he offers the Senate at this moment. I believe the remainder is constitutional.

But if I am wrong and the U.S. Supreme Court decides that Snowe-Jefords amendment controlling expenditures by independent groups by the use of unlimited soft money is unconstitutional, mark my words, the system we are creating in the United States of America is a radical change in how we govern this country and, for all practical purposes, it is the end of the two-party system financing national elections as we have known them in our lifetime. That is because under a McCain-Feingold bill that no one in this Senate voted for—and I suspect no one really supports—the system enacted in the United States will be the Democratic and Republican Parties will be limited to hard money expenditures and independent groups will spend unlimited money with no restrictions or controls. Of all the thousands of organizations in America, civic and corporate and labor, of all the thousands of memberships in American labor, of all the thousands of environmental and women's rights groups, or civil rights groups, may decide to support me. But they will run my ads. They will decide what I am for, and run my advertising.

My Republican opponent will be in a similar position. The Chamber of Commerce or a business group, a gun advocacy group, will run advertising with constitutional, saying what I am against.

American politics will be fought over the heads of the candidates—aerial warfare with the Democratic and Republican Parties in the trenches simply firing at each other. The real battle will be fought by surrogates, and political candidates in the Democratic and Republican Parties will be nothing but spectators in American politics.

This is not the system anyone here wants. Were I to offer it now, no one would vote for it. It sounds like 1974, doesn't it? It is. And we can have exactly the same result.

My colleagues, the Senator from Tennessee has offered an important, in some respects the most important, amendment in campaign finance reform.

It is the difference between a few ad hoc ideas to reform the campaign finance system and ensuring that this is comprehensive and fundamentally changes the entire system. Each becomes dependent on the other.

I asked the Senator from Tennessee to change his amendment in one more respect. I do not want my intentions questioned on the Senate floor. I have voted for campaign finance reform as often as any Member of this Congress in the last 20 years—as many times as Senator McCain, as many times as Senator Feingold. I will keep voting for reform.

My intention to ensure that this is constitutional and comprehensive is not because I oppose reform but because I want it to be genuine and complete. It is because of that that I asked the Senator from Tennessee to adjust his amendment. He complied. Under his amendment, not only are these provisions nonseverable, but there would be immediate Federal court review.

Upon action of the district court finding any provision of this legislation unconstitutional, there would be immediate and universal appeal to the U.S. Supreme Court to ensure that this Senate had guidance immediately so we could return to session and correct any constitutional defects.
This, my colleagues, is exactly what this Senate has done in dealing with other legislation that was of questionable or institutional compliance. It was what the Senate and House of Representatives did in dealing only a few years ago with the Religious Land Use Institutionalized Persons Act. We ensured that the provisions would have to stand together, and that there would be an immediate court review if they did not return to the Senate.

I ask the Senate to do what it did to correct what it did wrong in 1974 and did correctly on three previous occasions to ensure constitutionality and that the responsibility for writing this legislation remains here.

I do not understand, my colleagues, in fact, if we vote differently. The lessons of 1974 were learned in a very hard way. We have seen people lose confidence in this Government, and the campaign finance system evolved which took Members of the Congress away from their responsibilities and dispirited us and our constituents. It is not a system worthy of a good and great country—but it is the law—because we did not write it. We allowed others to write it. It evolved. It was not thought through or properly conceived.

I thought learned that lesson in 1974 because on the last three occasions that we reviewed campaign finance legislation in this Congress, we ensured that there was a nonseverability clause.

What Senator FRIST does today, on three previous occasions this Congress assured was in campaign finance legislation. What he does is not the exception. It has been the rule, specifically because of what we learned in 1974. Now Senator FRIST brings it to the Senate.

I urge my colleagues to act with caution. This vote has meaning, and it will last. It will change the complexity of this entire Congress as the years pass because the access to financing and how we govern this campaign finance system governs who rules, who wins, and who loses, and what issues come before their institution. It could not be more profound.

I urge my colleagues, no matter how they have viewed this question of severability in the past, to think carefully—not for reform for reform sake, not a slogan, not a campaign statement, but a careful review of how this law will evolve and what it means to this Senate and to this country.

I compliment Senator from Tennessee for offering it. I urge my colleagues to adopt it. I yield the floor.

Mr. MCCONNELL. Mr. President, before the Senator from New Jersey leaves, I listened carefully to his remarks, and I also say to the Senator from New Jersey that not only were nonseverability clauses a part of the three campaign finance reform bills that left the Senate in 1990, 1992, and 1993, it is a part of the Harkin amendment that we just voted on a couple of hours ago which had the support of 22 Members of the Senate on his side of the aisle.

So the notion that somehow nonseverability is unusual or inappropriate is absurd. It is more often the case that these are part of campaign finance reform bills that we deal with in the Senate.

Mr. TORRICELLI. I am glad the Senator noted that.

MR. DODD. Mr. President, how much time remains for the opponents?

The PRESIDING OFFICER. The opponents have 21 minutes.

Mr. DODD. Mr. President, I yield 5 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, it continues to be such an excellent debate. I am proud to be a part of it. I commend my colleagues on both sides of the issue.

I believe it is fair to say that putting nonseverability clauses into bills is not at all unusual. Congress passing a bill with a nonseverability clause in it is very usual.

Let's make sure we are not comparing apples with oranges. Are campaign finance laws so different from anything else that it should be looked upon differently? Because in everything else, severability is the norm. Nonseverability is very unusual. So we say we continually do it in these bills that we don't ever make into law. But we continue to put them into bills because they are campaign finance bills, and they are intricately woven.

I suggest if anybody who ever sponsored a bill—especially a large bill on the floor of this Senate—thinks this bill is pretty intricate, they think their bill was pretty intricately woven, also.

I don't think there is anything that unusual about campaign finance regulations except it pertains to how we raise money. That makes it unusual.

With regard to Buckley, my colleagues, of course, are correct to say the law that was passed in 1974 changed our campaign finance system in this country in the aftermath of Watergate. Buckley took a look at it and basically said: Congress, you can limit contributions but you can't limit expenditures.

I have often wondered what the Congress would have done had they known that.

My friend from New Jersey talks about soft money and all of that that was not relevant back then. That was in fact, if we vote differently, the so-called billionaire exception turned out to be in play with regard to Buckley, and limiting the expenditures was certainly in play. That was stricken.

But what would they have done? Would Congress, knowing they were going to have their expenditures limited by Buckley, do anything on the contributions? I don't think so. What they were doing was in response to Watergate. Would they have lowered the contributions? Basically, that is what you are talking about—contributions and expenditures. In that battle that Congress would have done anything any differently had they known what Buckley was going to do. And, if so, why didn't they?

We have been meeting regularly now for 27 years since they did that disdainfully to us, as it has been described to us on the floor. I don't know of any serious attempt to go back and readress the entire issue since that time.

I think the longstanding practice we have had in this country both legislatively and in our court systems to be restrained to have severability clauses in most cases is a wise one.

I say to my friends who talk about these outside groups that both sides have groups that support them and campaign against them. As far as I am concerned, let them come on as long as I have the right to go out and be happy when groups support me or oppose my opponent, and whatnot. And there will be plenty of each. There is plenty of robust debate out there. It makes us mad sometimes. These people have a first amendment right to do that.

According to an independent study, the House of Representatives the last time had more independent money spent on them than the Democrats did with independent ads.

They also said that Senate Democrats had more independent ad money spent on them than the Republicans did. Of course, in the Presidential race, the Republicans won. And that is one race. If you look at those soft money donors—I say to my friend from Louisiana who is concerned about this aspect, if you look at the large soft money donors, of the top 10 of them, 6 or 7 are Democrats. They will find a way to support some of these organizations otherwise. In fact, that is a concern on our side of the aisle, that they will do that. The Democrats will have more support than the Republicans will have.

Democrats say: Well, the hard money limits will hurt us more than it will the Republicans.

We will never be able to figure out exactly who is marginally helped or hurt with all of these. We have never been able to do that before.

Mr. President, I ask for 1 more minute from my friend.

Mr. DODD. I yield an additional minute.

Mr. THOMPSON. We are in as much equilibrium now probably as we will ever be. Behavior changes. The reason we are so soft money oriented now is
because we have neglected the hard money, the small dollars, for some time. I think both parties have. If we raise that hard money limit and say we have, and do away with soft money, you will see the concentration back toward the old-time way of raising money—in smaller amounts, legitimate, limited amounts—that we had since 1974.

Don’t treat the legislation that was passed that year as a total abomination. The fact is, until the mid-1990s, the 1974 law worked pretty well. We didn’t have any Presidential scandals. The money spent on each side was about the same. Sometimes the challenger won. Sometimes an incumbent won. We don’t like it now because some people in the 1990s showed us some ways to get some whole new money into their pockets. That is what we are reacting to now. It is not that law. It is what has been done, not just by the courts but the FEC and the Justice Department and a few others.

It is a complicated issue, but it all boils down to this: Are we prepared to get rid of the multimillionaire soft dollars that are coming from corporations and unions and wealthy individuals in this country into our political process? That is what this vote is all about.

Mr. DODD. Mr. President, I commend my colleague from Tennessee. He made a very good point at the outset on the severability issue and precedence. We went back the other day and looked at legislation over the last 10 or 15 years. We are told that of the hundreds, thousands of bills that passed the Congress, there are about 10 or 11 examples where limited severability was involved, the point the Senator was making. With that, let me turn to my colleagues. I commend Senator WELLSTONE has been around all afternoon.

I yield Senator SCHUMER 7 minutes.

Mr. WELLSTONE. I ask unanimous consent that I follow Senator SCHUMER.

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

Mr. SCHUMER. Mr. President, I rise in adamant opposition to the nonseverability amendment. At the outset, let us be very clear about the unmistakable goal of this amendment. It has been signed, sealed, and delivered primarily by opponents of the bill for one and only one purpose: as a poison pill. Of all the prescriptions for all of the poison pills that our friends on the other side of this issue have diligently mixed over the last 2 weeks, this one is the most lethal.

Why do I say that? Because it is aimed straight at the soft money ban, which is the heart and soul of this bill and has been at the core of cleaning up our campaigns since at least 1988. Ban ning soft money finally ends the practice, unhealthy in any democracy, whereby the wealthiest few million

lions and millions into our campaigns with no restriction at all and sometimes no disclosure, as long as the money is raised legally. They are the heart and soul of this bill. Ban ning soft money is the forest of this effort. It is far more important to the viability of our campaigns to ban soft money than regulate sham issue ads. There is no compelling reason to force the former to live or die based on the latter.

In medicine, it would be like killing the patient when all he has is a head ache. In warfare, we would destroy the village in order to save it. In legislation, it is just plain policy. The better policy, obviously, is to see what the Court does. And if we are left with an uneven system we don’t like, fix it then. That is what we always do. That is why we never enact nonseverability provisions. The last 12 years has a nonseverability provision become law, though nearly 3,000 bills were passed during that time. Passing one now will just be a transparent way of saying we never wanted to ban soft money in the first place, and we found a clever way to pass the buck.

It would be particularly ironic to do this in the name of preventing the Court from writing our campaign finance laws instead of Congress. It is precisely this amendment that gives the Supreme Court too much power, not ordinary severability of the kind we always have and that is in McCain-Feingold.

If we approve this amendment, we will be asking the Court to dictate our campaign finance laws to a far greater extent than in McCain-Feingold because the soft money ban, which is constitutional, which we and the House have debated for years and which we are poised to enact right now, will disappear even if it is not considered by the Court, much less struck down.

Why would we concede that much power to the Court? Most of the time the Senators supporting this amendment talk about the danger of judicial activism with the Court rubberstamping a peculiar and virtually unprecedented form of judicial activism with this amendment.

As the great Justice Robert Jackson once wrote of the Supreme Court’s role as the final arbiter of our law:

We are not final because we are infallible—we are infallible because we are final.

In the area of campaign finance, the Supreme Court has not been infallible, although it certainly is final. We should not tie the fate of this entire bill to the Court’s final decision on any one of dozens of minor provisions.

I will close by reemphasizing what the Senators from Arizona and Wisconsin have so often and eloquently said in the course of this debate. I plead with my colleagues, we cannot let the perfect be the enemy of the good. On this side of the aisle, I say to my colleagues, even if you are unhappy with the delicate balance of 501(c)(4) organizations, even if you realize they may not be limited once the courts get hold of this, don’t throw out the baby with the bath water. The good in this bill is more than just good, it is great. It is a landmark achievement, the first serious reform in a generation. And we should strive to preserve it, not kick the can across the street to the Supreme Court.

Mr. President, I yield back to the Senator from Connecticut my remaining time.

The PRESIDING OFFICER. Under the previous agreement, the Senator from Minnesota is to be recognized.

Mr. DODD. That is right. We are down to a very limited amount of time. I have two or three people who want to be heard. I am going to ask the indulgence of my colleagues unless the other side would like to give us a little time for people who want to be heard. How much time do the proponents have?

The PRESIDING OFFICER. Ten minutes.

Mr. DODD. May we have 5?

Mr. FRIST. I will yield 4 minutes.

Mr. WELLSTONE. I will do it in 3 minutes.

Mr. DODD. The Senator yields 3 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Although I don’t like doing it in 3 minutes.

Mr. President, I think that some of what other Senators have said about the whole being greater than the sum of its parts is, in part, true. But I think the soft money ban, which is at the heart of the McCain-Feingold bill, is important enough that we want to protect it.

Second of all, I frankly don’t know what the supreme political Court will do. You can argue different ways, but I would hate to see the supreme political Court render a decision taking on one part of the legislation and having the whole bill fall.

Third, I would like to point out to my colleagues that the amendment I introduced that was passed as a part of this legislation now was based upon the idea of severability. That was an amendment to improve this bill, not to jeopardize this legislation. And so, consistent with my commitment to severability, I will vote against nonseverability.

And then, finally, may I say this? How ironic it is that the amendment I introduced the other night is not even covered by this amendment that my colleagues introduced on the other side; that the amendment I introduced the other night that deals with these sham issue ads and the potential of all
the soft money shifting here is still se- verable. It is so ironic. But I say, no self-righteousness intended, consistent with the principle of improving this bill, not in any way, shape, or form trying to jeopardize this bill, I don’t even know how I am going to vote on final passage. But I certainly am op- posed to this nonseverable.

You see why I wanted to have more time than 3 minutes? I have a lot to say.

Mr. DODD. The distinguished Sena- tor is always eloquent.

I yield to my colleague from Massa- chusetts 3 minutes.

Mr. KERRY, Mr. President, it seems to me it is obvious to almost every Senator that we are sort of reaching a critical moment where we decide whether we are for campaign reform or we are not. At the bottom line, that is really what the severability issue is about, even though the severability has been limited now to a major compo- nent of the bill: Issue ads, i.e., Snowe- Jeffords, versus soft money. The soft money fails, the prohibition on it, only if the Court finds that Snowe-Jeffords is inappropriate, unconstitutional.

I suppose that the whole purpose of this reform is to get rid of the largest component of money that most taints the political process, which is soft money. One of the reasons peo- ple have doubts about their ability to be able to go after issue ads, if indeed that prohibition were to fall, is that they haven’t been raising hard money, because when you can go to somebody and ask for $50,000, $100,000, $500,000, why bother going after the smaller sum of money?

So it seems to me what is ignored in this argument is, if indeed you don’t have soft money, and if indeed the pro- hibition on issue ads, if Snowe-Jeffords were to fall, you are not defenseless at all, you still have the capacity to spend unlimited amounts of hard money in defense.

One of the reasons Senator WELLSTONE, Senator BIDEN, I, and oth- ers are so concerned about the McCain-Feingold bill in the end, though we support it, is that it ultimately only reduces a portion of the money that is in American politics, while it leaves in, I am a race, ever-escalating, of raising ex- traordinary amounts of hard money, sowing around the country, still in- debted to interests, still asking for large sums of money. We are still going to do that. I know Senators McCaIN and FEINGOLD would love to go further if they could.

So, colleagues, this vote on sever- ability is really a simple vote about whether or not we are prepared to take the risk of getting rid of the extra- ordinary amounts of soft money and tak- ing on ourselves the burden, if indeed Snowe-Jeffords were to fall, of raising appropriate amounts of hard money with which to take our case to the American people.

I happen to believe very deeply that the bright-line test we have set up will withstand scrutiny. You have all to do is read the Nixon and Missouri case. The Court makes clear that it is prepared to limit contributions where they are clearly contributing to the advocacy of the election of a candidate. Anybody can watch these ads and tell the difference as to whether they are purely about an issue or trying to seek defeat or elec- tion of a candidate. I am confident we have drawn a line that will pass consti- tutional muster.

I ask my colleagues to take the risk in favor of reform and eliminate the soft money from American politics. That is what this vote is about.

Mr. DODD. Mr. President, am I out of time?

The PRESIDING OFFICER. The Sena- tor has 4 minutes 43 seconds.

Mr. DODD. I yield 2 minutes to my colleague from Arizona.

Mr. McCaIN. Mr. President, we are now facing one of the major hurdles, and perhaps the last major hurdle, be- tween us and successful resolution of this issue. We had to fight back a poi- son pill in the form of a so-called pay- check protection. We had to speak clearly that we will not accept soft money in American politics. Then we voted in favor of a very hard-fought and carefully crafted compromise in the Thompson-Feingold amendment. Now we face this issue. Have no doubt about what this vote is really about. If you vote for this amendment, you are voting for soft money. That is really what this vote is all about.

Since this may be the last major ob- stacle we face, I take the opportunity to thank all of my colleagues for the level of this debate, the tenor of this debate. I also thank the thousands and thousands of Americans who have been active in this debate and participated with us through e-mail, phone calls, and through all communications. With- out their support, we would not be where we are today.

I urge a vote in favor of the tabling motion that will be proposed by Sen- ator THOMPSON of Tennessee.

Mr. DODD. Mr. President, let me also commum our colleagues. This has been a good debate, one we can be proud of in this body. I ask for recognition of the Senator from Wisconsin.

Mr. FEINGOLD. I thank the Senator. I join with my colleague in thanking each and every Member of this body for the way this debate has been con- ducted. It has been a great example of the way this institution can work.

The Senator from Arizona is also right about the ultimate point. This is a matter of whether in mathemati- cal terms—severability or nonsever- ability. But it truly is the whole issue. I said it time and again, but it is the most important thing to point out to people, and that is that we have never allowed unlimited campaign contribu- tions from corporate treasuries to pol- itical parties since 1907. We have never allowed unions to do the same thing from their treasury since 1947, the Taft-Hartley Act. But now, in the 1990s, the early part of this century, Members of Congress are engaged in asking for $100,000, $500,000, and $1 million con- tributions.

I say to you, Mr. President, if you told me even 10 years ago that such a practice could ever occur in this de- mocracy, I would have been stunned. But it is standard procedure today. This vote on this amendment will de- cide whether this terribly unfortunate and corrupting system continues or not. This is the soft money vote. This is where the Senate takes its stand. This is the test.

Thank you, Mr. President.

Mr. DODD. I presume all time has ex- pired.

The PRESIDING OFFICER. The Sena- tor has 1 minute 22 seconds.

Mr. DODD. Mr. President, my col- league from Tennessee, the author, has been very gracious in giving us some time. I am going to return the favor and extend a minute and a half to him.

The PRESIDING OFFICER. The Sena- tor from Tennessee.

Mr. FRIST. Mr. President, I, too, appeal our colleagues and everybody who have participated over the last 3 hours and really over the last 10 days. But over the last 3 hours, I have been quite pleased with the na- ture of the discussion, the debate, the issues.

It is very clear to our colleagues what this vote is about. Although some will say it is about soft money, it is about voice and it is about the freedom in our process, freedom of political speech.

Very briefly, I want to make three points in closing. No. 1, people are bill- ing this as a poison pill. Very clearly, we are not adding anything. We are linking principally two underlying fac- tors that are part of the underlying McCain-Feingold bill and added to the hard money the Thompson amendment. These are linked in a comprehensive, complementary, integral way. We are addressing just these three. If one falls, the other two come down; if one is un- constitutional, the others come down. Why? Because of balance.

All other provisions in this bill, whether it is increased disclosure, the provision clarifying the ban on foreign contributions, including soft money, the ban on raising money on Federal property, the millionaire amendment—all of those stand, all of those continue regardless of what happens with the Frist-Breaux amendment and constitu- tional parts since is concerned in other tech- nical terms—severability or nonsever- ability. But it truly is the whole issue. I said it time and again, but it is the most important thing to point out to
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that some do. It is in times exactly such as these where we bring people together and knit together in a comprehensive way that is so critical to maintain what we all cherish, and that is freedom of speech.

It is in unusual times such as these that a nonseverability clause is called for. It is this balance. If Snowe-Jeffords falls and the ban on soft money stays, then we increase, not decrease, the role of influence of the special interest groups we talked so much about over the last 3 hours. That is not the type of reform that Americans want.

Third, history. Clearly, there have been precedents, in fact, on campaign finance reform bills that have passed out of this body that have had nonseverability clauses.

In closing, I urge support of the Frist-Breaux amendment, as modified, during the course of the debate. It deals directly with the most cherished freedoms that any of us have today, and that is the freedom of speech.

If there is one thing that has been pointed out over the last several days, it is that we must be careful whenever we pass a bill that is going to ration free speech, and that is what we are doing. We must maintain that balance, and the only way to maintain that balance is to support the nonseverability clause amendment proposed by myself and Senator JOHN BREAUX.

I yield back the remainder of my time.

Mr. DODD. Mr. President, I move to table the Frist-Breaux amendment No. 156, as modified, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. This will call the roll.

The legislative clerk called the roll. The PRESIDING OFFICER (Mr. CHAFFEE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 43, as follows:

[Rollcall Vote No. 59 Leg.]

YEAS—57

Bunning
Burd
Campbell
Craig
Domenici
Risch
Judd
Montanari
Hagel

Batch
Bono
Hollings
Hutchison
Kyl
Klein
Leit
McConnell
Grassley
Kerry
Gregg
Hagel

Sanatorium
Sessions
Shelby
Smith (NV)
Smith (OK)
Stevens
Thomas
Terriccio
Torricelli
Veinovich
Warner

The motion was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. MCconnell. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The previous order was to recognize the Senator from Kentucky for up to 30 minutes.

Mr. MCconnell. Mr. President, I assure my colleagues that I am not likely to take 30 minutes. But I thought it was an appropriate time to say that I think we have dealt with the last very significant amendment to this bill.

I think it is time for Members of the Senate on both sides of the aisle to take a good hard look at what we have done to the political parties—both yours and ours. I asked the pages to hand out this little chart.

My colleagues, we have reached a point in this debate where I think it might be a good idea to take a look at what life in a hard money world is going to look like for our two great political parties. We have taken pretty good care of ourselves in this debate.

We have raised the hard money limit for us. I am for that. I think that is a very important step in the right direction.

We lowered the broadcast discount so we can buy time cheaper. I voted for that.

We tried to protect ourselves against being criticized by outside groups through the adoption of the Wellstone amendment and the Snowe-Jeffords language.

We even adopted the Schumer amendment which would make it difficult for parties to use coordinated expenditures over and above the current limit if the Supreme Court in fact strikes down the coordinated expenditure limit as unconstitutional, which is the case currently before the Supreme Court.

We have also defeated the non-severability clause, so that now if the Court strikes down our efforts to limit the ability of outside groups to criticize us in proximity to an election, and we are unable through the charting of new turf, new ground, to convince a court that the federalization of our parties is going to look like for our two great political parties. We have taken pretty good care of ourselves in this debate.

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But we are left now with the possibility of being saved by the House or being saved by the President, who says he is going to sign this bill.

If none of those things happens, you are looking at the plaintiff. I have no idea what the chances are of getting a Federal district court, or the U.S. Supreme Court, for that matter, on appeal, to tell us whether parties have a right of free association and a right of speech somewhat similar to individuals. That is really uncharted turf. We do know this: What we can calculate is what happens to the parties in a 100 percent hard money world.

I hope by now some of you have gotten—I don’t see that any of you have gotten—where are our pages with additional copies? I guess they thought you all wouldn’t be interested in this. I don’t know why. Could the pages please deliver those over to the Democratic side? This won’t take long.

I took a look at the 2000 cycle, the cycle just completed. You will see in the chart before you that the chart depicts the net Federal dollars available to the three national party committees.

Under current law, on the left—if I could call your attention to the column on the left, and for those in the gallery, this column is called “Actuals.” This was the last cycle, net hard dollars.

The Republican National Committee had net hard dollars to spend on candidates of 75 million; the Democratic National Committee, 48 million; net hard dollars to spend on candidates, 6 million.

The Republican Congressional Committee, $22 million; the Democratic Congressional Committee, minus 7 million in the whole cycle, net party dollars.

