The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

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

Martin Luther said, “The very ablest youth should be reserved and educated not for the office of preaching, but for government. Because in preaching, the Holy Spirit does it all, whereas in government one must exercise reason in the shadowy realms where ambiguity and uncertainty are the order of the day.”

Gracious God, infinite wisdom, we thank You for reserving and preparing the women and men of this Senate to serve You in the high calling of government. So often politics and politicians are denigrated in our society. We forget that politics is simply the doing of government. Bless the Senators, their faithful staffs, and all who are part of the Senate family. Give all of them a renewed awareness that they are here by Your appointment and You will give vision in the ambiguities and clear convictions in the uncertainties that occur today. Send out Your light; lead us; empower us. We commit ourselves anew to excellence for Your glory and the good of our beloved Nation. In the name of our Lord. Amen.

RECOGNITION OF THE MAJORITY LEADER
The PRESIDENT pro tempore. The able majority leader, Senator LOTT, is recognized.

SCHEDULE
Mr. LOTT. Mr. President, this morning there will be a period for continued debate on S. 1219, the campaign finance reform bill, with the time equally divided between the two leaders or their designees.

UNANIMOUS-CONSENT AGREEMENT
I understand that there has been a request for an extension of that debate, therefore I now ask unanimous consent that debate be extended until 1 p.m. today under the previous conditions, and further that Senators have until 1 p.m. in order to file second-degree amendments to the campaign finance reform bill, as well as first-degree amendments to the DOD bill.

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

Mr. LOTT. I might just note that has been cleared by the Democratic leadership. This just does provide for an additional 30 minutes of debate on the campaign finance reform bill.

At 2:15 today, under the previous order, the Senate will proceed to a roll call vote on the motion to invoke cloture on the campaign finance reform bill. If cloture is not invoked, the Senate is expected to resume consideration of S. 1219, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1219) to reform the financing of Federal elections, and for other purposes.

The Senate resumed consideration of S. 1219, which the clerk will report.

Mrs. HUTCHISON. Mr. President, I want to speak against cloture on this bill, but I also want to talk about what I think is good about the bill and why I am voting against cloture.

First, I want to say, if I were titling this bill, it would be called the Incumbency Protection Act, because that is what limitations on expenditures for campaigns will do. It will take away the right of a challenger to be able to raise more money than an incumbent with the advantage of name identification and to be able to go forward with a message.

What they say in this bill is that it is voluntary. It is voluntary, but you pay quite a price if you do not adhere to the limits. You, then, will be faced with 30 minutes of free broadcast time against you, if you do not adhere to the limits. You will have reduced postal rates against you. This is really coercive. Then there is the cost. My gosh, the Postmaster General has said he will have to raise all postal rates if he has to provide reduced rates.

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I yield the floor.

RESERVATION OF LEADER TIME
The PRESIDING OFFICER (Mr. DeWINE). Under the previous order, leadership time is reserved.

CAMPAIGN FINANCE REFORM
The PRESIDING OFFICER. The Senate will now resume consideration of S. 1219, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1219)...
So I want to talk about why I think this is the most important part of the bill. But I also want to talk about what I think is good in the bill because, if we ever want to come back to this, there are some improvements that we really ought to have. I will be susceptible to some of these things. I love the idea of requiring 60 percent of campaign funds to be raised from individuals in a State. I think that is something that will enable the people in the State to have the right say in the election of their Members of Congress, in the election of their Senators.

I am for limitations of personal money for a campaign. I think you have to make sure it would be constitutional, so you would say a person could spend any amount of his or her own money that he or she wants to, but he or she could only be repaid a certain amount. I think that is a wise thing, because I, too, am alarmed, as many of us are, by people who would just pour their own money into a campaign and, in effect, be able to buy an election; because that is what people see. They have the access to the airwaves with money, and it does become, I think, an inequitable situation.

Limitations on the amounts of contributions by PAC's to the same amount as individuals contribute is good. I do think PAC's, however, have been misrepresented, not only on this floor but around the country, because I think many of the companies in this country have done a voluntary and they should be voluntary. They should not be defeated. They also pointed out that the bill was, and said they hoped it would go against the incumbent. But you know what? The people were looking at the message. And even though my message was much less generously funded than my opponent's message, nevertheless, the people were able to make this choice.

I do not want to limit the incumbent or the challenger. If the message is right, we need to have the freedom to get it out. I, of course, think that limiting an incumbent and saying you can only spend $500 makes the incumbent, and I think I will stand always against any kind of limitations, whether it is cloaked in a voluntary cloak of armor or not, because it is not really voluntary when you are then going to the television stations or the postal service or going to the radio stations and saying, "Ah, yes."—these people that are voluntarily saying that they are going to stay within the limit—"You’re going to pay for that difference."

What is the nexus? Why are we telling television stations or the Postal Service, which is going to have to raise rates on everyone else in America, that you should subsidize this arbitrary limitation that is voluntary? It just does not make sense.

So I am going to vote against cloture because I think the overriding issue here is limitations. If you want to see the hardship of limitations, look at the States that have the limitations in place. Look at the Presidential election right now. One candidate has a primary and therefore has to spend the money in the limitation. The other candidate does not have a primary. This could be reversed. It could be the year that the incumbent and the Democrats have a primary. Either way, it makes for an artificial limitation that is not fair. I do not think we want to put that in place now for Members of Congress and Members of the Senate.

Let me just say that we do have limitations on contributions that I think are quite reasonable. Could they be lower? Yes. I mean, $500, $1,000—it could be lower if we wanted it to be lower. I would certainly be flexible in that regard. You know, when I look at the States around this country that have no limitations whatsoever on contributions and there are people taking $100,000 for a campaign for a State office, and we are talking about $1,000 limitations on contributions or $5,000 from a PAC that is an amalgamation of many employees in a company, I think we are assuring that there is going to be a great deal of abuse. We have that assurance right now.

I had 40,000 contributors to my campaigns for the U.S. Senate. I ran twice within 2 years. Forty thousand. My average contribution was about $200. I think that is a grass-roots base. The other $5 and $10 contributions. That does make sure that no one has particular access to a person because of some huge contribution.

I think we can do a lot to improve our campaign finance in this country. Mr. President, but I just think this bill is not the right approach. I hope that we can work on this and continue to work on it, because as I said, I think, having limitations on personal use of funds, having the 60 percent requirement of raising money in your home State, not using the franking privilege in an election year are very good, solid recommendations from this bill. So I hope that we will work on something, but, Mr. President, this is not the right vehicle. Thank you, and I yield the floor.

The PRESIDING OFFICER. Who yields the time?

Mr. McCONNELL addressed the Chair. The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Let me thank my good friend from Texas for an excellent statement on the issue before us. I appreciate her contribution to this debate, not only at this time but in previous rounds. She is right on the mark, it seems to me, in concluding that this bill fails well short of anything the Congress ought to foist on the American people, and particularly the restrictions on all the individuals across the country that want to participate in the political process. If I had just stayed with Texas—I did not get a chance yesterday to tell her this—even the National Education Association, almost never aligned with people like the Senator from Texas and myself, wrote me a letter yesterday saying how awful this bill was, and said they hoped it would be defeated. They also pointed out that the average contribution to the NEA PAC was $6, and asked the question, why in the world participation of that sort would be a bad thing for American democracy and something the Congress ought to eliminate?

Mrs. HUTCHISON. Will the Senator yield for a question?

Mr. McCONNELL. The Senator certainly.

Mrs. HUTCHISON. Is it not true that the Postmaster General has raised serious questions about this bill, and what he would be required to do is in the way of raising postal rates for everyone because of the subsidy that would be required under this lower postal rates in an election year?

Mr. McCONNELL. In a letter I received from the Postmaster General

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yesterday, he comes out against the bill. Obviously, the Postmaster General is not accustomed to taking positions on legislation up here. But his point is that this is in effect a transfer of cost to the postal ratepayers across America.

That is one of the reasons the Direct Marketing Association, the direct mail people—they are a private business—also opposes this, because in effect it is passing on to the postal ratepayers an enormous tax burden.

This bill is not free. The notion has been put forth that somehow the spending limits are free. In fact, it passes the cost on to the broadcasting industry and on to the postal patrons of this country.

Mrs. HUTCHISON. Not only that, since we have virtually a monopoly in the postal system, it is like a taxpayer subsidy because it is requiring every person in America that wants to send a letter to pay more for this limitation that we are putting in place. It just does not qualify as a true voluntary limitation.

Mr. MCCONNELL. No, it is not voluntary and not free. I say to my friend from Kentucky, the Postal Service is voluntary because if you choose not to shut up, if you choose not to take the Government prescribed speech limits, you have to pay more for your television. So it is not voluntary. And it is not free because the broadcasting industry is called upon to subsidize campaigns and the postal patrons are called upon to subsidize campaigns. So it is neither voluntary nor free.

I thank very much my friend from Texas for pointing this out.

Mrs. HUTCHISON. I yield the floor to the Senator from Kentucky for helping us understand this.

Mr. MCCONNELL. I thank the Senator from Kentucky for his remarks, let me just make a couple points in response to the Senator from Texas and the Senator from Kentucky.

First of all, it seems, almost as if in an effort to stop this bill from even being amended, that the kitchen sink is being thrown at this bill. Now we hear the Postmaster General is one of the lead opponents of the bill. But this completely disregards the resolution that, yes, if this bill, the Senator from Arizona has placed in the bill, that would provide that the money that is saved from preventing Members of Congress from franking during an election year would be used to provide relatively large postage savings that is necessary to provide the postal discounts which will only be given to those Senators and Members of Congress who agree to the spending limits. So that again is another red herring.

Second, it does not matter how many times the other side says that this bill is not voluntary, it is voluntary. There are no such mandatory restrictions across the board for citizens as has been suggested by the Senator from Kentucky. And the Senator from Texas.

It does not matter how many special interests—whether it is the NEA, the AFL-CIO, or business PAC's—it does not matter how many times they tell you our scheme for allowing people to abide by limits and give them benefits; it does not matter how many times they say that is not voluntary. It is voluntary.

Mrs. HUTCHISON. Will the Senator yield?

Mr. FEINGOLD. I am happy to yield to the Senator.

Mrs. HUTCHISON. I want to ask the Senator, what would happen under your bill if there was not enough money saved from the use of the frank to cover the cost of the discounted mailing?

Mr. FEINGOLD. If that happens, which I doubt, it would have to come out of the budget of the post office.

Mrs. HUTCHISON. In other words, it does not necessarily cover all of the costs?

Mr. FEINGOLD. Our estimates are from—

Mrs. HUTCHISON. The Postmaster General says he would have to raise all of the rates, because it comes from the post office.

Mr. FEINGOLD. Our estimates are that it would cover it. We go on the basis of estimates here. That is our assumption. Even if there was a small gap, the effect would be minimal.

Let me quickly wrap up—because I want to turn to the Senator from West Virginia—and indicate again a very serious distortion. The Senator from Kentucky keeps saying that it will cost people who do not abide by the limits more. That is just not true. They will not pay a dime more than they pay today. They will still be eligible for the lowest commercial rate as the TV stations are required to give them. They will not have to pay more for their postal rates. It is simply untrue they will have to pay more than they do today. True, they will not get the lower costs that those who abide by the limits will get, but do not let anyone tell you people have to pay more under our bill. They can still spend as much as they want, and they will not have any higher cost for what they do.

Finally, Mr. President, what this is all really is, is that candidates who are more rooted back in their home States will have a better chance, or whether those who are dominated by big money or by D.C. special interests will dominate. This is a cartoon from one of the most distinguished political cartoonist of the 20th century. This is the context in which the vote today is being seen. We can talk here about how important PAC's are, and somehow this will put artificial limits on candidates. This is what the American public knows today's vote is about. It shows a gentleman from the U.S. Congress talking to a lobbyist with a lot of money and a cigar. The guy says, “No more little gifts or junkets—from now on, it's still our scheme for allowing people to abide by limits and give them benefits.”

Mr. President, the American public knows we have finally done something about lobbying disclosures. The American public knows we have cracked down on the practice of gift giving, one of the most offensive practices to the American people. But they also know the big granddaddy of them all, the important issue is the money that is awash in this campaign because of campaign financing.

If we do not take the action today to move this bill forward, if we fail in this bipartisan effort, this cartoon will be prophetic. This cartoon will show that all that has happened is that the gifts and the lobbying are being transferred through the campaign cash system. I do not think that we should let that happen.

Mr. President, with that, I yield 15 minutes of the proponents' time to the distinguished Senator from West Virginia.

The PRESIDING OFFICER (Mr. BROWN). The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill, and I thank the Chair.

Mr. President, for nearly 2 years now many of our Republican colleagues, particularly those in the House of Representatives, have trumpeted the glory of their so-called Contract With America. To listen to some, this was the document that was to solving the Nation's problems. It was the primer for a reform-minded Congress—something that would bring great respect to this institution and its Members. Yet, there is one item conspicuously absent from the much-touted, so-called contract. I note with amazement that what is completely missing from that celebrated ideological text is any mention of campaign finance reform. I have looked and I have looked and I have looked and it is just not there.

We are told by those who promote the contract that a balanced budget constitutional amendment is good for
the country. We are told that the line-item veto is good for the country. But, for seemingly inexplicable reasons, many of those who have spent their time clamoring for change have decided that putting an end to our current grotesque and out-of-control campaign finance reform system is just not worthy of attention.

How unfortunate, Mr. President, because, along with many of my colleagues, truly believe that until Members of Congress are convinced of the simple fact that campaign finance reform is much more important than any of these other reforms, this institution will continue to be perceived as the property of the special interests—that is exactly what it is, the property of the special interests—owned lock, stock, and barrel. We all know it. And, as the public opinion polls indicate, the American people know it, too.

It is a great disappointment to me that too few Members seem to understand the time and effort of all of us who have pushed for these reforms have seen our efforts rebuffed. Indeed, Mr. President, as Majority Leader in 1987 and 1988, I tried eight times—eight times—to get cloture on campaign finance reform legislation. And eight times I lost. More importantly, however, eight times the American people lost.

That is why this legislation before us today is so important. It is an effort, a bipartisan effort, to put a stop to the noxious system currently in place for the financing of senatorial campaigns. It is a measure that does not favor challengers or incumbents, or candidates from either political party. On the contrary, this bill, the McCain-Feingold bill, takes a balanced approach that will go a long way toward creating a level playing field.

Mr. President, one needs to look no further than this Chamber to see the press of this type of legislation. I believe that the primary problem in this body, the root problem plaguing the Senate today is what I would term the “fractured attention”—the fractured attention of Senators. Countless times, action on the Senate floor has been slowed or delayed because Senators are not in Washington, or if they are, they are away from the Capitol. That absence is not because those Senators are off on vacation or taking their time, they are not out somewhere lounging in the sun, neglecting their duties here. On the contrary, as each of us knows all too well, Senators are often elsewhere because of the need to raise unthinkable sums of money—unthinkable sums of money essential for running for re-election.

Plato thanked the gods for having been born a man, and he thanked the gods for having been born a Greek. He also thanked the gods for having been born a statesman. Sophocles, Sophocles, said, “There’s nothing in the world so demoralizing as money.” Sophocles was not an American politician, but he knew what he was talking about.

I can say after 50 years in politics, there is nothing so demeaning, nothing so demeaning as having to go out with that in hand, passing a tin cup around and saying, “Give me, give me, give me, give me.” Not that old song, “Give me more and more of your kisses,” but instead “Give me more and more and more of your money.” Give me more and more of your money.

Sophocles said, “There’s nothing in the world so demoralizing as money.” And, eternal in this paradigm, the need for Members to constantly focus on raising the huge sums necessary to stay in office has taken a heavy toll. The incessant money chase is an insidious demand that takes away from the time we have to actually do our job here in Washington. It takes away from the time we have to study and to understand the issues, to meet with our constituents, to talk with other Senators, and to be with our families and to work out solutions to the problems that face us.

Mr. President, consider this: According to data provided by the Congressional Research Service, the combined cost of all House and Senate races in the 1994 election cycle was $724 million, an increase from 1976. Even more troubling, though, least from the perspective of our colleagues, is that the average cost of a winning senatorial campaign rose from barely $600,000 in 1976 to more than $4 million in 1994. Four million dollars, and that, of course, is just the average.

In 1994, nearly $35 million was spent by the two general election candidates in California, while the candidates in the Virginia Senate race spent $27 million.

What do those astounding numbers say to someone who may wish to stand for election to the Senate? What does the prospect of needing $35 million, or $27 million, or even $4 million say to the potential Senate candidate? What it says, Mr. President, is that unless you win the lottery, or unless you strike oil in your backyard, or unless you are plugged into the political money machines, unless you actively compete to be part of the “aristocracy of the money bag” you are a long shot, at best, to win election to the United States Senate. And that fate is meted out in politics, to the prospect of needing $35 million, or even $4 million, or $2 million, $4 million, or $10 million the first time I ran for the Senate, in 1988, I would not have given it a second thought. In fact, I would not even have gotten past the first thought. I would not have been able to even contemplate running for office—a poor boy like myself.

The ever-spiraling cost of public office is not a healthy trend. The Congress could become the exclusive domain of the very wealthy. The common man, without the funds to wage a high-powered, media-intensive campaign could be removed from effectively competing in the political arena, reserving it for the exclusive use of the very wealthy and the well-connected.

That is why we must stop this madness. We must put an end to the seemingly endless cycle of campaign costs. We must act to put the U.S. Senate within the reach of anyone with the desire, the spirit, the brains, and the spunk to want to serve once again.
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We must bring into check the obscene spending which currently occurs. The Bible says, “The love of money is the root of all evil.” In politics, the need for huge sums of money just to get elected is certainly at the root of most of what is wrong with the political system today.

Mr. President, I congratulate Mr. McCain and Mr. Feingold. I urge my colleagues, for the sake of this institution if for no other reason, to support cloture on this vital legislation.

Mr. Feingold addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. Feingold. Mr. President, I thank the Senator from West Virginia. I cannot think of a more eloquent testimony to the need for this reform than the statement that this great Senator, if he were starting out today, would not even have considered running for the U.S. Senate because of the insurmountable barrier of the money to be raised.

Our bill is a voluntary scheme that allows people who would try to follow in Senator Byrd’s tradition to raise a modest amount of money and have benefits that are agreeing to do that. I greatly appreciate that.

Mr. Byrd. Mr. President, I thank the Senator.

Mr. Feingold. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 82 minutes remaining, and Senator McConnell has 89 minutes.

Mr. Feingold. Mr. President, I now yield up to 15 minutes to the distinguished Senator from California, who has been a stalwart in support of campaign finance reform.

Mrs. Feinstein. Thank you, Mr. President.

I thank the Senator from Wisconsin and the Senator from Arizona. I want to compliment both Senator McCain and Senator Feingold for this effort.

I intend to vote for cloture, and should cloture on this bill be successful, I will either propose a substitute of the whole or two second-degree amendments to this bill.

I would like to take the time allotted to me this morning, Mr. President, to explain my position on campaign finance reform.

I believe very strongly that the time has come to engage the debate. If nothing else, I believe I am kind of a walking, talking case for campaign spending reform. In the 1990 race for Governor, I had to raise about $23 million.

In the first race for the Senate in 1992, $8 million; in the second race, $34 million.

One newspaper just estimated that in the big States a candidate really has to raise about $2,000 a day just to run for reelection to the Senate of the United States. It certainly should not have to be that way.

Essentially I agree with the basic tenets of the McCain-Feingold legislation. I agree that the time has come to try a system that would voluntarily cap campaign spending with a high of about $8.2 million in the big States like California, going down to $1.5 million in States with lesser population.

I believe that efforts should be made to limit the amounts of PAC funds that can be used in a campaign. I believe that an effort to promote honesty in advertising and reducing the influence of connected PAC’s in the outcome of elections is important.

As always in a election year, we hear a lot of talk about Congress enacting meaningful campaign spending reform. But when it comes to actually doing something about it we tend to hide behind one procedural maneuver or another that allows us to vote the right way but gets us nowhere toward achieving a piece of legislation.