Now let’s take a look at what the 2000 cycle would have looked like under McCain-Feingold in a 100-percent hard money world. That is the column over here on the right. You see the Republican National Committee would have gone from 75 million net hard dollars down to 37 million net hard dollars; the Democratic National Committee, from 48 million net hard dollars down to 20 million net hard dollars; the Republican Senatorial Committee, from 14 million net hard dollars down to 8 million. That wouldn’t even cover the co-ordinated in New York. The Democratic Senatorial Committee, 6 million net hard dollars down to 800,000.
Welcome to the 100-percent hard money world. You are going to like it. There has been a lot of discussion about who wins and who loses. We will lose. This is mutually assured destruction of the political parties.

I don’t think any of you believes seriously that Jeffords, or Wellstone, or Snowe-Jeffords are going to be upheld. This is an area of the law I know a little bit about. So the chances in court. This is an area of the law I previously that Jeffords, or Wellstone, or the Sierra Club. Or maybe the NRA will come save some of our people. But under this bill, I promise you, if McCain-Feingold becomes law, there won’t be people on our side too. We are going to be held in court. This is an area of the law I know a little bit about. So the chances are pretty good that all of those groups that Senator Breaux was describing are going to be out there on both the right and the left pounding away.

Maybe your friends in organized labor will be able to help you, or the Sierra Club. Or maybe the NRA will come save some of our people. But under this bill, I promise you, if McCain-Feingold becomes law, there won’t be people on our side too. We are going to be held in court. This is an area of the law I know a little bit about. So the chances are pretty good that all of those groups that Senator Breaux was describing are going to be out there on both the right and the left pounding away.

My friends on the other side of the aisle, hoping somebody, somewhere, somehow was going to keep this from happening. There is nobody to come to the rescue. This train is moving down the tracks. It is a perfect right to spend their money with lavish salaries for these people who are hanging around off the side of the tracks. Who are going to make this a better world than the one we have been living in. We have found a way to do this. I am proud of that. This is my main point, in asking for your attention—and I think you for being here—this is a candid appraisal. This is not a partisan observation. This is a candid and realistic appraisal of life after McCain-Feingold. I am sure there are very few of you who will believe this is going to improve the political system in America.

This bill is going to pass later tonight. If I were a betting man, I would bet it is going to be signed into law. I just wanted to welcome you, my friends, to a 100-percent hard money world.

I thank the Chair and yield the floor.

Mr. DODD. Mr. President, may I involuntarily make this a better system than the request made to respond to the unanimous consent request of the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. DODD. The distinguished Senator from Wisconsin or the Senator from Arizona, Mr. MCCAIN, I had thought, wanted to be heard on this issue.

Mr. President, let me reserve the time for them. I will take 2 minutes and say to my friend and colleague from Kentucky, this is a new world. I accept that description. I wouldn’t call it necessarily a perfect world, but I think for those of us who support McCain-Feingold, we think this is a far better world than the one we have been engaged in over the past number of years, as we have watched the explosion of unregulated soft money flow into the political process in this country.

Senator BENNETT of Utah a little while ago said one can say for certain where this is going to go. That is true. I think we do appreciate, those of us who have supported this legislation, that a system that is devoid of unregulated soft money, and those of us who believe that the Snowe-Jeffords provisions and the price we paid by increasing modestly the hard money contributions from millionaires than the one we presently are operating under. So, yes, it is a new world.

I happen to believe it is a vastly better world and that the American public, who have something to say about this and who have been declining, as my colleague and friend from Kentucky has pointed out, declining in their checking off on the 1040 forms of money to go into the public coffers to support Presidential elections is a good poll about how the public feels—he says about public financing, I think about politics—I am not certain this is going to change entirely the public mood. I think we are taking a giant step forward with the adoption of McCain-Feingold in improving the climate and improving the public’s confidence and their respect for the political process in this country.

Yes, it is a new world. I think it is a better world.

I yield 5 minutes to my colleague from Massachusetts and then reserve the remainder for Senator FEINGOLD or Senator McCAIN.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I listened carefully to the comments of the Senator from Kentucky. I respect the very direct, open way in which he has stated his opposition, and he has done so on the basis of a belief system. I respect that. I think we all do.

Let me say to my colleagues, there is an analogy that is not completely inappropriate in the sense that when you have found a way to do things and it works pretty easily. I think of swimming in it because it is easy, it is hard to give it up. It is not unlike an addiction in a sense. There has been an easy addiction to this flow of money.

When you look at the amounts of money, from $100 million up to $24 billion in a span of 2 years, dozens of times in excess of the rate of inflation, you have to ask: What is going on here?

I say to my colleagues, for those who fear this new world that has been defined, there are alternatives. There are other ways to do this. I am proud that I can stand as a Senator in the Senate today, having gotten elected a different way.

In 1996, the Governor of our State and I mutually agreed to limit the amount of money we would spend—he, a fervent Republican; me, an ardent Democrat. We both agreed to spend the same amount of money we would spend—he, a fervent Republican; me, an ardent Democrat. We both agreed to spend the same amount of money we would spend—he, a fervent Republican; me, an ardent Democrat. We both agreed to spend the same amount of money we would spend—he, a fervent Republican; me, an ardent Democrat. Under McCain-Feingold, we have raised the total amount of money that any independent expenditure is in favor of the other person or that our parties spent on our behalf. We ran a race that was absolutely free from soft money, from party money. We had nine 1-hour televised debates, and the public knew us both, probably better than they wanted to, and made a decision.

We can all run that way. There is adequate capacity in this new world to raise countless amounts of hard dollars.

Under McCain-Feingold, we have raised the total amount of money up to about $75,000 over 2 years to party and individual.

Nothing stops one Senator from going out and raising as much hard money as they can access in a 6-year term, in amounts that have now been raised to $2,000 a person, which means you can call on one couple, a husband and wife, and you can walk out with $8,000. All of us know that one-half of 1 percent of the people in America even contribute $1,000 contributions.
So this is not a dire new world, a brave new world. This is a world the American people are asking us to live by, and constitute business people across this country are sick and tired of us coming to them and saying I need $150,000 or I need $500,000 for my party. They look at the committee you serve on and they feel pressured, whether they say it or not. Whether you say it or not, it is an appearance.

So I say to colleagues, this is a world we can survive in just fine. With 6 years of incumbency, with all of the power of the incumbent, with all of the times you can return home as a Senator and meet with constituents, there isn’t one of us who doesn’t start with the natural advantage, even under McCain-Feingold.

So I suggest respectfully that this is the right world, the world in which we ought to be living. We should not fear the outcome of this particular change. I thank the Senator from Connecticut.

Mr. FEINGOLD. Mr. President, I thank the Senator from Kentucky for ensuring that the Senate has a moment to reflect on the implications of this bill. I think it is very important that we pause to evaluate this legislation, and what it will mean for our parties, and for the voters.

As my colleagues might imagine, I take a drastically different view on effects of this legislation than the Senator from Kentucky. I realize that change can be difficult, and even a little scary, but I think it is a mistake to try to scare Members out of voting for this bill. This reform is about increasing the public’s faith in our work. This bill doesn’t destroy the political parties; it strengthens them by ending their reliance on a handful of wealthy donors.

Parties need money to operate, and under this reform, the national parties will be able to raise hard money, just as they have for many years. What they won’t be able to do is raise the unlimited amounts of soft money. Just like the parties didn’t have much, if any, soft money for much of the 1970s and 1980s.

Soft money isn’t some magic bullet that the parties need to increase voter turnout or voter participation in the democratic process. Throughout much of the 1970s and 1980s, soft money was mostly absent from party fundraising. The parties raised hard money, and ran their parties on hard money. It is easy to forget that when we look at fundraising today, I know, but it is important to remember as we consider this bill. We didn’t need soft money then, and we don’t need it now; that is a myth that has been perpetuated, frankly, on both sides of the aisle, and it is a time to put that myth to rest once and for all.

Neither party can thrive when they are beholden to the wealthy few. Soft money doesn’t strengthen the parties, it undermines the spirit that keeps our parties strong. We all know that people, not soft money, are the heart and soul of our political parties.

With the soft money system, the parties have been operating outside the spirit of the law, and outside the public trust, for years. With this bill, we can return the parties to the people who built them in the first place. Our democracy demands vibrant political parties. No one believes that more than I do. But soft money has, ironically, strengthened our parties. I feel that is true in my own party, and I am deeply saddened to have to say that.

Last spring the Democratic Party held a fundraiser where soft money donors in the arena sat down to dinner at lavishly decorated tables, while those who could only afford a cheaper ticket actually sat in the bleachers and watched them enjoy their meal. Is that party-building? I think we all know that to say that kind of event strengthens the parties is just absurd.

The parties aren’t strengthened when people across the country, Republicans and Democrats, pick up the newspaper and read that their party is giving access and favors to the wealthy, while they struggle to pay for health care coverage, or they worry about how safe their drinking water is. They pick up the paper and see the parties take unlimited money from HMOs and big political action committees, and they wonder how in the world could their party really stand up for them when they depend so completely on a wealthy few? The assumption that we can be bought, or that our parties can be bought, has completely undermined our parties. I guess that there are few if any Members of this body who haven’t faced gone home to face the deep skepticism of their constituents on a given issue, when people felt like they or their party have been “bought off” by interest groups.

Soft money, like perhaps no other abuse of our system in history, creates an appearance of corruption. To demonstrate that, I want to put in the record two items of interest. The first are the results of a poll conducted just last week by ABC News and the Washington Post. This poll found that 74 percent of the public now support stricter laws controlling the way political campaigns raise and spend money. That is an 8 percent increase from just a year ago. The poll had a margin of error of plus or minus 3 percent.

More important, however, the same poll found that 80 percent of the public think that special favors for people and groups who give them campaign contributions. And 67 percent consider this a big problem. Seventy-four percent of those who believe that politicians do special favors for donors said they think these favors are unethical.

This is the appearance of corruption. The assumption that politicians are on the take, and that money purchases favors. The “Coin-Operated Congress,” as Pat Schroeder used to say.

In fact, it’s been felt so over the past few years that money is setting the agenda that began to speak on the Senate floor during debates on substantive legislation about the money flowing from companies and groups interested in that legislation, I have called this the “Calling of the Bankroll,” and since I started this practice in June of 1999, I have called the bankroll 30 times. I think it is important for us to acknowledge that millions of dollars are given in an attempt to influence what we do. The appearance of corruption is rampant in our system.

I have called the bankroll on mining on public lands, the gun show loophole, the defense industry’s support of the defense industry, CATF, the 92 K Liability Act, the Passengers’ Bill of Rights, MFN for China, PNTR for China, and the tobacco industry. I have talked about agriculture interests lobbying on an agriculture appropriations bill, telecommunications lobbying on a tower-siting bill, and railroad interests lobbying on a transportation appropriations bill. I’ve talked about contributions surrounding the Financial Services Modernization Act, nuclear waste policy, the Arctic National Wildlife Refuge, and the ergonomics issue. I have also called the bankroll on the Patients’ Bill of Rights, twice, the Africa trade bill, twice, the oil royalties amendment to the fiscal year 2000 Interior Appropriations bill, twice, and I have called the Bankroll on three tax bills, and four separate times on bankruptcy reform legislation.

I think it is safe to say that the public doesn’t think much of the current system and that soft money plays a big part in the public’s lack of faith in us and the work we do.

One of the most important ways I think this bill can change the fundraising culture is not just by stopping soft money fundraising, but by stopping soft money fundraising by Members of Congress. Soft money fundraising is something that many Members of this body find deeply troubling. How many of Members of the Senate enjoy picking up the phone and asking a donor for $100,000? How many Senators feel uncomfortable exerting pressure on wealthy interests to come through with big contributions to fuel the fundraising contest between the parties?

I have said before that I have had Members tell me they felt like taking a shower after asking for a huge contribution. And I recently quoted Senator Miller’s Washington Post op-ed, in which he said that after raising soft money, he felt like “a cheap prostitute who’d had a busy day.” Haven’t we had enough? I think we have. When this body voted 60 to 40 against the Hagel
amendment, which would have put the Senate's stamp of approval on the soft money system. I think we face a corner in this debate. We joined the rest of the country in recognizing that this system puts our integrity at risk, and that soft money simply isn't worth that risk anymore. This bill will reinvigorate the political process, and it will renew faith in the parties, and in each and every one of us. With the passage of this bill, we won't have to face the accusations that our parties have been bought off by soft money. We won't have to read about million dollar donations or getaways for hundred thousand dollar donors with party leaders, and neither will our constituents. And that will do something to improve the public's attitude toward us, and I think it will improve our own feeling about the work that we do. All of us take pride in our work, and in this institution. But we face nagging accusations that unlimited money plays a role in the legislative process in which all of us play a part. Today we have a rare chance to change that, and I believe we will.

I stand here today by my colleagues to say that soft money isn't good for politics. It is time to stop protecting, or defending it as something that strengthens our parties, or the political life of the nation. Soft money removes people of average means from the political process, and replaces them with a handful of wealthy interests. So to say that soft money is good for parties is to say that people, the party faithful who should be the lifeblood of a political party, don't really count anymore. That in the quest for unlimited contributions, the parties are willing to forgo the trust of the people they purport to serve. I don't accept that point of view. And I don't think that most of my colleagues do either. Soft money does a disservice to the work of this Senate, it does a disservice to our parties, and most of all, it does a grave disservice to the American people. So let us come together to end the soft money system, and dispel the tired myth that soft money is good for democracy once and for all.

I ask unanimous consent that a chart detailing the times I have called the bankroll be included in the RECORD at this point.

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

## The Calling of the Bankroll

<table>
<thead>
<tr>
<th>Date</th>
<th>Legislation/Issue</th>
<th>Bankroll of PAC and Soft Money Contributions</th>
<th>Forum</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/2/99</td>
<td>Emergency Supplemental Appropriations Conf. Rpt./Mining rider.</td>
<td>PACs associated with the members of the National Mining Association and other mining-related PACs contributed more than $29 million to congressional campaigns from January 1995 to December 1996. Mining soft money contributions totaled $15.6 million during the same 6-year period.</td>
<td>Senate floor statement given live, CR S5652.</td>
</tr>
<tr>
<td>5/2/99</td>
<td>Juvenile Justice (.25/4) Gun control measures.</td>
<td>Gun rights groups, including the NRA, gave nearly $9 million to candidates, PACs, and parties from 1991 to 1998. The NRA gave $1.5 million in PAC contributions to federal candidates last cycle. Handgun Control, Inc. gave a total of $146,614 in PAC money. A total of $220,478 was spent in support of gun rights groups, while those who voted against the first Lauderback amendment to close the gun show loophole received an average of over $30,478 from gun rights groups.</td>
<td>Statement for the Record, printed in CR S5572.</td>
</tr>
<tr>
<td>7/29/99</td>
<td>Senate Commerce Committee Markup of the Contract with America Agenda.</td>
<td>The defense industry gave more than 10 million dollars in PAC money and soft money to parties and candidates in the last election cycle alone. In the last ten years, the defense industry gave almost $40 million to candidates and the two national political parties. Boeing, the Super Hornet's primary contractor, gave more than $3 million in PAC money and more than $1.5 million in soft money during that same 10-year period.</td>
<td>Statement for the Record, printed in CR S7502.</td>
</tr>
<tr>
<td>6/1/99</td>
<td>Y2K Liability Act</td>
<td>The computer and electronics industry gave close to six million dollars in PAC money and soft money during the last election cycle—$5,772,146 each to the Senate and House. The Association of Trial Lawyers of America gave $2,816,950 in PAC and soft money contributions to parties and candidates in 1997 and 1998. The last election cycle, managed care companies and their affiliated groups spent more than $4.4 million dollars in soft money, PAC, and individual contributions—roughly double what they gave during the last mid-term election cycle. The pharmaceutical and medical supplies industry gave more than $4 million dollars in PAC money contributions and more than $46.5 million dollars in soft money contributions in 1997 and 1998. The AMA made more than $5.4 million dollars in contributions in the last cycle ($2.3 million in soft money, approximately $77,000 in soft money). The two ESLA gave parties and candidates close to $2 million dollars in 1997 and 1998. ($1.3 million in PAC money, $777,059 in soft money.)</td>
<td>Senate floor statement given live, CR S6854.</td>
</tr>
<tr>
<td>7/1/99</td>
<td>Patients’ Bill of Rights</td>
<td>During the last election cycle, managed care companies and their affiliated groups spent more than $3.4 million dollars on soft money contributions, PAC, and individual contributions—roughly double what they spent during the last mid-term elections. Managed care giant United Health Care Company gave $350,000 in soft money to the parties, and $650,000 in PAC money to candidates. Blue Cross/Blue Shield's national association gave more than $500,000 in soft money and more than $500,000 in PAC money, the managed care industry's chief lobby, The American Health Alliance, has given nearly $600,000 in soft money in the last two years.</td>
<td>Senate floor statement given live, CR S6965.</td>
</tr>
<tr>
<td>7/2/99</td>
<td>China MFA</td>
<td>Members of USA Engage, a major coalition lobbying for MFN status for China were big contributors in the last election cycle. Examples include: Defense contractor TRW Inc. gave more than $150,000 in soft money and $236,000 in PAC money. Financial services giant bank Ameriprise gave more than $316,000 in soft money and more than $430,000 in PAC money. The U.S. Chamber of Commerce gave nearly $50,000 in soft money and $163,000 in PAC money. Exxon, one of the largest oil companies, gave more than $1 million in soft money and $1 million in PAC money. Gillette gave more than $5 million dollars in soft money. This is just the tip of the iceberg. The nation's tobacco companies are some of the most generous political donors around today, including Philip Morris, which gave more than $1 million dollars in soft money and $1 million dollars in PAC money. During the 1997–1998 election cycle the tobacco companies gave more than $1 million in soft money. (For the first time ever, Philip Morris, R.J. Rahnson, Brown and Williamson, US Tobacco and the industry's lobbying arm, the Tobacco Institute, gave a combined $15.5 million in soft money to the parties, and another $2.3 million in PAC money contributions to candidates. The Coalition of Service Industries, a coalition of banks and securities firms, won a provision to extend for ten years a temporary tax deferral on income those industries earn abroad. The value of this tax deferral: $5 billion over ten years. During the 1997–1998 election cycle, coalition members gave the following: Ernst &amp; Young—more than half a million dollars in soft money, and more than $900,000 in PAC money. CSIRA Corporation—more than $335,000 in soft money, and more than $420,000 in PAC money. American Express—more than $720,000 in soft money and nearly $175,000 in PAC money. Deloitte Touche—more than $250,000 in soft money and more than $10,000 in PAC money.</td>
<td>Senate floor statement given live, CR S5665.</td>
</tr>
<tr>
<td>7/2/99</td>
<td>Tax Bill</td>
<td>The utility industry got a provision affecting utility mergers in the House measure, which, if it survives, would be worth more than $1 billion to the utility industry. The provision would require the payment of fees on the fund that utilities set up to cover the costs of shutting down nuclear power plants. Entergy Company gave $298,000 in soft money and nearly $500,000 in PAC money; Commonwealth Edison gave $120,000 in soft money and more than $100,000 in PAC money; and Florida Power and Light, gave more than $40,000 in soft money and nearly $80,000 in PAC money.</td>
<td>Senate floor statement given live, CR S5665.</td>
</tr>
<tr>
<td>8/4/99</td>
<td>Agriculture Appropriations bill</td>
<td>Agriculture interests have donated nearly $3 million in soft money—most to PACs. The industry got a provision affecting utility mergers in the House measure, which, if it survives, would be worth more than $1 billion to the utility industry.</td>
<td>Statement for the Record, printed in CR S10211.</td>
</tr>
<tr>
<td>8/5/99</td>
<td>Introduction of Tower Siting Bill. S. 1538</td>
<td>Examples of soft money &quot;double givers&quot; in the agriculture industry during the last cycle include the Archer Daniels Midland Company, which donated $263,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated $175,000 to the Democrats and $205,000 to the Republicans; and the Ocean Spray Cranberries Corporation, which donated more than $250,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated more than $250,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated more than $250,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated more than $250,000 to the Democrats and $255,000 to the Republicans; United States Sugar Corp, which donated more than $250,000 to the Democrats and</td>
<td>Statement for the Record, printed in CR S10440.</td>
</tr>
<tr>
<td>8/9/99</td>
<td>Interior Appropriations bill/Oil spills Rider Amendment.</td>
<td>During the 1997–1998 election cycle, all companies that fared this rider gave the following in political donations to the parties and political action candidates. Exxon gave more than $200,000 in soft money and more than $80,000 in PAC money. Marathon Oil gave more than $250,000 in soft money and more than $100,000 in PAC money. Atlantic Richfield gave more than $200,000 in soft money and more than $100,000 in PAC money. Amoco and Amoco, two of companies which have merged into the newly formed petroleum giant, BP Amoco, gave a combined total of more than $400,000 in soft money and nearly $550,000 in PAC money. That's more than $2.3 million just from those four corporations in the span of only two years.</td>
<td>Floor Coalition with Sen. Boren, CR S10567.</td>
</tr>
</tbody>
</table>
The railroad companies are backing up their point of view with almost $4 million dollars in PAC and soft money contributions in the last election cycle alone. During 1997 and 1998, the four Class I railroads gave the following political contributions: Burlington Northern Santa Fe gave more than $450,000 in soft money and nearly $425,000 in PAC money; CSX gave more than $600,000 in unregulated soft money to the parties and nearly $200,000 in PAC money; Norfolk Southern gave more than $400,000 in unregulated soft money to the parties and the almost a quarter million to candidates; Burlington Northern Santa Fe gave more than $450,000 in soft money; and nearly $425,000 in PAC money.  

The six largest airlines in the United States—American, Continental, Delta, Northwest, United and US Airways—and their lobbying associations, Air Transport Association of America and more than $1 million dollars in PAC money in the last election cycle alone. Northwest was the largest soft money giver among these dollars in soft money and nearly $2 million to the parties and more than $600,000 in PAC money to candidates.  

The largest bankroll ever—$3.4 million dollars in soft money and nearly $1 million dollars in PAC money. That is more than $7.4 million just from those four corporations in the span of only 2 years.

During the 1997-1998 election cycle, the very large oil companies that will benefit from this amendment gave the following political contributions: to the parties and more than $600,000 in PAC money to candidates.  

Four of the most important subcommittees of the project, TRW, Raytheon, Hughes Electronics and Norton Grumman, also happened to be major political donors in the last election cycle. Raytheon top this list with nearly $220,000 in soft money and $465,000 in PAC money to the parties, including more than $300,000 in soft money to the parties and more than $450,000 in PAC money to candidates. Hughes gave nearly $145,000 in PAC money during 1997 and 1998, and TRW gave more than $50,000 in soft money in the last election cycle.

This year, MBNA gave its first large soft money contribution ever to the Democratic party—it gave $150,000 to the Democratic Senatorial Campaign Committee. Another large contributor is BP Amoco, which gave the following during the period: $100,000 to the National Republican Senatorial Committee, $50,000 to the Democratic Senatorial Campaign Committee, $50,000 to the National Democratic Senatorial Campaign Committee, and $50,000 to the Republican Senatorial Campaign Committee.

In 1998, MBNA gave a $200,000 soft money contribution to the Republican Senatorial Committee on the very day that the House passed the conference report and sent it to the Senate. MBNA Corporation gave a $200,000 soft money contribution to the National Republican Senatorial Committee, PAC contributions, from National Consumer Bankruptcy Reform Act (S. 13897).

Before the conference vote, the non-profit group the American Council of Life Insurance, which also gave heavily to the soft money from banks and lenders than they did during the first 6 months of the last presidential election cycle in 1995. Six of the airlines—American, Continental, Delta, Northwest, United and US Airways—gave portions of the '98 election cycle.

Statements for the Record, printed in CR S10922.

Senate floor statement given live, CR S11278-88 and colophon with Set, Left on geraniums of debate, S11437.

Senate floor statement given live, CR S13229.

Statement for the Record, printed in CR S13897.

Senate floor statement given live, CR S3884.

Statement for the Record, printed in CR S3969.

Senate floor statement given live, CR S3643.

Statement for the Record, printed in CR S534.

Statement for the Record, printed in CR S2211.
Then there is the Food Marketing Institute, which represents supermarkets. Through June 1st this election cycle, the Food Marketing Institute has given more than $241,000 in PAC donations to candidates, after it made more than a half million in PAC donations during the previous cycle. FMI is also an active soft money donor, with more than $166,000 in soft money donations since the beginning of this cycle through June 1st of this year. On top of these wealthy associations, there are countless wealthy individuals who want to see the estate tax repealed, and a group called The Committee for New American Leadership, chaired by former New York Governor Mario Cuomo—Cuomo's son and Chair of the New York Senate Democrats, has weighed in against the estate tax repeal, and they do so with the weight of their soft money contributions behind them.

And last but not least, Boeing has given more than $593,000 in soft money through March 31st of the current cycle. That includes two contributions of a quarter million dollars.

United Airlines and its executives and subsidiaries have given more than one million dollars in soft money during the current election cycle, including six contributions of $50,000 or more. The American Benefits Council, which is strongly supporting this bill, sent around a list of supporters of provisions of the legislation. That list includes more than a mere dozen names.

The American Council of Life Insurers and its executives have given more than $260,000 to the parties’ soft money war chests during the period. The American Benefits Council, which has cost somewhere between $500,000 and $1 million, according to an estimate in Roll Call.

The Center for Responsive Politics estimates labor’s overall soft money, PAC and individual contributions at roughly $31 million so far in this election cycle (in a May 26th report, the Center found that soft money, PAC and individual contributions so far in the election cycle are, in total, more than $10 billion). The Center for Responsive Politics’ May 26th report put the collective contributions of Business Roundtable members at $58 million in soft money, PAC money and individual contributions so far in the election cycle. And that is in addition to the Roundtable’s $465 million in soft money contributions to the parties at this point. Telecommunications giant Motorola and its executives have given more than $70,000 in soft money and more than $177,000 in PAC money during the period.

And last but not least, Boeing, Philip Morris, UPS and Citigroup. Boeing has given more than $450,000 in soft money through the first 15 months of the election cycle, including 10 contributions of $35,000 or more. UPS’ subsidiaries and executives have given more than $960,000 in soft money through March 31st of the current cycle. That includes two contributions of a quarter million dollars.

Citigroup, its subsidiaries and executives gave more than one million dollars in soft money through the first 15 months of this election cycle, including six contributions of $50,000 or more. Philip Morris and its subsidiaries have given more than $2.2 million in soft money through March 31st of the election cycle, including more than eight donations of $100,000 or more. China is a huge untapped market for cigarettes. So Philip Morris’s soft money contributions open the doors for its lobbyists on this issue, just as they open the doors for its anti-toxins control arm.
BINGAMAN. Mr. President, I ask unanimous consent that the Specter amendment be temporarily laid aside so we can go to Senator BINGAMAN. Senator Specter will come after that.

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

BINGAMAN. I thank my colleagues very much. I have two amendments, the first of which I believe is acceptable to the managers of the bill. Mr. DODD. That is correct.

AMENDMENTS. 157

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:
The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 157.

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

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

The amendment reads as follows:

(Purpose: To require the Presidential Inaugural Committee to disclose donations and prohibit foreign nationals from making donations to such Committee)

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

SECTION 2. DONATIONS TO PRESIDENTIAL INAUGURAL COMMITTEE.

(a) General.—Section 501, United States Code, is amended by—

(1) redesignating subsections (b), (c), (d), (e), and (f) as subsections (c), (d), (e), (f), and (g), respectively; and

(2) by inserting after subsection (a) the following:

"§ 510. Disclosure of and prohibition on certain donations.

"(a) General.—(1) In general—

"(A) any expression of unmistakable and unambiguous opposition to the candidate; or

"(B) any expression of unmistakable and unambiguous support for the candidate.

"(2) Contents of report.—A report filed after paragraph (1) shall contain—

"(A) the date of the donation; and

"(B) the name and address of the person making the donation.

(b) Disclosures.—The committee shall not accept any donation from a foreign national (as defined in section 318(b) of the Federal Election Campaign Act of 1971 [2 U.S.C. 401(b)])

(c) Reports made available by FEC.—Section 304 of the Federal Election Cam-
today I believe is very important, and I believe it will substantially improve this legislation. It will help to address the inherent problems with our campaign finance laws in any meaningful way since I came to the Congress in 1983. The last significant reform of campaign finance laws was in 1974. Nearly everything about campaigns has changed radically since 1974, from the tremendous amount of money that has been spent on campaigns to the technologies and methods used to communicate with voters.

I congratulate Senator McCain, my colleague from Wisconsin, on their determination in finally bringing this bill to the Senate floor. I can think of no two individuals in recent memory who have worked harder on a bipartisan basis in pursuit of basic reform than these two Senators.

They have traveled the country, one of them, of course, during the time he was running for President. They have taken the campaign finance reform message to every corner of this country. We all in this Senate, in my view, owe them a debt of gratitude. I hope our effort is worthy of their significant effort. It has been a true labor of genuine reform in the interest of better and cleaner democracy, and I am very pleased to cosponsor this legislation.

Mr. President, turning to the amendment I have offered, it is a relatively simple amendment. It proposes to accomplish a central goal, and that is to provide congressional authority for Federal who are confronted with sham negative issue ads the opportunity to respond to those ads.

The amendment states that if a broadcast station, whether it is a television station or radio station, permits any person or group to broadcast material opposing or attacking a legally qualified candidate for Federal office, then that station, within a reasonable period of time, must provide, at no charge to the candidate who has been attacked, an equal opportunity to respond to those attacks.

This requirement would apply in this same period that is discussed in the legislation pending before us in the so-called Snowe-Jeffords language: that is, 60 days prior to a general election, 30 days prior to a primary election. It is in those two periods of time that the requirements apply.

All of us who have run for Federal office in the past have been in the situation about which I am concerned. As a candidate, you are out on the hustings; you are conducting a campaign that you hope is addressing the issues voters care about; you are trying to give the people in your State, or the people in your congressional district, the best vision you can for where this country should go, what should be done in the State; and you turn on the television in your hotel room and see an ad attacking you for some issue on some basis that you probably did not anticipate. You ask yourself the question: Who is paying for the ad? Who is this group? Who do they represent? Where did they get the information that they are using in this attack?

The process leaves the candidate, more often than not, unfairly accused of a position. It leaves voters increasingly cynical about the growing negative nature of our campaigns.

Unfortunately, this is the new world of campaigns in which we live. This is learned up to develop a national data set, whether you are Democrat, whatever your party affiliation, regardless if you are a challenger or incumbent.

Through the loopholes in our current campaign finance laws, outside interest groups are funding ads that are viewed by voters as electioneering, ads that are hundreds of thousands of dollars worth of political ads in many of our States. Most of those are very negative and have minimal issue content. Most of those ads flood our airwaves right before the election when they will have the biggest impact on the minds of the voters.

As noted, congressional authority Norm Ornstein said these ads often dominate and drown our candidate communications, particularly in the last weeks of the campaign. While the ads are often effective in a raw and practical sense, they are incredibly corrosive; they are frequently unfair; they are sometimes very personal in nature that they make; and they breed voter cynicism and voter apathy toward the electoral process.

We know all too well the gross aspects of the advertising, but now, thanks to a number of dedicated reform-minded groups and academicians, we have some real data to back up what we have all known as a matter of common sense for some time. The Brennan Center for Justice at NYU, New York University, and the University of Wisconsin at Madison have done significant work in the database of political television advertising from the 2000 election cycle. They monitored political advertising in the Nation’s top 75 media markets, and researchers, through that monitoring, have documented the frequency, the content, and the costs of television ads in the 2000 election, which duplicates a similar study they conducted in 1998.

The findings are stunning. Let me give a brief summary of what they found. First, the independent groups alone spent, conservatively estimated, about $88 million on media buys for political TV commercials in the year 2000. That is roughly a sixfold increase from what they spent 2 years before. This is not an inflationary increase; this is a sixfold increase in spending by the independent groups in the last couple of months of the campaign. Second, in the 2000 Presidential election, voters received the largest share of political advertising messages from independent groups and party committees, not from the candidates themselves or from the candidate’s committees.

Third, while all of the unregulated issue ads produced by the parties and independent groups are supposed to theoretically cover issue positions, since they do not contain these so-called magic words that there has been a lot of discussion about on the Senate floor in the last 2 weeks, the words “noted by the Supreme Court in the Buckley decision,” the public does not discuss substantive issues; they are often sponsored by party committees are viewed as electioneering ads. Within 60 days of the election, 86 percent of the ads produced by independent groups are viewed by voters as electioneering.

Fourth, the chart from the Brennan Center dramatically makes the point I am trying to make; the sham issue ads that are run by these groups become increasingly negative in tone as election day approaches. Issue ads by independent groups are far more likely than candidate ads or even party ads to attack candidates. Fully 72 percent of the issue group ads aired in Federal races last year directly attacked one of the candidates in the race in which they were run.

This chart is entitled “Growth of Negative Tone of Electioneering Issue Ads as Election Day Nears.” There are three lines on this chart. One is the red line, which represents the sham issue ads. This is according to the Brennan Center study. The green line is the contrast ads. The blue line is the ads to promote a particular candidate, positive advertising. “vote for me, I’m your best candidate,” on Social Security, Medicare, or whatever issue.

Finally, the Brennan Center notes that issue ads that are targeted at candidates are decisively negative in tone and pursue the tactic of attacking a candidate’s character. These ads do not focus on the candidates themselves or from the candidate’s committees. These ads do not focus on personal histories of the candidate.

The dramatic thing about the chart, which covers the period from January to the beginning of November of the year 2000, the negative ads are virtually nonexistent, very low level negative ads, until June; and then in the last couple of months of the campaign, the negative ads overwhelm the rest of the advertising. These are the negative ads that are being run almost exclusively by the independent groups—not by the candidate. The candidates do not want to be associated with negative ads, so they stay out of this and
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Mr. DODD. Mr. President, let me refer to the independent groups run the very negative ads.

I believe this study I have referred to provides the hard data to back up what we have all known for some time. That is, that sham issue ads are increasing sevenfold each election. They are casting a negative and personal tone to campaigns and are particularly effective and dominant in the last four weeks before election day. There is a vote in any one of our States who would not validate these findings from their personal experience of watching television or listening to the radio. I heard this refrain from people in my State of New Mexico constantly during the last campaign cycle. They thought the airwaves were clogged with ads and that the majority of them were too negative. The complaint is constant by the pulpit. It is also valid.

Mr. President, let me agree to the amendment I am offering. Again, the amendment is straightforward. Let me make it very clear to people what the amendment does not do. First of all, the amendment does not in any way restrict the ability of any candidate to run any ad they want. It does not put on broadcasters, radio or television broadcasters any obligation with regard to those ads, except to run the ads, obviously. That obligation is already there. The amendment does not affect ads sponsored by the candidate or the candidate’s committee.

Second, the amendment does nothing to restrict either the candidate or a party or an independent group from running any and all ads they want that are positive or that are contrast ads.

On the chart, the green lines are contrast ads and the blue line is for ads that promote the candidate. We are in no way talking about those in this amendment. There is no restriction on broadcasters to take any action with regard to those. They can take those ads sponsored by anybody they want without incurring any obligation.

In the case of an independent group or a party or an independent group from running any and all ads they want that are positive or that are contrast ads, which are free to do, there is no prohibition against running attack ads, if they want to run attack ads. The broadcasters who run those ads then have an obligation to provide the candidate an opportunity to respond. This is a level playing field kind of amendment. We are saying to broadcasters, if you want to accept these attack ads during these short periods of time, 30 days prior to a primary, 45 days prior to a general election, you are not required to, of course; there is no obligation under the Constitution or anything else that you accept ads from noncandidates; but if you want to accept these ads, fine, just provide the opportunity for the candidate who is attacked to respond. That is what the amendment does. I think it is a straightforward amendment.

The reason I am offering it is because I believe it will help improve this bill in a very dramatic way.

It will allow all candidates, whether they are challengers or whether they are incumbents in the office, that there will be an opportunity for them to respond when they are unfairly attacked.

The Brennan Center report—let me quote from that report:

Candidate ads are much more inclined than group sponsored ads to promote candidates or to compare and contrast candidates on issues. Conversely, issue ads that are sponsored by groups tend to attack candidates and attempt to denigrate their character. These ads tend to be very negative in tone. They do not discuss substantive issues and frequently they focus on personal histories of the candidate. As election day nears, electioneering issue ads become increasingly negative and personal in tone.

That is what this graph demonstrates. That is why this red line goes up and up and up as you get closer to the election.

I hope very much we can agree to this amendment. While McCain-Feingold’s legislation goes to the very heart of this problem, it specifically does not affect any sponsor who, for example, fundedness or how well their campaigns may be funded.

That is what the amendment does. I commend it to the consideration of my colleagues. I think it will substantially improve the legislation before us. I hope it is something you will approve.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BINGAMAN. Mr. President, I reserve the remainder of my time and yield the floor.

Mr. DODD. Mr. President, let me thank our colleague from New Mexico for proposing this amendment. All of us here, and those who pay any attention at all to politics in this country and are confronted with this, as most Americans are, if you look at this chart by the Senator from New Mexico, particularly in that August, September, October period of an election year, it is hard not to be confronted with the assault—that is the only way to describe this—of ads on television from one end of the country to the other on every imaginable radio station, television station, cable station—this bombardment that occurs.

What the Senator from New Mexico has graphically demonstrated with his chart is that the overwhelming majority of these ads are the so-called attack ads. Usually, they are very vicious, designed not to promote one’s vision or one’s agenda—if they are elected to Congress or the Senate or the Presidency or some other office—but merely to try to convince the rest of us why you ought to be against someone; not why you ought to be for me but why you ought to be against my opponent.

The least enlightening part of a campaign is the proliferation of these ads. They do nothing, in my view, to contribute to the education, the awareness of the American people. We have seen an explosion of them over the past few years. I suspect this has probably been in the last 6 or 7 years, with the explosion of soft money that the McCain-Feingold soft money loophole that the McCain-Feingold legislation goes to the very heart of this problem.

As I understand, we are not talking about ads where candidate X goes after candidate Y—an individual candidate making a case, although I have problems with that as well, but what the Senator from New Mexico is talking about are these issue-based ads where they get away with it by merely not putting in a line at the end—they don’t say at the end “vote for,” “vote against,” but that is hardly a necessary tag line after they have proceeded to just destroy your reputation and probably that of your families and your neighborhood, and any pets you may have as well.

These are designed to be sort of nuclear bombs on people. We have all seen them. Some of them are almost laughable they are so bad, and I suspect the damage may be minimal because they are so bad. Unfortunately, many of them are very effective.

The theory works, again, if you can get your opponent to hurt someone whom I think may be inimicable to my special interest, you are more likely to vote for the person you know less about or nothing about. So this has become a standard diet to which the American public is subjected every late summer and fall of an election year.

As I understand it, what the Senator from New Mexico attempts to do is address these issue-based ads, ads not from a specified opponent but, rather, from one of these so-called organizational groups that, up to now, have had unlimited sources of revenue to come in and destroy a reputation without having any fingerprints. You can’t find out who contributes the money; you can’t find out where they come from; usually your opponent says I know nothing about them; in many cases the opponent will hold a press conference to disavow that ad and say I deplore that kind of advertising, while simultaneously thinking and allowing this process to get forward, distorting the political process.

The Senator from New Mexico makes a very valid point in his amendment. It
is something we are getting further and further away from, by the way. The airwaves in this country belong to the American public. We should be able to use the privilege to utilize those air waves for the benefit of the American public. It is not a right; it is a privilege. It is a limited privilege, based on your sense of responsibility. That privilege or that license can be removed if you abuse it.

There are numerous examples, almost on a daily basis, where that happens. What the Senator from New Mexico, as I understand it, is suggesting is that if, in your discretion as a radio station or television station, you decide to tolerate this kind of political advertising, knowing full well how damaging it can be, then we have the right to say to that station you must extend to that candidate an opportunity to respond to that kind of garbage.

I think this has value. It will have the net effect of ending these issue-based ads that destroy people’s reputations and destroy any sense of understanding that particular campaign may be about. To that extent, everyone is benefitted—not the candidate so much, in my view, but the voting public who may learn more about what people stand for, rather than what some issue group dislikes about a candidate.

I am attracted to this amendment. I think it contributes to McCain-Feingold. Obviously, there are questions that will be raised about constitutionality. My friend and colleague is a brilliant lawyer. He understands it well. He has crafted it about as tightly as you can to achieve the desired result. I think it is worthy of our support.

I look forward at the time this comes up for a vote to support it. I urge my colleagues to do so as well. We are all sick and tired of this.

I go back to the point I made earlier. We are seeing a declining level of participation too often in the political life of our country. How sad I think all of us are when we see that. There are a myriad of reasons for it, but one of the major reasons is this growing distrust people have over the low level of debate, the way campaigns are conducted. It is all done now on television and radio; most of it in negative ads, as this graph so graphically points out.

We wonder why only one out of every two eligible adult Americans participated in the national elections of this past fall. Fifty percent of adult eligible Americans stayed home. I know some may have done so for legitimate personal reasons. I suspect a significant majority of those who stayed home did so because they are fed up. They are fed up with the process. They think it is out of control, and one of the strongest pieces of evidence of that is this: a deluge of negative ads that have swamped the airwaves of this country and have the net effect of depressing turnout of the vote and disgusting the American public.

I think the Senator from New Mexico has offered a very constructive suggestion with this amendment, and I urge my colleagues on both sides of the aisles to be supportive of it.

I see my friend from Arizona is still with us.

Mr. MCCAIN. Mr. President, in behalf of the Senator from Kentucky, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. MCCAIN. Mr. President, I rise in opposition to the amendment. I appreciate very much what the Senator from New Mexico is attempting to do. He has identified very eloquently an enormous problem that we have with these negative ads. Suppose we don’t know who paid for and which are clearly not identified. With passage of McCain-Feingold, I think we will make some progress in that area.

I say that also as a person who supports that particular time for candidates. I agree with the Senator from New Mexico that when a broadcast station obtains a license, they sign a piece of paper that says they will act in the public interest. I think that Americans believe free television time for candidates can be very helpful.

But this amendment raises many troublesome issues that I, frankly, can’t quite fathom.

First of all, who would determine if an ad was indeed a negative ad? Is there going to be a censorship board? Is there going to be a group of Americans who say, OK, watch all of these ads and see which one is negative and which one is not? Is an ad that says: Call your Senator—or, see, many times—and ask him or her to save Social Security a negative ad or a positive ad?

I don’t know who makes this determination as to what is indeed a negative ad. Is it the argument of every candidate I have ever known that says that wasn’t a negative ad? I was trying to inform the people of my district or State about the fact that my challenger is a baby killer?

I find it very difficult to define what a negative ad is. Suppose we had some organization that could determine that this is a negative ad. What if a broadcaster had already sold all their television time? It is the last week of the campaign. It is certainly not unusual that a broadcaster has sold all of their television time in the last 2 or 3 weeks. Do they have to pull ads off the air and replace them with the ads that are mandated by this legislation? I am not sure how you do that either, especially in a Presidential election year. That is time already sold.

So the night before the election or 3 days before the election, I say: Wait a minute. My opponent is running attack ads. Now you have to run three times that many on my behalf or against them. However, they say: I am sorry. We have sold all of our time. What is your option then? Suppose they had some television time. What is fair ad placement? Runs of “Gilligan’s Island” at 2 a.m. or is it the evening news? I don’t know exactly. One station may have a higher rating than the other station. You are going to give me the local channel 365 versus the CBS, ABC, NBC, or FOX Network.

This is very difficult to work out. I am a little surprised that the Senator from Connecticut didn’t look at some of these problems.

I want to repeat. I am for free television time for candidates. I detest the negative advertising. I think it is one of the worst things that has ever happened will come over to what we have these unnamed, unknown groups calling themselves by some attractive name and buy millions of dollars of advertising, and they basically viciously attack their opponents.

What does that mean? Many years ago, I reminded the Senator from Connecticut they had a board in Hollywood that used to make decisions as to what was acceptable and not acceptable. They had problems.

I don’t know who is going to be doing that.

I want to work with the Senator from New Mexico. I think we have to do something about these negative ads. I tell you the best way is to dry up their money, and what you don’t dry up fully disclose.

I want to work with the Senator from New Mexico. I would like to sit down and see how we could work this out. But in its present form, I am just not sure how this amendment can possibly be workable.

Finally, I want to say that we just had a major vote, as we all know. We have amendments that are still outstanding.

I know Senator MCCONNELL, the Senator from Kentucky, will be back fairly soon. I understand they have a minimal number of amendments. I still think we can get done in a relatively short period of time.

I hope all Senators who have amendments in their name so we can start putting these amendments in order and so we can get time agreements, and perhaps not just time agreements but agree to amendments that are satisfactory to both sides so we can wind up all of this.

It is not that I am getting fatigued, but it is that we are sort of at a point now where we should bring this to a closure, and I hope we can do that.

Reluctantly, at the appropriate time I will be moving to table the Bingaman amendment.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.
Mr. MCCAIN. Mr. President, on behalf of the Senator from Kentucky, I yield such time as the Senator from Wisconsin may consume.

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

Mr. FEINGOLD. Thank you, Mr. President.

Not only is this amendment well-intentioned, but it is offered by somebody who anyone in the Senate knows is not only one of the most decent but one of the best Members of this body.

Since I have been here, no one has been easier to work with and kinder to me than the Senator from New Mexico. I really appreciate the time which he has given to me and Senator McCAIN. He has been a totally stalwart supporter of reform every year, and has been there on every floor vote in this debate. I thank him also for the amendment which we adopted that requires disclosure of Presidential inaugural funds. That is exactly the kind of thing we are trying to accomplish in this effort so the public can be fully informed of what is going on with all of these venues where large amounts of money can have a negative impact on some of our most sacred public traditions.

That was an important addition to the bill and will result in more information being available to the public of who is giving large sums of money to the inaugural events.

Reluctantly, I will oppose this amendment.

The bill addresses a number of problems with our system which the Senator from Connecticut correctly pointed out must be addressed. It is a problem that deserves more study. I don’t think this particular approach is one that I would be quite ready to accept. I am willing to look at it some more.

So I will be taking the same position as the Senator from Arizona, but with a willingness and desire to continue to work on this issue and this idea in the future.

Again, I thank the Senator from New Mexico for all of his support.

Mr. DODD. Mr. President, I was going to respond to some of the things the Senator said.

Let me also in response to my good friend from Arizona say that there are a number of amendments that Members have that have been coming over with great regularity over the last 2 weeks. I have been sitting here for 2 straight weeks. We have had very few quorum calls. I have been asking the indulgence of my colleagues to postpone their offering of amendments over the past 2 weeks while we considered some of these other amendments, such as the ones that we most recently rejected dealing with severability. But as the ones that we most recently rejected dealing with severability.

But as the ones that we most recently rejected dealing with severability. But as the ones that we most recently rejected dealing with severability.

I promise you, I am not going to then ask you to somehow be on a fast track here when you want your amendment considered and debated adequately. My hope is you will be able to do it in less amounts of time than we have allocated for every amendment. You get 3 hours if you want it, unless you yield back time or the opponents do. We ought to try to move along if we can. I want you to know, I think your amendments are serious and they deserve to be heard, debated, and voted upon, if you so desire.

I apologize for having asked you to wait for a week and a half and want you to know that you will have adequate consideration for your time. I turn to my colleague from New Mexico to respond to any of the unfair accusations that have been made about his stunning amendment.

Mr. BINGAMAN. Mr. President, I greatly appreciate the courtesy of all Members, particularly the Senator from Connecticut and his statement in support of this amendment.

There were several questions raised. Let me then reaffirm that there is no confusion by the Amendment Group or a party committee or anybody else wants to run an advertisement endorsing or supporting a candidate for office, this amendment does nothing to restrict that, prohibit it, impose obligations on broadcasters, or anything else.

That is perfectly appropriate. If anybody wants to take an ad out for my opponent and run ads in favor of my opponent, they should be able to do that.

If they want to run ads that contrast my opponent’s position with my position, that would be these ads that are reflected by the green line on the chart, it is entirely appropriate, no obligation on the part of broadcasters. This amendment only deals with advertisements which attack or oppose a legally qualified candidate.

The question has been raised by the Senator from Arizona, who will decide whether this is a negative ad, whether this is an ad that attacks or opposes a candidate for public office. My initial reaction is to refer to Justice Stewart’s great comment when he was told that he could not define “pornography.” He said: I may not be able to define it, but I know it when I see it. Government can regulate pornography because of that. The American people know a negative ad when they see or hear it. The answer to who will decide initially, the person who will decide is the candidate who is being attacked or the candidate’s campaign who is being attacked; they would detect an advertisement that is attacking them by a group as being run by a broadcasting station and they would presumably go to that broadcasting station and say, this is an advertisement that falls within the definition of this statute and we would like our time to respond. That is how it would work.

We have been very specific about what kinds of ads they would be entitled to respond to, what kinds of ads we would classify as an attack or opposition to the candidate. Or, B, if it does not fall within that description, it would be any communication that contains a phrase such as “vote against,” “defeat” or “reject” or campaign slogan or words that when taken as a whole and with limited reference to external events, such as proximity to the election, can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates, regardless of whether or not the communication expressly advocates a vote against the candidate. That could not constitute an attack other than to advocate the defeat of the candidate, then it is an advertisement that would entitle the candidate who is being attacked or being opposed the opportunity to respond. That is, we have given a tight definition. It would be up to the candidate or his campaign, first of all, to identify that such an ad is running, and then they would presumably go to the broadcast station and say: Look, this is why this ad as a whole is. The term “attacked” or “opposed” means, with respect to a clearly identified candidate, first, A, any expression of unmistakable and unambiguous opposition to the candidate. So that is pretty easy to determine. You can listen to an advertisement on radio. You can see an advertisement on television and determine whether it is, in fact, an unmistakable and unambiguous statement in opposition to the candidate. Or, B, if it does not fall within that description, it would be any communication that contains a phrase such as “vote against,” “defeat” or “reject” or campaign slogan or words or that when taken as a whole and with limited reference to external events, such as proximity to the election, can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates, regardless of whether or not the communication expressly advocates a vote against the candidate.
to make room for the candidate to respond during the time period between then and the election on a basis that would be regarded as equal. I ask: What is fair in ad placement? And we have used general language here that the candidate would be entitled to respond for the same amount of time during the same period of the day and week as was used by the person who is doing the attacking.