In the last Congress a campaign finance bill passed both the Senate and the House but got bogged down because the necessary 60 votes to invoke cloture on a motion to proceed with a conference were not present in the Senate.

I understand that this will likely be the problem here today, I hope we do get the 60 votes for cloture, and I hope that in the ensuing debate a solid campaign finance bill will emerge.

Legislation I introduced last year and which, for the most part, forms the basis of McCain-Feingold, addresses what I believe are the areas most in need of reform: creating a level playing field between wealthy candidates who finance their own campaigns and candidates who rely on contributions; and finally ensuring honesty in campaign advertising.

One of the problems where I have a very real difference with the present bill is on the issue of a candidate using vast sums of his or her own money to finance a campaign. Either the substitute bill, or a second-degree amendment which I offer if we gain cloture on this bill, mirrors parts of the campaign finance bill introduced by Senator Dole in the last Congress. It also attempts to limit the ability of a wealthy candidate to buy a seat in Congress.

The provisions of the amendment I would propose are a little different than anything that has been introduced before now.

Under my substitute bill, after qualifying as a candidate for a primary, a candidate must declare if he or she intends to spend more than $250,000 of their own funds in the election. If the candidate says “I am going to spend more than $250,000 of my own money in this election” then the contribution limits on his or her opponent are raised from $1,000 to $2,000. If a candidate declares that he or she will spend more than $1 million on the race from their own pocket, then the contribution limit on his or her opponent is raised from $1,000 to $2,000. If a candidate declares that he or she will spend more than $1 million on the race from their own pocket, then the contribution limit on his or her opponent is raised from $250,000 to $500,000.

The amendment I will propose would essentially be this way.

They are going to spend more than $1 million of their own money would enable a more level playing field.

The amendment I will propose would also address the issue of PAC’s. As you know, McCain-Feingold would prohibit PAC contributions on nonconnected PAC’s. But not these PAC’s are connected PAC’s; that is, connected to a business or a labor union or a nonconnected PAC. By that, I mean organizations that are developed let us say to promote women for public office, or let us say to support a cause in candidates who support that cause for public office. The law permitting nonconnected PAC’s would remain unchanged in my amendment.

As a fallback, if the ban on connected PAC’s is found to be unconstitutional, it provides that contributions to the connected PAC’s be limited to 20 percent of a campaign’s receipts.

In my view, a blanket ban on all political action committees in a sense throws the baby out with the bath water. I think we need to be encouraging people to be involved in politics and not discouraging them. Virtually every legal scholar who has examined this question believes that a complete ban on all PAC’s is unconstitutional.

The Congressional Research Service has advised the Senate, and I quote: “A complete ban on contributions and expenditures by connected and nonconnected PAC’s appears to be unconstitutional in violation of the first amendment.”

I support the ability of a group or organization to encourage small donations from their members to candidates of their choice. In some cases, these members send their contributions made out directly to the candidate’s campaign to that organization to be gathered or bundled and presented collectively to the candidate. In other cases, the organization simply asks for donations to be made directly to the candidates they recommend. This is not the same as writing a check to an intermediary or to a political action committee and then having the political action committee decide how to disburse the funds.

The McCain-Feingold bill bans bundling of all political action committees. My amendment would not affect bundling, and I believe this is a crucial difference in these two bills.

For example, there are two organizations which have helped women run for political office. One is EMILY’s List, and one is WISH List. One is a Democratic organization and one is a Republican organization. Both of these groups collect smaller donations primarily from women. They bundle those funds from many sources to a single candidate.
In the 1994 election cycle, EMILY’s List members supported 55 women candidates. They raised a total of about $8.2 million. The average donation to EMILY’s List was less than $100. WISH List, a much smaller and newer organization than its Democratic counterpart, supported 40 Republican women candidates and raised approximately $400,000. None of these funds were given directly to either of these groups and neither group used the funds to lobby on legislation before Congress. EMILY’s List and WISH List researched the records of women candidates and advised their members which candidates they recommended supporting. Based on that information, the members decided who to support and how much they wished to donate, and they donated directly to the candidates, sent their check to either WISH List or EMILY’S List who then put the checks together and sent them to the candidates.

I believe that that has been helpful in electing women to both Houses of this Congress. Currently, there are nine women in the Senate. When I came to this body, there were only two elected women.

Groups like WISH List and EMILY’S List are an important factor in helping more women run for office. Frankly, I do not have a problem with any organization going out and endorsing candidates, writing to their members, and saying if you would like to contribute to these candidates, please go ahead and do so. I have no problem whether that group is the Christian Coalition, whether it is the National Rifle Association, whether it is EMILY’S List or WISH List. I think the encouragement of small contributions to candidates that support a cause that you believe in is important to the American political system.

My separation from what Senators McCaunac and Finko have done is that this bill wipes out all PAC’s, connected and unconnected. I would ban connected PAC’s but permit unconnected PAC’s to continue their bundling efforts.

The other difference I have would be in how you would voluntarily have the spending limits to create two different levels. If a wealthy candidate were to enter a race and say, I do not intend to adhere to the spending limits; I intend to spend $25,000 to $1 million of my own money, that your opponent’s limit goes to $2,000. If the wealthy candidate says, I am going to spend more than $1 million, then the limit of the opponent goes to $5,000.

I strongly support the $50 disclosure requirement. I strongly support the incentives that are built into this bill which would provide free radio time, special mailing to those who do comply with the voluntary spending limits.

I believe this is an important bill. I am proud to vote for cloture. I hope that the Senators of this body would see some merit in either the two amendments I will offer as second-degree amendments or the substitute of the whole to do the two items that I mentioned.

I thank the Chair. I yield the floor.

Mr. McCONNELL addressed the Chair. The PRESIDING OFFICER. Who seeks recognition? The Senator from Kentucky is recognized.

Mr. McCONNELL. Let me just say briefly in response to the speech of the Senator from California, which I listened to carefully, she also is a member of the Rules Committee and participated in the hearings. I do not remember whether she was there—she may have been—the day that Col. Billie Bobbitt, retired U.S. Air Force officer, testified before the committee in opposition to this bill. I want to take a minute to quote some of her observations. She is a member of EMILY’s List, which would effectively be put out of business by this legislation, as the Senator from California has, I believe, acknowledged. That might have been one of the amendments she would offer were she in a parliamentary position where that was permissible. But, in any event, Colonel Bobbitt, retired Air Force officer, said, "I'm one of the to organizing," EMILY’s List, "35,000 active members from all 50 States, and along with voting, I haven't missed an election," she said, "in 51 years. EMILY’s List is the primary means through which I participate," and Colonel Bobbitt, "in the electoral process."

She goes on in her testimony, "In the decade since EMILY’s List began, more women than ever have been elected to Congress, and EMILY’S List is a big reason why. EMILY’s List has allowed women to compete and win."

She went on to say, with regard to the bundling, in effect, that EMILY’S List does—she describes it. She says, "This is what's called bundling, which Colonel Bobbitt knows, and some others have criticized, but to me it's just good old American democracy at work." So said Colonel Bobbitt.

She goes on to say, "That's not bad for the system. That's good for the system. Thousands of small contributions are able to offset the big money coming from the rich and powerful. We are making the system more participatory and more competitive," said Colonel Bobbitt.

Then he concluded by saying, "My membership in EMILY’s List is a way for me to be connected to the political life of the Nation and to my fellow citizens. It allows me to band together with others who share my views and work toward a common end. I do not pretend to be a constitutional scholar," she says, "but like most Americans, I carry within me an almost innate knowledge of the first amendment rights of citizenship—freedom to practice religion, freedom to speak my mind, freedom to assemble with fellow citizens in support of a common goal. I believe without a doubt that any membership in EMILY’s List is secured by such rights, and I believe that organizations like EMILY’s List, which encourage political participation by average citizens, are in the best tradition of American democracy."

I just wanted to quote what Colonel Bobbitt from an active member of EMILY’s List, had to say about the underlying legislation, which she obviously believes would greatly restrict her rights to participate in the political process.

Mr. President, I wanted to take a moment here to make some observations about the injunctive authority that I view in this bill as provided to the Federal Election Commission. As I read the underlying bill which we are debating, section 306, "An Injunction," basically, what this section does is give to the Government, the Government of the United States, the right to step in and, prior to the issuance of speech, restrain it. It gives the Government, the Government, to engage in prior restraint of political speech by stepping in and getting a temporary injunction. This is but one of a number of clearly unconstitutional measures granted to the Government by this bill.

In addition, obviously, if this bill were somehow to pass constitutional muster, which is extremely unlikely, the Federal Election Commission, which today has great difficulty in auditing the races of the candidates running for the one race in America at the Federal level where we have, arguably, spending limits—it takes 5, 6 years to audit those few races that they have to audit—it is just, I think, reasonable to ask the question: How big would the Federal Election Commission be if it had to regulate the speech of 535 additional races as well as engage in the injunctive relief powers apparently given to it by the bill, the authority to engage in prior restraint of political speech by stepping in and getting temporary injunctions. This is but one of a number of clearly unconstitutional measures granted to the Government by this bill.

I just wanted to quote what Colonel Bobbitt had to say about the underlying legislation, which she obviously believes would greatly restrict her rights to participate in the political process.

Let me just go down some of the letters that I have received on this bill,
from the Christian Coalition, a letter dated yesterday, June 24, 1996, in response to an effort to modify this bill, which was agreed to, and we do have a modified version in the Chamber today. The Christian Coalition says it strongly urges a no vote on cloture.

Contrary to the letter sent out by Senators McCain, Feingold, and Thompson on June 19, the amended version of S. 1219 still contains the flawed provisions that seriously threaten voter education from government regulation. The voter guide problem has not been corrected.

According to the Christian Coalition. The letter goes on:

The amended S. 1219 continues to place the First Amendment right to educate the public on issues in serious jeopardy. It defines “express advocacy” so that for the first time ever the Federal Elections Commission would regulate issue advocacy by citizen groups.

The Supreme Court has repeatedly protected voter education from Government regulation. Currently, “express advocacy” is defined as advocacy of the election or defeat of a clearly identified candidate. This interpretation ensures that the free speech rights of citizen organizations would be protected. The amendment would allow the FEC, possible illegality. S. 1219 could effectively cripple the Christian Coalition’s voter education activities, including the distribution of voter guides.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD. There being no objection, the letter was ordered to be printed in the RECORD, as follows:


Dear Senator: Tomorrow the Senate will vote on whether to invoke cloture on S. 1219, the McCain-Feingold campaign finance bill. Christian Coalition strongly urges you to vote no on this legislation, contrary to the letter sent out by Senators McCain, Feingold, and Thompson on June 19. The amended version of S. 1219 still contains the flawed provisions that seriously threaten voter guides. The voter guide problem has NOT been corrected.

The amended S. 1219 continues to place the First Amendment right to educate the public on issues in serious jeopardy. It defines “express advocacy” so that for the first time ever the Federal Elections Commission (FEC) would regulate issue advocacy by citizen groups.

The Supreme Court has repeatedly protected voter education from Government regulation unless it “expressly advocates” the election or defeat of a clearly identified candidate. This interpretation ensures that the First Amendment right of like-minded citizens to discuss issues is not infringed by federal campaign law. But under S. 1219, this free speech would be subjected to great uncertainty, and as it is likely to be interpreted by the FEC, possible illegality. S. 1219 could lead to the unlawfully depriving the Christian Coalition’s voter education activities, including the distribution of voter guides.

Although the sponsors of this legislation have asked to exempt the distribution of elected officials’ voting records (vote ratings and congressional scorecards), the new provision still threatens the distribution of candidates’ positions on the issues (voter guides).

This new definition of express advocacy is not just a thin line’s worth of provisions. Under subsection (a) of Section 241, the expenditures made by a Christian Coalition chapter leader for voter education could be considered ‘express advocacy’ even if that same chapter leader happened to merely retain the same lawyer or accountant as a candidate, even though the chapter leader did not cooperate or consult with the candidate at all.

Section 211 is so broadly written that it could prevent a Christian Coalition chapter leader from holding a local party position even though the two activities are separate and not interrelated. Section 306 would give the FEC the authority to seek injunctions if it believes “there is a substantial likelihood that a violation . . . is about to occur.” Such a prior restraint of free speech is unconstitutional. It is only justified in weighty cases such as national security concerns, but should never be permitted to prevent core political free speech. The free speech rights of citizen organizations should not be infringed by the FEC at the eleventh hour of an election.

The Christian Coalition does not have a political action committee. However, a free speech right would be infringed if other groups would be able to pool resources to form political action committees under reasonable restrictions. We therefore object to section 201. On behalf of the members and supporters of the Christian Coalition, we strongly urge you to vote on the side of the First Amendment and free speech. Please vote NO on cloture. Thank you for your attention to our concerns.

Sincerely, BRIAN LOPINA, Director, Governmental Affairs Office.

Mr. McCONNELL. In addition to that, the National Right to Life Committee, in a letter dated June 22, says that it has analyzed the new substitute and finds that, to an even greater degree than the original bill, it rides roughshod over the First Amendment. The National Right to Life Committee also opposes this bill.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the RECORD. There being no objection, the letter was ordered to be printed in the RECORD, as follows:


Re: In opposition to McCain-Feingold sub.

senate bill S. 1219.

Dear Senator Mitch McCONNELL, U.S. Senate, Washington, D.C.

On June 18, we sent you a letter expressing the strong opposition of the National Right to Life Committee (NRLC) to the McCain-Feingold “campaign reform” bill (S. 1219). We noted that the substitute contains a new substitute amendment, on which the Senate will conduct a cloture vote on Tuesday, June 25, at 2:15 p.m.

NRLC has analyzed the new substitute and finds that, to an even greater degree than the original bill, it rides roughshod over the First Amendment. For example, if it is located with a senator with the merits of a certain abortion-related bill, which the senator
later voted for, and if NRLC later ran advertisements in that senator's state discussing that bill, this could be regarded as a "contribution" to the incumbent (even if the senator is not mentioned in the ad), and therefore subject to all of the other restrictions and penalty clauses in the bill. The costs of non-partisan voter guides that contain information or questionnaires or other communications with an incumbent or a challenger could also be regarded as "contributions" under this provision.

The substitute [Sec. 306] explicitly authorizes the Federal Elections Commission, if it believes "there is a substantial likelihood that a law is about to occur," to obtain a temporary restraining order or temporary injunction to prevent publication, distribution, or broadcast of material that the FEC believes to be outside the bounds of the types of political speech that would be permitted under the law. This authorization for prior restraint of speech violates the First Amendment.

The overall effect of the bill would be to greatly enhance the already formidable power of media elites to constrain the options of individuals to "set the agenda" for public political discourse—at the expense of the ability of ordinary citizens to make their voices heard in the political process.

Therefore, the National Right to Life Committee urges you to vote No on cloture on S. 1219. Because S. 1219's restrictions on independent expenditures and voter education activities would "gag" the pro-life movement from effectively raising right-to-life issues in the political realm, NRLC will score this vote as a key pro-life vote for the 104th Congress.

Thank you for your consideration of NRLC's concerns regarding this legislation.

Sincerely,

DAVID N. O'STEEN, Ph.D.,
Executive Director.

DOUGLAS J. JOHNSON,
Legislative Director.

CAROL LONG,
Director, NRL-PAC.

Mr. MCCONNELL. Interestingly enough, a group with which I have not frequently been allied, and not many Members of this side of the aisle have been allied, the National Education Association, sent a letter to me dated yesterday, June 24, in which the NEA stated it opposed this bill and called upon all Senators to vote against cloture. The NEA concluded, in reference to the ban on political action committees, that "The average contribution of NEA members who contribute to NEA-PAC is under $6." So, their question is, How in the world is that bad for the political process? So they, too, oppose this legislation and urge a vote against cloture.

I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the Record. There being no objection, the letter was ordered to be printed in the Record, as follows:

NATIONAL EDUCATION ASSOCIATION, Washington, D.C., June 24, 1996.

Mr. MCCONNELL: The National Rifle Association, in a letter dated yesterday, said:

"We have examined the draft text of that possible substitute [the bill that is actually before us today], and our conclusion is not only unabated—it is, if anything, stronger than before. So the National Rifle Association also urges a vote against cloture because they believe it adversely affects their ability to participate in the political process."

"I will not read further from that letter, but I ask unanimous consent the entire letter be printed in the Record."

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

NATIONAL RIFLE ASSOCIATION OF AMERICA, Fairfax, VA, June 24, 1996.

Hon. MITCH MCCONNELL, Chairman, Senate Republican Conference, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR MCCONNELL: We understand that an amendment in the nature of a substitute may be offered during this week's debate on S. 1219, the Senate campaign finance bill. As you know, we have repeatedly expressed our opposition to S. 1219, as we believe it unjustifiably and unconstitutionally restricts the First Amendment right of organizations to communicate with their members and the general public in the political process.

We have examined the draft text of that possible substitute amendment and our opposition to S. 1219 is not only unabated—it is, if anything, stronger than before. The ban on independent expenditures and voter education activities would make it more difficult for the pro-life movement to broadly educate the public about the issue of abortion, and would have a devastating effect on the ability of ordinary citizens such as our members to act jointly in support of candidates.

Additionally, the new proposed reporting requirements for independent expenditures, and the provisions intended to dilute the effects of such expenditures, would have a chilling impact on the effectiveness of such communications. Coupled with the continuing efforts to broadly redefine "express advocacy," the bill would radically alter the nature of political discourse in this country.

We urge you to oppose cloture on S. 1219, and should the Senate vote on the measure, to oppose it and its substitute.

Sincerely,

MARY ELIZABETH TEASLEY,
Director of Government Relations.

TANYA K. METAKSA,
Executive Director.


Hon. MITCH MCCONNELL, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR MCCONNELL: On behalf of the one million members and supporters of the American Conservative Union, I urge you to oppose S. 1219, the McCain-Feingold campaign finance reform act.

As a party to the seminal Buckley v. Valeo decision, ACU has had a longstanding interest in our nation's campaign finance system. Over the years, we have worked with many Members of Congress on both sides of the aisle to try to restructure the manner consistent with constitutional guarantees of free speech—even as we have opposed efforts to change the system in a manner which abridges those freedoms. McCain-Feingold does just that. Its fundamental reliance on spending limits—whether "voluntary" or otherwise—is merely a replay of some of the many wrong-headed provisions. The problem with our current system is not that too much money is raised and spent; as countless studies have shown, we spend as a nation far more to advertise products such as soft drinks and potato chips in a given year than we do on all campaign spending combined. Do you really want to vote for spending limits and in effect tell your constituents that as far as you're concerned, their decision over which soft drink
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Mr. McCONNELL. So there are a number of groups who, in the past, have largely not been heard from during these debates who have decided to take a position, to get interested, and to express their views. This is of course something we greatly welcome because politics will only be made better. I believe that whatever this bill does, it will not only affect candidates for office, it affects everybody's ability to participate in the political system. These groups do not like our effort to push them out of the process. They believe involvement in politics is a harmful thing. They think it is protected by the first amendment, and I think they are right. Also, just in closing, I see the Senator from Utah is ready to take a few minutes or more, if he would like. One of my biggest adversaries on this issue, over the last decade, has been my hometown newspaper, the Louisville Courier-Journal, which is the largest newspaper in our State. I was amazed to pick up the Courier-Journal today and read an editorial in which they even think this is a bad bill. They even think this is a bad idea. This is the most liberal newspaper in Kentucky. I was astonished. Obviously, it made my day.

I would like to read a couple of comments. They are predicting the cloture will not be invoked. They say, "This outcome would be more regrettable if the bill were better." They go on to say:

[Most] . . . of the rest of the package would be a step back from real reform, while making the election finance regulatory effort more complex and of less service to the public.

Further, they say:

The abolition of those endlessly maligned PACs would make special interest money harder to trace while denying small givers a chance to participate. A limit on out-of-state contributions sounds good, but it could cut two ways. Indeed, it would probably be more damaging to candidates who challenge the local powers-that-be than to one who thrives on special interest support. Anyway, both provisions are surely unconstitutional.