I am sure there are details of this that will be debated and discussed, if this becomes law, as there always is in every piece of legislation we pass. It is pretty clear what we are talking about. We are talking about a limited time period, 30 days before a primary, 60 days before a general election. We are talking about ads that involve attacking or opposing a candidate for Federal office or it. We are providing no precise definition of what “attack” or “oppose” means for purposes of this statute applying.

I believe this would be an enforceable provision. It would be an understandable provision. I think it would add greatly to the quality of the campaigns that we run in this country. It would be fair to the candidates in the sense that they would have the opportunity to respond. That is all we are saying.

In this country, we have used a fairness doctrine. I know that has become something of a dead letter, but there used to be an obligation on the part of broadcasters to provide equal time for people to respond when there was a question of controversy and not the effect would be, one, that the broadcast stations probably would not sell time because of the requirement to have an opportunity to come on and it says: “I believe people should still vote for me” in spite of the fact that the Senator says this is not like the American political system. It is an attack ad or not.

Mr. MCCAIN. Mr. President, on behalf of the Senator from Kentucky, I yield myself such time as I may consider necessary.

Mr. President, I want to say to the Senator from New Mexico, I am in total sympathy of what the Senator’s intent is. Let’s go back into the language of his amendment:

The term “attack or oppose” means, with respect to a clearly identified candidate—

(A) any expression of unmistakable and unambiguous opposition to the candidate.

Does that mean if I took out an ad and I say I am a better candidate than Mr. SMITH and I am opposed to him, is that an attack ad? That is the first definition.

Any expression of unmistakable and unambiguous opposition to the candidate.

If I am running and I am a better candidate than Mr. SMITH and I am not going to be able to run an ad that says I oppose Senator SMITH or Senator MCCAIN.

Mr. BINGAMAN. Will the Senator yield?

Mr. MCCAIN. Yes.

Mr. BINGAMAN. I just point out to the Senator that this legislation would not apply at all to any candidate who wanted to run an ad such as the Senator has proposed.

Mr. MCCAIN. Suppose it is the Sierra Club that says we oppose Senator MCCAIN. That is an attack ad? They can’t say that?

Mr. BINGAMAN. Mr. President, again, if the Senator will yield, they would certainly be able to run that ad. But if they say we oppose Senator MCCAIN, then Senator MCCAIN should have an opportunity to come on and say, “I believe people should still vote for me” in spite of the fact that the Senator says this is not fair to the candidates in the sense that we run in this country. It would greatly to the quality of the campaigns that we pass. It is an enforcement of an understanding that we had a right, as far as child pornography was concerned, that it was a compelling State interest. I don’t think you can make the same argument in respect to television time or attack ads.

Any communication that contains a phrase such as “vote against,” “defeat,” or “reject.”

Boy, we better get out the dictionary because there is a great deal of ambiguity of words. I have “concerns” about the candidacy of Senator SMITH. Well, is that in opposition to? Words “such as,” I think, are hard. Again, I get back to my fundamental point. It says in the amendment:

(Such as proximity to an election) can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates.

Who decides that? The Senator says you go to the station and get free time and, if not, you go to a judge. Now you are asking a judge to look at every commercial, or you are asking the broadcast station to look at every communication and make some decision as to whether it is an attack ad or not. I will tell you if I were on the station, I would say never mind; why should I take a risk when I am not sure this ad is an attack ad or not.

This is the problem we had when we have gone over and over and over this issue. How do you stop these attack ads without infringing on freedom of speech and not being so vague that it is very difficult to stand constitutional muster? The difference between Snowe-Jeffords and this amendment is that Snowe-Jeffords draws a very bright line and it says:

Show the likeness or mention the name of a candidate.

That is a very bright line. This is a campaign slogan or words that, when taken as a whole and with limited reference to external events, such as “proximity to an election”—these words—I admit to the Senator from New Mexico, I am not a lawyer, but I have been involved so long and so engaged in these issues that words do have meaning, and this amendment is very vague.

I am sure we can make a judgment on a lot of ads we have seen and the same ads the Senator and I find disgusting and distasteful and should be rejected. But at the same time, I don’t know how we can say, OK, if this station doesn’t run my ads, I am going to go to a judge and have the judge make them run my ads. It just is something that would be very difficult.

I would love to work with the Senator from New Mexico. He has been a steadfast stalwart for campaign finance reform. I would love to work with him to try to achieve this goal. Frankly, after going around and around on this issue, identifying who paid for the ad, full disclosure and, frankly, not allowing corporations and
unions to contribute to paying for these things in the last 60, 90 days, which is part of our legislation, is about how do we get some variety where we thought we could address the issue.

I thank the Senator from New Mexico. He is addressing an issue that has demeaned and degraded all of us because people don’t think very much of you when they see the kinds of attack ads that are broadcast on a routine basis.

As the Senator pointed out, they are dramatically on the increase. I will tell you what. You cut off the soft money, you are going to see a lot less of that. Prohibit unions and corporations, and you will see a lot less of that. If you demand full disclosure for those who pay for those ads, you are going to see a lot less of that because people who can remain anonymous are obviously much more likely to be a lot looser with the facts than those whose names and identity have to be fully disclosed to the people once a certain level of investment is made.

I thank the Senator and I regret having to oppose his amendment. I yield the floor.

Mr. BINGAMAN. Mr. President, I thank the Senator from Arizona for his comments. I understand the concerns he has raised. Let me make one thing very clear. Snowe-Jeffords is a prohibition against certain acts by certain groups. Now, that is a very different kettle of fish than what I am proposing.

My amendment does not in any way prohibit anyone from running ads. All my amendment says is that if an independent group wants to run an ad that attacks or opposes a candidate, then the candidate’s committee during certain periods of time, groups cannot run ads. So I think the constitutional problem that people have raised with regard to Snowe-Jeffords is much less of a concern than the kind of amendment that I have proposed.

This amendment is designed to deal with a particular type of advertisement run by groups other than the candidate and the candidate’s committee during certain periods of time. I think we have clearly defined what we are talking about. There are many advertisements that would not fall within the definition of attacking or opposing a candidate. Certainly, there is nothing here that would in any way obligate broadcasters, when they take those kinds of ads. But when they are running ads that do attack or oppose a candidate, then they would be under an obligation to provide an opportunity to respond. I think that is eminently fair, constitutional, and consistent with the general obligation that I believe broadcast stations ought to have to present both sides of an issue during a campaign when a candidate has become qualified for a Federal office. For that reason, I urge my colleagues to support the amendment.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, unless the Senator from Arizona has more time, I suggest the absence of a quorum.

Mr. MCCAIN. Mr. President, may I be recognized?

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. McCain. Mr. President, again I thank the Senator from New Mexico. He has identified a very serious issue. I want to work with him on this issue. It is important because his graph dramatically illustrates the magnitude of the problem.

The Senator from New Mexico is trying to address one of the most serious issues that affects American politics today and makes us much diminished in the eyes of our constituents and the people around the country. I really do applaud the Senator from New Mexico on this issue. At the appropriate time, I will move to table the amendment.

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

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

Mr. DODD. Mr. President, I ask unanimous consent that the order of business be suspended for a colloquy with my colleague, Senator McCain.

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

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I wish to make a statement and engage in a colloquy with my colleague, Senator MCCAIN.

Mr. MCCAINE. Mr. President, again I spoke about this amendment last week that I had introduced to try to correct an inequity in the law we passed last year that required State and local candidates to file with the IRS as a 527 political organization. I think the purpose of this was not to affect State and local candidates who have no involvement in a Federal election. I think we did intend to include any PAC that might have an influence on a Federal election.

I worked with Senator LIEBERMAN, Senator MCCAINE, and others who were interested in trying to fix this problem. But I did give the commitment that we would not allow the bill to be blue-slipped in the House because of this amendment. The fact is, we came to an agreement among all the parties who worked together on the Senate side that would correct the problem. Senator LIEBERMAN, Senator MCCONNELL, Senator DODD, Senator LIEBERMAN and others, all agreed that the language would do the job, but I could not get the commitment from the Ways and Means Committee on the House side not to blue-slip the bill even though I think a blue slip was not warranted. I made the commitment on the floor I would not do anything to jeopardize the bill procedurally with a blue-slip question.

This is my question to my colleague from Arizona. I will not pursue the amendment, but I think since everyone has agreed this needs to be fixed and we have the language to fix it, I ask the Senator from Arizona if he would agree to work with me to get this fixed in another bill.

Mr. MCCAINE. I say to the Senator from Texas, we established a $100,000 threshold so those who went above that would be disclosed; that is the outline of the agreement. Senator LIEBERMAN agrees, I agree, and I look forward to working with the Senator from Texas.

Mrs. HUTCHISON. I would like to clarify that the $100,000 threshold is not on State and local candidate committees but on State and local PACs.

Mr. MCCAINE. I yield the floor.
The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from New Mexico, Mr. BINGAMAN. The yeas and nays have been ordered. The clerk will call the roll.

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

The result was announced—yeas 72, nays 28, as follows:

[Rollcall Vote No. 60 Leg.]

YEAS—72

Allard Enzi McConnell
Allen Feingold Miller
Baucus Feinstein Markkowski
Bayh Fitzgerald Murray
Benetton Frutu Notice (NE)
Bond Graham Nickles
Breasea Gramm Roberts
Brownback Grassley Rockfeller
Bunning Gregg Santorum
Burns Hagel Schumer
Campbell Hatch Sessions
Cantwell Helms Shelby
Carnahan Hutchinson Smith (NV)
Chafee Hutchison Smith (RI)
Cleland Inhofe Snowe
Cochrane Jeffords Specter
Collins Kerry Stevens
Craig Koli Stevens
Crapo Ky Thomas
DeWine Landrieu Thompson
Domenici Lincoln Thurmond
Dorgan Leit Voinovich
Edwards Lugar Warner
Ensign McCain Wyden

NAYS—28

Akaka Dayton Lieberman
Biden Doole Mikulski
Bingaman Durbin Nelson (FL)
Boxer Harkin Reid
Byrd Hollings Reid
Carper Inouye Sarbanes
Clinton Johnson Torricelli
Conrad Kennedy Wollstone
Corzine Leahy Wyden
Daschle Levin

The motion was agreed to. Mr. LOTTT. Mr. President, I move to reconsider the vote. Mr. DODD. I move to lay that motion on the table. The motion to lay on the table was agreed to. The PRESIDING OFFICER. The majority leader is recognized.

Mr. LOTTT. Mr. President, a number of Senators are inquiring about how we will proceed for the balance of the evening and when we can expect to complete this bill, how long we will go tonight and also, of course, will it be necessary for us to go over until tomorrow and beyond. All along, the commitment and the understanding have been, I believe by all parties, that we would spend 2 legislative weeks on this issue and we would have a full debate and votes on amendments, and that we would bring to it a conclusion at about this time so we could be prepared to move on to other very critical national issues. I am not sure exactly how many amendments are still remaining.

I know Senator RZID has been working to try to identify exactly what amendments remain and to move those by consent agreement or voice vote, where it was possible. I know Senator McCONNELL has been doing the same thing on our side, working with Senator DODD. I think we are ready to complete action on this legislation. We have no more than four amendments on our side, and we think we could be prepared to work through those very quickly. I am not sure exactly what remains on the Democratic side, but I believe that the opponents and proponents are ready to vote. We have been through this. We have not moved toward a filibuster or cloture on either side. Although, in talking to Senator MCCAIN at a moment ago, he was saying that, if it were necessary, he hopes that I would file cloture on this bill. Can you believe those words came from his mouth? If I had to, of course, the cloture would ripen on Saturday. I don’t think we should end this process that way.

We do need to keep going. I know some Senators have commitments tonight they would like to go to. Some Senators have commitments they would like not to have to go to. I have heard—more of the latter, yes. Senators have commitments they would like not to have to go to. Some Senators have commitments tonight they would like to go to. I have heard—more of the latter, yes.

So I would like to propose a unanimous consent request. I haven’t precleared this with Senator DASCHLE. He looked over it. He talked about it. I am not exactly sure what his thinking is. I would be willing to consider other ideas if somebody has a good idea about how we can complete it. This is the fairest way.

I ask unanimous consent that all remaining amendments in order to S. 27 be limited to 30 minutes equally divided and all other provisions of the consent agreement of February 6, 2001, remain in order.

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTTT. Mr. President, I inquire of the managers, how do we wish to proceed? I yield to Senator DASCHLE.

Mr. DASCHLE. Mr. President, I have not had a chance yet to consult with our colleagues. We have 10 remaining amendments on this side. I know Senator SPECTER has been waiting patiently to offer his amendment.

Throughout the week, I have promised our colleagues that if they played by the rules and waited patiently for their opportunity to offer their amendments, we would accord them the same opportunity other Senators have had throughout the duration of this debate, as the majority leader indicated.

This has been a very good debate. No one has talked about the need to file cloture. I hope we will not have any reason to do that in the future. I believe Senators ought to have an opportunity to have their amendments considered and have a vote. So until I have had the opportunity to consult more carefully with those colleagues who still have outstanding amendments, I have to object.

Mr. LOTTT. Mr. President, then, let me talk to colleagues, we will continue on into the night. We will be having votes. If necessary, to have those votes in a reasonable period of time, we will move to table them. But we will continue as long as it takes to get this bill done.

When we know more about what we could agree to, we will let you know. You should expect a vote within the next couple of hours.

Mr. GRAHAM. If the majority leader will yield.

Mr. LOTTT. I yield.

Mr. GRAHAM. For those who do want to make commitments, would it be possible to have a window of a couple of hours with assurance that we will vote in that window?

Mr. LOTTT. I think the majority of those who had talked to me were hoping we would not have a window. I think we need to keep our nose to the grindstone and try to complete this legislation. I am not saying it won’t happen. I don’t think we should make a commitment of a window. My wife will be waiting for me to come home and have supper. When we complete our work, I will go home and have supper with her. She may be hungry, but she waits.

Mr. GRAHAM. That commitment is important above all.

Mr. LEAHY. If the leader will yield, will it be safe to say that in the next hour or so those who show up on the floor with a tuxedo or evening dress are those who want to fulfill their commitments, and those who are not would like to keep voting?

Mr. LOTTT. Those who show up with a tuxedo, that will count as having fulfilled your commitment to the dinner because it would show intent to be there, but a higher calling prevented your presence. You might want to don your evening attire and come to the floor and wait for an opportunity to vote.

Mr. LEAHY. I will change within the hour.

Mr. LOTTT. I yield the floor.

AMENDMENT NO. 140, AS MODIFIED

Mr. SPECTER. I send an amendment to the floor, which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; and

On page 8, line 1, by striking "(iv)" and replacing with "(v)".

March 29, 2001

CONGRESSIONAL RECORD—SENATE
On page 15, line 19, strike “election, convention or caucus,” and insert the following: “election, convention or caucus; or alternately, if subclauses (i) through (iii) of subsection (3)(A) are held to be constitutionally insufficient to support the regulation provided herein, which also (iv) promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the campaign is conducted by advocates for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.

On page 2, after the matter preceding line 1, insert:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) In the twenty-five years since the 1976 Supreme Court decision in Buckley v. Valeo, the number and frequency of advertisements increased dramatically which clearly advocate for or against a specific candidate for Federal office without magic words such as “vote for” or “vote against” as prescribed in the Buckley decision.

(2) The absence of the magic words from the Buckley decision has allowed such advertisements as issue advertisements, despite their clear advocacy for or against the election of a specific candidate for Federal office.

(3) By avoiding the use of such terms as “vote for” and “vote against,” special interest groups promote their views and issue positions in reference to particular elected officials without triggering the disclosure and source restrictions of the Federal Election Campaign Act.

(4) In 1996, an estimated $350 million was spent on such issue advertisements; the estimate for 1998 ranged from $275–$340 million; and, for the 2000 election the estimate for spending on such advertisements exceeded $410 million.

(5) If left unchecked, the explosive growth in the number and frequency of advertisements that were intended to influence the outcome of Federal elections yet are masquerading as issue advocacy has the potential to undermine the integrity of the electoral process.

(6) The Supreme Court in Buckley reviewed the legislative history and purpose of the Federal Election Campaign Act and concluded that the authorized or requested standard of the Federal Election Campaign Act operated to treat all expenditures placed in cooperation with or with the consent of a candidate, an agent of the candidate, or an authorized committee of the candidate as contributions subject to the limitations set forth in the Act.

(7) During the 1996 Presidential primary campaign, candidates of both major parties spent millions of dollars in excess of the overall limits to which they were subject to provide a bright-line test with constitutional standards.

(8) These candidates made these expenditures in their respective national political party committees, using these party committees as conduits to run multi-million dollar television ad campaigns to support or oppose candidates.

(9) These television ad campaigns were in each case prepared, directed, and controlled by the campaign committees of these candidates.

(10) The television ad campaigns forcefully advocated the election of their candidate and the defeat of their opponent and those television ads were suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate; however, in the absence of a specific mention of “vote for” or “vote against,” those television ads were deemed issued ads and not advocacy ads under Buckley v. Valeo.

(11) To avoid this, the legislation was aimed at those television ads that applied to each of their campaigns, and overall Presidential primary spending limit was increased to avoid the vagueness standard of the Buckley v. Valeo decision. The critical language in the bill is the reference to a clearly identified candidate for Federal office. Now this may or may not be a sufficiently bright light to satisfy the requirements of Buckley v. Valeo, or in fact it may not be because it does not deal with the kind of specific urging of a candidate to “vote for” or “support,” which Buckley has talked about.

What this amendment seeks to do is to provide an alternative test, which is derived from the decision of the Court of Appeals for the Ninth Circuit in the Furgutch case, and this definition is really Furgatch streamlined. The original amendment that was offered provided that the context of the advertisement was “unmistakable, unambiguous, and suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.”

In our debate last Thursday, there were arguments made that the language of “unmistakable” and “unambiguous” left latitude for a challenge.

In the amendment which has been modified, it is deemed to be sufficient to have the language be “suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.”

This really sharpens up Furgatch, really streamlines Furgatch in order to provide a constitutional mechanism.

The finding which has been set forth in the modified amendment seek to characterize events which have occurred in the intervening 25 years since
the decision of Buckley v. Valeo, reciting how much money has been paid, the very heavy impact of funding, the ads really, in effect, urging the election of one candidate and the defeat of another so that, by any logical definition, they would be deemed advocacy ads and not issue ads, but they do not meet the magic words test of Buckley v. Valeo.

The expanded test of having “no plausible meaning other than an exhortation to vote for or against a specific candidate” would make it plain that the kinds of ads which have been viewed as being issue ads are really advocacy ads.

We had an extended debate last Thursday about the impact of this language on the balance of what is in the bill at the present time on a clearly identified modified amendment. This modified amendment has been very carefully crafted to meet the concerns that if the Supreme Court of the United States determines that the language in the underlying bill is sufficient, and the language added in this modified amendment is insufficient, that one or the other will be stricken so that there is a severability clause within this amendment as modified.

We have already legislated, we have already adopted an amendment to provide for severability. So it may be this is surplusage or it may be that it is necessary, but it does not do any harm to have this language.

I believe that most, if not all, of the objections which were raised last Thursday have been satisfied in this modified amendment. I urge my colleagues to adopt it.

I am not yet asking for the yeas and nays to see if the arguments which may be presented here are suggestive of some other modification which would require consent after asking for the yeas and nays, but it is my intention, as I have notified the managers, to seek a rolcall vote. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I can be yielded 5 minutes, 2½ minutes from either side, because I am not sure if I am for or against it because I don’t have a copy of the final product. May I ask the Senator? This modified amendment has been very carefully crafted to meet the concerns that if the Supreme Court of the United States determines that the language in the underlying bill is sufficient, and the language added in this modified amendment is insufficient, that one or the other will be stricken so that there is a severability clause within this amendment as modified.

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The PRESIDING OFFICER. The Senator from Pennsylvania.

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

The PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SMITH of Oregon. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

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

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

The remarks of Mrs. LINCOLN are located in today’s RECORD under “Morning Business.”

Mrs. LINCOLN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT. The Senator from Michigan—where we are now—has the floor.

Mr. SPECTER. Mr. President, the further modification has been made to satisfy some concerns about drafting. I believe the language had been definitive, but it was faster to make some changes than it was to debate that proposition. And where we are now—if I may have the attention of the Senator from Michigan—where we are now is to satisfy all the parties that what we are accomplishing on this amendment is that if the Snowe-Jeffords test is held to be unconstitutional by a final judicial decision, then the modified Furgatch test will be applied to define an advocacy advertisement which will satisfy Buckley v. Valeo that the advertisement is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.

The additional sentence has been made: “Further, nothing in this subsection shall be construed to affect the interpretation or application of 11 CFR 100.22(b),” which is the current FEC regulation on an electioneering communication which follows Furgatch.
March 29, 2001

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Then the further modified amendment strikes the findings, and they will be supplemented at a later time because all the departments and committees of Congress will then be fully appraised of our purpose and of the findings, in a manner that will satisfy all the parties to the findings will take longer than we can accomplish it simply by full striking, which this further modification does.

I believe at this juncture that we have satisfied all the concerns of the various sorts of cooks who have been added to the stew.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Texas?

Mr. GRAMM. I ask the Senator from Kentucky to yield me 20 minutes.

Mr. MCCONNEEL. Mr. President, I yield 20 minutes to the Senator from Texas.

Mr. GRAMM. Mr. President, we are in the process of rapidly completing this bill. I would not have come over to speak, except that it was clear to me that, for the moment, nothing was happening. I have not yet spoken on it. And while I think it is clear what the outcome will be, I at least want to go on record on this issue.

Free speech in America is a very funny thing. If a person goes out and burns the American flag and they say they are exercising free speech or they dance naked in a nightclub and say that this is personal expression, a league of defenders springs up in America to defend the first amendment of the Constitution. Yet when someone proposes that we preserve free speech about the election of our Government and the election of the men and women who serve the greatest country in the history of the world, when such a motion is made, it dies from a lack of a second.

It is astounding to me that free speech about our candidate has come to protect flag burning and nude dancing but yet the greatest deliberative body in the history of the world feels perfectly comfortable in denying the ability of free men and women to put up their time and their talent and their money to support the candidates of their choice.

I can’t help but say a little something about the protagonists in this debate. I would like to begin by saying that my dear friend Senator MCCAIN, with whom I profoundly differ on this issue, I have the highest respect for him. In fact, he has reminded me in this debate of an ancient god, Antaeus, whose mother was the earth, and every time he was thrown to the ground, he became stronger than he had been when he was cast down.

Having said that, having admired his diligence and his determination, I would say that seldom has a more diligent and his determination, I would say that seldom has a more
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some people have freedom and not others? That is the profound issue that is being debated here.

I suspect this bill is going to pass, but this is not a bright hour in American history, in my opinion. The amazing thing—I never cease to be amazed by our system—is there is no constituency for this bill.

This is a total fabrication. The constituency for this bill is a group of special interests who cloak themselves as public interest advocates and it is they who will have their power enhanced by limiting the ability of people to put up their time, talent, and money in support of candidates. The so-called public interest promotion of the bill in editorials across America is coming from the very people who will become more powerful if this bill is adopted.

So what have is an incredible example, cloaked in great self-righteousness, of special interest triumphing over public interest through the power of the same groups that will have their power enhanced if this bill is adopted. If editorialists in America, if Common Cause, and all these similar groups, can induce the Congress to limit freedom of speech to enhance their power, what strength will those who oppose their views have when freedom of speech has been, in fact, limited? I think that is something that should give us all pause, though I have no doubt there will be no pause tonight.

It is as if we look at the Constitution and we say that what is at stake is either protection of the first amendment of the Constitution, or whether we are going to get a good editorial in tomorrow morning’s newspaper, and the judgement is made that tomorrow morning’s newspaper is much more important than the first amendment of the Constitution.

Let me conclude by quoting, because I never think it hurts to read from the greatest document in history, other than the Bible—the Constitution. Let me read amendment No. 1 of the Constitution, and I will read the relevant points:

Congress shall make no law abridging the freedom of speech.

If I believe the Senator from Virginia is the next Thomas Jefferson and I want to sell my house to support his candidacy, who has the right under the Constitution to deny me that right? No one has that right. Yet we are about to vote on the floor of the Senate to keep me from doing that.

The Constitution says that: The right of the people peaceably to assemble and to petition the government for a redress of grievances shall not be abridged.

If I am not permitted to spend my money to present my grievances to my Government, how am I going to be heard? In modern society, the ability to communicate depends on the ability to have funds to amplify your voice so it can be heard in a nation of 285 million people.

If I don’t have the right to use my time and my talent and my money to enhance my voice, how can I be heard? Well, what the advocates of this bill are really saying is we don’t want you to be heard because we might not like what you have to say.

We have a bill before us that says you can’t run ads. If I wanted to run ads supporting you, or give you money to spend, I can’t do it. We are all unhappy that these special interest groups run ads. It hurts my feelings. When people tell my mama that I am this terrible, bad person, that I have sold out to the special interests, my mama asks me, “Why can they say that?” How can they say it? You know why they can say it? Because they have the right under the Constitution to deny me that right? No

It amazes me—and I will conclude on this remark—I hear colleagues talk about corruption, corruption, corruption. In America, I know that there has never been a Congress in American history less corrupt than this Congress. I don’t agree with many of the people in this body, but I don’t believe there is a person in this body who is dishonest.

I can only speak for myself, but I have never, ever felt compromised because somebody supported me. I have felt honored, I have felt grateful, but I have always believed they supported me because of what I believed. In fact, on many occasions, when people have supported me—the AMA is a perfect example. When I was a young man running for Congress, the American Medical Association supported me and just about everybody else. Nobody said they don’t like me. What changed? They changed; I didn’t change. I have always been for freedom. When I stood right at this desk and helped lead the effort to kill the Clinton health care bill, I did it because I believed in freedom, and they loved it. Now that they want to kill HMOs, they don’t think so much of freedom anymore.

But I didn’t feel corrupted by them giving me money. They supported me because of what I believed in. When they supported me, they changed; I didn’t change. So I don’t know what is in the hearts of those who feel this corruption. I do not feel it. I think corruption, as it is portrayed in the media, has increasingly become a codeword for anybody who can speak for themselves and, therefore, doesn’t have to be too concerned about the commentary of some special interest group or the media.

I love the Dallas Morning News, especially when they write good things about me. When they endorse me and support me, I like it. But I have 84,000 contributors. The newspaper can go ahead and say whatever they want to say about me because my contributors and supporters have ensured that I will get to respond and tell my side of the story.

What this bill is going to do, and the terrible effect of it if it does become law, is that it is going to limit the ability of people to tell their side of the story. I think that is fundamentally wrong. I still do not understand how someone can burn a flag, and that is freedom of speech; someone can dance naked in a night club, and that is freedom of public expression; but if I want to sell my house and support somebody that I believe in with all my heart, that is fundamentally wrong; that is corrupt.

I believe there is salvation. I believe we are going to get salvation from this bill. I think the salvation will come from this ancient document, our Constitution, because I believe this bill is going to be struck down by the courts, and that is ultimately going to be our salvation.

I want to say to my dear colleague from Kentucky that I admire him, and I want to thank him for the great sacrifice he has made to stand up on behalf of freedom, when very few people are offering compliments, and very few pundits are applauding. I am one person who is applauding, and I will never, ever forget what you have done. It may not be in an editorial, but it will be enshrined in my heart.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. McCONNELL. Mr. President, I want to say to the Senator from Texas how much I appreciate what he had to say. There is no question that he gets it. It is all about the first amendment. It is all about the first amendment and the rights of Americans to have their say.

This bill, as the Senator from Texas pointed out, is simply trying to pick winners and losers. It takes the parties and it crushes them. And the irony of it all is there will be way more money spent in the next election than there was in the last one. It just won’t be spent by the parties.

So we have taken resources away from the parties, which will be spent otherwise because of all of these other efforts, as the Senator from Texas pointed out. And I assure him I will be in court. I will be the plaintiff, and we will win if we have to go to court. Efforts to restrict the voices of outside groups will be struck down.

I hope we will be able to save the ability of parties to engage in speech that isn’t federally regulated, which is what soft money is. It is everything that isn’t hard money. I thank the Senator from Texas for always being there on so many issues, and especially for the kind things he said tonight about this struggle. It isn’t a lot of fun being the national pinata. But there are some rewards.
I say to my friend from Texas my reward is that I could not think of a group of senators I would rather have in this chamber than those we have in this debate. I can't think of a single set of friends I would rather be associated with than people such as the Senator from Florida, who understand what freedom is all about and understand what this debate is all about.

I say to my colleagues, we may lose tonight, but we will ultimately win this no matter how long it takes; we will win it. I thank him so much for being there when it counts.

Mr. President, I yield the floor.

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator NELSON from Florida be allowed to proceed to offer his amendment, 5 minutes equally divided, and then there be a voice vote on that amendment, and that we lay aside the Specter amendment in order to permit that to happen; then we immediately vote on the Specter amendment.

Mr. NELSON of Florida. Mr. President, I send an amendment to the desk to the Federal Election Commission. I hope our colleagues will consider the vote.

This amendment makes it illegal to fraudulently solicit contributions.

Senator from Florida be allowed to proceed with the Specter amendment.

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator Nelson from Florida be allowed to proceed to offer his amendment, 5 minutes equally divided, and then there be a voice vote on that amendment, and that we lay aside the Specter amendment in order to permit that to happen; then we immediately vote on the Specter amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Florida is recognized.

AMENDMENT NO. 159

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

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:
The Senator from Florida [Mr. NELSON] proposes an amendment numbered 159.

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

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

The amendment is as follows:

(Purpose: To prohibit fraudulent solicitation of funds)

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

SEC. 3. PROHIBITION ON FRAUDULENT SOLICITATION OF FUNDS.

Section 322 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441h) is amended—

(a) by inserting "(a) is general...." before "no person";
(b) by adding at the end of the section:

"(b) FRAUDULENT SOLICITATION OF FUNDS.—No person shall—

"(1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or

"(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)."

Mr. NELSON of Florida. Mr. President, the Federal Election Commission reports receiving a number of complaints that people have fraudulently raised donations by posing as political committees or candidates and that the current law does not allow the Commission to pursue such cases.

For example, one newspaper reported that after last November's Presidential election, both Democrats and Republicans allege victims in a scam in which phony fundraising letters began popping up in mailboxes in Washington, Connecticut, Michigan, and elsewhere. Those letters urged $1,000 contributions to seemingly prestigious Pennsylvania Avenue addresses on behalf of lawyers purportedly for both George W. Bush and Al Gore. About the same time, thousands of similar letters offering coffee mugs for contributions of between $1,000 and $5,000 were sent to Democratic donors from New York to San Francisco.

Clearly, one can see the potential for harm to citizens who are targeted in such fraudulent schemes. Unfortunately, the Federal Election Campaign Act does not grant specific authority to the Federal Election Commission to investigate this type of activity, nor does it specifically prohibit persons from fraudulently soliciting contributions or donations.

The FEC has asked Congress to remedy this, and the amendment I offer today is in response to this request. This amendment makes it illegal to fraudulently misrepresent a candidate's political party or party employee in soliciting contributions or donations.

I thank my Senate colleagues for their consideration of this amendment.

The PRESIDING OFFICER. The amendment (No. 159) was agreed to.

The PRESIDING OFFICER. The result was announced—yeas 82, nays 17, as follows:

{Roll Call Vote No. 61 Leg.}

YEAS—82

Aksakal  Alaska  Amak  Baca  Baxley

Alaska  Allard  Baucus  Bayh  Bennet  Biden

Bennett  Bishop  Boxer  Brown  Burns  Byrd

Cantwell  Carper  Case  Chambers  Collins  Conrad

Cleland  Cochran  Craig  Crapo  Daschle  Dayton

Dodd  Dodd  Durbin  Edwards  Ensign  Feingold

Fisher  Fitzgerald  Frank  Graham  Grassley

Griffin  Hagel  Harkin  Harris  Hatch  Hatch

Hutchison  Inhofe  Inouye  Jeffords  Johnson

Kennedy  Kennedy  Kennedy  Kennedy  Kennedy

Kerry  Kohl  Landrieu  Leahy  Levin

Levin  Lieberman  Lincoln  Locke  Lott

Lugar  McCaskill  McCain  McConkie  McFadden

McCain  McMillian  Melson  Miller  Mikuelski

Nelson (FL)  Nickles  Nickles  Nickles  Newell

Nieves  Noll  Noll  Noll  Noll

North  Norris  Norwood  O'Connell  Olsen

O'Malley  Orrin  Ort  Orrin  Ort

Patriot Act  Partisanship  Partisanship  Partisanship  Partisanship

Paul  Paul  Paul  Paul  Paul

Porter  Portman  Portman  Portman  Portman

Pudlowski  Reed  Reed  Reed  Reed

Reno  Risch  Risch  Risch  Risch

Roberts  Roberts  Roberts  Roberts  Roberts

Rothschild  Roth  Roth  Roth  Roth

Santorum  Sarbanes  Sarbanes  Sarbanes  Sarbanes

Schumer  Schumer  Schumer  Schumer  Schumer

Sessions  Sessions  Sessions  Sessions  Sessions

Simpson  Smiley  Smith (OR)  Smoak  Snowe

Snowe  Snowe  Snowe  Snowe  Snowe

Stabenow  Stabenow  Stabenow  Stabenow  Stabenow

Stevens  Stevens  Stevens  Stevens  Stevens

Thurmond  Thurmond  Thurmond  Thurmond  Thurmond

Torrance  Torrance  Torrance Torrance  Torrance

Tydings  Tydings  Tydings  Tydings  Tydings

Van Houten  Van Houten  Van Houten  Van Houten  Van Houten

Vomitting  Vomitting  Vomitting  Vomitting  Vomitting

Yates

NAYS—17

Allen  Grassley  McCauley  McConnell  McConkie

Brownback  Gregg  Nickles  Nickles  Nickles

Burns  Hatch  Roberts  Roberts  Roberts

DeWine  Helms  Smith (NH)  Smith (NH)  Smith (NH)

Enzi  Hutchinson  Thomas  Thomas  Thomas

Gramm  Ky

NOT VOTING—1

Voinovich

The amendment (No. 140), as further modified, was agreed to.

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

The motion to lay on the table was agreed to.

STATEMENT OF INTENT

Mr. SPECTER. Mr. President, I concur with the statement of supporters of the Bipartisan Campaign Reform Act of 2001, with respect to the discussion of the intent of the Specter amendment.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. President, I know Senators are interested in how we proceed for the remainder of tonight and tomorrow. I believe we have come up with the best possible arrangement of how we can complete action on this bill and be prepared to move on to other legislation.

Senator DONALD DASCHLE AND I HAVE TALKED ABOUT IT AND HAVE TALKED TO THE MANAGERS AND THE PROONENTS OF THE LEGISLATION. I THINK EVERYBODY IS SATISFIED THAT
Mr. DODD. The Democratic leader said it well. Any technical amendments would have to be amendments agreed to by both managers. So that the idea of something coming up late—I make it plural because the staff will apt to encounter more than one. Any technical amendments would have to have the concurrence of both managers.

Mr. LOTT. I can understand how the managers might want to obviously have that opportunity. But also we want to have a chance to review it. I also see how maybe the Senator from Arizona would want to be included in reviewing that.

But, again, there is no intent on anybody's part to try to snare anybody. I think the way I worded it, where both managers have to agree to it, takes care of the problem. I can understand how the managers would prefer not being dragged around by our very capable staff for part 3 hours on Monday, arguing over a technical amendment. However, I think this does give us a way to correct legitimate problems.

I say to Senator MCCONNELL, do you want to comment further?

Mr. MCCONNELL. Is the leader then confirming no technical amendments could be offered after tomorrow without the consent of both managers?

Mr. LOTT. Absolutely. Mr. NICKLES. Will the leader yield further?

Mr. LOTT. Certainly, I yield to Senator NICKLES.

Mr. NICKLES. One of the remaining issues is—some people would call it technical, but I think it is major, and that deals with coordination. A lot of us recognize that the underlying bill needs some improvement on coordination or else we are going to have a lot of people who are going to be crooks who want to participate in the political process. And they should have the opportunity to participate. I have been trying to get language, and I have not seen it. But that is not insignificant and not technical; that is a major concern.

Mr. LOTT. I believe that would have to be one of the regular amendments, not a technical amendment.

Mr. DODD. Yes. That will be up to.

Mr. NICKLES. Will it be possible for us to see language tonight?

Mr. DODD. Probably not. No, we will get you some.

Mr. LOTT. Senator for McCaIN.

Mr. McCaIN. I think that both leaders for their cooperation on this. I am confident after tomorrow, if there are technical amendments, they will only be allowed if we are in agreement.

On the issue of coordination, we are ready to consider amendments and votes on that issue.

Mr. LOTT. I say to Senator WELLSSTONE, did you get wet?

Mr. WELLSTONE. Because of you, I tried to run all the way up to Connecticut Avenue, and I got wet on the way.

Mr. LOTT. I say to Senator DASCHLE, I am sorry; Mike Epstein, who used to work with me, is no longer here or I would have asked him this—but on technical amendments, is the definition of that that there would not be an up-or-down vote automatically?

Mr. LOTT. After the vote tomorrow on the sequence of amendments, there would not be a vote on the technical amendment. It would have to be agreed to. So it would be handled in that way.

Mr. WELLSTONE. I think I would object to a technical amendment unless there is an understanding to this effect: If this affected the work of any one Senator, that we would be consulted before an agreement.

Mr. DODD. Yes, we would provide that.

Mr. WELLSTONE. Is that implicit?

Mr. LOTT. That is implicit. Also, it would certainly be the proper way to proceed.

Are we ready to get this consent?

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, we have an amendment.

AMENDMENT NO. 160

Mr. President, I send an amendment to the desk on behalf of Senator KERRY, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. KERRY, proposes an amendment numbered 160.

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

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

The amendment is as follows:

(a) CLEAN MONEY CLEAN ELECTIONS DEFINED.—In this section, the term "clean money clean elections" means funds received under State laws that provide public financing of elections.

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

SEC. 305. STUDY AND REPORT ON CLEAN MONEY CLEAN ELECTIONS LAWS.

(a) CLEAN MONEY CLEAN ELECTIONS DEFINED.—In this section, the term "clean money clean elections" means funds received under State laws that provide public financing of elections.

Mr. WELLSSTONE. Is that implicit?
The amendment is as follows:

(Purpose: To amend the definition of Federal election activities for State, district, or local committees of political parties)

Beginning on page 3, strike line 12 and all that follows through page 4, line 4, and insert the following:

“(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

(1) IN GENERAL.—Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (incorporating an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party or agent acting on behalf of such committee or entity), or by an entity directly or indirectly established, financed, maintained, or controlled by or acting on behalf of such committee or entity, as it applies to State, district, or local committees of political parties for elections for State or local office from raising and spending funds permitted under applicable State law other than for a Federal election activity that refers to a clearly identified candidate for election to Federal office.

(2) APPLICABILITY.—

“(A) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the costs of such activity are allocated under regulations prescribed by the Commission as costs that may be paid from funds not subject to the limitations, prohibitions, and reporting requirements of this Act. Nothing in this subsection shall prevent a principal campaign committee of a candidate for State or local office from raising and spending funds permitted under applicable State law other than for a Federal election activity that refers to a clearly identified candidate for election to Federal office.

“(B) CONDITIONS.—Subparagraph (A) shall only apply if—

“(i) the activity does not refer to a clearly identified candidate for Federal office; and

“(ii) the costs described in subparagraph (A) are paid directly or indirectly from amounts donated in accordance with State law, except that no person (and no person established, financed, maintained, or controlled by such person other than $10,000 to a State, district or local committee of a political party in a calendar year to be used for the costs described in subparagraph (A).

Mr. LEVIN. Mr. President, this amendment will allow the use of some non-Federal dollars by State parties for voter registration and get out the vote, where the contributions are allowed by State law, where there is no reference to Federal candidates, where limited to $10,000 of the contribution which is allowed by State law, and where the allocation between Federal and non-Federal dollars is set by the Federal Election Commission.

This bill that is before us is about limits. We have set limits on contributions by individuals, by PACs, by national parties to State parties. It is all about trying to restore some limits to a law where law has really been completely subverted in terms of contribution limits by the so-called soft money loophole.

I think it is perfectly appropriate that the bill set limits. The bill has also put some restrictions which are excessive on the non-Federal dollars by State parties for voter registration and get out the vote.

I think in our efforts over the last couple weeks we have really done the right thing in establishing the limits that we have. We have focused on trying to restore something which was always intended, which is contribution limits, but we have also, in our review, done some fine tuning. We have done some adjustments.

This amendment provides some fine tuning in an area where State parties are using non-Federal dollars, dollars allowed by State law, for some of the most core activities that State parties are involved in; that is, voter registration and get out the vote.

Now the bill does not restrict State parties when it comes to using non-Federal dollars for things such as salaries and rent and utilities, nor should it. But it does prohibit altogether—unless this amendment is adopted—a use by State parties of non-Federal dollars. These are dollars not raised through any effort on the part of Federal officeholders, Federal candidates, or national parties. These are non-Federal dollars allowed by State law.

The bill, as it is currently written, would prohibit the use of any of those dollars for those core activities of State parties that we all know and call by get out the vote, registration activities, and voter identification.

In this regard, I believe and our co-sponsors believe that the bill has gone too far, that we ought to allow State parties using non-Federal dollars, under very clear limits, where there is no identification of a Federal candidate, where there is a limit as to how much of those contributions they can use, and where the contributions are allowed by State law—that we ought to allow, with the proper Federal match, determined by the Federal Election Commission. State parties to use these non-Federal dollars in some of the most core activities in which State parties are involved.

There is nothing much more basic to State parties than identifying voters who agree with their causes and to try to get those voters to the polls. That is about as core an effort as you can get. Yet unless we make this modification in the bill, we would tell State parties they can’t use the non-Federal dollars in any year where there is a Federal election, which is every other year, for those core activities.

This amendment, I believe, now has the support of the managers of the bill. They will speak for themselves, of course. But we have worked very hard to make sure there are still some limits. We are not eliminating the limits on this spending, nor should we, because if it is unlimited, we then have a
Mr. LEVIN. The Senator is correct.

Mr. DORGAN. Secondly, there are roughly 160 democracies in the world. I wondered whether he knows—I didn’t know until a few minutes ago—where we rank in the democracies around the world in voter participation. Before asking whether he knows the right answer, I will say we rank 139th among the democracies in the world in voter participation. It seems to me we ought to encourage in every conceivable way activities that get out the vote, that encourage voter participation. Is it not the case, that is exactly what this amendment does?

Mr. LEVIN. This amendment is aimed at restoring the appropriate use by parties of non-Federal funds which are obtained by those parties in compliance with their own State laws in those very activities which the Senator has identified. These are the fundamental activities in a democracy. We want State parties to be involved in those activities, as the Senator pointed out. We don’t want that to become the loophole, however, for unlimited Federal dollars. That is why this amendment is crafted the way it is.

Mr. DORGAN. Finally, if the Senator from Michigan will yield one additional time, let me say the proposal of the Senator from Michigan is a modest one. We could have done more, perhaps in a very self-effacing way, a very critical way. I thank him as well, very responsible way. I think the Senate has identified. These are the fundamental activities in a democracy. We want State parties to be involved in those activities, as the Senator pointed out. We don’t want that to become the loophole, however, for unlimited Federal dollars. That is why this amendment is crafted the way it is.

Mr. LEVIN. The Senator is correct.

Mr. DORGAN. Let me say to Senator LEVIN and Senator ENSIGN and others, I want to be considered a cosponsor as well. Mr. President, I appreciate the efforts of Senator LEVIN and Senator ENSIGN to work this out. This is an important provision that is going to make a difference. It is done in a very thoughtful way, a very responsible way. I think it adds again to the value of this piece of legislation. I thank our colleagues for their efforts.

Mr. LEVIN. Before I yield the floor, I want to add as a cosponsor Senator HARRY REID and to thank him for the work he has done. He, as is so often true with Senator REID, making things happen in the Senate which otherwise simply would not happen, but doing it in a very self-effacing way, a very critical way. I thank him as well.

Mr. ENSIGN. Mr. President, I first thank the Senator from Nevada. Without objection, it is so ordered.

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

Mr. ENSIGN. Mr. President, I first thank the Senator from Nevada for working together on this amendment. It is a very important amendment. I am very pleased that Senator McCaIN, for allowing us to bring this amendment up. I yield the floor.

Mr. LEVIN. I thank the Senator from Michigan for working together on this amendment. It is a very important amendment. I am very pleased that Senator McCaIn, for allowing us to bring this amendment up.

The PRESIDING OFFICER. The Senator from New York.

Mr. DODD. Let me say to Senator LEVIN and Senator ENSIGN and others, I want to be considered a cosponsor as well. Mr. President, I appreciate the efforts of Senator LEVIN and Senator ENSIGN to work this out. This is an important provision that is going to make a difference. It is done in a very thoughtful way, a very responsible way. I thank our colleagues for their efforts.

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Mr. ENSIGN. Mr. President, I first thank the Senator from Nevada for working together on this amendment. It is a very important amendment. I am very pleased that Senator McCaIN, for allowing us to bring this amendment up. I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mrs. CLINTON. Mr. President, I add my words of support and thank Senator LEVIN and the other cosponsors who have worked hard on this matter.

I wish to reiterate the point that, while we are working so hard to reform our campaign finance system, we cannot undermine our ability to reform the way elections are conducted. For all of the reasons Senator LEVIN and Senator ENSIGN and others have pointed out, registering voters, getting votes, and for those elections is a critical role of parties. From my perspective, we need to be doing even more to try to promote what parties used to do, which was that kind of grassroots outreach activity.

In reforming the way campaigns are financed, we must not hurt out ability to reform the way elections are conducted. This amendment would ensure that State, district or local committees of a political party would be able to continue to provide vital services to our citizenry during Federal elections, from voter registration activities to assisting individuals in getting out to vote on Election Day.

The 2000 election taught us many things. One of the most important was the significance of having an informed electorate. Too many citizens in the last election were provided with too little information about where and how to vote. Too many citizens experienced unwarranted obstacles to registration and voting. As a result, fewer votes were counted, and in the next election fewer people may turn out to vote.

The solution to these problems cannot be in the province of Government
alone. America’s political parties must play an important role in helping people register to vote, helping them learn more about the voting process, and helping them turn out at the polls on election day. It is vital to the health of our democratic process. Leading up to an election, both parties provide voters with information on how and where to register to vote. On Election Day, both parties use their resources to drive elderly voters to the polls, provide answers to questions about where and how to vote, and give voters information about where the candidates stand on issues.

In the State of New York over the past 2 years, the State Democratic Party has conducted an intensive voter education drive in predominantly African-American and Latino communities, often our most disenfranchised citizens. This education drive resulted in a surge in voter registration and voter activity in both of these communities throughout the state. Republican parties around the country are also active in voter registration and get out the vote efforts. This type of activity should continue to be supported by our State parties for all elections so that all of our citizens fully participate in our democracy.

Some will claim that this amendment will bring soft money back into federal campaigns. Let me be very clear, this amendment does not bring soft money back into campaigns. Rather, it allows State and local parties to use money that is regulated by States and is capped at $10,000 for single contributions in order to support vital election services. That represents an improvement over the status quo, because under current law there is no national cap on such contributions at the local and State level.

I ask my colleagues to rise in support of an amendment that will ensure that our political parties can continue to use State regulated funds to provide voter education, registration and get out the vote services that we know work. Because helping voters register to vote, helping them to learn how and where to vote, and helping them get out to vote are American values we should encourage, not inhibit.

It is an amendment relating to democracy. If this amendment pass so we are able to make a very clear distinction between the kind of roles and activities that should be conducted by parties and that we look forward to a time when we are going to be able to take up electoral reform with the same intensity that we have taken up campaign finance reform, which will give us a chance to go into more detail as to what our parties could and should be doing in order to promote democracy.

I thank my colleague from North Dakota for pointing out where we stand when it comes to voter participation. I hope all of our colleagues will support the amendment.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. DODD. Yes.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 161.

The amendment (No. 161) was agreed to.

Mr. LEVIN. Mr. President, I move to reconsider the vote.

Mr. DODD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 162

Mr. DURBIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator COCHRAN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN], for himself and Mr. COCHRAN, proposes an amendment numbered 162.

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

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

The amendment is as follows:

(Purpose: To establish clarity standards for identification of sponsors in certain election-related advertising.)

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

SEC. 3. CLARITY STANDARDS FOR IDENTIFICATION OF SPONSORS OF ELECTION-RELATED ADVERTISING.

Section 318 of the Federal Election Campaign Act of 1971 (2 U.S.C. 441d) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ‘Whenever’ and inserting ‘Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising, or whenever’;

(ii) by striking ‘an expenditure’ and inserting ‘a disbursement’; and

(iii) by striking ‘and per’ and ‘or’

(B) in paragraph (3), by inserting ‘and permanent street address, telephone number, or World Wide Web address’ after ‘name’; and

(2) by adding at the end the following:

(c) Specification—Any printed communication described in subsection (a) shall—

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) ADDITIONAL REQUIREMENTS—

(1) AUDIO STATION.—

(A) CANDIDATE.—Any communication described in paragraphs (1) or (2) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) OTHER PERSONS.—Any communication described in paragraph (3) of subsection (a) which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following statement: XXXXXXXX is responsible for the content of this communication.

(2) TELEVISION.—If a communication described in paragraph (1)(A) is transmitted through television, the statement shall include, in addition to the audio statement under paragraph (1), a written statement that—

(A) appears at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds;

(B) is accompanied by a clearly identifiable photographic or similar image of the candidate.