For a scheme to lift the contribution limits by offering them free TV time contributed by the networks, it's simply wrong to foist the cost of cleaner government on a handful of businesses—and viewers. If there's a cost to election reform, it should be borne by all taxpayers.

We, indeed, that Congress is incapable of devising workable change. And that may matter less and less. The good news is that Kentucky and other states are experimenting with new approaches to paying for campaigns. To the extent that states are also developing solutions to welfare and other national problems—a positive trend in our view—a national political establishment wallowing in dollars showered on it by Philip Morris, RJ R. Nabisco and others becomes increasingly irrelevant.

Rudy W. Pearson, Executive Director.

CONGRESSIONAL VICTORY FUND, Washington, D.C.

Dear Congressman:

I want to bring to your attention a bill that would bring irreparable damage to the political process. Congresswoman Linda Smith has introduced HR 2566 which bans contributions from political action committees. Public subsidies amount to partial taxpayer financing of politicians—something overwhelmingly opposed by the American people. Nor should PACs be abolished; to do so would be an unconstitutional infringement on the rights of free association and free speech. McSween vs. Ferguson is a bad bill. Kill it and start over.

Yours sincerely,

David A. Keene, Chairman.

CONSERVATIVE VICTORY FUND,

Washington, D.C.

DEAR CONGRESSMAN: I want to bring to your attention a bill that would bring irreparable damage to the political process. Congresswoman Linda Smith has introduced HR 2566 which bans contributions from political action committees. Public subsidies amount to partial taxpayer financing of politicians—something overwhelmingly opposed by the American people. Nor should PACs be abolished; to do so would be an unconstitutional infringement on the rights of free association and free speech. McSween vs. Ferguson is a bad bill. Kill it and start over.

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Yours sincerely,

David A. Keene, Chairman.
We urge you to oppose S. 1219's attack on the right of free political speech. If there is anything we can do to be of assistance to you, please do not hesitate to call.

Sincerely,

TANYA K. METAKSA, Executive Director.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA.

MEMBERS OF THE U.S. SENATE: The Senate will soon be asked to consider S. 1219, the "Senate Campaign Finance Reform Act of 1996." As United States Chamber of Commerce, a long-standing protected freedoms. These attempts to further limit the ability of individuals or collective political participation should be defeated as an infringement on the right of free political speech. If there is anything we can do to be of assistance to you, please do not hesitate to call.

Sincerely,

TANYA K. METAKSA, Executive Director.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.

Washington, D.C., June 24, 1996.

DEAR SENATOR: You are being pressured by the right of free political speech. If there is anything we can do to be of assistance to you, please do not hesitate to call.

Sincerely,

DOUGLAS J. JOHNSON, Legislative Director.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.

Washington, D.C., June 18, 1996.

DEAR SENATOR: We understand that the Senate is likely to vote on or about June 25 on whether to invoke cloture on the McCain-Feingold bill (S. 1219), which would make sweeping changes in federal election laws.

The National Right to Life Committee (NRLC) is strongly opposed to any legislation that would restrict or further restrict districts which individuals voluntarily participate in the election of candidates and collectively as associations and political committees—whether by banning PACs or in any other fashion. Such proposals would infringe on the First Amendment rights of individual citizens, sharing a common viewpoint on an important public policy issue, to pool their modest financial resources in order to participate effectively in the democratic process. As you review various "campaign reform" proposals during the weeks ahead, please keep in mind the words of the Supreme Court in its 1976 Buckley v. Valeo decision: "The First Amendment rights of individual citizens, sharing a common viewpoint on an important public policy issue, to pool their modest financial resources in order to participate effectively in the democratic process. The average donation to N.R.C. is $31.

The bill would also place severe new limitations even on issue-oriented voter education materials that do not urge the election or defeat of any candidate. This, too, violates the First Amendment. The overall effect of S. 1219 would be to greatly enhance the already formidable power of media elites and of very wealthy individuals to "set the agenda" for public political discourse—by restricting the quantity and range of debate on public issues in a political campaign. The Wirthlin Group conducted a nationwide poll on May 26-30, which included this question: "Do you believe that it should be legal for individuals and groups to form political action committees to express their opinions about elements and candidates?" Yes, should be legal: 83%.

No, should not be legal: 13%.

Thank you for your consideration of NRLC's concerns regarding this legislation.

Sincerely,

DOUGLAS J. JOHNSON, Legislative Director.

CAROL LONG, Director, N.R.C.
We urge you to oppose S. 1219. Attorneys that span the ideological spectrum agree that S. 1219 would destroy free speech and grievously injure both the right to association and the right to petition government.

It is a myth that the American public is clamoring for campaign finance reform. In a recent poll conducted by the Tarrance Group, only one out of every 1,000 unvolunteered campaign finance reform as the biggest problem facing the country. When the poll respondents were given a list of 10 problems and were asked which one bothered them the most, campaign finance reform came in last, with only 1% selecting that topic.

Under S. 1219, an individual would be able to make independent expenditures, but because of the ban on political action committees, a group of individuals would be forbidden to organize, pool their resources, and coordinate their activities. This would leave the political process open to very wealthy individuals and the media, but would prohibit the vast majority of citizens from effectively making their voices heard.

S. 1219 defines “express advocacy” so broadly as to sweep in “issue advocacy.” Thus, in order to avoid S. 1219, groups would, in effect, be prohibited from publishing voter guides or giving candidates’ voting records. Several federal courts have already struck down attempts by the Federal Election Commission to do the same thing.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but for ordinary citizens. We urge you to take any steps necessary, including opposing cloture, to prevent S. 1219 or any similar measure that infringes upon the right to association, which is a core political speech. There simply is no government interest of sufficient weight to outweigh the First Amendment rights of citizens from being approved by the Senate.

We also appoint the opposition of any unelected commission that has the authority to issue a final report on campaign finance reform that would not be subject to the regular amendment process on the Senate floor.

Respectfully,

WANDA FRANZ, Ph.D.,
President
DAVID N. O’STEEN, Ph.D.,
Executive Director
CAROL LONG,
PAC Director

Mr. MCCONNELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 75 minutes.

Mr. MCCONNELL. Mr. President, I yield to the Senator from Utah, 10 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, speak at some length, I urge, because I am in a philosophical fashion, going back to the Founding Fathers and the Federalist Papers, hoping to turn the debate into that kind of an analysis of our basic freedoms and our political approach. Today I want to get very down and dirty, as they say; very practical. It has been my observation throughout this entire controversy, and it goes back to the last Congress as well as this one, that the efforts at campaign finance reform really constitute an in-depth attempt to protect our democracy. The Senator from Arizona, my friend, Senator MCCAIN, said that if the challengers were voting here they would all vote for this bill because he showed the chart that showed most of the PAC money went to incumbents.

I have been a challenger. The memory is still fresh in my mind, even though I am now an incumbent. And I can assure all who do not know anything about the political process, that the incumbent is in a race with incredible advantages. Let me give an example. I did not run against an incumbent Senator, but I ran against an incumbent Congressman. These are the advantages he brought to the race.

He had a staff, paid for by the taxpayers, that was available to research every issue, provide him with a paper on every issue, and in the course of press releases give him the press support that he required.

We urge you to oppose S. 1219. Attorneys that span the ideological spectrum agree that S. 1219 would destroy free speech and grievously injure both the right to association and the right to petition government.

It is a myth that the American public is clamoring for campaign finance reform. In a recent poll conducted by the Tarrance Group, only one out of every 1,000 unvolunteered campaign finance reform as the biggest problem facing the country. When the poll respondents were given a list of 10 problems and were asked which one bothered them the most, campaign finance reform came in last, with only 1% selecting that topic.

Under S. 1219, an individual would be able to make independent expenditures, but because of the ban on political action committees, a group of individuals would be forbidden to organize, pool their resources, and coordinate their activities. This would leave the political process open to very wealthy individuals and the media, but would prohibit the vast majority of citizens from effectively making their voices heard.

S. 1219 defines “express advocacy” so broadly as to sweep in “issue advocacy.” Thus, in order to avoid S. 1219, groups would, in effect, be prohibited from publishing voter guides or giving candidates’ voting records. Several federal courts have already struck down attempts by the Federal Election Commission to do the same thing.

Free speech is essential to democracy. It is important not only for the press and wealthy individuals, but for ordinary citizens. We urge you to take any steps necessary, including opposing cloture, to prevent S. 1219 or any similar measure that infringes upon the right to association, which is a core political speech. There simply is no government interest of sufficient weight to outweigh the First Amendment rights of citizens from being approved by the Senate.

We also appoint the opposition of any unelected commission that has the authority to issue a final report on campaign finance reform that would not be subject to the regular amendment process on the Senate floor.

Respectfully,

WANDA FRANZ, Ph.D.,
President
DAVID N. O’STEEN, Ph.D.,
Executive Director
CAROL LONG,
PAC Director
and who handled all press inquiries relating to it was paid by the taxpayer because he was on the Congressmen’s staff. I had to have people there to protect my interests. They were all paid for out of campaign funds because I had no congressional staff. I am not saying that he broke the law. I am not saying that he did anything improper. I am just outlining this is the way it is.

He had name recognition going back to 80 in the House of Representatives. I thought I had some name recognition because my father had served in the Senate. I figured everyone would remember the name “BENNETT” favorably in connection with the Senate. Boy, did I find out differently. In the first poll that was taken, I was at 3 percent, with a 4-percent margin of error. I could have been minus 1. How do I counteract that 8 years of name recognition that he has built up? I had to raise the money. How did I pay for the people who were there to counteract the people that he had on his congressionally supported staff? I had to raise the money.

Is it a fair fight when you say the incumbent is at level x and the challenger must also be at level x, when the incumbent has all of these advantages that are worth money that the challenger has to raise money in order to produce? When you say, let us get a fair fight and let us do it by saying that the challenger is unable to raise money to take care of the things that the incumbent does not have to raise money for, you are automatically creating a circumstance in favor of the incumbent.

Some political observers have said to me, “Why are you opposed to this now that you are an incumbent? We can understand that you were opposed to campaign reform while you were a challenger because as a challenger you were at a disadvantage in the face of campaign reform. But now that you are an incumbent, and particularly now that you have a majority, why isn’t your party in favor of an incumbent protection act that will put all of these disadvantages on the backs of the challenger?”

Well, I go back to my statement yesterday. I have philosophical challenges with these attempts to do that which I consider would produce damage to our basic philosophical underpinnings in this country. I did not quote the Federalist Papers just to prove that I had read through that process to demonstrate that I have a philosophical objection to what it is we are trying to do here, even though, should this bill pass, I would be benefited as an incumbent. I am convinced, if this bill were passed, that I would be benefited as an incumbent, that I would be in a circumstance where it would be impossible for anybody to challenge me. But I am willing to run the risk of having them challenge me because that is the American pattern and that is what is in the Constitution that all of us have sworn to uphold and defend here in this body.

So, Mr. President, I am not going to vote for cloture. I am not going to vote to support a bill that is an incumbent protection act. I am going to say we will all stand exposed to the challenge of challengers who have the energy and the message necessary to raise the money to overcome the imprecision and the hindrance that is the campaign system that the current incumbents have to raise behind limits that say that we can use the advantages of our offices and our challengers cannot. I believe it is as simple as that. I believe that honest fairness says that the public should oppose this bill, and, therefore, I oppose cloture on the bill. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. FEINGOLD. How much time do the proponents have remaining?

The PRESIDING OFFICER. The proponents have 67 minutes 15 seconds.

Mr. FEINGOLD. I yield 10 minutes to the distinguished Senator from Florida, who has been one of the original supporters of this legislation and has helped us all through the difficult process of trying to get it up for a vote. I thank him very much.

Mr. WELLSTONE. Will the Senator yield me 5 seconds?

Mr. GRAHAM. I yield the Senator 5 seconds.

Mr. WELLSTONE. I thank the Senator.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Mr. Higavi, who is intervening with me, be allowed to be on the floor throughout the duration of this bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I first will extend my commendation to Senators FEINGOLD and McCAIN and the others who have worked so hard to craft what is truly a bipartisan proposal to deal with one of the serious cancers of our American democratic system, and that is the way in which we manage and finance campaigns for the Congress. This bill is another example that, if we are going to do the public’s will, it must be done in a bipartisan spirit.

Mr. President, we have spent a lot of this year and last year talking about the creative energy of the States, the desire to return greater responsibility to the States for many of our most basic functions. We have acknowledged that the States, given that responsibility, given their flexibility to respond to the specific circumstances that they face, would unleash a new wave of innovation to bring us creative solutions to some of our most vexatious problems.

Mr. President, I say that we can take some encouragement as to the legitimacy of that position by looking at what States have done in the area of campaign finance reform. States were far ahead of us in developing the campaign finance mechanisms in order to restore public confidence.

The experience of my State of Florida, I believe, is instructive in this regard. In 1991, the State legislature overhauled Florida’s campaign finance system. It instituted overall caps on statewide races. It provided incentives to abide by the cap.

What has happened in the relatively brief period that Florida has had these campaign finance reforms? In 1990, there was an incumbent Governor running for reelection. That incumbent Governor spent $10,670,000. Four years later, there was a different incumbent Governor running for reelection. In that campaign he spent $7,480,000. I note that the incumbent in 1990, who spent almost a third more, lost. The incumbent in 1994, under the new standard, was reelected. Governor running for reelection. In that campaign spending direct to Florida’s enactment of campaign finance reforms.

Mr. President, the States can control the terms and conditions of elections for State officials. It is our responsibility to do likewise for the Congress. I applaud the effort that is before us today. It is a genuine, thoughtful response to a serious national problem. I do not pretend that it is perfect. We have already heard from several persons who, like myself, will vote to invoke cloture and support this bill, but who also are prepared to support modifications that we think would perfect it.

For instance, I do not believe that political action committees are a poisonemos political evil that should be banned. But, Mr. President, if accepting some restraints on political action committees is necessary to achieve the bipartisan consensus for the passage of this sorely needed legislation, I am prepared to vote to do so.

Mr. President, there are many infirmities in our current system which have already been identified. Remedies have been prescribed. I wish to focus on one of those infirmities. That is, that the enormous amount of money in political campaigns has fundamentally changed the nature and purpose of congressional campaigns.

What should be the purpose of a political campaign? In my opinion, it should include at least two dual relationships. First, there should be a duality of relationship in terms of education. Yes, the candidate is trying to educate the public as to who he or she is, what he or she stands for, what would be the objective of service in public office, what they would try to accomplish. But there is an equally important side of the education duality, and that is that the citizens are influenced by the message necessary to raise the money to overcome the imprecision and the hindrance that is the campaign system that the current incumbents have to raise for State officials. It is our responsibility to support a bill that is an incumbent protection act.

The campaign should better prepare the candidate to serve in public office by...
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the experiences, the exposure, that the campaign will provide.

There is a second duality, and that is the development of a democratic contract. The citizens should have some reasonable expectation that if they vote for a particular candidate, the policies that candidate has advocated will, in fact, form the basis of the candidate’s efforts once in office, and the public official should have the right to expect that in office he would have the support of the public, the mandate of the public to achieve those policies upon which his or her campaign was predicated. These dualities, a duality of education and a duality of the forming of a democratic contract, these are essential elements of our system of representative democracy.

However, Mr. President, the excess of money in campaigns has changed the nature and the purpose of the campaign. It has, in fact, allowed candidates to hide from the voters rather than to campaign, to spend over 90 percent of their days in traveling and more effectively communicate with the public. Candidates now move from the television studio to record 30-second sound bites, often of a highly negative character, to the telephone to solicit contributions and lobby for those 30-second sound bites. There is little time left to interact on a personal level with the voter.

By providing for spending limits, this bill would direct voters from the television studio back to the street to look for ways other than money to appeal to voters, by interacting with them, discussing issues, debating the candidates, so that voters can make an accurate assessment of who they wish to represent.

I personally, Mr. President, would like to see a requirement that one who participates in the public assistance to a campaign, whether Presidential candidates participating for direct-cash infusion or congressional candidates who serve under this legislation, would benefit by preference in perks like postal and broadcast rates, that they would commit themselves to participate in a stipulated number of public appearances with their opponents. I believe that is the truest way in which the public can form an opinion as to the qualities and capabilities of the persons who seek to represent others.

Mr. President, providing for a voluntary system of spending limits, while simultaneously requiring candidates to raise at least 60 percent of campaign funds from their home State, positive steps toward bringing candidates and voters together. Passage of this bill would be a positive step toward realizing the goals of a political process, allowing the voter to truly understand, truly assess the candidate’s view, and thus to make an informed judgment, while simultaneously helping to prevent politicians from becoming insulated and mitigate voters’ disaffection.

Mr. President, by passing this bill today, we can restore a meaningful dialogue between the voter and the candidate. By doing so, we can all share in giving this country a great victory, and restoring the public’s faith in the political process. I urge this bill’s passage.

The PRESIDING OFFICER, who seeks recognition?

Mr. FEINGOLD. Mr. President, I yield up to 5 minutes to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I intend to vote for cloture today. I do not do so believing this is a perfect bill. There are some provisions in this measure I do not support. I do not support the complete abolition of PAC’s, for example. But I believe we ought to be debating campaign finance reform. Therefore, I will vote for cloture to get a campaign finance reform bill on the floor of the Senate so we can offer amendments and see if we can perfect the bill in a way that will represent the public interest.

In my judgment, the financing of political campaigns is spinning out of control—more and more dollars in each campaign, more and more wealthy candidates financing their own campaigns. Campaigns have not so much become a competition of ideas; this is what campaigns ought to be—but a 30-second ad war. Not so much by candidates, but by the creators of the 30-second little “bomb bursts” that are put on television to try and destroy the other’s reputation. These hired guns hardly serve the public interest, yet campaigns really have become a competition of 30-second ads.

When I last ran for the U.S. Senate, I was much better known than my opponent, so I made a novel proposal, which he did not accept, unfortunately. I wish he would have. I said: I am better known than you, but if we can agree to certain things, I think in many respects it will even things up. I will put no money into advertising at all. Neither of us will do any radio or television ads, no 30-second ads, no ads of any kind. You and I will put our money together, and we will buy an hour of prime time television each week for the 8 weeks prior to the election, and each week we will show up without handlers, without research notes, at a television studio with no monitor, and for an hour in prime time, statewide on North Dakota television, we will discuss the future. We will discuss whatever you want to discuss, whatever I want to discuss, such as why we are seeking a seat in the U.S. Senate, what kind of future we see for this country, what kind of policies we think will make this a better country.

I thought, frankly, 8 hours of prime time television, statewide, with both of us addressing each other and addressing why we were running for the U.S. Senate, might have been the most important thing in the country. My opponent chose not to accept that. Instead, we saw a barrage of 30-second ads. I do not think it provided any illu-

mination for the North Dakota voters in that campaign. I think it would have been a better campaign had we had 8 hours prime time, statewide television, without handlers, to talk about what we thought was important for the future of this country. We did not have this kind of campaign.

So, the question for the Senate now is, what kind of campaign finance reform would be useful in this country? There are wide disagreements about how this ought to be addressed. For instance, I saved this article, the headline of which quotes my friend Speaker Gingrich as saying, “Gingrich calls for even more, not less, campaign cash.” Speaker Gingrich gave a speech downtown, and he fundamentally disagrees with me that there is too much money in politics. He says there is not enough money in politics; there ought to be more money in politics.

I think that if we can find a way—and this bill provides one mechanism—and thus to make an informed judgment, while simultaneously requiring full disclosure on all contributions, at that point you will start ratcheting down the cost of political campaigns in this country, and I think you will do this country a public service.

I was at Monticello, the home of Thomas Jefferson, I was reminded again of the words of this great American in the early days of this country. It seems to me Tom Jefferson would view what is going on in political campaigns in America today as a perversion of democracy. Today’s campaigns are not, as I said earlier, a competition of ideas about how to make this a better country. They are much more a 30-second ad war that does not serve the public interest.

I intend to vote for cloture. I hope we will obtain cloture and have this important piece of legislation on the floor, open for amendments. I yield the floor.

Mr. FEINGOLD. Mr. President, I yield up to 15 minutes to Senator THOMPSON of Tennessee, who has been one of the main authors of this bill and has been key to making this a bipartisan reform effort. I thank him for his good work on this bill. The PRESIDING OFFICER, the Senator from Tennessee is recognized.

Mr. THOMPSON. I thank the Senator. I thank the majority leader for giving me this time. I am honored to be here at this time. I thank my distinguished colleagues, Senator McCain and Senator FEINGOLD, for their leadership on this bill. I am proud to be one of the original cosponsors of this particular legislation.

Mr. President, after having listened to over a day of debate on this issue, I think the question now could be simply put. Are we satisfied with our current system of financing Federal campaigns in this country? Do we think it is a system that serves the election? If we are not satisfied, are we willing to at least take the first step—perhaps not a perfect step—toward doing something about it?
I approach this from the standpoint of one who was recently a challenger and who is now an incumbent running for reelection in 2 years, having gotten the unexpired term of the Vice President for a 2-year term. I am now running for an incumbent for a full term. So I have seen it from both sides.

I also approach it from the standpoint of one who made a commitment to the people of Tennessee that I will try to change the system that we have now and get voting in Washington and that I was dissatisfied with the process by which our legislation is enacted. But I think it is fundamentally the business of the U.S. Congress to address how we elect our public officials, how long they stay, and what their motivations are when they get here. So I am delighted to be a part of this effort.

The system now—let us take a look at the system that we have now. I believe I can be objective in describing it. Elections certainly cost more and more and more. We see Senate campaigns now that cost $10, $20, and $30 million. The combined expenditures in one Senate campaign were over $40 million. We have a system where more and more and more is taken by Members of Congress, and we have to ask ourselves, “Is this a system that we want to have?”

Mr. President, that is not why I came to the U.S. Senate. We have a system now where more and more of the perception of the public is that contributions are tied to legislation. Perhaps that was not a problem when the amounts were smaller. But now we see larger and larger contributions, usually soft money contributions, with regard to larger and larger issues, millions of dollars being spent, billions of dollars being decided by massive pieces of legislation in the U.S. Congress.

We have a system where it is no longer ideological. The money does not flow where the people are. Our society is fractured. New ideas will be restricted somewhat. There is no restriction of freedom to the people with the tough choices that we are facing. The campaign has to be about mom and pop sitting around the kitchen table deciding how to distribute their $100 or $250 to a Presidential campaign or a senatorial campaign. They can still do that any way they want to do it.

With regard to the PAC issue, which I will discuss in a moment, it simply means that if this legislation were passed instead of soft money in political action committees, they would have to make a decision themselves as to which candidate they wanted to send it to. There is no restriction of freedom here on anyone except those in Washington who receive all those minicontributions from various people and make the political decision as to how to use that money. Their freedom will be restricted somewhat. There is no limit whatsoever in this legislation on anybody’s ability to participate in the process. People need to understand that.

The current limitation we have is $1,000 on individual contributions. That is a limitation. That is the same limitation that we have here; no new limitation.

Many people say that certainly we would reform everybody knows we need reform. “It is a broken system but not this reform. I would support it, if this particular feature was in, or out,” or whatnot. I think that it is tempting to...
want to have it both ways; to be for reform but never be for a reform measure. Some people say it is an incumbent protection business, like my friend Senator Bennett. I take a different view from that. I think that under what he is proposing now is basically correct. Incumbents have substantial advantage. What this legislation would do is, let us say, at least place some limitation on the major incumbent advantage; and that is the ability to raise unlimited amounts of money. The incumbent is going to have a substantial advantage that they always had. But at least you are saying to that incumbent if he voluntarily chooses to participate that there will be some cap on the amount of money that you spend. You are an incumbent now. The money is going to come to you not because people believe in you in many, many cases any more but simply because you are an incumbent, and you have the power and authority at that point. They say it restricts people from coming in and spending enough money to overcome the incumbent. How often does that happen in the real world? When it happens, it is somebody who is an extremely wealthy individual. And it happens that infrequent.

So you wind up with professional politicians on the one hand who are able to raise large sums of money because they are incumbents, and wealthy individuals on the other. That is what our system is becoming—those two classes of people and nobody in between. This legislation would level the playing field and let more people of average means participate. This bill is voluntary. Under it campaigns will cost less. I think that is the crucial feature. A lot of us who support this legislation have different ideas about that. To me the PAC situation is not a crucial feature. Opponents are certainly correct when they say the PAC's were something long overdue. We needed to do it. But we are in a situation now where you cannot buy me a $50 meal or a $51 meal but you can go out and get together a few hundred thousand dollars for me for my campaign. So that does not make a whole lot of sense.

I do not think that we ought to get in a situation where we are for reform until it affects us individually and our livelihood; where people affecting everybody else's livelihood on a daily basis. I think it should not be viewed with suspicion among my Republican colleagues. I think too often that we are trying to figure out how this is going to benefit them, that the fact of the matter is we do not know. There is no way to figure it. There is no way to tell. It depends on swings. Sometimes we are going to be in. Sometimes we are going to be out. Sometimes a new scheme might hurt us. Sometimes it might help us. But the bottom line is that we should not be afraid of fundamental reform that the American people want, that we all know that we need, and we should get back to winning not on the basis of who can raise the most money but on the basis of the competition of ideas. That is what we pride ourselves in. That is why we think we were successful last time. That is why we think we will be successful again. Let us get back to that concept.

It is for those reasons that I support this legislation and urge my colleagues to do so. Thank you, Mr. President. I yield the floor.

Several Senators addressed the Chair.
person other than an individual or a political committee may make a contribution to a candidate.

"No person other than an individual or a political committee may make a contribution to a candidate." In other words, political action committees are severely penalized for contributing to candidates or the media, and the political parties are severely restricted in their fundraising and advertising. The United States do not like the present system, which is based on the belief that if a majority of the people of the United States do not like the present system, it is improper. The present system, nonetheless, is severely restricted in its fundraising and prevented in many cases from providing support to their own candidates. Now, while candidates have their rights abridged, organized groups have their rights abridged, individuals have their rights abridged, and political parties have their rights abridged, whose free speech is not abridged by this bill? Well, first, television networks and stations and their reporters and their editorial writers can continue to say as much as they want to say and to be as biased as they wish to be with respect to any election campaign, and not only are no restrictions placed on their ability to engage in those activities but the candidates who are their victims, whom they oppose, are not granted any ability to raise money. That is wrong. Whatever we consider to be biased editorials or biased news stories. Newspapers fall into exactly the same category, whether in the reports of their political writers or the editorial support that they provide for candidates—no limitations there but severe limitations on the ability to respond to those newspapers. And one other important element. All organizations, all groups that are not political committees or political action committees are severely restricted in their fundraising and without restriction to buy advertisements attacking candidates or their opponents removed from the equation and newspaper and television commercials we have seen in the last 6 months paid for by labor unions attacking Members of the House of Representatives for their votes on Medicare reform and the balanced budget, none of those are restricted in any way by the proposals in this bill. All that is restricted is the ability of a candidate attacked by these millions of dollars effectively to respond to those attacks. Nonetheless, I believe there is in those motivations of the authors of the bill. Perhaps they feel that form of political participation ought not to be restricted in any fashion. Perhaps they feel that even though they cannot stand a political action committee giving money to a candidate’s campaign, that same group ought to be permitted without limitation and without restriction to buy advertisements attacking candidates or the incumbent on their lifestyle or their record, that they continue, or another is good policy. I think, however, the reason there is no limitation on this form of free speech is that they know perfectly well, the sponsors know perfectly well that such restrictions would effectively to respond to those attacks. And so they only restrict free speech where they think they can get away with it, even though they make a situation that at the present time is unfair far more unfair than is the status quo.

My friend and colleague from New Hampshire has been on the floor for a while. Mr. Gregg, Mr. President, those who oppose this bill, that the people of the United States by special interest groups that would be benefited by having their opponents removed from the equation and newspaper and television editorialists who would be benefited by having their views less effectively counteracted, have created a situation where a majority of the people of the United States do not like the present system and want reform. This bill is one such proposal. It says no voluntary association can make a contribution to a candidate for the Senate.

Our opponents can read us 1,000 opinions of law professors to the effect that that does not violate the First Amendment, but a third grader would understand that it does. It is a clear abridgment of the right of free speech. Moreover, that brief comment reflects the entire nature of this bill. Everything in it is designed to restrict political participation, to abridge the effective right of free speech in the political arena. Not only are no restrictions placed on their ability to engage in the most effective possible way in a political campaign by making any contribution to a candidate at all.

Here we live in the third century of a Nation, another, it is has been the accomplishment of myriad purposes by voluntary associations, and we are seriously considering a bill that says no voluntary association can make a contribution to a candidate for the Senate.

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air and the other side directly on the ground.

We have to realize that under this bill one of the core elements of what I consider to be inappropriate activity in the political area, but which others would call good politics if they are supported by it, is not addressed at all. It was in March, for example, that the AFL-CIO held a rather unique convention here in Washington, where they voted, as an institution, to levy a special assessment on their membership, which assessment was meant to raise approximately $25 million of a $35 million goal dedicated to defeating Republicans. There was no other purpose. It was openly stated. They were going to spend $35 million for the purpose of defeating Republicans. So they had this special assessment of $25 million which went out against all their union membership.

Some one took a poll of the union membership, and it turns out the union membership, at least 58 percent of the union membership, did not realize they were going to have to pay this mandatory fee; 62 percent of the union membership opposed this mandatory fee; 78 percent of the union membership did not know they had the right to get the fee back; 84 percent would support making union leaders here in Washington, the big bosses, disclose exactly what their money is spent for; and only 4 percent thought that engaging in political actions and elections was the most important responsibility of major unions.

So, what we have here is an instance where the AFL-CIO is going to go out, and they have the right to do this, and raise $25 to $35 million and spend it against people who they, the union bosses here in Washington, do not agree with. It happens that the rank and file membership, to a large degree, do agree with the agenda of the Republicans here in Washington. In fact, 87 percent of union members supported welfare reform and 82 percent of union membership supports the balanced budget amendment and 78 percent happens to support tax reductions and the $500-per-child tax credit, all of which happen to be Republican initiatives, all of which are opposed by President Clinton, all of which have been opposed by Democratic Members. But, once again, the big bosses here in the unions in Washington have decided to assess, essentially, a tax against the union membership, and that tax, raising $25 to $35 million, is going to be used to attack Republicans who happen to support philosophies which are supported by a majority of the union membership.

Yet, this bill remains silent on this rather significant gap in the campaign election laws. If you were in the process of addressing campaign election laws, I think by the very fact it remains silent one must ask: Why? Why would such a colossal amount of money that is going to be poured into the political system be ignored by a bill like this?

Well, folks, I think it is called politics. I think it is called political influence. I think it is because the majority of the sponsors of this bill happen to be mostly related in their political philosophy to the bosses of the unions here in Washington. As a result, there is no desire to address an issue which might affront that group of political forces in this country, who are significant. They have always been significant in this country. They have a major role to play, and always should have a major role to play, in determining unquestionably a significant issue of credibility raised by the failure to address this issue. In fact, it is such a significant issue of credibility that I think it brings down the whole bill, because it draws the whole bill into question, as to its integrity, as to its purpose—not integrity, wrong word—as to its purpose, as to its legitimacy.

It could be corrected rather easily, actually. You could simply put language in the bill which union members shall have the affirmative right, which shall have to be confirmed or which shall have to be—let me restate that. Union members will have to approve how their dues will be spent, when it involves concerns about political actions and political activity.

The PRESIDING OFFICER. The 5 minutes of the Senator has expired.

Several Senators addressed the Chair.

Mr. MCCONNELL. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator has 2 additional minutes.

Mr. GREGG. I have an amendment which proposes that the Union Members Protection Act. It essentially says that before union members' dues can be spent in the manner in which these $25 million to $35 million are going to be spent, the union member will have the right to affirmatively approve that or feel comfortable in approving it, the money will not be spent. That will bring into the process at least the ability of the union members to avoid this tax if they decide to avoid this tax; in the process, to direct the funds in a manner which they feel is appropriate to their own political position, not to those of a few bosses here in Washington.

That type of correction is not in this bill. Not only is it not in this bill, but were that amendment to be brought forward, this bill would be filibustered by the supporters of the bill, I suspect. Certainly, if there was a chance it was going to be passed, it would be filibustered by the proponents of this bill.

Why? Political interests.

So the credibility of this proposal, I think, is highly suspect, not only substantively on the grounds of constitutionality that was raised by Senator Gorton, but on the grounds of the political interests because it is unknown that you have this large a gap. In the issue of how you are going to reform campaign financing, you basically are saying your intention is not to reform campaign financing; your intention is to tilt the playing field once again in favor of one political group which happens to have a significant amount of influence amongst the sponsors. Mr. President, I yield back the remainder of my time.

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

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Very briefly, before I turn it over to the Senator from Massachusetts, I, too, listened to the Congressional analysis by the Senator from Washington and the strong agreement by the Senator from Kentucky. The one suggested that any third grader would know that the PAC ban, with a backup provision, is unconstitutional. I am sorry, but I will say one thing about that. The Senator from Kentucky and the Senator from Washington voted for precisely that proposal 3 years ago under the Pressler amendment. So, apparently, at that time they did not understand, apparently, what any third grader understand, which is that this in fact is constitutional, because it provides that, if the PAC ban is found unconstitutional, there is a backup provision. So that entire analysis disregards their own voting record and their own past position, which is that such constitutional. Mr. President, I yield up to 10 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, thank you. I thank the Senator from Wisconsin. Mr. President, I was really fascinated to listen to our colleague from New Hampshire. I really never knew, but now I guess the Senate has learned something new, that the Senator from Tennessee, Senator THOMPSON, and the Senator from Arizona, Senator MCCAIN, are the heads of the union bosses. That is a rather remarkable concept. I am sure the Senator from Arizona will struggle, as will the Senator from Tennessee, for years to get out from under that moniker.

I think that both that and the argument of the Senator from Washington just underscore what is really going on here today in the U.S. Senate. Every argument that can conceivably be laid out on the table in pretense on the merits is really just an effort to avoid what this vote today is really about. This vote today is about whether or not the U.S. Senate is willing to stay here and work to produce campaign finance reform or whether it is happier with the status quo. That is the vote. It is very simple.

Eighteen months ago we could have started doing campaign finance reform. I think it was 12 months ago there was a famous handshake between Newt Gingrich and the President suggesting that there would be a commission to deal with campaign finance reform. But not only did Congress not follow through on the commission, as neither the
President nor the Speaker did, but at the last moment here we are on day one of consideration of this bill and we have to allow a cloture vote. That tells the whole story.

This is not a serious effort to legislate. This is not an effort to bring an amendment from the Senator from New Hampshire and deal with this problem of constitutionality or of union bosses. After all, they only have 53 votes last time I counted. It seems to me that if it is truly an issue of the union bosses or Republicans or whatever, we are very quickly going to be summoned to the floor to vote against whatever union advantage is being built into this bill.

So let us cut the charade here. This is not a serious effort to legislate. This is, once again, the Senate’s moment of tokenism to pretend or at least expose—because Senator Feingold and Senator McCain insisted on it—that there are a majority of Senators here who are unwilling to deal with the issue of campaign finance reform.

There is not even a serious discussion going on of an alternative. There is no alternative that has been proposed. There is no serious set of alternatives that have been put forward to try to say, ‘Well if we don’t want to do your way, here’s a better way of doing it.’ There is no better way on the table.

The Senate has been forced to bring one vote today, and an effort, one pathetic gasp to try to suggest that we are prepared to deal with what the majority of Americans want us to deal with, which is the putrid stench of the influence of money in Washington that is taking away democracy from the people of the country. Everybody knows it. Every poll in the Nation just screams it at us.

Ninety-two percent of registered voters believe that special interest contributions affect the votes of the Members of Congress. Eighty-eight percent believe that people who make large contributions get special favors from politicians. The evidence of public discontent just could not be more compelling. It is now spoken in the way in which Americans are just walking away from the system.Only 37 percent turned out to vote in the last election. They are walking with their feet away from what they perceive as an unwillingness of the Congress to deal with this.

The vote today, Mr. President, is very simple. Do you want to deal with campaign finance reform or do you want to play the game today, or do you want to make badly needed reforms to our campaign finance system.

I listened to the Senator from Washington raise the first amendment. My God, three-quarters of the people today talking about the first amendment and no curbs on free speech are the first people to come down here and vote against the Supreme Court’s decision with respect to the protection of free speech and the flag. So they choose it when it suits their purposes, and then they go protect it when it also suits their purposes. Selective constitutionalism.

Any third-grader does understand that if there is a voluntary system, purely voluntary, by which people participate in any restraint on free speech. Anybody who wants to go out and spend their millions of dollars and avoid accountability within the rest of the system can do so under this bill. There is no limit.

So perhaps this is to be some problem with the PAC’s and constitutionality, because of the freedom of association, the House of Representatives, in their bill, has an alternative. It is perfectly legitimate for us to send this bill to a conference committee, work in the conference committee, come up with a reasonable alternative and come back here. It is really inconceivable that the Republican Party, which is the majority of the U.S. Senate with 53 votes, is going to pass any amendment on the floor of the U.S. Senate, because they can summon all 53 votes to beat back any amendment that does not draw away some measure of those who are reasonable on their side.

So this is not an effort to legislate. This is an effort to procrastinate once again. It is a vote on whether you desire to have campaign finance reform or whether you are content to suggest that there are problems with this bill sufficient that we cannot deal with it on the floor or work through the legislative process.

I have some problems with this bill. I do not like every component of it. I personally would like to see more free time available. I think there are a number of other options that we could work on. But I am content to live with what the majority of the U.S. Senate thinks is appropriate. I am content to have whatever advantage to our side or the other that we perhaps have the rest of the legislative process. That is what we are supposed to do. Instead, once again, the special interests are going to win here today. Probably most likely this issue will not be able to be seriously considered this year yet again.

I have worked on this since the day I came here with Senator Bradley, Senator Biden, Senator Mitchell, and Senator Boren. We have passed it in certain years here. But the game has been played to the House so it comes back at the last minute. Each side can blame the other for not really being serious about it or for filibustering it to death.

In the end, Mr. President, the American people lose again, because everyone knows that the budget deficit is partly driven by the interests that succeed in preventing any tough choices from being made. Everyone knows what the money chase and the money game do to Washington. It hurts. We would all be better off if we were to reduce that. I hope that colleagues today will come together in an effort to try to say, let us at least legislate through the week and see if we could engage in a serious effort to try to deal with one of the most pressing problems facing America’s fledgling democracy.

Mr. President, I yield back whatever time I may have to the manager of the bill.

Mr. McConnell, Mr. President how much time do I have remaining?

The Presiding Officer (Mr. Gregg). The Senator has 43 minutes remaining.

Mr. McConnell. I yield to the distinguished chairman of the Rules Committee—and we have listened to a great many hearings this spring on this matter—I yield 10 minutes.

Mr. Warner. Mr. President, I thank the floor managers, both floor managers, and indeed my colleagues from Kentucky. As a senior member of the Rules Committee he sat side by side with me throughout what I am sure will be reviewed as a very prodigious, fair, and balanced series of hearings, which I will cover, given that the Rules Committee has jurisdiction over this particular bill and like bills.

This morning, however, Mr. President, I make it very clear that while I support many areas of campaign finance reform, and I shall point out those areas, this particular bill that is before the Senate is not one, in my judgment, which will solve any of the problems. Therefore, I shall be voting against it in accordance with the procedural vote.

I will start my comments by quoting from Thomas Jefferson. Virginians are very proud of our heritage of freedom which is reflected by Mr. JEFFERSON, who said: “To preserve the freedom of the human mind *** and freedom of the press, every spirit should be ready to devote itself to martyrdom; for as long as we may think as we will, and speak as we think the condition of man will proceed in improvement.”

Jefferson’s thoughts on the first amendment reflect my own personal concern that our constitutional right to speak out as individuals and as groups receive the utmost protection as we labor as a legislative body to make badly needed reforms to our campaign finance system.