SEC. 4. SEVERABILITY.

If this amendment or the application of this amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.

Mr. DURBIN. I have given a copy of the amendment to Senator MCCONNELL and I will make copies available to any other Members who would like to read it. The amendment is very straightforward. If I can have just a moment or two, I will describe it for those who are interested.

It is an amendment relating to disclaimers on television and radio ads, as well as in print media. It requires of those electioneering communications—the so-called Snowe-Jeffords ads—that they abide by the same requirements for disclaimer and disclosure as ads for candidates themselves and ads authorized by candidates, and independent expenditures. It requires, when it comes to these ads, that they also show on the screen, for example, not only the name of the organization that is sponsoring the ad, paying for the ad, but also either an address, phone number, or Internet Web station.

I can give a very inspired speech as to why this is necessary. But I think the concept is very basic. It is that we do not want to restrict freedom of expression, nor in fact do we restrict freedom of speech, but we ought to make sure that people know what they are buying. If somebody wants to put an ad on that is categorically wrong, whether it is a candidate, a party, or any other group, I guess there is an American right to that. But we
Mr. DODD. Mr. President, I commend

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Governmental Affairs Committee identified at least $2.825.600 in illegal contributions to the DNC. Yet, regardless of the proportion of the total that these violations were, all the violations under FECA were still misdemeanors. Our amendment would remedy this problem for the future by authorizing felony prosecutions of FECA violations, but only if (1) the offender needs to be deterred from the existing federal offense "knowingly and willfully" and (2) the offense involved more than $25,000.

Second, criminal violations of FECA are the only federal crimes outside of the Internal Revenue Code that have a statute of limitations shorter than 5 years. Our amendment conforms FECA’s statute of limitations to those of virtually all other federal crimes.

Third, the Federal Sentencing Guidelines, which govern which should enhance the punishment for FECA violations such as the size of a contribution or its origin. Our amendment would require the Sentencing Commission to promulgate a guideline specifically directed at campaign finance violations. As a result, judges must use guidelines for other offenses, preventing them from considering factors which should enhance the punishment for FECA violations. As a result, judges must use guidelines for other offenses, preventing them from considering factors which should enhance the punishment for FECA violations.

The changes made in this amendment will provide conscientious prosecutors with the tools they need to investigate and prosecute those who violate our campaign finance laws and attack the integrity of our electoral process. For that reason, I urge my colleagues to support this amendment.

Mr. President. I am pleased to join my colleague from Tennessee in offering this amendment. I am delighted to be joined by Senators LEAHY, COLLINS and JEFFORDS as cosponsors. Senators THOMPSON, COLLINS and JEFFORDS are part of a growing number of legislators who are working to pass campaign finance reform. I believe that we are making progress, and I am committed to working with my colleagues to achieve that goal.

Our amendment contains one other provision—one extending FECA’s statute of limitations for five years. As of now, FECA has the only statute of limitations outside the Internal Revenue Code of less than five years. We need to change that so that prosecutors are not prosecuted.

I hope that we can see these provisions be enacted. I hope that we can see these provisions be enacted. Our amendment is about something that we all should be able to agree upon, which is that actions that are already criminal and that we all agree are wrong should be punished. Mr. President, I am proud of our amendment's provisions should be controversial, and I hope that we can see them enacted into law, so that we can go into the next election cycle with confidence that prosecutors have the tools necessary to deter and to punish those who would violate our election laws. I thank my colleagues, and I yield the floor.

Mr. DODD. Mr. President, I understand this amendment has been cleared by the Justice Department. This provision enhances the criminal enforcement provisions of the FECA legislation by authorizing felony prosecutions of willful and knowing violations of that law.
over $25,000, directs the Sentencing Commission to promulgate guidelines on campaign finance violations, and extends the FECA statute of limitations for criminal violations from 3 to 5 years.

Mr. MCCONNELL. Mr. President, I am sure this must be a wonderful idea if it was offered by Senator LIEBERMAN and Senator THOMPSON. Therefore, I am happy for the amendment to be adopted.

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

The amendment (No. 163) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. MCCONNELL. I move to lay that on the table.

The bill clerk read as follows:
The Senator from Rhode Island (Mr. REED) proposes an amendment numbered 164.

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

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

The amendment reads as follows:

(Purpose: To make amendments regarding the enforcement authority and procedures of the Federal Election Commission)

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

SEC. 161. AUDITS.

(a) Election audits.—Section 311(b) of the Federal Election Campaign Act of 1971 (2 U.S.C. 438(b)) is amended—

(1) by adding at the end the following:

"(13) AUTHORITY TO INVESTIGATE.

"(A) IN GENERAL.—If, at any time in a proceeding described in paragraph (1), (2), (3), or (4), the Commission believes that—

"(i) there is a likelihood that a violation of this Act is occurring or is about to occur;

"(ii) the failure to act expeditiously will result in irreparable damage to a party affected by the potential violation;

"(iii) expeditious action will not cause undue harm or prejudice to the interests of others; and

"(iv) the public interest would be best served by the issuance of an injunction;

the Commission may institute a civil action for a temporary restraining order or a preliminary injunction pending the outcome of the proceedings described in paragraphs (1), (2), (3), and (4).

(b) Venue.—An action under subparagraph (A) shall be brought in the United States district court for the district in which the defendant resides, transacts business, or may be found, or in which the violation is occurring, has occurred, or is about to occur;

(2) in paragraph (7), by striking "(5) or (6)" and inserting "(5), (6), or (13)"; and

(3) in paragraph (9), by striking "(6)" and inserting "(6) or (13)".

SEC. 162. INCREASE IN PENALTY FOR KNOWING AND WILFUL VIOLATIONS.

Section 309(a)(5)(B) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)(5)(B)) is amended by striking "the greater of $10,000 or an amount equal to 200 percent" and inserting "the greater of $15,000 or an amount equal to 300 percent".

SEC. 163. USE OF CANDIDATES' NAMES.

Section 302(e) of the Federal Election Campaign Act of 1971 (2 U.S.C. 432(e)) is amended by striking paragraph (4) and inserting the following:

(4) The name of each authorized committee shall include the name of the candidate who authorized the committee under paragraph (1).

(B) A political committee that is not an authorized committee shall not—

(i) include the name of any candidate in its name, or

(ii) except in the case of a national, State, or local committee of a political party, use the name of any candidate in any activity on behalf of such committee in such a context as to suggest that the committee is an authorized committee of the candidate or that the use of the candidate's name has been authorized by the candidate.

SEC. 164. EXPEDITED PROCEEDURES.

Section 309(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 437g(a)) is amended by adding the following:

(14) EXPEDITED PROCEEDURE.—

"(A) 60 DAYS PRECEDING AN ELECTION.—If the complaint in a proceeding is filed within 60 days preceding a general election, the Commission may take action described in this paragraph.

(B) RESOLUTION BEFORE ELECTION.—If the complaint determines, on the basis of facts alleged in the complaint and other facts available to the Commission, that there is clear and convincing evidence that a violation of the Act has occurred, is occurring, or is about to occur and it appears that the requirements for relief stated in clauses (ii), (iii), and (iv) of paragraph (13)(A) are met, the Commission may—

(i) order expedited proceedings, shortening the time periods for proceedings under paragraphs (1), (2), (3), and (4) as necessary to allow the matter to be resolved in sufficient time before the election to avoid harm or prejudice to the interests of the parties; or

(ii) if the Commission determines that there is insufficient time to conduct proceedings before the election to avoid harm or prejudice to the interests of the parties; or

(C) COMPLAINT WITHOUT MERIT.—If the Commission determines, on the basis of facts alleged in the complaint and other facts available to the Commission, that the complaint is clearly without merit, the Commission may—

(i) order expedited proceedings, shortening the time periods for proceedings under paragraphs (1), (2), (3), and (4) as necessary to allow the matter to be resolved in sufficient time before the election to avoid harm or prejudice to the interests of the parties; or

(ii) if the Commission determines that there is insufficient time to conduct proceedings before the election, summarily dismiss the complaint.

SEC. 165. AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL ELECTION COMMISSION.

Section 314 of the Federal Election Campaign Act of 1971 (2 U.S.C. 438c) is amended—

(1) by inserting "(a)" before "There";

(2) in the second sentence—

(A) by striking "and" after "1978.", and

(B) by striking the period at the end and inserting the following:

"(A) by striking "and" after "1978.", and

(B) by striking the period at the end and inserting the following:

"(ii) if the Commission determines that there is insufficient time to conduct proceedings before the election, summarily dismiss the complaint.

The PRESIDING OFFICER. The motion to table was agreed to.

Mr. DODD. I move to reconsider the vote.

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

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

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

The amendment reads as follows:

(Purpose: To make amendments regarding the enforcement authority and procedures of the Federal Election Commission)
the FEC is rather moribund because they don’t have the resources necessary or the staff or the tools necessary to do the job of effectively enforcing our campaign finance laws.

All of this effort over these several weeks and several years will amount to very little if we don’t give the FEC the resources and tools to effectively enforce our campaign finance laws. If we are serious about reform, we need to be serious about giving the FEC these resources.

My amendment is based upon recommendations made by the FEC Commissioners over many years with respect to improving the performance of the FEC. As we all know, the FEC is composed of six Commissioners—three Republicans and three Democrats. These recommendations represent a bipartisan consensus of the FEC Commissioners over many years with respect to the inadequacies of the Federal Election Commission. First and foremost, my amendment would reauthorize the Federal Election Commission, which hasn’t been technically reauthorized since 1980. It would also increase the authorized appropriations for this Commission. Over the past 2 weeks, we have talked about doubling and tripling money going to candidates. Again, if we are serious about campaign finance reform, we should also talk about increasing the budget of the FEC. Senator Thompson mentioned yesterday that the average amount spent by a winning Senate campaign went from approximately $1.2 million in 1980, to $7.2 million in the year 2000. According to the FEC, total campaign spending has increased 1,000 percent since 1976. Total campaign disbursement activity was $300 million in 1976 and exploded to $3.5 billion in the year 2000 election cycle. But the agency, which is charged with enforcing these campaign finance laws, the Federal Election Commission, has seen very little increase in their operating budget over these many years. We have had an explosion of activity, we have had an explosion of contributions, but nothing to keep the FEC in league or in sync with this explosion of campaign spending.

Despite all the increased activity, the FEC staff is virtually the same as it was 20 years ago. In 1980, the FEC had 270 full-time equivalent staff. In 1998, the level was about 303, a very small increase, and at the same time there has been an explosion of donations, an explosion of reports, and increased in activity.

It is obvious with all of these activities, with all of these transactions that were reported that the FEC needs to do more and needs more resources to do the job it has been commissioned to do. The FEC is also supposed to review the financial reports. They are expected to enforce the laws, and unless we give them the resources to do that, we are going to be in a very sorry state and, indeed, we are in a very sorry state today. Because of the onslaught of cases before the FEC, it has to prioritize its enforcement work.

It turns out they give certain cases priority status. That means when there is an available attorney, they will put that attorney on the case, but there are so many cases that they eventually become stale. In fact, the FEC had to dismiss about half of its enforcement caseload in fiscal year 1998 and in fiscal year 1999 due to lack of resources. Due to the limited resources they have, they simply cannot keep up with the work. Once again, if we are serious about reform, we should be serious about giving the FEC the resources to do it.

Let me move forward and suggest other aspects of the legislation which I think it would be an improvement. In addition to increasing the resources to meet this obvious need, the amendment would also authorize the Commission to conduct random audits in order to ensure voluntary compliance with the campaign act.

It is based upon the same premise we use with the Internal Revenue Service. The idea that somebody would show up and look at your records encourages you to keep good records and to follow the law. That same principle would be effective with respect to the Federal Election Commission.

In addition to giving authority for random audits, it also would give the Commission the authority to seek an injunction from a Federal judge under specific circumstances.

First, there would have to be a substantial likelihood that a violation of campaign finance laws is occurring or is about to occur. There has to be a showing that the act expeditiously will result in irreparable harm to a party affected by the potential violation, and that expeditious action would not cause undue harm to a party affected by the potential violation, and finally, the public interest would be best served by such an injunction.

I point out that in order to seek such an injunction, the Commission would have to have a majority vote, 4 out of 6, and since there are three Republicans and three Democrats, this process of obtaining a majority necessarily would have to include votes from both Republicans and Democrats. I think it is a way to ensure fairness and not abuse this injunctive power.

In addition to providing these aspects, the amendment would do something else. It would also increase the penalties for willful violations and knowing violations of the Federal Election Campaign Act. The violations would be increased from $10,000 to $15,000 or an amount equal to 300 percent of the violation amount, the greater of those two sums.

The amendment also includes a provision that would restrict the misuse of a candidate’s name. It would require that a candidate’s committee include the name of the candidate, but it also would prohibit the use of that candidate’s name by an unauthorized committee or any other committee except the party committee.

This would, I hope, correct a situation in which committees or organizations unrelated to the candidate use the name of the candidate and misrepresent the name of the candidate.

Also, the amendment would expedite procedures used by the FEC to enforce violations or investigate violations of the Federal Election Campaign Act.

It would also allow an expedited referral to the Attorney General in the case of a perceived criminal violation of the Federal Election Campaign Act.

Once again, such a referral would require a majority vote of the Commissioners, so it would be inherently bipartisan and could not be abused by a partisan faction of the Federal Election Commission.

We have for the last several weeks been working diligently, creatively to fashion stronger Federal election campaign laws. But without my amendment, all of our work might be for naught because unless we strengthen the Federal Election Commission, we will not have the enforcement capability to take this legislative design which we have worked over so many days, and make it effective to regulate the campaigns for Federal office in the United States.

I urge adoption of this amendment. I yield the floor.

The PRESIDING OFFICER (Mr. Ensign). The Senator from Kentucky.

Mr. McConnel. Mr. President, Senator Reed seeks to reverse a decision taken in 1979. Back in 1979, under pressure from House Democrats, the Democratic-controlled House and Senate passed the amendment, signed into law by a Democratic President, which eliminated random audits.

The catalyst was a large number of audits that were commenced consuming enormous amounts of time and money and done in a manner which was viewed as unfair.

This provision may present the same problem. I say to my friend from Rhode Island, we are going to need to look at it overnight. My inclination is to oppose it, in which case we will need a rollcall vote. At least we can look at it overnight.

It is unclear who authorizes the audits, the six appointed members of the commission or the use of that commission appointed by those members? The period commencing these random audits is extended from 6 months to 12 months. Campaigns will have to wait 1 year before they even know if an audit will begin and if they need to raise additional funds to cover that cost.

There is no time limit for commencing audits of PACs or party committees. The 1979 amendment allowed
the Commission to continue audits for cause where the FEC reviews the reports by determining if they meet the threshold for substantial compliance.

After the review, it takes an affirmative vote of four Commissioners to conduct an audit. The only other agency I know that conducts random audits is the IRS, and even they are scaling back.

Practically speaking, an audit by the FEC takes years, costs tens, even hundreds of thousands of dollars in lawyers and accountants. For instance, the audit of the 1996 Republican Convention concluded just months before the 2000 convention.

To carry out this provision, the FEC will have to double or even triple its audit staff. This is wrong for the FEC to review the record before commenting on a work on it, the majority no longer be the case under the Reed amendment.

We will have more to say about it tomorrow. Suffice it to say, I say to my friend from Rhode Island, he gets the drift. I think this is a step in the wrong direction, and I think Members of the Senate need to be apprised of the fact that they may be subjected to these lengthy and costly audits under the Senator’s amendment.

Maybe we will wake up and see the light and conclude the amendment of the Senator from Rhode Island is a good idea. In any event, we will have to carry it over until tomorrow.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I thank my colleague from Rhode Island for bringing this up. These were provisions we proposed as well over the last number of years.

There are very good concepts here. The random audit races issues can be very expensive. If there is no cause for doing it randomly, there is a legitimate concern this can be abused by those who would like to become a policing action, without any rationale for doing it, other than for the sake of doing it.

I would like to sleep on this and take a look at it and see if we can maybe get some agreement to accept it tomorrow, maybe make some modification; rather than dealing with it this evening, see if the majority and the minority, to see if we can come up with a proposal to be accepted before we can bring it up for consideration between 9 o’clock and 11 o’clock in the morning. If the Senator would agree, that would help.

Mr. REED. I have no opposition to working in a purposeful manner. I reassure the Senator of concerns expressed. First, the random audit would have to be approved by the majority of Commissioners. This is not something that would be inherently abusive, since it requires four Commissioners, at least one of whom has to be from the opposing party.

In addition, the audits would be subject to strict confidentiality rules and only be published if they were completed and would they be published, and not try to insinuate an audit into the newspapers for political campaign purposes.

I do believe this is a good way to reach compliance, and it is something that has been succumbed by those people who look closely at the Federal Election Commission.

With respect to the lengthening of the time period for audit, the length is increased from 6 months to 12 months for these audits for cause. I think that is a reasonable amendment to the current practice. I hope it is accepted.

As the Senator from Connecticut and the Senator from Kentucky suggest, I have no opposition to thinking on this overnight and coming back.

Mr. DODD. I thank my colleague.

I have an amendment I may offer tomorrow, but we will have the staff look at it and get their thoughts on it. We have done a lot of work. There are outstanding issues as well as amending the amendment of Senator REED of Rhode Island, an amendment of Senator HATCH and Senator SPECKER, and one I want to offer tomorrow morning, if necessary, with half an hour equally divided. That will be between 9 o’clock and 11 o’clock and we should be able to wrap this up.

Mr. McCONNELL, Mr. President, I would like to read into the RECORD excerpts from the cogent analysis of S. 27 that was prepared by James Bopp, Jr., General Counsel of the James Madison Center for Free Speech, entitled ‘‘Analysis of S. 27, ‘McCaín-Feingold 2001.’ ’’

In this analysis, Mr. Bopp thoroughly demonstrates why this bill violates the First Amendment rights of individuals, political parties, labor unions, corporations, and ‘‘issue advocacy’’ groups.

Mr. Bopp begins his analysis by noting S. 27 will hurt—the ‘‘little guy’’, the tax payer. The argument will help, chiefly the wealthy and the news corporations:

McCain-Feingold 2001 is a broad-based and pernicious attack on the rights of average citizens to participate in the democratic process, thereby enhancing the power of already powerful wealthy individuals, millionaire candidates, and large news corporations—the archetypical story of big guys enhancing their power to dominate the little guy.

McCain-Feingold 2001 is a major assault on the average citizen’s ability to participate in the political process because it targets and imposes severe restrictions on two key citizen groups, which serve as the only effective vehicles through which average citizens may pool their money to express themselves effectively: issue advocacy groups and political parties. However, McCain-Feingold 2001 of course, the individual and candidates and powerful news corporations unscathed, thereby enhancing their relative power in the marketplace of ideas.

Both issue advocacy groups and political parties are private organizations that provide a vehicle for average citizens to effectively participate in the political process by their resources and individual voices. These organizations participate broadly in our democratic process by advocating issues of public concern, lobbying for legislation, and directly promoting the election of candidates.

Issue advocacy groups and political parties enhance individual efforts by association. One individual of average means can accomplish little alone in the public arena, but thousands of average citizens who pool their resources with like-minded individuals can accomplish great things together. The right to associate, therefore, is so fundamental to our democratic Republic and its role in the public policy so important that the United States Supreme Court has recognized it as a fundamental right with powerful constitutional protection.

Furthermore, 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 advance of 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 American Federation of Labor and Congress of Industrial Organizations, although with a broader spectrum of issues. McCain-Feingold 2001 ignores this reality and treats political parties as simply federal candidate election machines.

McCain-Feingold 2001 attacks the abilities of ordinary citizens to participate in the political process in two ways: (1) by focusing restrictive efforts on issue advocacy corporations, labor unions, and political parties—three organizations vital to the ability of average citizens to pool their resources to make their opinions heard, and (2) by imposing sweeping restrictions that reach broadly beyond direct participation in elections to_actual participate in the public forum in addition to lobbying for nonparticipation, the rich and powerful will run politics, much as they did before the first and foremost campaign reform adopted by our Nation, the First Amendment, which protects the right of association and democracy by banning restrictions that abridge the freedom of speech—especially speech about those in power and on the critical issues of the day.

Campaign finance ‘‘reform’’ proposals, notably McCain-Feingold 2001, do not, and could not, eliminate the power of the giant media corporations, which are protected by the First Amendment restrictions on issues of public concern, the views of candidates on issues, and grassroots lobbying for favorable legislation.

If McCain-Feingold 2001 succeeds, the influence of the average citizen would be drastically reduced because association with like-minded individuals is essential to effective participation in the public policy arena. With the little guys locked in the dungeon of nonparticipation, the rich and powerful will run politics, much as they did before the first and foremost campaign reform adopted by our Nation, the First Amendment, which protects the right of association and democracy by banning restrictions that abridge the freedom of speech—especially speech about those in power and on the critical issues of the day.
proposed campaign "reforms" because they need not be based on contributions from others—they can spend their own money to campaign—and officeholders of all stripes have the incredible power of incumbency to support their candidacy. Thus, campaign finance reform has been proposed by proponents of the McCain-Feingold 2001, strips power from the People and gives it to the already wealthy and powerful.

So there are winners and losers under McCain-Feingold 2001. The losers are citizens of average means, citizens groups, advocacy organizations, labor unions, and political parties. The winners are the wealthy, major news corporations, and incumbent politicians. It is small wonder then that the wealthiest foundations and individuals are the prime supporters of so-called campaign finance "reform," that the mainstream media and news corporations, and incumbent politicians, is the primary cheerleader for it, and that incumbent politicians are so attracted to it.

But in our Republic, founded by the People for the People, the right of the People to speak out on the most critical issues of the day in the public domain, through political speech and association, is a bedrock principle of our democratic Republic. Organizations, from political action committees ('PACs') to ideological corporations, labor unions, and political parties to amplify their voices. This right to associate is a bedrock principle of our democratic Republic. Organizations, from political action committees ('PACs') to ideological corporations, labor unions, and political parties to amplify their voices. This right to associate is a bedrock principle of our democratic Republic.

Mr. President, Mr. Bopp next explains how S. 27 unconstitutionally prohibits and restricts the abilities of outside groups to exercise their rights to make small contributions, in support of candidates. He first discusses how the bill's "electioneering communication" standard sweeps in issue speech and then shows how that standard violates Supreme Court precedent. McCain-Feingold 2001 prohibits political participation of average means by broadly defining 'electioneering communication' so that issue advocacy expenditures currently permitted become forbidden under federal law for corporations and labor unions.

McCain-Feingold 2001 restricts the issue advocacy of ideological, nonprofit corporations, labor unions, and political parties to "electioneering communication" to include issue advocacy, i.e., 'any broadcast, cable, or satellite communication' to 'members of the electorate that refers to clearly identified' (federal) candidate 'within 60 days before a general election.' Thus, this legislation defines the electioneering communication to include advocacy of ideological, nonprofit corporations, labor unions, and political parties. The legislation defines the electioneering communication to include advocacy of ideological, nonprofit corporations, labor unions, and political parties.

The broad definition of 'electioneering communication' plainly sweeps in and prohibits a wide variety of issue advocacy communications traditionally engaged in by such organizations. First, Congress is often in session within 60 days before a general election and 30 days before a primary. As a result, grass-roots lobbying regarding a bill to be voted on during this 60 day period will be prohibited if the broadcast communication named a candidate by referring to the bill in question ("the McCain-Feingold bill") or by asking a constituent to lobby their Congress or Senator.

With corporations and labor unions prohibited from issue advocacy under federal law, the McCain-Feingold 2001 then requires those that may still do so, individuals and PACs, that spend over $10,000 per year, to file reports with the FTC. Among other things, the Senate reports must list every disbursement over $200 and to whom it was made, the candidate(s) to be identified, and the identity of all contributors aggregating $1,000 or more during the year. The $10,000 triggering expenditure occurs when a contract is made to disburse the funds, which might be months in advance—allowing some incumbent politicians, who object to the general public being informed of their voting record or positions on issues, to attempt to discourage the broadcast medium, or to intimidate the person or PAC paying for the ad, from actually running the ad.

In sum, the issue advocacy communications of nonprofit corporations and labor unions, are treated like express advocacy communications and organizations doing such advocacy, like PACs, are prohibited under federal law. However, as seen next, there is no constitutional warrant for Congress to regulate issue advocacy or the organizations that primarily engage in it. Period.

To protect First Amendment freedom, the Supreme Court has created a bright line between permitted and proscribed regulation of political speech. Government may only regulate a communication that "expressly advocates the election or defeat of a clearly identified candidate" ("express advocacy"), by "explicit words" or "in express terms," such as "vote for," "support," or "defeat." Election-related speech that discusses candidates' views on issues is known by the legal term of art "issue advocacy." Although issue advocacy undoubtedly influences elections, it is absolutely protected from regulation—even if done by corporations, labor unions, or political parties.