The pending bill would amend our campaign finance laws applicable to elections to Congress. This bill, S. 1219, was referred to the Committee on June 25th. I supported Administration 43 years ago. In addition to S. 1219, 14 other bills that would amend our campaign finance laws have also been referred to the committee. These bills address myriad issues and offer a variety of potential solutions to the concerns many of us have.

I am well aware that the calls for campaign finance reform have been heard for many years. I am well aware, also, of the many proposals this body has considered over the past sessions. I am also well aware these efforts were ultimately unsuccessful because they did not reflect the consensus of the American people. It is easy to label
something campaign finance reform and immediately find support from those across this Nation, like myself, who have a level of frustration with the current framework of laws. Ultimately, however, each of those bills must stand on its own merits. I will not merely vote for something called reform without being convinced that the proposals are constitutional and beneficial to our political process.

Our committee gave careful consideration to the diversity of issues before us. First, our committee heard from Senators McCain of Arizona, Feingold of Wisconsin, Thompson of Tennessee, Wellstone of Minnesota, Feinsteins of California, and Bradley of New Jersey. Members of the House of Representatives also appeared before our committee.

We then heard testimony from some of the foremost experts across our Nation on campaign finance reform, including Prof. Larry Sabato and Prof. Lillian Beckman of the University of Virginia; Norman Ornstein from the American Enterprise Institute; Thomas Mann from the Brookings Institution; Bradford Smith from the Cato Institute; David Mason of the Heritage Foundation; Prof. Herbert Alexander from the University of Southern California; Dr. Candice Nelson of American University; Prof. Michael Malbin from the Rockefeller Institute of Government; Ann McBride of Common Cause; and Joan Claybrook with Public Citizen. We also heard from a number of citizens who participated in campaigns by including Prof. Larry Sabato and Prof. Lillian Beckman of the University of Virginia; Norman Ornstein from the American Enterprise Institute; Thomas Mann from the Brookings Institution; Bradford Smith from the Cato Institute; David Mason of the Heritage Foundation; Prof. Herbert Alexander from the University of Southern California; Dr. Candice Nelson of American University; Prof. Michael Malbin from the Rockefeller Institute of Government; Ann McBride of Common Cause; and Joan Claybrook with Public Citizen.

We also heard from a number of citizens who participated in campaigns by contributing to political action committees—PAC's—or by making donations to be bundled. We heard these voters' worries that their voices would be greatly diminished if their ability to participate in PAC's and bundling were completely denied. In addition to these witnesses, we also asked the Chairmen of the Republican and Democratic National Committees, Mr. Haley Barbour and Mr. Donald Fowler to testify before our committee. Each party official testified to the need to strengthen—not weaken the political parties and enhance their links to their State counterparts.

Because several of the bills before the committee mandated some form of free or reduced-fee television time and reduced postage rates, as S. 1219 does, we also heard from representatives of the broadcast industry and parties affected by the health of the postal service. They advised us of the impact on these proposals, pro and con, on their operations.

Further, because of my personal belief that we should not pass legislation that has a high degree of likelihood of being struck down by the Federal court system as unconstitutional, we asked a number of legal experts and scholars to address the constitutionality of some of the proposals before the committee, particularly the proposal to ban PAC's. Among those commenting on the issues were Joel Gora of Brooklyn Law School on behalf of the American Civil Liberties Union, Robert O'Neill of the Thomas Jefferson Center for the Protection of Free Expression, Archibald Cox of Harvard Law School, and Frederick Schauer with the Kennedy School at Harvard.

To date, we have held six extensive hearings on campaign finance reform—the most extensive, I repeat, the most extensive hearings on this subject of campaign finance reform, held here in the Senate since 1991. A thorough consensus was reached, although not formally, by the individual Members. I shall speak for myself.

First and foremost is the overwhelming consensus that the PAC ban contained in S. 1219 is unconstitutional. There is little doubt on this, with near unanimous agreement from the legal experts. Mr. President, we should not pass legislation in the name of reform, knowing that the Federal courts will strike down the bill. There is always the threat of the courts striking something out there and go back and tell our constituents, "Well, we handled it—we handled campaign finance reform," but I personally cannot do that with clarity of conscience, knowing that there is a high likelihood that the Federal court system will strike it down.

A second point: in addition to the PAC ban, there are other serious constitutional concerns in S. 1219. One problem lies in the extremely broad definitions of "independent expenditures" and educational advertising which would serve to greatly restrict information about the candidates. According to the Free Speech Coalition which represents groups from far left to far right, "This extremely broad definition of 'expressed advocacy' would sweep in protected issue advocacy such as voter guides."

Perhaps even more startling, S. 1219 allows the Federal Elections Commission to obtain prior restraining orders against groups it suspects might violate the new, broader provisions on presently-independent political activities. Let me emphasize this point. Federal bureaucrats would have the power to stop—I repeat, somebody from exercising their first amendment rights before they say or publish anything. One commentator called this result "a grotesque legislative assault on bedrock American freedoms * * * "

A third observation is that, while reduced fee or free TV coverage and postage might serve to reduce the cost of campaigns, requirements such as these are not really free—they simply shift the costs from candidates to postal users, broadcast stations, and other television advertisers. To the extent candidates for political office are granted even more reduced fee postage rates than they already have, the postal user—virtually every American citizen and business—will bear the cost, for the Postal Service must make up the lost revenue from these users.

And, in addition to the lost revenues the TV broadcasters will face, there are extremely severe management problems associated with S. 1219's mandate for TV stations to provide coverage of political candidates. Not the least of these would be trying to offer television time to candidates in large population centers such as New York City where dozens of contested elections will take place in New York, New Jersey, and Connecticut—you might have more than 50 candidates each entitled to prime time TV coverage. And this doesn't even consider party primaries which might feature many candidates per election.

And, as I have noted in our hearings, how will local politicians react if they see candidates for offices being offered extremely cheap ads and mailings. If we start down this road, how will we say no to the local sheriff or other State and local politicians who run for office? In sum, these reduced fee proposals—which are better described as cost shifting provisions—are not well thought out. More thorough analysis and understanding of the impact they will have on the postal and broadcast industries and the American people is necessary.

Finally, the provisions of S. 1219 could result in less information being available to voters. Spending caps obviously might cause cutbacks in campaign activity, whether advertising, traveling, or get-out-the-vote activities. Bringing more independent expenditures under spending caps also could reduce the amount of information that is available. This concern has been voiced by others. David Frum of the National Review stated:

"Political reformers imagine that by capping campaign spending America could somehow purify its politics. Is this politics corrupt and deceptive radio spots with lofty Lincoln-Douglas-style debates and serious-minded
presentations of positions in 30-minute un-
paid public service announcements on tele-
vision. The far likely effect of campaign ex-
penditure caps, though, would be to invite 
cheat. Moreover, less attentive voters 
even of what little information they now get 
to guide their vote.

This discussion of present reform 
proposals would of course be incom-
plete without considering the point 
that the Federal Election Commission 
would need a veritable army of investi-
gators and auditors to keep up with 
their new mandates. We know that the 
FEC has had difficulty winding up au-
dits of past campaigns in a timely 
process, and I hesitate to think 
about the prospect of the FEC trying 
to keep up with hundreds of congres-
sional candidates every 2 years.

While these hearings result in the 
conclusion that S. 1219 will not produce 
the type of reform that is needed, they 
also have revealed many potential re-
forms which might be quite beneficial 
to our political process without tramp-
ing on the first amendment. The 
many witnesses testified at these 
hearings provided us with a multitude 
of proposals that should be examined 
more thoroughly.

I was particularly impressed by some 
of the suggestions made by Prof. Larry 
Sabato of the University of Virginia, 
who has been at the forefront of cam-
paign finance reform and is a well-re-
owned speaker and author on the sub-
ject. I ask unanimous consent that a 
statement submitted by Professor 
Sabato be printed in the Record at the 
conclusion of my remarks.

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

MR. WARRINER. Professor Sabato’s 
main focus lies in broadening and 
strengthening our disclosure laws, so 
that all types of significant political 
involvement are available for public in-
spection. The American people are the 
best regulators of money, or excessive in-
fluence, and it may be time to require 
greater access to information about 
those who give to candidates for Fed-
eral office and those who spend more to 
influence campaigns. Of course, we 
would need to weigh the need for 
degree of privacy that should be af-
forded to individual donors, but this is 
clearly a subject that should be ad-
dressed in any campaign finance re-
form.

I have been impressed with other sug-
gestions which have been raised in our 
hearings, such as: limiting the amount 
of money a PAC can give to a can-
didate from funds raised out of State; 
raising the contribution limits for ini-
tial donations to challengers to facili-
tate their entry into the political cam-
paign process; and permitting chal-
lengers to draw a salary from their 
contributions.

Then there is the sensible suggestion 
to index contribution limits for infla-
tion—perhaps this had been done in the 
last reforms in the 1970’s, candidates 
would have more time to debate the is-
sues and meet the voters and need less 
time to raise money. This change 
would also reduce the growing tend-
ency for rich candidates to use their 
money to buy credibility. As discussed 
by the eminent commentator, David 
Broder:

All the contribution limits are accomplish-
ing today is to create an ever-greater advan-
tage for self-financed millionaire can-
didates. . . If we really want to be ruled by 
a wealthy elite, fine; but it is a foolish popu-
larly that increases the influence of 
wealth, and then resists liberalizing cam-
paign contribution limits.

While I disagree with their proposals, I 
commend my colleagues for making a 
commitment to this difficult issue. I 
can understand their frustration in at-
tempting to craft legislation which 
might meet constitutional muster and 
find legislative support. Their bill has 
served the useful purpose of generating 
an extensive set of hearings on cam-
paign finance reform and the many 
ideas I have mentioned.

Yet, the hearings which the Rules 
Committee held will be for nought if 
we proceed on S. 1219 today, in its 
current form. We must learn from 
these hearings. The committee should 
be permitted to proceed with its hear-
ings. The Rules Committee will hold 
authorization and oversight hearings 
this coming Wednesday, June 26 on the 
Federal Election Commission [FEC]. 
These hearings will include a discus-
sion of some 18 recommendations that 
would update the campaign finance 
laws and streamline the administration 
of the campaign finance laws. In addi-
tion, we are studying the possibility 
of holding one more hearing on the Presi-
dential election process and reform 
suggestions that might be beneficial. 
After that the full extent of the com-
mittee hearings will be made available 
to the entire Senate and to others for 
study and review with the goal that 
this educating process will produce an 
effective and positive reform bill.

While I understand the frustration 
of some of my colleagues with this issue, 
I cannot shirk my duty with regard 
to this legislation. It is the constitu-
tional and unwise provisions, and we 
should not pass this legislation into 
law.

EXHIBIT 1

phony Cures Versus A Workable Solution:  Deregulation Plus

The campaign finance reformists’ problems 
are vexing. Is it possible to fashion a solu-
tion to all of them simultaneously? Over 
the years, the reformers’ panacea has been 
taxpayer-financed elections and limits on 
how much candidates can spend. Public fi-
nancing is a seductively simple proposition: 
that there is no private money, presumably 
there will be no contribution associ-
ated with private money. But in a country 
such as ours, which places great emphasis 
on the freedoms of speech and association, 
it is unrealistic to imagine that the citi-
zens’ or even many of the elite activists will 
come to support greater federal subsidization 
of our election system at the cost of their 
independent and group political involvements. 
Spending limits are also enticing. Are politi-
cal parties going to cede control and spend money? 
Let’s pass a law against it! Yet such a sta-
uty may be difficult to enforce in an era 
when politicians and the public seek less reg-
ulation—not more—of political effort, seri-
ous, maybe fatal, problem of plugging all the 
money loopholes (the C(4)s; Supreme Court– 
sanctioned, unlimited “independent expendi-
tures”; groups that are not candidates 
unconnected to a campaign, and so on). Once 
again, the biggest, the original, and the 
unpluggable loophole is the First Amend-
ment.

Public financing and spending limits are 
both also objectionable on the basic merits: 
the effective representation of influ-
ence politics is a fundamental constitutional 
guarantee, derived from the same First 
Amendment protections that need to be 
forcefully protected. To place draconian lim-
its on political speech is simply a bad idea. 
(The call for a ban on political action com-
mittees suffers from the same defect.)

Once again, even if candidates could 
be persuaded to comply voluntarily with a 
public financing and spending limits scheme, 
the legislation would fail if it is consid-
ered the many ways that interest 
groups such as the Christian Coalition and 
lobby unions can influence elections without 
making direct contributions. Even if we passed laws that appeared to be 
taking private money out, we would not 
really be doing so. This is a recipe for decep-
tion, and consequently—once the truth be-
comes apparent—for still greater cynicism.

In our opinion, there is another way, one 
that takes advantage of both current real-
tities and the remarkable ten-

dencies of a free-market democracy, not to 
mention the spirit of the age. Consider the 
American stock markets. Most government 
oversight of them simply makes sure that 
publicly traded companies accurately dis-
close vital information about their finances. 
The philosophy here is that buyers, given 
the information they need, are intelligent 

eough to look out for themselves. There 
will be winners and losers, of course, both 
among companies and the consumers of their 
securities, but it is the shareholders’ role to gua-

t anyone’s success (indeed, the idea is abhorrent). The notion that peo-

ple can smart enough for the 
duty, to think and choose for themselves, 
also underlies our basic democratic arrange-
ment. There is no reason why the same prin-
ciple cannot be successfully applied to a free 
market for campaign finance.2 In this sce-

cenario, disclosure laws would be broadened 
and strengthened, and penalties for failure to 
disclose would be ratcheted up. The same rules 
on other aspects—such as sources of funds 
and sizes of contributions—could be greatly 
loosened or even abandoned altogether.

In the well-in-
formed marketplace, rather than a commit-
tee of federal bureaucrats, be the judge of 
whether someone has accepted too much 
money from a particular interest group or 
whether someone has accepted too much 
from a particular interest group or 

2. It is an idea that 
Commonwealth, has already utterly failed to inhibit special-

interest influence. (Plus, the reformers’ new plans will fail spectacularly, as we have al-
ready argued.) On this latter point, advocates 
might gain substantially by bringing 
all financial activity out into the open where 
the public can see for itself the truth about 
human campaigning. If the facts are really as 
as reformers contend (and as close observers of the system,

Footnotes at the end of article.
Much of what we see is appelating, then the public will be moved to demand change. Moreover, a new disclosure regime might just prove to be the solution in itself. It is worth noting that a large scale lobbying effort by and large, is happy with the relatively liberal manner by which the Securities and Exchange Commission regulates such entities. Companies and brokers (the candidates and consultants of the financial world) actually appreciate the SEC's efforts to enforce regulations in its domain, since such enforcement maintains public confidence in the system and encourages honest, ethical behavior, without unnecessarily robbing the freedom of the nation's players. Again, the key is to ensure the availability of the requisite information for people to make intelligent decisions. Some federal officials who would rather not be forced to operate in the open will undoubtedly assert that extensive new disclosure requirements violate the First Amendment. We see little foundation for this argument. As political regulatory schemes go, disclosure is by far the least burdensome and most constitutionally acceptable of any political regulatory proposal. The Supreme Court was explicit on this subject in its landmark 1976 Buckley v. Valeo ruling. The Court found the overweening aspects of the Federal Election Campaign Act [such as limiting contributions and expenditures to the light of publicity, disclosure, the term limits groups, and organized labor have all raised and spent millions of dollars annually and operated on a national scale. It is not hard to make a distinction between groups such as these and benign small-scale advocacy. Another necessary broadening of disclosure would not merely be for individuals. While most political action committees already disclose ample data on their backers and financial activities, contributions to candidates from individuals are reported quite haphazardly. New rules could necessarily require a massive increase in funding. Under a disclosure regime, the agents of political parties deserve more fundraising freedom, which would give these critical institutions a more substantial role in elections.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A publication armed with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those seeking federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's support also allow the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

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For political parties, there seems little alternative to simply legitimizing what has already happened de facto: the abolition of all limits. When the chairman of a national political party bluntly admits that millions of dollars in "soft money" receipts mean that the FEC is helpless to enforce its prohibitions of millions of dollars in "hard money," it is time for everyone to acknowledge reality. Moreover, such an outcome is not far-fetched. Political parties deserve more fundraising freedom, which would give these critical institutions a more substantial role in elections. Who would want a government that indirectly or directly supports the Christian Coalition and labor unions to disclose, their role in elections can be more fully and fairly debated. Another necessary broadening of disclosure requirements would be the fear that the rules would rule a huge number of politically active but relatively inconsequential players into the federal regulatory framework. Clearly, no one wants the local church or the Rotary Club taken to court for publishing a newsletter advertising a benefit, but excluding contributions to candidates of their choice. To our mind, this is easily addressed by establishing a high reporting threshold—something between $25,000 and $50,000 in non-campaign-related expenditures per election cycle. After all, the concern is not with the small organizations that indirectly contribute to the Christian Coalition, the term limits groups, and organized labor have all raised and spent millions of dollars annually and operated on a national scale. It is not hard to make a distinction between groups such as these and benign small-scale advocacy. Another necessary broadening of disclosure would not merely be for individuals. While most political action committees already disclose ample data on their backers and financial activities, contributions to candidates from individuals are reported quite haphazardly. New rules could necessarily require a massive increase in funding. Under a disclosure regime, the agents of political parties deserve more fundraising freedom, which would give these critical institutions a more substantial role in elections.

For political parties, there seems little alternative to simply legitimizing what has already happened de facto: the abolition of all limits. When the chairman of a national political party bluntly admits that millions of dollars in "soft money" receipts mean that the FEC is helpless to enforce its prohibitions of millions of dollars in "hard money," it is time for everyone to acknowledge reality. Moreover, such an outcome is not far-fetched. Political parties deserve more fundraising freedom, which would give these critical institutions a more substantial role in elections. Who would want a government that indirectly or directly supports the Christian Coalition and labor unions to disclose, their role in elections can be more fully and fairly debated. Another necessary broadening of disclosure requirements would be the fear that the rules would rule a huge number of politically active but relatively inconsequential players into the federal regulatory framework. Clearly, no one wants the local church or the Rotary Club taken to court for publishing a newsletter advertising a benefit, but excluding contributions to candidates of their choice. To our mind, this is easily addressed by establishing a high reporting threshold—something between $25,000 and $50,000 in non-campaign-related expenditures per election cycle. After all, the concern is not with the small organizations that indirectly contribute to the Christian Coalition, the term limits groups, and organized labor have all raised and spent millions of dollars annually and operated on a national scale. It is not hard to make a distinction between groups such as these and benign small-scale advocacy. Another necessary broadening of disclosure would not merely be for individuals. While most political action committees already disclose ample data on their backers and financial activities, contributions to candidates from individuals are reported quite haphazardly. New rules could mandate that each individual contributor disclose his place of employment and profession, without exception. The FEC has already debated a number of effective but not overly oppressive means of accomplishing this goal (although to date it has adopted only one). A solution that would prohibit campaigns from accepting contributions that are not fully disclosed. Disclosure of campaign expenditures is also curtailed when organizations failing to make a detailed statement describing the purpose of each expenditure. It would be no great task to require better reporting of these activities as well. The big trade-off for tougher disclosure rules should be the loosening of restrictions on fundraising. For example, the liberalization of limits on fundraising by individual candidates. This is only fair and sensible in its own right: there is a glaring disconnection between the artificial limitations on sources of funds and ever-mounting campaign costs. One of the primary pressures on the system has been the declining value in real dollars of the maximum legal contribution by an individual to a federal candidate ($1,000 per election), which is now worth only about a third as much as when it went into effect in 1975. This increasing scarcity of funds, in addition to fueling the quest for loopholes, has led candidates (particularly incumbents) to do things they would not have done before for fundraising. Perversely, limits appear to have increased the indebtedness of lawmakers to special interests that can provide huge amounts of money by bypassing "soft money." The FEC's access to ``clean'' funds would rise dramatically if it does not increase substantially. In addition, the commission's authority to audit campaigns randomly would have to be restored to ensure compliance, and sanctions for failure to disclose would have to be increased substantially. In addition, the commission's authority to audit campaigns randomly would have to be restored to ensure compliance, and sanctions for failure to disclose would have to be increased substantially. In addition, the commission's authority to audit campaigns randomly would have to be restored to ensure compliance, and sanctions for failure to disclose would have to be increased substantially.