Although the First Amendment says that Congress "shall make no law...respect to the freedom of speech," the reformers," and the incumbent politicians that their efforts would protect, have refused to take "no" as an answer. But the deformed legislation consistently enforced the First Amendment against all attempts to regulate issue advocacy.

The Supreme Court has recognized that the freedom of speech is both an inherent liberty and a necessary instrument for limited
representative government. The Court observed that '[i]t is a republican where the people, not their legislators[,] are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for these decisions inevitably shape the course that we follow as a nation.' As a result, 'it can hardly be doubted that the constitutional guarantee [of the First Amendment] has its focal, its most urgent application precisely to the conduct of campaigns for public office.'

The seminal case is the 1976 decision of Buckley v. Valeo, in which the Supreme Court faced with constitutional questions regarding the post-Watergate amendments to the Federal Election Campaign Act (‘FECA’)—which was by far the most comprehensive attempt to regulate election-related communications and spending to date. One of the more nettlesome problems with which the Court struggled was the question of what speech could be constitutionally subject to government regulation. The post-Watergate statute was broad in its prohibitions of any public communications which ‘expressly advocate the election or defeat of candidates’ or ‘for the purpose of . . . influencing . . . the nomination or election of candidates for public office.’

In considering this question, the Court recognized that the difference between issue and candidate advocacy often dissipated in the real world:

"[T]he distinction between discussion of issues and candidates and advocacy of the election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest."

Thus, the Court was faced with a dilemma whether to allow regulation of issue advocacy because it might influence an election or to protect issue advocacy because it is vital to the conduct of our representative democracy, even though it would influence elections.

The Court resolved this dilemma decisively in favor of protection of issue advocacy. First, the Court recognized that ‘a major purpose of the Amendment is to protect the free discussion of governmental affairs . . . of course including discussions of candidates.’ Thus, the Court concluded that issue advocacy was constitutionally sacrosanct:

"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 affords the broadest protection to such expressions in order to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

Second, in order to provide this broad protection to issue advocacy, the Court adopted the bright-line ‘express advocacy’ test which limited government regulation to only those communications that expressly advocate the election or defeat of a clearly identified candidate; ‘in explicit words’ or ‘by express terms.’ In so doing, the Court narrowed the reach of the disclosure provisions to cover only ‘express advocacy.’ A decade later, the Court reaffirmed the express advocacy standard and applied it to the ban on corporate and labor union contributions and expenditures in connection with federal elections.

Finally, not even the interest in preventing campaign contributions to or expenditures on behalf of candidates, which was found sufficiently compelling to justify contribution limits, was deemed adequate to regulate issue advocacy. The Court rejected this interest even though it recognized that issue advocacy could potentially be abused to obtain improper benefits from candidates.

In adopting the test focused on the words actually spoken by the speaker, the Court expressly rejected the argument that the test should focus on the intent of the speaker, reasoning that the message would be to influence an election:

"[W]hether words intended and designed to fall short of invitation [to vote for or against a candidate] would miss the mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in circumstances at which the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

"Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim."

Some ‘reformers’ claim that the Court was not sufficiently farsighted to see the effect that issue advocacy would inevitably have in influencing elections and, if we only bring this to their attention, then the Court will allow government regulation of it. However, the Court made clear that it was not so naive:

"Public discussion of public issues which also are campaign issues is readily and often unavoidably drawn in candidates and their positions, their voting records and other official conduct. Discussions of those issues, as well as more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections."

As a result, the Court explicitly endorsed the use of issue advocacy to influence elections:

"So long as persons and groups eschew explicit advocacy of the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views."

The several lower federal courts and state courts that have been faced with restrictions on issue advocacy have faithfully adhered to the ‘explicit’ or ‘express’ words of advocacy test according to its plain terms.

For example, in Michigan, the Secretary of State promulgated a rule that banned corporate and labor union communications made within 45 days of an election that merely contained the ‘name or likeness of a candidate’ and its ‘endorsement or defeat of the same candidate anywhere.’ Michigan Right To Life of Michigan and Planned Parenthood, challenged the rule in separate federal courts and had the rule declared unconstitutional. The court of appeals in Michigan held that McCain-Feingold 2001’s materially identical ‘electioneering communication’ definition is dead on arrival in the federal courts.

"The weight here is indeed heavy; the express advocacy test means exactly what it says. Campaign finance statutes regulating more than explicit words of advocacy threaten the free expression of clearly identified candidates are ‘impermissibly broad’ under the First Amendment."

Mr. President, Mr. Bopp then notes that while S. 27 has an exception for not-for-profit corporations that they could not be banned from engaging in core political speech, issue advocacy, the price that the bill extorts from these groups so—the disclosure of confidential donor information—is unconstitutional. I will quote Mr. Bopp at length from his letter of 12/27, Mr. President, but I should note that because this body has adopted Senator WELLSSTONE’s amendment to this bill, not-for-profit corporations now cannot engage in issue advocacy at all within 60 days of an election, even if they divulge to the federal government their confidential donor information. Mr. Bopp observes that:

McCain-Feingold 2001 makes a very minor exception for nonprofits that (1) permits expenditures for “electioneering communication,” (2) applies only to those organizations taxable under §§501(c)(4) or 527 of the Internal Revenue Code, and (3) applies only if any expenditure made by a qualified organization is coordinated with a corporation, to which contributions can only be made by individuals and with respect to which all receipts and disbursements must be reported.

The first thing to be noted about this minor exception is that it only applies to 501(c)(4) and 527 organizations. That means all other nonprofits are excluded from engaging in issue advocacy for a couple of months before an election, including 501(c)(3)s, veterans groups, trade associations, and labor unions.

Furthermore, this quasi-PAC is required to report all of its contributors of $1,000 or more. This is a very substantial burden because it exposes contributors to harassment and intimidation by ideological foes. The United States Supreme Court in Buckley held that such burdens could not be applied to issue-oriented groups, as McCain-Feingold 2001 does, because disclosure of private associations is an unconstitutional burden.

Next, Mr. President, Mr. Bopp explains how the “coordination” provisions of McCain-Feingold effectively prohibits persons from exercising their First Amendment right to petition the government for redress of grievances, as well as their free speech and associational rights. Mr. Bopp notes that:

McCain-Feingold 2001 also prohibits corporations and labor unions for funding any “coordinated activity.” “Coordinated activity” is so broadly defined and uses such vague terms that it would ban nearly everything. It is made vulnerable to coordination by converting it into a forbidden “contribution.”

“Coordinated activity” is “anything of value provided by a person (including corporations and labor unions) in connection with a Federal candidate’s election who is or previously has been within the same election cycle in connection with a Federal candidate . . . (regardless of whether the value being provided is in the form of a communication that expressly advocates a vote for or against a candidate) as to make it reasonable to believe that the candidate . . . will be . . .핸드폰번호계정
broad, and he then explains why a “coordinated activity” is also extremely sweeping.

A “coordinated activity” includes “anything of value provided by a person in connection with a Federal candidates' election.” “Anything of value” is breathtakingly broad and vague, and any such thing is subject to being coordinated. It provides no limit or notice to organizations subject to civil and criminal sanctions for coordinating it with a candidate.

Furthermore, with respect to communications, it is not limited to express advocacy and thus clearly encompasses issue advocacy by an organization the court has cur- rently divided on whether a coordinated communication must contain express advocacy to be subject to regulation or prohibition, no court has suggested that any and all communications are so subject.

Under current law, coordination between a candidate and a citizen group exists only when there is actually prior communication about a specific expenditure for a specific project that effectively puts the expenditure under the candidate's control or is based on information provided by the candidate about the candidate's needs or plans. However, McCain-Feingold 2001 expands “coordinated communication” to include any discussion or coordination of a candidate’s “message” any time during “the same election cycle,” i.e., a two-year period or, perhaps, a four-year period, if it relates to a President, or a six-year period if it relates to a Senator.

For example, if an incorporated ideological organization praised Sen. McCain for his work on “reform” early in a session of Congress and worked with him on promoting such “reform” legislation, then “coordination” would be established and anything of value to Sen. McCain’s candidacy would be deemed coordinated, would be a contribution to his campaign, and would be illegal because corporations cannot make contributions to candidates.

However, the very notion that American citizens should be punished for commun- icating with elected officials on a wide range of public issues impor- tant to the official and his constituency by having any subsequent efforts to praise the candidate’s issue position or to support the candidate in his or her campaign consid- ered a coordinated activity is repugnant to our constitutional scheme of participatory government in a democratic Republican run and answerable to the People. In a concep- tually related context, in Clifton v. FEC, the First Circuit struck down the FEC’s voter guide regulations which prohibited any oral communications with candidates in prepara- tion of voter guides. The court held that this rule is “patently offensive to the First Amendment” and that it is “beyond reason- able belief that, to prevent corruption or illic- it coordination, the government could prohibit voluntary discussions between citi- zens and their legislators and candidates on public issues.”

And coordination would also be presumed, under McCain-Feingold 2001, if the ideological communications by the same vendor of “professional services,” including “polling, media advice, fundraising, campaign research, political advice, or direct mail serv- ices (except mass mail services)” if the vendor had worked for a candidate and if the vendor is retained to do work related to that candidate’s election. Under this scheme, a vendor’s work for a candidate could unilaterally lock an ideological cor- poration out of otherwise permissible issue ad- vocacy at election time. And even if the cor- poration establishes a PAC, any PAC-related expenditures would be prohibited from making an inde- pendent expenditures of more than $5,000, since that expenditure would also be deemed to be a coordinated expenditure.

This presumption is also fatally infirm as coordination must be proven. In Colorado Republican Federal Campaign Comm. v. FEC, the FEC argued that certain independent expenditures were presumed to be coordi- nated with their candidates as a matter of law. The Supreme Court rejected this view: “An agency’s simple conclusion that the government could not disregard the exercise of constitutional rights by mere labels.” The court held that there must be “actual coordination as a matter of fact.” Congress, therefore, cannot merely recite some factual scenarios wherein it might be possible, or even probable, that coordination with candidates takes place and then pre- sume as a matter of law that it has occurred in such circumstances. He notes that the government to drastically curtail inde- pendent expenditures by mere labels, which cannot be constitutionally limited.

Finally, McCain-Feingold’s “coordina- tion” if there is any “general understand- ing” with the candidate about the ex- penditure. This general catchall goes way beyond the notion that the courts have on what “coordination” is. Consis- tent with other federal courts, the Dis- trict Court in FEC v. Christian Coalition held that a communication “becomes ‘coordinated’ where the can- didate or her agents can exercise control over, or where there is substantial discussion or negotiation between the cam- paign and the spender over a communica- tion’s: (1) Contents; (2) timing; (3) location, mode, or intended audience (e.g., choice be- tween newspaper or radio advertisement); or (4) volume (e.g., number of copies of printed materials or frequency of media spots); ‘Sub- substantial discussion’ is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender are not bound to spend. This is a far cry from a ‘general under- standing.’"

Mr. President, at this point in Mr. Bopp’s analysis, he explains that the citizenry needs a bright line not only to protect them from prosecution, but to protect them from a punitive inves- tigation simply because they exercised their First Amendment rights.

While it may be theoretically possible to do issue advocacy without running afoul of it being a prohibited “electorateline commu- nication’ or ‘coordinated activity,” only the reckless, foolish, or wealthy and powerful are likely to try. Particularly in Wash- ington, where lobbying is in the process. Any organization that does something that could be deemed of value to a candidate can expect to be the subject of an FEC com- plaint even if the activity is not coordinated. To coordinate an activity is to control whether the activity was ‘coordinated.’ Thus, pub- licly praising an officeholder for her vote on a bill invites investigation by the FEC. Dar- ing to tell constituents to get an incumbent to change his position on an upcoming vote could provoke an FEC investigation. This is the world of ubiquitous FEC investigations that all advocacy groups can expect.

And these ‘mere’ investigations themselves, violate the First Amendment. As the U.S. Supreme Court explained when Congress was busy investigating Communist influence in the 1940’s and 50’s, “[t]he mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions, or associations is a measure of govern- ment interference with First Amendment freedoms.

Mr. President, Mr. Bopp then notes another major impediment to individ- uals and citizens’ groups exercising the First Amendment rights, and that is how the bill’s coordination pro- visions interplay with contribution limits. He notes that “[f]or any indi- vidual, and for any organization that can actually do a ‘coordinate activity,’ which seems to be only a federal PAC, the ‘coordinated activity’ would be limited by contribution limits. So a substantial amount of traditional ‘independent expenditures’ by PACs are not swept under the control of McCain-Feingold because a multi-candidate PAC can only make a contribution of $5,000 per election to a candidate.”

Of course, Mr. President, this is only part of the story. As Mr. Bopp explains, S. 27 also violates the free speech and associational rights of our political parties in its effort to regulate non-federal money. Specifically, he states that “[i]n its effort to regulate ‘soft money,’ McCain-Feingold 2001 has two dramatic adverse effects on political party activ- ity: (1) it imposes federal election law limits on the state and local activities of national political parties, and (2) it dramatically limits the issue advocacy, legislative, and organizational activi- ties of political parties. But first it is important to recall the U.S. Supreme Court’s comment that ‘we are not aware of any special dangers of corrup- tion associated with political parties. . . . Political parties are merely the People’s associating to advance issues, legislation, and candidates that further those values. When they do these things, they are just doing their his- toric job as good citizens. The notion that they are somehow corrupt for doing so is both strange and constitu- tionally infirm.’"

Mr. President, Mr. Bopp next notes that this bill federalizes state and local parties and totally federalizes national parties, which engage in a multitude of activities besides federal elections. He observes that “[a]lthough national par- ties care about local, state, and federal elections, they are treated by McCain- Feingold 2001 as if they only care about federal elections. As to state and local political parties, if there is a federal candidate on the ballot, they too are treated as if only the federal candidate matters. In short, McCain-Feingold 2001 federalizes the state and local election activities of national, state, and local political parties.”

Mr. Bopp then explains how this fed- eralization occurs: “As to national pol- itical parties, this happens as a result
of the total ban on national political parties receiving ‘soft money.’ This happens to state and local political parties as a result of the designation of ‘federal election activity,’ which governs political party expenditures if any federal candidate is on the general election ballot, and which includes ‘voter registration’ during the 120 days before an election, ‘voter identifications, get-out-the-vote activity, or [any activity promoting a political party].’ Therefore, if state and local political parties do ‘federal election activity,’ they are not subject to FECA restrictions, for such activity if a federal candidate is on the ballot. These activities are traditional activities that state and local parties have always done and the national parties as if they were just federal. The fact that there is a federal candidate on the ballot, along with the state and local candidates for whom state and local parties have the greater concern, does not justify federalizing and limiting these activities.

Mr. Bopp concludes his analysis of §27 by explaining the constitutional problem with the bill’s prohibition on the parties’ use of non-federal dollars to engage in issue discussion. He first notes that under the bill ‘federal election activity’ includes ‘a public communication that refers to a clearly identified (federal) candidate . . . and that promotes or opposes a candidate or opposes a candidate . . . (regardless of whether the communication expressly advocates a vote for or against a candidate) . . . .’ Presently, political parties, like any other entity, may receive and spend an unlimited amount of money on issue advocacy. McCain-Feingold 2001 would virtually eliminate this basic constitutional freedom for national political parties, by prohibiting the receipt of all ‘soft money,’ and severely limit it for state and local political parties, by requiring only hard money to be used if a federal candidate is involved. Because McCain-Feingold 2001 prohibits the raising of ‘soft money’ by national political parties, they have no such money available for issue advocacy, legislative, and organizational activities. It treats political parties as if they were just federal-candidate election machines. As a result, McCain-Feingold 2001 has effectively amputated these other important, historical activities of political parties.

Mr. President, the constitutional problems with such restrictions on parties are explained in detail by Mr. Bopp as follows:

‘These restrictions fall constitutional muster. Political parties enjoy the same unlettered right to engage the advocacy as other entities, which is especially appropriate because advancing a broad range of issues is their raison d’etre. Reform’s banning political parties from recruiting and spending so-called “soft money” cannot be justified as preventing corruption, since the Supreme Court has already held that interest insufficiency is not justiciable for restricting issue advocacy in Buckley.

If individuals and narrow interest groups enjoy the basic First Amendment freedom to discuss issues unconnected with the election of candidates on those issues, how can political parties, which have wide bases of interests that are necessarily and diffused, be deprived of the right to engage in such issue advocacy?

However, proponents of abolishing “soft money” argue that this is simply a contribution limit. The truth of the matter, of course, is that the Supreme Court has justified contribution limits only on the ground that they do not promote or support a candidate . . . (regardless of whether the communication expressly advocates a vote for or against a candidate) . . . .’ Presently, political parties, like any other entity, may receive and spend an unlimited amount of money on issue advocacy, and limiting these activities would have resulted in allowing individuals, candidates, and political action committees to spend $5,000 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 contributions and expenditures from political parties that have wide bases of interests that are necessarily and diffused because of their candidates.’ 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 spending, which has direct application to McCain-Feingold 2001’s 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 echoed the same theme with respect to the independent expenditures of political action committees:

‘The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view.’

If this is true of PACs, then a fortiori there can be no justification for governmental interference with political parties because of their ever-present threat of corruption resulting from issue advocacy by political parties.

In addition, the Supreme Court in MCFL considered further granting of the threat of corruption is posed by an organization such as a political party. The Court considered the ban on independent expenditures by political committees under §403(a). The Court found that MCFL evaluated whether there was any risk of corruption with regard to an MCFL-type organization that would justify federalization. While MCFL considered whether an ideological corporation was sufficiently like a business corporation to justify the ban on using corporate dollars for independent expenditures, there are several transferable concepts to evaluating the threat of corruption posed by a political party.

The concern raised by the FEC in MCFL was that §441b served to prevent corruption by ‘prevent[ing] an organization from using an individual’s money for purposes that the individual may not support.’ The Court found that ‘[t]his rationale for regulation is not compelling with respect to MCFL-type organizations because [t]hose who contribute to an MCFL-type organization are fully aware of its political agenda and influence precisely because they support those purposes.’ ‘Individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction.’ Finally, a contributor dissatisfied with how funds are used can simply stop contributing. Thus, the Court held that the prohibitions on corporate contributions and expenditures in §441b could not be constitutionally applied to non-profit ideological corporations which do not serve as a conduit for business corporations.

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.

Finally, the Supreme Court also found that, just as independent expenditures of interest groups pose no danger of corrupting candidates, neither do those of political parties. And while no one disputes that expenditures on express advocacy actually coordinated with candidates are properly contributions to the candidate because of the possibility of quid pro quo corruption, the Court held that coordination must be proven as a matter of fact, it cannot be presumed. ‘Reforms’ may not presume coordination where it does not actually exist.

Thus, there is no justification, in either policy or law, for the severe limits on national, state, and local political parties that McCain-Feingold 2001 imposes.

Thus, Mr. President, Mr. Bopp has thoroughly shown the constitutional problems from which this bill suffers, and I am confident that the Supreme Court will ultimately validate his analysis.
Mr. President, I ask unanimous consent to have printed in the RECORD, the letter authored by Laura Murphy, Director of the Washington National Office of the American Civil Liberties Union and Professor Joel Gora of the Brooklyn Law School. In this letter, Ms. Murphy and Professor Gora analyze S. 27, “The Bipartisan Campaign Reform Act of 2001” and discuss its many constitutional infirmities.

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


DEAR SENATOR: The McCain-Feingold bill, also known as “The Bipartisan Campaign Finance Reform Act of 2001” (S. 27) is a destructive distraction from the serious business of meaningful campaign finance reform. Meaningful campaign finance reform would develop comprehensive programs for providing public resources, benefits and support for all qualified federal political candidates. Since 2000, Americans and constitutional limits on public financing for all qualified candidates is an option that provides the necessary support for candidates without the imposition of burdensome and unconstitutional limits and restraints. The ACLU has long argued for this, but instead we must use our time today to condemn the ill-conceived iterations of McCain-Feingold that are non-comprehensive and work to remediate our national campaign finance woes and are wholly at odds with the essence of the First Amendment.

Simply put, the McCain-Feingold bill is a recipe for political repression because it egregiously violates longstanding free speech rights in several ways: It stifles issue advocacy in violation of the First Amendment, it criminalizes any constitutionally-protected contact that groups and individuals may have with candidates (through bans on so-called “soft money” and its virtual destruction of political parties in an unconstitutional manner); it creates a federal database of sex offenders, new federal crimes legislation—is a classic example of constitutional infirmities.

I. S. 27 ERODES ROBUST CITIZEN SPEECH PRIOR TO ELECTIONS

As Virginia Woolf stated, “If we don’t believe in freedom of expression for people we despise, we don’t believe in it at all.” Clearly, the authors and supporters of McCain-Feingold despire any form of issue advocacy that has the audacity to mention candidates for federal office by name. The bill virtually silences issue advocacy (redefined as “electioneering communications”) and it virtually destroys political parties in an unconstitutional fashion.

Section 201 requires accelerated and expanded disclosure of the funding of issue advocacy. Section 202 effectively criminalizes issue advocacy as a prohibited contribution if it is “coordinated” in the loosest sense of that term with a federal candidate.

Section 203 nullifies advocacy completely if it is sponsored by a labor union, a corporation (including such non-profit corporations organized to advance a particular cause like the ACLU National Right to Life Committee or Planned Parenthood, unless they are willing to obey the government’s stringent new rules) or other similar organized entities, and it virtually eliminates financial support—from prohibited contributors such as corporations, unions or wealthy individuals—is also barred from engaging in “electioneering communications.”

The bill would impose these limitations on communications about issues regardless of whether the communication “expressly advocates the election or defeat of a particular candidate.” Nor is there any requirement of even showing a partisan purpose or intent. Instead, during 60 days before a primary or 30 days before a general election, any such communication is subject to the new controls simply by identifying any person who is a federal candidate, which will usually be an easy task.

These restraints and punishments are triggered by the making of any “broadcast, cable, or satellite communication” which “refers to a clearly identified candidate for Federal office” within 60 days of a general or runoff election or 30 days of a primary election or convention, “made to an audience of the electorate.” Id. Section 203 criminalizes any constitutionally-protected speech that includes members of the electorate” for the purpose of “political influence.” Id. Any such communication is subject to the new controls simply by identifying any person who is a federal candidate, which will usually be an easy task.

Section 203 would have been illegal for the ACLU or the National Right to Life Committee to criticize Governor Bush’s failure to endorse hate crimes legislation, or to advocate the election or defeat of a clearly identified candidate, and include “explicit words of advocacy of an election or defeat of.” 42 U.S.C. §44. 45. Under the reasoning of Buckley v. Valeo, the Court developed that doctrine because it was greatly concerned that giving a broad scope to FECA, and allowing the government to control the funding of all discussion of policy and issues that even mentioned a public official or political candidate, would improperly deter and penalize vital criticism of government because speakers would fear running afoul of the FECA’s prohibitions. “The distinction between discussion of issues and communications that in express terms advocate the election or defeat of candidates is important.” In re 2000 Election—Innovative Voting Systems, 362 F.Supp. 2d 395, 406 (D.D.C. 2005).

Section 203 bars issue advocacy that includes members of the electorate,” for the purpose of “political influence.” Id. Any such communication is subject to the new controls simply by identifying any person who is a federal candidate, which will usually be an easy task.

Second, the ban on “electioneering communications” would stifle legislative advocacy on pending bills. The blackout periods coincide with crucial legislative periods, including the months of September and October as well as months during the Spring. During Presidential years, the blackout periods would include the entire Presidential primary season, conceivably right up through the August national nominating conventions. For example had this provision been in effect in 2000, the election would have been illegal for the ACLU or the National Right to Life Committee to criticize the “McCain-Feingold” bill as an example of campaign finance legislation or to urge elected officials to oppose that bill. The only time the blackout ban would be lifted would be in August, when many Americans are on vacation!

During the 104th Congress, for example the ACLU identified at least 10 major, controversial bills that it worked on that were debated in either chamber. Of these—only 60 days prior to the November 1996 general election. This legislation includes several anti-abortion bills including so-called “partial birth” abortion, creation of a federal database of sex offenders, new federal penalties for methamphetamine use, protections of school children who identify as lesbians in the workplace, same-sex marriage prohibition, anti-immigration legislation and school vouchers, among others. This pattern of legislating election and general elections has only been repeated in subsequent Congresses.

B. WHY THESE LIMITATIONS RUN AFOUL OF THE FIRST AMENDMENT

Under the reasoning of Buckley v. Valeo and all the cases which have followed suit, the funding of any public speech that falls short of such “express advocacy” is wholly immune from campaign finance laws. Speech which comments on, criticizes or praises, applauds or condemns the public records and actions of public officials and political candidates, even though it mentions and discusses candidates, and even though it occurs during an election year or even an election season—is constitutionally protected speech. It is constitutionally protected speech. It is constitutionally protected speech.