Finally, in exchange for the FEC relinquishing much of its police powers, Congress could suspend much of its power over the FEC by establishing an appropriate budgetary level for the agency that by law would be indexed to inflation and could not be reduced. Another way of guaranteeing adequate funding for a disclosure regime is to establish a new tax check-off on Form 1040 that would permit each citizen to channel a few dollars of her tax money directly to the FEC. Congress also could appropriate the money to the FEC to cover the costs of Congress's appropriations process entirely. The 100 solicitation would carefully note that the citizen's tax burden would not be increased. Instead, the solicitation would inform taxpayers that the money collected is to inform the public about...
the sources of contributions received by political candidates. It is impossible to forecast
the precise reaction of taxpayers to such an opportunity, of course, but our bet is
that most Americans would strongly reject the box funding the Federal Election Commis-
sion than the box channeling cash to the presidential candidates and political parties.
In today's postmodern polity, the people's choice is likely to be reliable infor-
mation about the interest groups and individuals investing in officeholders.

CONCLUDING COMMENTS

The purpose of these reforms is to make regulation of campaign financing more ra-
tional. Attempts to outlaw private campaign contributions or to tell political actors how
much to spend are more than likely to be unworkable. Within broad limits, the politi-
cal marketplace is best left to its own de-

devices, and when those limits are exceeded, violations would be punished swiftly and ef-

tively.

Regarding the pro-incumbent bias of contrib-
utors, there is unfortunately no obvious practical solution. It is impossible to predict
how a deregulated system would affect the existing heavy bias toward incumbents by
contributors, both PAC and individual. In truth, the influence of money is likely to be in-
dependent of any kind of limits expressed by Reformers. The purpose of these reforms is
to make regulation of campaign financing more rational. Attempts to outlaw private campaign
contributions or to tell political actors how much to spend are more than likely to be unworkable. Within broad limits, the political marketplace is best left to its own devices, and when those limits are exceeded, violations would be punished swiftly and effectively.

FOOTNOTES

1We are indebted to attorney J. An Ban of the law firm Wiley, Rein & Fielding for this analogy.

2Frank Sorauf, one of the most astute students of campaign finance, has just published a book, "Dirty Little Secrets: The Existence of Corruption in American Politics" (New York: Times Books), by Larry J. Sabato and Glenn R. Simpson. All rights reserved.


4See "Campaign Finance Reform: A Report to the Majority Leader, the Minority Leader, United States Senate, Reference Panel," March 6, 1990, p. 40. Coauthor Sabato was one of the panel's six members, appointed by the Senate Majority Leader (Majority Leader Mr. Dole) and the Senate Minority Leader Robert Dole (Re-
publican of Kansas).

5See Larry J. Sabato, Paying for Elections: The Campaign Finance Thicket (New York: Twentieth Century Fund-Priority Press, 1989, esp. pp. 25-42; 64. For example, disclosure laws do not currently cover contributions to foundations that presidential candidates sometimes form. These foundations often pay for pre-campaign travel, and openly promote their candidate-create.


Mr. MCCONNELL. Mr. President, I thank my good friend, the chairman of the Rules Committee for his excellent statement and say again how much I enjoyed sitting in Texas listening to the testimony this spring. Thanks for a very important contribution to this matter.
There being no objection, the material was ordered to be printed in the Record, as follows:

**POLITICAL SPENDING BYGANIZED LABOR: BACKGROUND AND CURRENT ISSUES**

By Joseph E. Cantor

SUMMARY

Labor unions have traditionally played a strong role in American elections, assisting favored candidates through their direct and indirect financial support, as well as through maneuvers and organizational services. While direct financing of federal candidates by unions is prohibited under federal law, unions have used political action committees (PACs) to raise voluntary contributions for donation to federal candidates. This PAC money is also known as “hard money,” which is not limited by federal law and is not as hard to raise. Soft money is generally considered to be a formative factor in organized labor’s political spending, which is largely unregulated, either because it is restricted to seeking influence only its members and their families or because it does not advocate specific candidates’ election or defeat. The soft money aspect of labor’s political activity has aroused controversy because of fundraising methods and the relative dearth of disclosure.

**ORIGIN OF DISTINCTION BETWEEN HARD AND SOFT MONEY**

During World War II, the War Labor Disputes Act of 1943, as amended, prohibited unions from making contributions in federal elections. In 1947, the Taft-Hartley Act made this wartime measure permanent and expanded it to include all forms of political activities aimed at their restricted class (as defined for purposes of the FECA) and federal candidates. This new form of activity has been known as “soft money.”

**CURRENT REGULATIONS**

Under recently amended regulations, unions (and corporations) are acknowledged and permitted to communicate with their members to promote their political philosophy: (1) the exempt activities category to give specific authority for these or- ganizations to use their general treasury money for political activities. It thus exempted certain union and corporate activities from the federal laws that prohibited unions and corporations from making contributions and “expenditures,” if the activities are aimed at restricted classes (for unions, members, and their families, and, for corporations, stockholders and their families). The soft money aspect of labor’s political activity has aroused controversy because of fundraising methods and the relative dearth of disclosure.

**SOFT MONEY ACTIVITY: UNION TREASURIES**

The FECA thus created a legal framework for unions to set up PACs to raise and spend money on specified activities, subject to federal regulation (hard money), and to use its treasury money for specified activities aimed only at its restricted class and not subject to federal regulation (soft money). The FECA gave unions and other labor organizations the right to set up PACs. Such efforts, however, may only be aimed at union members, executive or administrative personnel, and their families.

**SOFT MONEY ACTIVITY: UNION PACS**

Under recently amended regulations, unions (and corporations) are acknowledged and permitted to communicate with their members about elections.

In terms of public education and issue advocacy, unions engage in the same type of efforts as many other groups in the public arena. These often involve media ads to influence public opinion or to defeat or elect specific candidates. By avoiding overt appeals to elect or defeat specific candidates, these groups may promote their political and philosophical goals without coming into federal campaign finance regulation.
Some portion of these workers pay agency fees as a condition of employment.

Due to the compulsory nature of agency fees, some workers have objected to the union's use of their payments. Among several relevant rulings, the Supreme Court, in Communication Workers of America v. Beck, 481 U.S. 732, 1987, said that the unions may not, over the objections of dues paying nonmember employees, spend funds collected from them on activities unrelated to collective bargaining. An objecting employee could get a pro rata refund of their agency fees representing costs of non-collective bargaining activities.

While the other rulings have left no doubt that dissenting workers are entitled to such refunds if requested, issues have arisen as to the extent to which unions should notify such workers regarding the use of their dues. On April 13, 1992, President Bush issued Executive Order 12800, requiring federal contractors to post notices to employees informing them of "Beck" rights; this was rescinded by President Clinton on February 1, 1993 (Executive Order 12836). Bills have been introduced in recent Congresses to either prohibit the use of "compulsory union dues" for political purposes or to require greater notification of all workers' (not just non-members') rights regarding their dues or agency fees.

Dollar value of union soft money.

The only soft money unions must disclose under the FECA are express advocacy communications with members, but only when they are "targeted" communications, and excluding communications primarily devoted to other subjects. In 1992, unions reported $4.7 million on such activities. While unions are required to file financial reports under the Labor Management Reporting and Disclosure Act of 1959 (P.L. 86-257), they categorize their expenses and types of expenditure (e.g., salaries, administrative costs) rather than by functional category (e.g., contract negotiation and administration, political activities). Under President Bush, the Department on Labor proposed regulations to change reporting to require functional categories (October 30, 1992); in a proposed rulemaking notice on September 23, 1993, the Department, under President Clinton, rescinded the change to functional categories.

Due to the limitations of public disclosure, one must look to estimates of the total value of labor soft money. Such estimates, which amount to educated guesses and may be influenced by the political orientation of the observer, range from the $20 million labor supporters claim is its value in presidential campaigns, to the $400-$500 million critics estimate for total labor soft money in a presidential election year.


The Beck decision was significant in that the federal courts properly exercised jurisdiction over such cases as a violation of the unions' duty of fair representation and, indeed, such union conduct was also prohibited under the National Labor Relations Act, enforcement of which is charged to the National Labor Relations Board.

The rest of the system really is this. Regardless of what the court ruled—and it took some 8 years before the NLRB even got around to issuing its first ruling on a Beck-related case in 1995—all of the burden is being placed on the employee instead of on the union. For an employee to be able to withdraw his or her dues and request disclosure, the employee has to go to court, file a claim before the NLRB, and/or has to go through all kinds of procedural maneuvers, and basically has to resign from the union to lose all of that employee's democratic rights to vote for or against strikes, for or against contract ratification, etc. In the end, the employee is basically out of a lot of money, out of his power of representation, and out of his right to vote. Why? Simply because one employee, pitted against a powerful union, has sought a voice in how his or her union dues are being spent for political purposes.

We do not see how we can consider campaign finance reform without correcting this injustice. Nothing should be a more fundamental American right than political expression. Those Americans whose union dues are diverted for political purposes—without disclosure and without an adequate rebate system—have been treated as second-class citizens.
this injustice to individual workers all over America?

What is even more amazing to me is that my colleagues on the other side of the aisle have fought any attempt to deal with this issue. Several years ago, I offered a simple and straightforward amendment to campaign finance reform that would merely have required that unions disclose to dues paying members how their dues money is being spent. It was defeated.

It is about time that we realize that mega-labor unions are among the biggest—they are the biggest—special interests in the electoral system, and that their political capital was not always given away freely.

Unless this issue can be addressed, I do not see how we can call this campaign finance reform. It is more a continuation of campaign finance coercion.

Employees have a right to know how much of their moneys are used for partisan political activities with which they disagree. That is what the Supreme Court said, and that ought to be enforced. This bill will do nothing about that.

Mr. President, I yield back whatever time I have.

Mr. McCONNELL. Mr. President, I yield the Senator from Colorado 2 minutes.

Mr. BROWN. I will take 1 minute. I ask unanimous consent that the Brown amendments 4108, 4109, as offered to S. 1219, be withdrawn because they were improperly drafted.

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

Mr. FEINGOLD. Mr. President, I want to indicate my highest praise and respect for the authors of the underlying bill. I think they come with good intentions and an honest bipartisan effort. I am concerned about the bill. I am concerned about the prospect of us divid- ing views and phrases and para- graphing, and do something about it. There are 53 votes on this side. Do not refuse to move forward with the bill. If you do not like the bill—everybody comes down here and says, "I am for campaign finance reform, but just not this one."

If you are not for this one, come to the floor after we invoke cloture, and propose your amendments. We have 53 votes on this side, 47 on that side. If they share the view of the Senator from Utah, then you can amend it and take care of it. But do not expect the American people to accept this story about "I am for campaign finance reform but not this one," and then not vote to cut off debate because it is a filibuster, and then we cannot move forward with the bill.

Mr. HATCH. Mr. President, will the Senate consider the following amendment?

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, let me reiterate what the Senator said. It was thus that the cloture vote was taken up so there could not be amend- ments. That was the idea of the other side. That is the only way we could get the bill up for a vote.

I yield 5 minutes to the distinguished Senator from New Jersey.

Mr. HATCH. Will the Senator yield for 10 seconds?

Mr. BRADLEY. Not out of my time. The PRESIDING OFFICER. The Senator from New Jersey.

Mr. HATCH. Is it on our time? Mr. BRADLEY. I would be prepared to yield on the manager's time.

Mr. McCONNELL. Mr. President, I yield the time out of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, let me say this up front. If cloture is invoked, that type of amendment would not be germane and would not be permitted. If cloture is not invoked, I intend to bring up an amendment.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, I think it says a lot if the Senate is not able to move forward on this good piece of legislation. I think this inability to move forward says two things.

The first thing it says is that funda- mental campaign finance reform will not begin in Washington. It will begin in the states. The opponents of this bill have the status quo. They have not offered an alternative. They have only picked at the bill. They want to keep money and politics just as it is today because they know how to work the system.

The fact is the American people have a different view. I am astounded how much opposition to this bill is rooted in a kind of Washington understanding of this country. The people in this country look at elected Representa- tives and they think we are controlled. They think we are controlled by special interest money. Some think we are controlled by parties that blunt our independence. Some think we are controlled by our opposi- tion that prevents us from saying what we really believe and only saying things that will advance us to the next level of office. Some even think we are controlled by pollsters who give us focus views and phrases and para- graphs, and not think for our- selves, saying things because we have convictions in our heart.

The fact is that the opponents of this provision do not get it. This year there will be referendums in California, Colorado, Alaska,Arkansas, and Maine, and all of those referendums will be sending one message: reduce the role of money in politics; cut back on the role of money in politics.

Those referendums will be followed in the years to come by other referen- dums, and maybe after another 2 or 3 years the people in this body who like the status quo will change. I hope they will, because I believe money and poli- tics today distort democracy.

That leads to the second point. We need to confront the central issue. The central issue is Buckley versus Valeo. The only way to confront Buckley versus Valeo directly is with a constitu- tional amendment.

The distinguished Senator from South Carolina and I have offered such an amendment for a number of years that would say simply that the Con- gress and the States may limit what is spent in a campaign in total and what an individual may spend on his or her own campaign. Until we take that step, we are going to be constructing Rube Goldberg types of contraptions to try to get around the central issue, which is, money is not speech. Anybody who believes that money and po- litics is changing the way we now do politics in Washington, but even that issue is based on a confusion.

Capitalism is different than democr- acy. The distinguished Senator from Kentucky said, "Well, we have to com- pare antacids and bubble gum be- cause"—compared to what? I would suggest you compare the amount of money in politics in 1980 versus the amount of money in politics today and the size of the contribution and the sources of the money.

Without question, money is distort- ing democracy. And, indeed, we have had other times in American history where there have been distortions in our democracy. We have changed it by referendums where there have been distortions in our democracy. We passed a constitutional amendment giving women the right to vote in order to restore a broader par- ticipation.

I believe today money is playing the same role. The fact of the matter is that we are confronting a new sort of skepticism going to be high. People say, "Well, it is not the No. 1 issue on peo- ple's minds." That is true. The No. 1 issue on people's minds is, how do I put it...
broad on the table? How do I pay the utility bill? How do I send my kids to college? They are dealing with the economic transformation which we are in. That is the No. 1 issue. But when they say, "Do any of the politicians have any honest discussion of these issues," people say no, because politicians are controlled by money. That is why this is a linchpin issue.

Mr. FEINGOLD. Mr. President, I thank the Senator from New Jersey.

Mr. President, I yield 3 minutes to the distinguished Senator from Connecticut.

Mr. DODD. Mr. President, I thank the Senator.

Mr. President, let us be very clear. I think we all get a sense of what is going to happen here in about 3 hours and 45 minutes, and that is clout, instead of being invoked, is not going to be invoked.

Everyone ought to understand this. This is a vote that will be our vote in this Congress on campaign finance reform. It is going to come down to this. It will get obscured so much because it is a procedural vote. But how you vote on this will be determined on how you are judged on the issue of campaign finance reform.

The idea that we ought to reject the effort to invoke cloture here because we want to make perfect the enemy of the good, I think is a great tragedy. I think it is so short-sighted that anyone watching this will see right through it—to come up and say, "I don't like this aspect or that aspect," therefore denying the opportunity for cloture to be invoked. As I listened to our distinguished colleague from Utah suggest an amendment that might have something to do with whether or not organized labor would be able to participate with soft money, or that independent campaigns will not be allowable in a post-cloture environment, it is ridiculous.

So I want to commend our colleagues from Arizona and our colleague from Wisconsin for bringing this up. I am proud to be a cosponsor of it. I have believed for years that we had to move directly and aggressively in this area of campaign finance reform.

Mr. President, in Connecticut, it is $16,000 a week. That is what you have to raise over a 6-year period every week, in and week out, if you are going to be successful in taking on or waging an effective campaign.

We know today—quite candidly, all of us in this Chamber know—that the respective leaders of our campaign committees are recruiting affluent candidates. So out and buy candidate who is well-heeled financially, and you have a pretty good good candidate, someone who can write their own checks. Why seek those kind of candidates? Why? Because you understand that it is money. It is money that allows you to ante up and to get an entry fee into the contest.

There is a woman by the name of Linda Sullivan who a few weeks ago in Rhode Island—and I do not know much about it, what the issues are or what she stands for—said: "I took my race out of Congress because Mr. and Mrs. Smith can no longer be candidates of the Congress of the United States on an average basis in their finances."

So we all know her situation. Every single one of us knows that the debates around here are directly affected by it. Positions people take are directly affected by this issue.

For Bob Dole, his victory in the Iowa caucuses cost him about $2 million. A little less than $2 million. Forbes spent $400,000 per delegate that he were not a multimillionaire. Americans would know about them if they were not a multimillionaire.

So we all know her situation. Every single one of us knows that the debates around here are directly affected by it. Positions people take are directly affected by this issue.

Mr. President, I rise on the floor today for what I believe is a truly historic debate.

As America's elected leaders we play a critical role as guarantors and protectors of our Nation's democratic institutions.

And with this legislation today, we have a unique opportunity to fulfill that mandate as leaders—by beginning the long and arduous process of restoring the American people's faith in their Government and their democracy.

The McCain-Feingold bill will not change the American people's seemingly inherent cynicism toward their Government overnight. That is an ongoing process—and one that should concern every Member of this body.

However, by reducing the role of money in our campaign system, this legislation takes a critically important first step toward cleaning up our political process.

In my view, there are few issues we in Congress consider that have as overwhelming and direct an impact on the functioning of our democracy than the laws governing how we run campaigns in this country. For many of us, campaigns are often the most direct means by which we, as elected representatives, communicate with our constituencies.

But, today those lines of communications are frayed by a political process that rewards those with money and influence, rather than working families and Americans struggling to make ends meet.

Consider that in his run for the Republican Presidential nomination, Forbes spent $400,000 per delegate that he won in the Republican primaries. Our colleague Senator PHIL GRAMM, spent $20 million to win 10 delegates. For Bob Dole, his victory in the Iowa caucuses cost him about $2 million. Forbes' ideas on the flat tax or economic growth, it is doubtful that most Americans know about them if he were not a multimillionaire.

That is why, more than any other time in our history, the American people's confidence in their Government and its elected leaders is abysmally low.

Poll after poll provides ample evidence that the American people believe special interests and lobbyists have a greater influence on our endeavors than the will of the voters.

I believe wholeheartedly that the vast majority of those who serve in the U.S. Congress are well-intended and responsive to the varied needs of their constituents. However, I think I speak for many of my colleagues when I say it is becoming more and more difficult to make that argument to the American people.

Because, when the American people look to Washington they do not always see citizen-legislators who focus their full energies on tackling the problems in our society and not the mechanics of campaigns. Instead, they see corporate lobbyists working hand-in-hand with lawmakers to turn back the clock on 25 years of environmental protection.

They see special interest lobbyists with unfettered access to committee rooms drafting legislation that fails to keep our workplaces safe and protect the food we eat.

When they look to Washington they hear politicians in positions of great power and influence bemoaning the lack of money in our political process. They see leaders who insist that the political process is starving even though $724 million was consumed on House and Senate campaigns in 1994 alone.

When they look to Washington they see unlimited access and influence given to the fewer than 1 percent of Americans who can, and do, give more than $724 million to political campaigns.

And, when they look out on the campaign trail they see a political process dominated by candidates with deep pockets, instead of those with new ideas.

Whatever one may think of Steve Forbes' ideas on the flat tax or economic growth, it is doubtful that most Americans would know about them if he were not a multimillionaire.

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In fact, Presidential candidates spent more than $138 million by the end of January 1996—all before a single American voter had stepped into the voting booth to cast their ballot.

Is it any wonder the American people are cynical and disenchanted with their elected leaders?

But, the vast sums of money needed, for even unsuccessful runs for public office, are simply out of reach of the average American.

Eighty-five years ago, former President Theodore Roosevelt said "the
Representative body shall represent all the people rather than any one class of the people * * * ."

But today, not only are we becoming more responsive to one class of citizens, but the reseach of leadership are increasingly capable to only a select few Americans.