The Court made that crystal clear in Buckley when it fashioned the express advocacy doctrine. That doctrine holds that the FECA cannot be used for its central purpose of silencing political communications that in express terms advocate the election or defeat of a clearly identified candidate, and include “explicit words of advocacy of an election or defeat of.” 42 U.S.C. §44. 45. Under the reasoning of Buckley v. Valeo, the Court developed that doctrine because it was greatly concerned that giving a broad scope to FECA, and allowing the government to control the funding of all discussion of policy and issues that even mentioned a public official or political candidate, would improperly deter and penalize vital criticism of government because speakers would fear running afoul of the FECA’s prohibitions. “The distinction between discussion of issues and communications that in express terms advocate the election or defeat of candidates is important.” In re 2000 Election—Innovative Voting Systems, 362 F.Supp. 2d 395, 406 (D.D.C. 2005).

Issue advocacy is free from government control through a number of other doctrines the courts have recognized as well. First, the constitutional right to engage in unfettered issue advocacy is not limited to individuals or groups organized to influence legislation. Business corporations can speak publicly and without limit on anything short of express advocacy of a candidate. Second, the right to petition the Supreme Court of Boston v. Bellotti, 455 U.S. 765 (1978). (Of course, media corporations can speak publicly and without limitation on any subject, thus freeing them to engage fully in public discourse.) If any reference to a candidate in the context of advocacy of an issue rendered the speech or the speaker subject to campaign finance controls, the consequences for the First Amendment would be intolerable.

Issue advocacy is free from government control through a number of other doctrines the courts have recognized as well. First, the constitutional right to engage in unfettered issue advocacy is not limited to individuals or groups organized to influence legislation. Business corporations can speak publicly and without limit on anything short of express advocacy of a candidate. Second, the right to petition the Supreme Court of Boston v. Bellotti, 455 U.S. 765 (1978). (Of course, media corporations can speak publicly and without limitation on any subject, thus freeing them to engage fully in public discourse.)
where the candidate is the driving force behind the issues. The signature of a federal election candidate will be required of any individual or group's ability to support or oppose a tax cut, to argue for or more or less regulation of tobacco, to support or oppose abortion, flag-burning, campaign finance reform and to discuss the stands of candidates on those issues.

That freedom must be preserved whether the speaker is a political party, an issue organization, a labor union, a corporation, a foundation, a newspaper or an individual. That is all that the First Amendment guarantees. If it is, in effect, silencing a citizen group by authorizing the IRS to define what the IRS might view as partisan communications, that must be stopped. Moreover, the groups would have to rely solely on communications. They would have to disclose their names, which would be a prior restraint, which bars the individual or group from engaging in core First Amendment activity unless that activity is funded strictly with hard money. The scope of "federal election activity" encompasses the following activities if they are connected to federal candidates or office holders. Under current law they are no federal restrictions on raising, spending or routing soft money by federal political parties or their candidates or office holders. Under McCain-Feingold, all of the funding for all of the vital party activities described above would become illegal, unless it came only from individuals,youtu small dollar amounts. In other words, political parties may only raise and spend highly regulated "hard money" for virtually everything they do.

In addition to its disruptive and unconstitutional virtual destruction of political parties, McCain-Feingold would make parties less able to support grassroots activity, candidate recruitment and get-out-the-vote efforts.

A. THE BILL REPRESENTS A THREE-PRONGED ATTACK ON POLITICAL PARTIES

(1) Section 101 of the bill completely eliminates all "soft money" funding for all national political parties and all of their consultants, committees, and staffs. Under current law there are no federal restrictions on raising, spending or routing soft money by federal political parties or their candidates or office holders. Under McCain-Feingold, all of the funding for all of the vital party activities described above would become illegal, unless it came only from individuals, small dollar amounts. In other words, political parties may only raise and spend highly regulated "hard money" for virtually everything they do.

(2) Section 101 of the bill also bars any federal candidate or officeholder from having any contact whatsoever with the funding of any "federal election activity" by any organization unless that activity is funded strictly with hard money. The scope of "federal election activity" is extremely broad and encompasses the following activities if they have any connection to any federal election or candidate: (1) voter registration activity for more than 46 days prior to the general election, (2) voter identification, get-out-the-vote activity or "generic campaign activity," (3) any significant "public communication" by a political party or any of its committees or committees that refer to a clearly identified federal candidate and "promotes," "supports," "attacks," or "opposes" a candidate for office (regardless of whether the communication contains "express advocacy"). Under this rule, a candidate would attend an NAACP Voters Rights benefit dinner at his or her peril, if funds were being raised for any "federal election activity" such as getting people to the polls on election day. The same might be true for one who attended an ACLU Bill of Rights Day fund raiser, when the ACLU produces a box score on civil liberties voting records during an election season.

(3) The bill also reaches and regulates all State and local political parties and bans them from raising or spending soft money for any federal election activity" also or any activity which has any bearing on a federal election. It basically nullifies the effects of all the restrictions on soft money that support so much of what American political parties do. It would cast a pall over the vital democratic work that any contact whatsoever with the funding of any "federal election activity" on any individual or group's ability to support or oppose issues. Those who advocate government money." Those who advocate government money on those issues.

Finally, it is no answer to these principled objections that this flawed bill would permit certain non-profit organizations to sponsor "electioneering communications" if they in effect created a Political Action Committee to fund those messages. Under existing law, contact coordination must be made through the government's hoops in order to "coordinated" with the politician as a regulated or prohibited activity. In order to win the hearts and minds of voters, the group then can't run ads in Senator McCain's state praising him for protecting the flag.

Once such so-called coordination is established it triggers a total ban on issuing any communication to the public deemed of value to the candidate and it defines such communication as an illegal corporate contribution! These rules act as a continuing prior restraint, which bars the individual or group from engaging in First Amendment speech for the lawmaker's entire term of office. Even if such an organization has a connected PAC, it can no longer engage in any independent expenditure affecting the lawmaker because by merely speaking to the candidate or his or her staff it has engaged in illegal "coordination." Here again, the bill attempts to rewrite the First Amendment on issue advocacy organizations.

Translated into the way in which citizen advocacy groups work, this means that a non-profit organization cannot make a particular proposal a part of the candidate's platform if the group subsequently plans to engage in independent advocacy on that issue. Likewise, a group like the National Rifle Association could not discuss a gun control vote or position with a Representative or Senator if the NRA will subsequently produce a box score that praises or criticizes that official's stand. Similar to the ban on coordination (Section 202) discussed earlier in this letter, banning "coordination" of "electioneering activity" resulting in a long意义上的 sweep of the anti-coordination rules. See "Puttice Labor: Why Are The Unions Against McCain-Feingold?" The New Republic, March 12, 2001, pp. 14-16.

Thus, these coordination rules will wreak havoc on the ability of the representatives of citizens to organize groups and even citizen groups to interact in important ways with elected representatives for fear that the
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that can be subject to control is either contributed giving directly to candidates or their campaigns (or partisan expenditures explicitly coordinated with campaigns) or communications that constitute express advocacy. These can be subject to source limitations (of contributions or union contributions to a non-union candidate, or corporate or labor union contributions to noncorporate or nonlabor union candidates) or amount restraints ($1,000, or $5,000 in the case of PACs). All other funding of political activity and communication is beyond presumptive constitutional control. That would include soft money activities by political parties.

Participation for the candidates’ electoral success and issue organizations that influence the public debate. Get-out-the-vote drives, voter registration drives, issue advocacy, policy discussion, and lobbying for the political parties was almost concurrent with the formation of national political parties. The formation of national political parties was almost concurrent with the formation of national political parties. But the total ban on soft money and the related limits on political candidates, which have a unique role in serving this principle; they exist to advance their members’ shared political beliefs.” Id. at 629.

While electoral competition is a central mission of political parties, they do so much more than that. They engage in issue formulation and advocacy, and mobilize their members through voter registration drives, organize get-out-the-vote efforts, they engage in generic party communications to the public. Much of these activities are supported by what S. 27 would deem as soft money. The bill before you would dry up these significant sources of funding for these party activities. It would basically starve the parties’ ability to engage in the grass roots and issue-advocacy work that makes the American political parties so vital to American democracy.

C. S. 27 DEMINISHES THE ABILITY OF POLITICAL PARTIES TO COMPETE EQUITABLY WITH OTHERS WHO CHOOSE TO SPEAK DURING CAMPAIGNS.

Finally, the law unfairly bars parties, but no other organizations, from raising or spending soft money. That would mean that everyone else—corporations, foundations, media organizations, labor unions, bar associations, wealthy individuals—could use any resources without limit to attack a party and its programs, yet the party would be defenseless to respond except by using limited hard money dollars. The NRA could use unregulated funds to produce attacks on the Democratic Party’s stand on gun control, and the party would be effectively silenced and unable to respond. Conversely, NARAL could mercilessly attack the Republican Party’s stand on abortion, using corporate and foundation funds galore, and that Party would likewise be stifled from responding in kind. A system which lets one side of a debate speak, while silence the other, violates both the First Amendment and equality principles embodied in the Constitution.

The Bipartisan Campaign Finance Reform Act of 2001 is not reform at all, but is a fatally flawed assault on First Amendment rights.

Sincerely,

LAURA W. MURPHY,
Director,
JOEL GORA,
Professor of Law,
Brooklyn Law School and Counsel to the ACLU.

CHANGE OF VOTE

Mr. REID. I ask unanimous consent to change my vote on rolloff call vote No. 41 from yeas to nay. This change will not affect the outcome of the vote. The amendment at issue was adopted by a vote of 70-30 and if enacted will require broadcasters to charge political candidates the lowest rates offered by the broadcasters or cable stations throughout the year.

While I believe the goal of this amendment is laudable I am concerned that it could unsettling the balance of power in the airwaves. Further, I believe it could provide political candidates with an unfair economic edge in the purchasing of air time.

On the first point, it should be clear to all that the McCain-Feingold legislation was carefully crafted to ensure meaningful campaign reform while recognizing the rights of all Americans to continue their participation in our electoral process. This is a delicate balance and I would regret to see this bill lose the support of such important participants in the political process as our nation’s broadcasters. I believe that political candidates should not be gouged in their purchase of air time but I remain unconvinced that such is the normal and usual practice today. Other groups, be they charitable or civic oriented, should not be disadvantaged because of efforts to lower the rates for political candidates.

For the reasons stated above I believe this issue should not be considered on this important legislation.

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

1996 CAMPAIGN FINANCE VIOLATIONS

Mr. THOMPSON. Mr. President, in 1997, the Governmental Affairs Committee spent a year investigating some of the worst campaign finance abuses in our Nation’s history. Despite a number of obstacles, witnesses felling our nation, people pleading the fifth amendment, entities failing to comply with subpoenas, our Committee uncovered numerous activities that were not only improper but illegal. To date, 26 individuals and two corporations have been prosecuted or indicted for campaign finance violations arising from the 1996 Federal elections.

Specifically, what we uncovered was a pattern of abuse in which access to people in power was bought with large campaign contributions. What made that possible was unregulated, unlimited soft money. Time after time we heard about contributions and hundreds of thousands of dollars in exchange for which access was granted. In fact, one of the key reasons I have fought for the McCain-Feingold bill is to eliminate this opportunity for abuse.

There is no question in my mind that the enormous soft money contributions we examined led to corruption and the appearance of corruption to the American public. The committee’s findings are supported by a six volume, 30,000 page report, S. Rpt. No. 105-167, the committee’s depositions, S. Prt. No. 106-30, and the committee’s hearings, S. Hrg. No. 105-300). The facts and findings contained in these documents clearly provide the basis for a determination that unlimited soft money contributions lead to corruption and the appearance thereof.

Mr. LEVIN. Mr. President, the Senator from Tennessee appropriately puts in the record the compelling need for this legislation. In particular, we learned during the 1997 hearings
that some of the most egregious conduct we uncovered, wasn’t what was illegal, but what was legal. That was the real problem.

The 1997 Senate investigation collected ample evidence of campaign abuses, the most significant of which revolved around the soft money loophole. Soft money contributions of hundreds of thousands, even millions, of dollars, were shown to have undermined the contribution limits in Federal law and created the appearance of corruption in the public’s eye. The Republican and Democratic national political parties that solicit and spend this money use explicit offers of access to the most powerful, elected officials.

Roger Tamraz, a large contributor to both parties and an unrepentant witness at our hearings, became a bipartisan symbol for what is wrong with the current system. Roger Tamraz served as a Republican Eagle in the 1980s during Republican administrations and a Democratic Trustee in the 1990s during Democratic administrations. Tamraz’s political contributions were not guided by his views on public policy or his personal support for or against the person in office; Tamraz gave to help himself. He was unabashed in admitting his political contributions were made for the purpose of getting access to people in power. Tamraz showed us in stark terms to all-too-common product of the current campaign finance system, using unlimited soft money contributions to buy access. And despite the condemnation by the committee and the press of Tamraz’s activities, when asked at the hearing to reflect on his $300,000 contribution to the Democrats in 1996, Tamraz said, “I think next time, I’ll give $600,000.”

As I said, most of the appearances of impropriety revealed during the 1997 investigations involved legal activities. Virtually every foreign contribution of concern to the Committee involved soft money. Virtually every offer of access to Dan White House or to the Capitol or to the President or to the Speaker of the House involved contributions of soft money. Virtually every instance of questionable conduct in the Committee’s investigation involved the solicitation or use of soft money.

The McCain-Feingold bill recognizes that the bulk of troubling campaign activity is not what is illegal, but what is legal. It takes direct aim at closing the loopholes that have swallowed the election laws. In particular, it takes aim at closing the soft money and issue advocacy loopholes, while strengthening other aspects of the Federal election laws that are too weak to do the job as they now stand.

The soft-money loophole exists because we in Congress allow it. The issue advocacy loophole exists because we in Congress allow it. Congress alone writes the laws. Congress alone can shut down the loopholes and reinvigorate the Federal election laws.

Mrs. MURRAY. Mr. President, in recent days there has been much speculation regarding my position on retaining the severability of the campaign finance reform bill being considered by the Senate.

First let me start by reiterating my strong and unwavering commitment to meaningful campaign finance reform. Since I arrived in the Senate, I, along with many of my colleagues, have championed an overhaul of our campaign finance system. Our system demands more disclosure and accountability, we should reduce the amount of money in the system, we should ensure that the voice of every American can be heard, and we must require fairness.

I admire Senator MCCAIN and others for their courage and persistence in pursuing this goal. Senator MCCAIN has shown himself to be a real leader, and I enjoy working with him in the Senate.

I believe the McCain-Feingold bill is a carefully crafted, balanced bill. There have been a number of amendments to this bill, some of which I have supported; some I have opposed. Campaign finance reform, in addition to reforming the excesses of the current system, must be fair and not favor any one party or group over another. If the court, at some later date, finds that some part or parts of our reform effort do not pass constitutional muster, that ruling should not be allowed to tip the scales to the benefit or detriment of one class of actors with regard to their ability to engage in political debate. As strongly as I believe in reforming our campaign finance laws, I also believe we should do a better job of supporting our public schools, providing more and better access to quality healthcare, protecting our environment, and creating family wage jobs. If my, or the people who share my positions, ability to communicate those positions is altered to a greater or lesser extent than those with other opinions, then what we have left will be fundamentally unfair. The balance of this court’s interpretation. The severability issue goes directly to this point.

Which leads me to believe this year’s effort is different from previous efforts in one very significant and fundamental way. Today, we know more about the Supreme Court than we did just a few months ago. We know that the Supreme Court’s interpretations is that would appear to favor one party over another. And that has given me pause, and, I would think, it may give my colleagues pause, when we consider the application of this law, how it will be tested in court, and what we may end up with as a result.

If the Supreme Court decided to uphold limits on the amount of soft money flowing to our parties, while allowing special interest groups to spend unlimited sums to attack or defend candidates, then we would shift the electoral process over to those same special interests who we seek to limit.

In this debate, too often, people who have differed with the sponsors have been characterized as wanting to ‘kill’ the bill. Contrary to those assertions, this bill, with or without non-severability, is about to pass the Senate.

After careful consideration, I have decided to vote against the non-severability amendment. I have made this judgement with strong reservations about how the Court could interpret the law we pass.

I am not willing to participate in enacting a precedent for severability that could impact a wide range of bills to come before the Senate. Rather than adding a non-severability clause to this bill, the Congress should act quickly to meet the challenges that may be presented by any future court action, and fashion a set of campaign finance laws that will serve to strike a balance and ensure fairness.

Mr. MCCONNELL, Mr. President, reformers frequently assert that there is a great desire throughout the land for their campaign finance scheme. The truth is there is not, nor has there ever been, a groundswell of public demand for even the concept of “reform,” let alone an unconstitutional assault by the Federal Government on the constitutional freedom of citizens, groups and parties to participate in America’s democracy.

On that note, I would ask that a March 22, 2001 article in the Washington Times entitled “Nation Yawns at Campaign Finances,” be printed in the RECORD at this point.

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

(Nation Yawns at Campaign Finances, March 22, 2001)

Campaign finance reform may be the No. 1 issue in the Senate right now, but outside of Washington it does not even make the top-40 list of most important problems facing the country.

Sen. John McCain, Arizona Republican, with the help of favorable national news media coverage, has managed to drive the issue to the top of the Senate agenda this week—ahead of education, health care, Medicare, Social Security, tax cuts and other issues that score much higher in poll after poll after poll.

Polls show that Americans strongly support the overall concept of campaign reform, but it does not appear on most lists of what concerns them the most, or if it does come in last.

“We’ve asked people what is the most important problem facing the country and watched campaign finance reform languish at the bottom of every list of 20 possibilities,” said Whit Ayres, a Republican pollster based in Atlanta.
There being no objection, the matter was ordered to be printed in the RECORD, as follows:

[From USA Today, March 23, 2001]

"REFORM" HURTS FREEDOMS
OPPOSING VIEW: BILL UNFAIRLY RESTRICITS PARTIES' ABILITY TO CHALLENGE INCUMBENTS

(By Mitch McConnell)

Next week, in its debate over changing campaign-finance laws, the Senate will consider a constitutional amendment overriding the First Amendment and thereby allowing the government to police speech. The amendment would not allow for political speech, whether by candidates or independent groups, to mimic a campaign advertisement. Opponents argue that the amendment is a constitutionally valid way of restricting speech.

Mr. McCaskill's amendment would also require that candidates pay taxes on all donations made to their campaigns. The amendment would also ban the use of "soft money," which is not regulated by the Federal Election Commission. Mr. McCaskill's amendment would also require that candidates pay taxes on all donations made to their campaigns. The amendment would also ban the use of "soft money," which is not regulated by the Federal Election Commission.

Mr. McConnell says that the amendment is a constitutional amendment that would allow the government to regulate speech. He argues that the amendment would also ban the use of "soft money," which is not regulated by the Federal Election Commission. The amendment would also require that candidates pay taxes on all donations made to their campaigns. The amendment would also ban the use of "soft money," which is not regulated by the Federal Election Commission.

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On the question of pornography and child pornography, and those ques-
tions, people can go either way. The Supreme Court has dealt with America about
different ways. These forms of speech and press are quasi-speech. De-
pictions or acts of burning a flag were never what our Founding Fathers were
fundamentally concerned about. They were concerned in early America about
political speech, the right to speak out on public policy issues and say what
you wanted to say.

James Madison, the father of our Constitution, whose birth we cele-
brated earlier in the month, the 250th anniversary of his birth, in talking
about our goal in America as to free elections and people you chose could be
elected, said: The value and efficacy of this right to elect and vote for people
for office depends on the knowledge of competent and determined people
of how the candidates for public trust, and on the equal freedom, consequently, of ex-
amining and discussing these merits and demerits of the candidate’s respect-
ively.

That suggests this is what America was founded about, to have a full
debate about candidates and their posi-
tion on issues. When do you do that? You do that during the election time.
Not 2 years before an election.

I believe the contributing of money to promote and broadcast or amplify
speech is covered by the first amend-
ment. I do not think that is a matter of serious debate. Some have suggested
otherwise. They said money is just an inanimate object. But if you want to be
able to speak out and you cannot get on
television, or you cannot get on
radio, or you cannot afford to publish
newspapers or pamphlets, then you are
constrained in your ability to speak
during an election.

The Supreme Court dealt with this
issue quite plainly in Buckley v. Valeo in 1976. A string of cases since that
time have continued that view.

In Buckley they said the following:

The first amendment denies government
that is, us] the power to determine that spending to promote one’s political views is wasteful, excessive, or unwise.

They go on to say:

In a free society, ordained by our Constitu-
tion, it is not the government, not the gov-
ernment, but the people individually as citi-
sens and collectively as associations and po-
itical committees who must retain control
over the quantity and range of debate on
public issues in a public campaign.

What is that Court saying? That Court is saying the right to decide who
says what in a political environment is the right of the people and associations
of people. They have that right. The Government does not have the right to
restrain that right and to limit their debate, even if it is aimed
at us in the form of a negative ad and it
hurts our feelings and we wish it had
not happened. We do not have the right
to tell people they cannot produce hon-
est ads, hard-hitting ads against us. If we get to that point, I submit, our coun-
try will be less free, you will have a less ability to deal with incumbent
politicians who may not be the kind
that are best for America.

In the Buckley case the Court held
that political committees constitute protected speech under the first amend-
ment.

I remain at this point almost stunned
that earlier in this debate 40 Members
of this Senate voted to amend the first
amendment of the Constitution of the United States. Fortunately, 60 voted
no. We had 38 vote yea in 1997 or 1998, and last year it dropped down to 33.
But this year 40 voted for this amend-
ment. It would have empowered Con-
gress and State legislators, govern-
ment, to put limits on contributions and expenditures by candidates and
groups in support of and in opposition
to candidates for office. Just as they outlined in Buckley.

That is a thunderous power we were
saying here, that we were going to em-
power State legislatures and the U.S.
Congress to put limits on how much a person and group could expend in sup-
port of or in opposition to a candidate.

Think about that. Where are our civil libertarian groups?

I have to give the ACLU credit, they have been consistent on this issue. They
are saying it is bad, and they have said so. But too
many of our other groups—I don’t know whether they are worried about
the politics of it or what, but they have not grasped the danger to free speech
and full debate we are having here.

It seems to me we are almost losing
perspective and respect for the first
amendment that protects us all. In this
debate we have focused on what the
courts have held with regard to the
first amendment. I happen to believe that
the courts have held it wrong. I think it
is bad, and I think it ought to be struck
down by Federal courts.

We ought not to vote for something
that is unconstitutional. We swore to
uphold the Constitution. If we believe a
bill is unconstitutional, we should not
be passing it on the expectation that
someday a court may strike it down,
even if we like the goal. If it violates
the Constitution, each of us has a duty,
I believe, to vote no. The idea that we
can pass a law that would say that
within 60 days of an election a group of
union people, a group of citizens, a group of citizens, cannot get together and run an ad to
say that JEFF SESSIONS is a no-good skunk and ought not be elected to of-
cice, offends me. Why doesn’t that go
to the heart of freedom in America?

Where is our free speech? Our citizens
cannot get together and run an ad to
say that JEFF SESSIONS is a no-good skunk and ought not be elected to of-
cice, offends me. Why doesn’t that go
to the heart of freedom in America?

Where are our law professors and so forth on
this issue? It is very troubling to me,
and I believe it goes against our funda-
mental American principles.

I will conclude. I make my brief re-
marks for the record tonight to say I
believe this law is, on balance, not
good. I believe the attempt to deal-
with corruption in campaigns is not going to be achieved. I believe it is
the case with every politician I know,
that votes trump money every time
anyway. If you have a group of people in
your State you know and respect, you
try to help them. Just because
they may give you a contribution doesn’t mean that is going to be the
thing that helps you the most. Most
public servants whom I know try to
serve the people of the State and try to
keep the people happy and do the right
things that are best for the future.

I believe this bill is not good, that
the elimination of the corrupt aspects
we are trying to deal with will not ulti-
mately be achieved. At the same time,
I believe we will have taken a historic
step backwards, perhaps the most sig-
ificant retrenchment of free speech
and the right to assemble, and free
speech, that has occurred in my lifetime
that I can recall. This is a major bit of
legislation that undermines our free
speech.

I know we have talked about all the
details and all the little things. There
are some things in this bill I like. I
wish we could make them law. But as
a whole, we ought not pass a piece of
legislation that would restrict a group
of people in America from coming to-
together to raise money and speak out
during an election cycle, 60 days, 90
days, 10 days, 5 days, on election day—
they ought not be restricted in that ef-
fort. In doing so, we would have be-
trayed and undermined our commit-
tment to free speech and free debate
that has made this country so great.

Mr. President, I will proceed to see if
I can close us out for the night.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask
unanimous consent there now be a pe-
riod for the transaction of routine
morning business with Senators per-
mitted to speak for up to 10 minutes
each.

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

TRIBUTE TO THE LATE
CONGRESSMAN NORMAN SISISKY

Mr. WARNER. Mr. President, I am
joined by my colleague, Senator
ALLEN. We would like to address the
Senate for a period not to exceed 10
minutes.

Mr. President, today, just hours ago,
Senator ALLEN and I were informed of
the loss of one of our Members of Con-
gress from the State of Virginia, Nor-
man Sisisky. It has been my privilege
to have served with him in Congress
throughout his career. Our particular
responsibilities related to the men and