Throughout my more than 21 years of public service, it has been my great privilege to serve the people of Connecticut in the U.S. Congress. Even before I came to the floor of this body I am humbled by the great men and women who came before me: Daniel Webster, Henry Clay, Everett Dirksen, Lyndon Johnson, Richard Russell, and the list goes on.

But today in America, I genuinely fear that the next generation of Clays, Websters, Doles, and Byrds will be excluded from a process that favors the privileged few.

This is not just partisan rhetoric. There are real Americans who are being thwarted from seeking public office. Just a few weeks ago, I read about Linda Sullivan, president of the Warwick Education Council in Rhode Island.

Ms. Sullivan considered seeking the Democratic Party's nomination for the seat of Congressman Jack Reed, who is running for the Senate.

But she decided against it because she simply could not raise the $450,000 needed to seek the nomination. And I want everyone to hear what she said, because it says a lot about our current campaign system.

Unfortunately, my campaign has come face to face with the financial reality that governs today's politics in America. Sadly, Mr. and Mrs. Smith cannot go to Washington anymore.

Now, I do not know Ms. Sullivan personally. I do not know anything about her ideas, her policy prescriptions or her capability as an effective legislator.

But, what I do know is that the exclusion of an entire segment of the population from the political process threatens to undermine the whole notion of participatory democracy in this country. What is more, it fundamentally limits the choices of the American people to politicians who, more and more, are incapable of understanding the problems of working class Americans.

Aristotle once said that; "Democracy arises out of the notion that those who are equal in any respect are equal in all respects."

But, when it comes to political campaigns in this country and the access that working Americans have to their lawmakers, those words ring hollow.

Mind you, there are no silver bullets for ending the American people's inherent cynicism or feeling of disempowerment toward their government. But the legislation we are debating today is the foundation by which we must begin this process of change.

First of all, by limiting overall campaign spending, the McCain-Feingold bill would allow candidates to focus less time on raising money and more time on tackling the issues that truly affect the American people.

Now, I know some of my colleagues argue that this provision of the bill violates the 1976 ruling that political campaign spending is a form of political speech, and thus protected by the first amendment.

But, this legislation imposes only voluntary limits on campaign spending. No candidate would be mandated to accept them. In fact, no provision in this legislation would prevent a candidate from spending as much money as they wanted to.

However, if they chose to abide by these voluntary limits, candidates could receive free television time, could purchase advertisements at lower rates, and could send out mail at cheaper rates.

Additionally, the bill would tackle the issue of millionaire candidates by exempting candidates from the bill's benefits if they spend more than $250,000 of their own money.

The McCain-Feingold bill is by no means perfect. In particular, we need to be sure that working people are not restricted from participating in the political process and that grass-roots and volunteer activities are not constrained.

However, it is an excellent place to start in reforming the means by which we fund political campaigns in this country.

Let us be clear on one point: I am not a Johnny-come-lately to this debate. In 1985, I sponsored one of the first legislative proposals to reform campaign finance laws.

And as a Congressman, Senator, and now, chief executive officer of the Democratic party, I have nourished within the framework of the current system.

But, after 20 years of public service I am more convinced than ever that the current approach to funding political campaigns in this country is broken and desperately in need of reform.

Time after time, we have talked about reform—particularly when it is an election year—but in the end we have done nothing. We have appointed commissions, we have proposed legislation, we have ordered reports, analyses and studies, and yet in the end, it seems that it is just business as usual.

Well today, I call on all my colleagues to chart a new course, to put aside their partisan differences, to ignore how this bill affects our reelection chances and put first and foremost in our deliberations the good of the Nation.

Let us not forget that a Government that is viewed with suspicion and mistrust by its own people cannot sustain our Democratic institutions.

As Henry Clay, a former Member of this body once said:

"Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people."

Let us remember that: our democracy exists for the benefit of the people—and not their elected leaders.

As leaders, we must not shirk our responsibility to do all we can to restore that sense of trust to the American people. The McCain-Feingold bill begins that process and I believe that as a body we have a solemn responsibility to embrace this legislation.

Mr. Feingold. Mr. President, I yield 30 seconds to the Senator from Arizona.

Mr. McCain. Mr. President, I ask unanimous consent that in the event that cloture is invoked, that two amendments be made in order and germane, one on the Beck decision and the other on allowing unlimited spending on campaigns.

The PRESIDING OFFICER. Is there objection?

Mr. McConnel. Mr. President, I have no objection.

Mr. McCain. Mr. President, I withdraw the unanimous consent request, but I want to make it clear that in the event that cloture is invoked, that the unanimous consent proposal made would make those amendments germane to this bill. But I withdraw the unanimous consent request.

The PRESIDING OFFICER. The request is withdrawn.

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

The PRESIDING OFFICER. There are 24 minutes and 23 seconds.

Mr. McConnel. I yield to the distinguished Senator from Oklahoma.

Mr. Inhofe. I thank the Senator for yielding. I do not think I will even take that much time. I know time is very precious right now. I have been listening to the debate, and I am the first one to say I am not on any of the committees that deal with this, so it is not the place I have been entrenched in this issue. I agree with one thing the Senator from Connecticut said, and that is it is very transparent, the things that are going on around here.

The Senator from Utah was very specific and I think very articulate in the way that he addressed how this would affect labor unions. It is my understanding that even in the reporting aspect of soft money each local could give up to $10,000 without even reporting it. So let us try to report accurately and that someone who says that a local says it is contributing less than $10,000 is in fact correct. I am not ready to accept that. But let us assume that is right. If you have a hundred locals, you are talking about a million dollars. No one will ever know where it came from. This is money that is used very effectively in campaigns.

So as far as I am concerned, one of the big areas that should be regulated is the issue of soft money. The McCain-Feingold bill begins that process and I believe that as a body we have a solemn responsibility to embrace this legislation.

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over, from trial lawyers from all over America because I am the one who has on his agenda a desire that I am going to fulfill to see if it we have real meaningful tort reform in this country, to make us competitive again. So we have rollout of state as our own with the ability to send in, on their own contributions of $1,000 a piece, to maybe six different campaigns. Maybe there are 100 of them who are out there. All you have to do is look at an FEC report and you can see that they are doing it. Let me make one comment about PAC’s. Everyone assumes that political action committees are something evil. Political action committees allow small people to get involved, people who are of low incomes to get involved in the process, and there is not any other way they can get involved. I have been a commercial pilot for I guess 38 years. I have been active in aviation. I believe that aviation makes a great contribution to the technology of aerospace and many other things and consequently I am supported by the Aircraft Owners and Pilots Association, AOPA, 340,000 members. Each one puts in about $5 and they do contribute to people who are supportive of the industry that they believe in.

The NRA, they have taken a lot of hits recently. Who are the NRA? When you sit up there, you are looking at millions of dollars in Washington, but if you were with me last weekend in Hugo, Cordell, Lone Grove, Sulphur, those are people who belong and they might give $5 a year because they honestly in their hearts believe in the second amendment rights to the Constitution. I do, too. They contribute. These are not big fat cats, wealthy people. So I think to categorize PAC’s as being something that is evil in our society is wrong.

The third thing I do not like about this legislation that is coming up, and I will support it, is the arrogance of the Senate. They are saying, from the outset of this legislation, all the Hatch amendments and all else that was there that is there. We have reduced postage for us—not for you, not for anybody else but for us. Now, what happens when you reduce our postage? It is all out of one fund. So other postage is going to end up going up. It is just sheer arrogance that we should be treated differently than everybody else.

We passed legislation, a very good bill through this Chamber at the very first session, which I think is the only bill which makes us live under the same laws as everybody else. All of a sudden people around here are looking, pointing fingers, saying, should we have done that? Here we are again, coming right on the heels of that, saying we are going to give us a benefit nobody else has.

The Senator from Massachusetts a minute ago stood up and said we ought to have more free time on TV. Who are those fat cats? I go around Oklahoma. We have small stations. They are going to give time, and if they do not give free time, they are going to have to give a reduced rate, 50 percent of the lowest rate. That is for us because we are in Congress. We are important people. We are supercitizens—not everybody else, just us.

The arrogance in the way we are approaching, in saying we are entitled to things other people are not entitled to I find to be very offensive.

Mr. President, I conclude by saying I agree with the Senator from Connecticut. This is transparent. The two biggest offenders to contribute the most to campaigns—and I would categorize them as organized labor and trial lawyers—are not going to be inhibited in any way by this bill.

The PRESIDENT. The Senator’s time has expired.

Mr. MCCONNELL. Thank you. The PRESIDENT. The Senator has 19 minutes.

Mr. McCONNELL. I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDENT. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I thank the Senator from Kentucky for his important contribution to this debate.

Mr. President, how much time do I have remaining?

The PRESIDENT. The Senator has 19 minutes.

Mr. McCONNELL. I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDENT. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, I thank the Senator from Kentucky for his diligent and dedicated efforts to this debate for a long, long period of time—probably longer than he wishes.

I know it has been said many times but I think everybody should see a caution flag go up when the Republican National Committee, the National Taxpayers Union, the National Right to Life Committee, the National Rifle Association, the American Civil liberties Union, the Christian Coalition, Direct Marketing Association, National Association of Broadcasters, National Association of Business PAC’s, National Education Association, the complete political spectrum, all are opposed to this legislation. Which brings into it an infringement on the first amendment of the Constitution of the United States. It is that simple.

Just moments ago I was at a hearing where a former Presidential candidate, Governor Lamar Alexander, said it best. He said these efforts to regulate and restrict have left labor with full constitutional rights of the first amendment, political parties with full constitutional rights of the first amendment in the United States with the full rights of the first amendment, and only one category is being denied their rights under the first amendment, and who is that? It is the candidates, the candidate for President, the candidate for Senate, the candidate for Congress. The only class for which we restrict first amendment rights, the people who will ultimately represent America are the single class we carve out to deny first amendment rights.

Mr. President, this kind of legislation envisions a very narrow sanitized environment, almost like a prize fight with two contestants inside a defined ring, and there are rules that define how that combat will be conducted. But in the case of American politics, vast resources affect the outcome of the election. Take my State. The largest newspaper in the State is the Atlanta Constitution. The circulation of a half a million, on Sunday 750,000, and they can say anything they choose and meddle in every political race, and with everybody’s acknowledgment, and even theirs, with a very biased and fixed agenda.

Anybody seeking office a candidate who might not agree with that agenda is not simply dealing with his or her opponent; they are dealing with the extraneous factors—the media itself, the State’s largest daily newspaper. Why is it that this corporation, the Atlanta Constitution—it is a corporation, I might add—is not restricted under campaign finance? Why are their first amendment rights protected but Ace Hardware’s are not? They can say anything they choose. They can put an editorial in their editorial page every day for a month. They can comment, as they do, on the fortunes of a political campaign every day. To buy an ad in that paper might cost, one page, $14,000, or a half page $7,000. So think of the enormous resources that are being invested in meddling or commenting, however you want to put it, on the outcome and fortunes of a political race.

We need to take the candidate and draw narrow parameters around that candidate in terms of how he or she can communicate.

Frankly, I think it is the candidate that should be the freest to express himself or herself, to talk about and interpret his or her beliefs. The idea of restraining that candidate’s capacity only enforces the forces of those who do not ultimately represent the people—the journalists, the media. Would it not be far better to let the person who is going to represent the American people, the person who is going to represent the people from the good State of Georgia, to be on equal footing with all these other resources? The answer to that question is yes.

The PRESIDENT. The time of the Senator has expired.

Mr. COVERDELL. I ask for 1 additional minute.

Mr. McCONNELL. Mr. President, I yield my colleague a minute.

Mr. COVERDELL. I think the Governor of Tennessee said it best. The first amendment is protective for the labor movement, for the media, for special interest groups, and one class in American politics has been carved out for denial of first amendment rights: the candidates. That is not appropriate.

I yield the floor.

Mr. McCONNELL. Mr. President, I said a short time ago I should do special thanks for a superb presentation.

I just want to make one additional comment to follow on. The proponents of this kind of legislation have said
It is also worth keeping in mind that campaign finance reform does work for every American unless it also works for every candidate, including minority candidates and women. Minority and women candidates currently have less access to the large sums of money needed to run for elected office than other candidates. That financial inequity is one of the primary reasons both women and minorities have long been under-represented in both the Senate and House. The spending limits in S. 1219 are very important in addressing their concerns, but reform will only be truly successful if it increases opportunities for candidates from all walks of life and our society. Campaign finance reform will be counted as a failure if the numbers of women and minorities in Congress goes down, rather than up, under a new system.

S. 1219 attempts to level the playing field for all competing candidates. It establishes a voluntary system by which candidates who agree to limit their overall spending—call them non-compliers—may spend 10 percent more than the State spending limits, then the complying candidate can spend 20 percent more than the spending limit and still be in compliance with the bill. If a noncomplying candidate raises or spends 50 percent more than the spending limits, the complying candidate’s limits increase 50 percent without penalty. Furthermore, complying candidates cannot spend more than the lesser of 10 percent of their overall spending limit or $250,000, from their personal funds. When a candidate declares their intention to spend more than $250,000 of personal funds, the $1,000 contribution limit for individuals is raised to $2,000 for complying candidates, and the noncomplying candidate does not qualify for any of the bill’s benefits.

These steps represent real progress, but the problems here are very serious, and need much more attention. Those who are independent or have an unequal access to the political system, and if reform is to work, we have to do something about that.

Self-financing candidates are a rapidly growing phenomenon in our current political system. In 1994, one candidate for the Senate spent a record setting $27 million, almost all of which was his own money. And over the last year, a Presidential candidate spent $30 million of his own money for the primary election campaign. Workable spending limits that apply to every candidate, those who can break the limits by dipping into their own deep pockets will end up dominating
our politics, even more than is the case now. Talented, but less wealthy candidates will have it tougher than ever. The trend toward a Congress comprised disproportionately of millionaires does a disservice to representative democracy, and is a major aspect of the loss of confidence in our system. This bill does not resolve that fundamental flaw.

Imposing spending limits on millionaire candidates is very difficult, given the Supreme Court’s decision in the case of Buckley versus Valeo, which used a first amendment justification to invalidate a congressional attempt to impose limits on the amount a candidate can contribute to his or her own campaign. However, there are things that Congress should consider that might be able to bring self-funding candidates into a campaign spending limits regime, or at least provide enough disincentives so that these candidates will no longer profit politically by using their own resources to finance their campaign cash flow.

The relevant provision of the 1971 Campaign Act that was invalidated in Buckley provided that a Presidential candidate could spend no more than $500,000 out of personal resources. It is at least possible that with a much more generous, though not unlimited, opportunity for candidates to spend their own money, the infringement of individual freedom is less severe, and perhaps not substantial as stated by the Court in Buckley. After all, it is one thing to tell a candidate that he or she can’t spend more than $50,000 of personal money; it is quite another to say he or she can’t spend more than $1 million—and that the rest must be raised from small contributors in order to demonstrate broad political support.

If candidates were required to seek and demonstrate support from a broad range of individuals—an important component of the Democratic Congress—the Supreme Court might see the first amendment issue somewhat differently. An appropriate analogy would be the laws that require candidates to obtain a certain number of signatures as a requirement for access to the ballot. In other words, the reason for this limit would not be to equalize resources, but to ensure that the amounts candidates spend have some relation to breadth of support. This proposal would be at least arguably consistent with Buckley, since the Court in that case recognized that the Government has “important interests in limiting places on the ballot to those candidates who demonstrate substantial popular support.”

Joe Biden
And, to do that, we must have comprehensive campaign finance reform.

Unfortunately, today, we are not even voting on a campaign finance reform bill. This is a vote on whether we will be allowed to vote on the bill. And, you know American people are so sick of this system.

The special interests have circled the wagons. They are on the warpath to kill campaign finance reform.

So, I implore my colleagues: stand today with the American people. Let us take up this bill—the first bipartisan campaign finance reform bill in nearly a generation. Let us debate the issue. And, let us decide the issue on the merits, not on inside-the-beltway maneuvering.

The American people demand no less.

Mrs. MURRAY. Mr. President, this past February, over 4 months ago, I took the Senate floor to announce my cosponsorship of S. 1219. As I spoke about the interior of this bill is one of the only truly bipartisan attempts to reform campaign laws in two decades—

I could not help thinking to myself, “here we go again.”

I have only been a Senator for a little over 3 years. In Senate terms, that is not very long. But, I have been here long enough to see campaign finance reform come up, and be killed. In the 103rd Congress, shortly after the 1992 elections, I proudly cosponsored campaign reform legislation. I was eager to answer the voters’ hope for clearer, more thoughtful politics.

I watched colleagues come to the floor, proclaim the need for reforms, and declare their support for good legislation. The Senate passed that bill, S. 3, and sent it to the House. A short time later, I saw it killed amidst partisan bickering, despite the mad scramble of Senators wanting to be seen as leading the charge for reforms.

In the end, nothing was accomplished, and we are today living under the same campaign system that has created so much cynicism and mistrust among the voters.

So when I endorsed S. 1219, I thought “here we go again!” because I was embarking on my second attempt to reform campaign laws. But this time, instead of thinking we could simply pass a bill and send it to the White House, I knew we had our work cut out for us.

Now it is June, and the 104th Congress is in a few weeks. While we are only now taking up campaign reform, I am still encouraged.

For the first time in a long time, the Senate is considering a truly bipartisan bill. It has not been drafted by one party or another to give themselves a leg up.

It has been drafted by a Republican and a Democrat, JOHN McCAIN and RUSS FEINGOLD, because they know that until the two parties come together and focus on common sense reforms we can all agree on, nothing will get done. It is supported by thoughtful new Senators like FRED THOMPSON of Tennessee and CAROL MOSELEY-BRAUN of Illinois who, like me, were elected to make changes in the political system.

We have a very narrow window of opportunity today. It is narrow because we have only a few months left in this Congress, and we have a lot of work to do. It is narrow because it is a bipartisan bill, free of taint, and maybe—just maybe—capable of restoring some faith to the people. In light of this, it is critical that we move quickly.

I urge my colleagues to stop, look, and listen. Listen to people at the coffee shops. Talk to friends, to family members. Walk through a neighborhood. A basic, fundamental lack of faith in Government lays at the root of peoples’ concerns about the future. Until something dramatic happens to address public confidence in the political system, we can expect the gap between the people and their Government to widen.

There is nothing I can think of that would be worse for this country; for alienation breeds apathy, and apathy erodes accountability. America is the greatest democracy the world has ever known, and it was built on the principle of accountability; government of the people, by the people, for the people. We simply must restore peoples’ faith in their Government.

At the core of the problem is money in politics. Right now the system is designed to favor the rich, at the expense of the poor. It benefits the incumbents, at the expense of challengers. And most of all, it fuels the special interest, inside-the-beltway machine at the expense of the average person back home.

The average person feels like they can no longer make a difference in this system. Earlier this year, my campaign received a $15 donation from a woman in Washington State. She included a note to me that said, “Senator Murray, please make sure my $15 has as much impact as people who give thousands.”

She knows what she is up against, but she is still willing to make the effort. Unfortunately, people like her are fewer and farther between, and less willing than ever to try to make a difference.

We see her problem when people like Ross Perot or Steve Forbes are able to use personal wealth to buy their way into office. Ninety-nine percent of the people in America could never even imagine making that kind of splash in politics. Should we rely only on the benevolence of a few wealthy individuals to ensure strong democracy in this country? I don’t think that is how the Founding Fathers had in mind.

The political consultants will say negative ads work, because they quote, “move the numbers.” They will say it is easier to raise millions of dollars because that is what it takes to get a message out.

But that ignores the reality in Main Street America every day. The very campaigns they say we need to run to win are bleeding the life out of our political system. Every time we go through an election with expensive, negative campaigns, we pay a severe price in voter participation and citizen apathy.

Add up election, after election, after election in the modern political era, and elected officials are facing a huge bill for accountability they may not be able to pay. I fear that once lost, citizens may never re-engage in their democratic system.

During this debate, I have heard Senators take issue with certain provisions in S. 1219. I have heard colleagues question the constitutionality of spending limits. I have heard them make the case that this bill takes the wrong approach. I have heard them argue for reform, but not this way.

Mr. President, these arguments miss the point entirely. The upcoming vote is not about whether you agree with every provision of S. 1219. It is about whether this Senate is willing to step up and pass campaign reform legislation this year.

I myself am not completely satisfied with S. 1219. The McCain-Feingold bill is very broad, and does something about nearly every aspect of the system: it restricts political action committee contributions; it imposes voluntary spending limits; it provides discounted access to broadcast media for advertising; it provides reduced rates for postage; it prohibits taxpayer-financed mass mailings on behalf of incumbents during an election year; it discourages negative advertising; it tightens restrictions on independent expenditures; and it reforms the process of soft money contributions made through political parties.

Mr. President, there are very strong, positive steps, especially the ones addressing independent expenditures. Over the past few years, through the so-called Gingrich Revolution, we have seen an explosion of campaign spending by special interest groups, many from Washington, DC, attempting to swing elections in their own favor. These expenditures are ideologically driven, often highly partisan, and serve only to manipulate voters in the most sinister way. They corrupt our elections. They are not disclosed, so we do not know who makes them, and they violate the spirit of every disclosure requirement in law today.

If enacted as a package, all the steps I just mentioned would make our system of electing Federal officials more open, competitive, and fair. I feel strongly that we must take such steps to re-invigorate peoples’ interest in the electoral process, and in turn to restore their confidence in the system.

There are some provisions in S. 1219 that would be problematic, however.

For example, the bill would require 60 percent of a candidates’ donors to reside within his or her State. This might work fine for someone from New
York or California. However, it could put small-state candidates at a real disadvantage, particularly if their opponent is independently wealthy.

I also question the ban on PAC’s. Under the right regulations, I believe PAC’s have a legitimate role in the process, for two reasons. First, PAC’s are fully disclosed, and subject to strict contribution limits. That means we have a very detailed paper trail from donor to candidate for everyone to see. Second, they give a voice to individuals like women and workers and teachers who, if not organized as a group, might not be able to make a difference in the process.

A serious question about PAC’s remains, however: do they unfairly benefit incumbents at the expense of challengers? This is a legitimate question, and one I think we should focus on closely in this debate.

Finally, I am deeply concerned about how this bill would effect organized lobbying by party groups that do not even lobby Congress. Groups like EMILY’s List and WISH List support pro-choice women candidates of both parties, though they do not actually lobby Congress on legislation. Theodore Roosevelt said of modest means like me an opportunity to compete on the electoral playing field. For too long, this field has been dominated only by wealthy, well financed candidates, establishment candidates, or incumbents. In my 1992 campaign I was out-spent nearly three-to-one. Without the support of groups like this, I would have not even been able to make the race.

By banning these groups, S. 1219 would send a signal to people everywhere: do not even think about playing this game unless you can afford the price of admission.

However, as I said a moment ago, this vote is not about every little detail. It is about something: the whole debate—arguments for and against—comes against the backdrop of a campaign finance system that has not been reformed since Watergate, over 20 years ago. Public faith in government today has sunk below what it was in 1974. So in spite of my personal concerns, I will vote to invoke cloture on the McCain-Feingold bill. And after cloture is invoked, I will support amendments that address the issues I have raised.

Right now, we need to move forward. People in this country want to feel ownership over their elections; they want to feel like they, as individuals, have a role to play and can make a positive difference. Right now, for better or worse, not many people feel that way, and the trend is going the wrong direction. Real campaign reform will be the strongest, easiest step this Senate could take to begin restoring peoples’ faith in the process.

Set aside partisan leanings. Let us look at the facts. Unquestionably, one of the most significant recollections I have of the campaign is the enormous amount of money that I was forced to raise and spend to defend against a wealthy opponent who attacked early and continued with venom and vituperation until the votes were counted.

Mr. President, the system is broken and anyone who thinks otherwise simply has not looked at the facts. More and more of our time is spent raising money, special interest groups have too much influence at the expense of the individual American, and, most importantly, the American people have lost confidence in their elected officials because they no longer believe that we have time to listen to them. Instead they believe that only the wealthy can serve in Congress and that we are engaged in an endless pursuit of special interest money. While this is not true in all cases, I am very concerned that if we do not reform the current system some of the fears of average Americans will become real.

Mr. President, we need to change the system and I believe that the bill offered by Senators McCain and Feingold offers us a chance to regain the confidence of those who sent us here.

If cloture is invoked tomorrow, I intend to offer amendments to this legislation. These amendments are contained in legislation I offered earlier this year with my friends and colleagues Senator Pell and Senator Campbell, S. 1723.

The first amendment requires that if a qualified candidate for Federal office references his or her opponent in a TV advertisement they do themselves if they want to take advantage of the lowest unit-rate charge provided to candidates for Federal office under the Communications Act of 1934. If the candidate voluntarily chooses not to make the reference herself or himself, the candidate would be able to take the lowest unit-rate for the remainder of the 45-day period preceding the date of a primary or primary runoff election or during the 60 days preceding the date of a general or special election. The candidate would of course continue to have access to the broadcast station and would be able to air whatever advertisement they wish, but they would not be eligible for the special benefit that Congress has provided under the Communications Act.

The second amendment requires that broadcasters who allow an individual or group to air advertisements in support of, or in opposition to, a particular candidate for Federal office, allow the candidate in the case where a candidate is attacked, the same amount of time on the broadcast station during the same period of the day.

Mr. President, these are not new concepts. In the 92nd Congress, Senator Danforth offered, a bill to require a broadcast station that allowed a candidate to present an advertisement that referred to her opponent without presenting the ad herself, to provide free rebuttal time to the other candidate. Since then, we in this chamber have acted on what has become known as talking heads legislation have been incorporated in overall campaign finance reform bills and introduced as free standing bills.

In a little over a month, both national parties will be holding their conventions. After that the race will be on, not only for the White House but also for 435 House seats and 33 Senate seats and untold number of State and local elections. I can say in honesty that I do not envy my colleagues here in the Senate, whether they are Republican or Democrat, because I know that they will soon be subjected to the same
type of negative attacks ads that I had
to face in my last election. Many of
these ads will contain misrepresenta-
tions, distortions, and outright untruths. A voice will appear on the
television but it will not be the can-
didate's, to be sure, but it will not be the candidate's ei-
ther. Instead, the candidate will be hid-
ning behind the message and that mes-
gage will undoubtedly be negative.

Mr. Frist told me that public opinion polls show that politicians are
held in only slightly higher esteem
than lawyers and journalists. While
that may be true, I know that my col-
leagues, regardless of their political af-
filiations, are honorable men and
women who care about their respective
States and our Nation. They are also
courageous. It is not easy putting your
reputation and privacy on the line to
run for public office at any level. Un-
fortunately, the negative, perception-
persists. I believe that one of the rea-
sions for that is the trend in today's
campaigns to attack, attack, and at-
tack, to go negative early and stay
negative until the votes are counted.

As Senator Danforth noted, legislation
requiring the candidate himself to
present ads that reference his opponent
would serve the purpose, “to open up
speech, open up the ability to respond,
the ability to defend oneself. In the
case of a candidate making a negative
attack, we try to improve the sense
of responsibility and accountability by
making it clear that the candidate who
makes the attack should appear with
his own face, with his own voice.”

I believe that the amendment I am
discussing today, just like the legisla-
tion by Senators McCain and Fiegold, will begin the process of re-
 storing the confidence of the American
people in the process as an honor-
able endeavor and in the election pro-
cess as one where ideas and platforms,
not the candidate's personalities, are
debated.

Mr. President, I would again like to
commend my colleagues Senators McCains and Fiegold for their com-
mittment to bringing this legislation to
the floor of the Senate and I hope that
we will all vote tomorrow to allow de-
bate and votes on amendments and the
underlying legislation. The American
people deserve nothing less.

Mr. Frist. Mr. President, I rise to
discuss the important issue of cam-
paign finance reform. I applaud the ef-
forts of my colleagues on both sides of
the aisle in addressing this issue to the
forefront of our public policy debate.

The sole objective of any serious
campaign finance reform must be to
open up the political process—to make it
easier for Americans to be engaged,
to have more competitive races, to increase the free exchange of
ideas and debate, and to make our elec-
tions more reflective of the will of the
people.

To that end, I strongly support the
following steps and believe they are a
sound foundation for campaign finance reform:

First, we should insist on full disclo-
sure of all campaign spending, by can-
didates, parties and nonparties alike. Currently, many special interest
groups have a huge impact on elections
yet are not required to and don't dis-
close anything about their political
spending. Full and fair disclosure
will let the voters weigh the relative in-
fluence of all who participate in the proc-
cess.

Second, we should place PAC's and
individuals on an even footing by in-
creasing the individual contribution
limit to $5,000 and indexing it for infla-
tion. This will reduce both the influ-
ence of PAC's and the amount of time
and money elected officials must spend fund rais-

Third, we should ban the use of
franked mass mailings by incumbents
in the calendar year of an election—al-
though I would ban them completely; and

Fourth, we should require candidates
to raise a stated percentage, for exam-
ple 60 percent, of their individual con-
tributions from people residing within
their home State.

The first amendment is the starting
point for any discussion of campaign fi-
nance reform. It ensures that, among
other things, citizens can participate
in politics fully disclosed contributions to the campaigns of their own choosing. It also permits citizens
to spend their own hard-earned dollars,
independent of any candidate, to influ-
ence elections via letters to the editors of their local papers, pamphlets, and
even television, radio, and newspaper
advertisements. This is a precious
right to Americans. It sets us apart
from many other countries.

Many, however, believe that we spend
too much money on this first amend-
ment right. Yet, given the importance
of such speech, it is surprising to find
that in the 1994 House and Senate
races, said to be among the most ex-
pensive ever, we spent roughly $3.74 per
elector. More time meeting voters and
discussing the issues. Contribution limits are a sig-
nificant cause of the drain that fund-
raising has become on a candidate's
time. Instead, I favor placing PAC's
and individuals on an even footing. The
existing $1,000 limit placed on individ-
uals should be raised to $5,000—the
same level as PAC's—and indexed for
inflation. The $1,000 contribution limit
established by FECA in 1974, had it been
inflation-adjusted, would have been
worth approximately $3,000 today.

Instead of a campaign system that
simply forces candidates to spend too
much money on this first amend-
ment right, I propose placing PAC's
and individuals on an even footing. The
existing $1,000 limit placed on individ-
uals would be allowed under the legislation
currently being debated by this body.

Second, limits on campaign spending
would overwhelmingly benefit incum-
ents. Congressional spending limits
are subject to manipulation that sets
the spending threshold just below the
amount that the challenger must spend
and thus close the gap between the incum-
ent. In testimony before the Senate Committee on Rules and Ad-
ministration, Capital University law
professor, Bradley A. Smith, said that
in the 1994 Senate elections, the suc-
cessful challengers spent more than
$100,000 more than would be allowed under the legislation

Finally, spending limits reduce the
ability of campaigns to speak directly
to the voters, without the filter of the
news media. The news media does play a
critical role in the election process, but further increasing their control
over the flow of political information
is not positive reform.

Similarly, a limitation on contribu-
tions, like spending limits, is inher-
ently biased in favor of incumbents. Inc-
cumbents with high name recognition
and existing voter data bases are able
to raise necessary campaign dollars, in
small amounts, with far more ease
than no-name challengers. Therefore,
challengers must look to a small num-
ber of large contributors to launch a
campaign. This initial seed capital is
essential for challengers to get their
name and message out to the voters.
The limits on contributions imposed by
the 1974 amendments to the FECA have
limited the ability of challengers to
raise seed capital.

I believe that further restrictions on
contributions will force candidates
to spend too much time and money
less time meeting voters and discussing the
issues. Contribution limits are a sig-
nificant cause of the drain that fund-
raising has become on a candidate's
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cessful challengers spent more than
$100,000 more than would be allowed under the legislation

Yesterday and today, I’ve heard the
arguments concerning other aspects of
the current legislation be it usage
provisions that mandate free air
time and greatly reduced postages to
candidates. I am opposed to those
provisions, however good intentioned
they are, because they would place a greater burden for funding Federal campaigns on the backs of American taxpayers.

Proposals to force American businesses to give away their products free of charge to the candidates and party committees and contracted to a free-market society. Accordingly, I oppose attempts to mandate that private broadcasters be forced to give free air time to candidates. Similarly, allowing deep discounts in postal rates is merely a subsidy for the general taxpayers. These are not sound reforms.

As I mentioned earlier, strong campaign finance reform should also mandate the complete and full disclosure of all funds that unions and other special interest groups spend for political activity. This is a critical point. We cannot outlaw special interest money, but the potential penalties for accepting it can be raised via the court of public opinion.

We are all aware of the current multi-million dollar effort by organized labor to spend upward of $35 million to try and buy back control of the House for the Democrats. They are getting the money for this massive, partisan campaign through compulsory union dues, even though 40 percent of their membership voted for Republicans in 1994.

No union member should be forced to make compulsory campaign contributions to support a candidate and cause unless they freely choose to do so. That is the foundation for our constitutional form of government and the first amendment freedoms we enjoy as citizens. To be forced, as a condition of employment to do otherwise, is wrong.

As unfair as this is to union members, it is even more poisonous to our political process. There is no disclosure or reporting of the sources or the expenditures paying for these activities. Under current law, the unions are not required to do not file and disclosure to report these political expenditures. This should be changed.

In closing, I would like to quote a section of the 1976 decision by the Supreme Court in the Buckley versus Valeo decision:

"In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees who must retain control over the quantity and range of debate on public issues in a political campaign."

Our system is not perfect, and we do need meaningful campaign finance reform. But, placing artificial limits on spending at this point would mislead and run counter to what we should be saying. We should not drive spending control away from candidates and parties to special interests. We should not enact reforms that will result in less information to the public. We should open up the system to allow maximum dissemination of information and maximum exchange of ideas and debate. I intend to work toward this type of campaign finance reform, and I urge my colleagues to do likewise.

Mr. BAUCUS. Mr. President, I rise in support of the important campaign finance reform legislation that is before us today.

I support this legislation because I believe it represents the right kind of change. While not a perfect solution, it will help to put our political process back where it belongs: with the people. And it will take power away from the wealthy candidates and special interest groups that often call the shots in our political system.

Yet, ironically, by failing to act; by failing to pass this legislation; we will also be opening the door to change—the wrong kind of change. Our political system will continue to drift in the dangerous direction of special interest.

Over the years since 1971, when Congress last enacted campaign finance reform, special interest groups supporting both political parties have found creative new ways, some of questionable legality, to get around the intent of our campaign finance laws. Things like soft money, independent expenditures, and political action committees all can be the consequence of very well-intended attempts at campaign finance reform.

NEED FOR REFORM

This is an arcane subject, but it hits home. One of the benefits of walking across Montana is that we are given the beautiful scenery that I hear what real people in Montana think. Average folks who do not get paid to fly to Washington and tell elected officials what they think. Folks who work hard, play by the rules, and are still struggling to get by.

People are becoming more and more cynical about government. Over and over, people tell me they think that Congress cares more about fat cat special interests in Washington than the concerns of middle class folks like theirs, or that Congress is corrupt.

EFFECT ON THE MIDDLE CLASS

Middle-class families are working longer and harder for less. They have seen jobs go overseas. Health care expenses rise. The possibility of a college education for their kids diminished. Their hope for a secure retirement evaporate. Today, many believe that make the American dream a reality, you have to be born rich or win the lottery. Part of restoring that dream is reauthorizing the campaign disclosure bill and having the electoral system works on their behalf, not just on behalf of wealthy special interests.

I believe that this Congress has taken some small but important steps in that direction.

First, we passed a tough, fair gift ban to ensure that special interests are not out winning and dining Members of Congress and executive branch officials. Helping to reassure folks that individuals in Government, whether you agree with their policies or not, are acting in what they sincerely believe is the country's best interest. I am proud to say that my office has taken this one step further—and instituted a tougher than required gift ban—months before the Congress voted.

Second, we passed a comprehensive lobbying disclosure bill—eliminating the cloak of secrecy which lobbyists and other special interest groups use to cover their activities. We are in the process of enacting greater disclosure of lobbying activities by both the individuals conducting and contracting the lobbying.

Now it is time for us to take the real step to win-back the public trust—it is time for us to pass a comprehensive, truly comprehensive campaign finance reform bill. That bill must accomplish three things. First, it must be strong enough to encourage the majority if not all candidates for Federal office to participate. Second, it must contain the spiraling cost of campaign spending in this country. Finally, and most importantly, it must control the increasing amounts of undisclosed and unreported soft-money that is polluting our electoral system.

REFORM MUST REDUCE COSTS OF CAMPAIGNS

Under the current campaign system, the average cost of running for a Senate seat in this country is $4 million. In 1994, nearly $35 million was spent between two general election candidates in California. And nearly $27 million was spent in the Illinois Senate race.

There are some in Congress, I believe House Speaker NEWT GINGRICH is one, who say we do not spend enough on campaigns in this country. I am faced with the daunting task of raising $12,000 a week—every week—for 6 years to meet the cost of an average campaign, qualified people will be driven away from the process. If we allow ideas to take a back seat to a candidate's ability to raise money—surely our democracy is in danger.

Let me be clear—my first choice would simply be to control campaign costs by enacting campaign spending limits. However, there is another approach, in the Buckley versus Valeo, made what I believe was a critical mistake—they equated money with free speech—preventing Congress from setting reasonable State-by-State spending limits that everyone would have to abide by.

I have voted several times to over-turn the Buckley decision and allow Congress to set limits that everyone would have to obey.

WHAT'S RIGHT WITH THE BILL

While I must admit this bill is not perfect, compromise is never, it will do several crucial things to reign in campaign spending. First, that it is the first bipartisan approach to campaign finance reform in more than a decade.

Second, the bill establishes a system that does not rely on taxpayers dollars to work effectively.

The bill encourages campaigns to accept a voluntary spending limit in exchange for free and reduced cost access to television advertising, and postal rates.

Last, the bill bans both PAC contributions, and indirect soft-money campaign spending, while at the same
time increasing disclosure and accountability in political advertising. Every election year, in addition to the millions of dollars in undisclosed contributions, there are the hundreds of millions in unreported, undisclosed contributions by those independent expenditure campaigns and issue advocacy funded by soft-money contributions to national political parties. Where out-of-State special interest groups may spend any amount of money they choose, none of which is disclosed, all in the name of educating voters—when, in fact, their only purpose is to influence the outcome of an election. More times than not the seeing-sawing 30-second sound bites do more to confuse than to educate. This lack of accountability is dangerous to our democracy. These independent expenditure campaigns can say whatever they wish for or against a candidate and there is little that candidate can do—short of spending an equal or greater amount of money to refute what are often gross distortions and character assassinations.

However, in the case of Federal elections, the bill is not perfect. As currently written, it fails to address critical issues in campaign reform.

WHAT’S WRONG WITH THIS BILL

I am concerned that this bill forces an unfunded mandate on television broadcasters by requiring them to donate up to 30 minutes of free prime time advertising air time to each candidate who abides with the limits in the bill. While I believe this free and reduced cost air time is critical to encouraging campaigns to accept spending limits, I don’t believe that broadcasters should be forced to bear the entire burden.

I’m pleased that the sponsors have included provisions to prevent broadcasters with an exemption in the case of economic hardship, however, it is my belief that we should do more.

Last, but perhaps most importantly, this bill does not contain the strong enough voluntaristic provisions that are critical to ensure that individuals who promise to abide by the spending limits don’t dump large sums of money into the campaign weeks or even days before the election.

Since 1985, I have fought to limit the spiraling cost of Federal elections in this country by cosponsoring five different campaign finance reform proposals, as well as supporting efforts to amend the Constitution to allow the Congress to set reasonable spending limits.

I remain committed to this cause and will do everything in my power to ensure that the Congress passes meaningful campaign finance reform this year. Mr. DOMENICI. Mr. President, those who follow campaign finance reform are well aware of my thoughts on this issue. I have long advocated four very different campaign finance reform proposals to address the spiraling cost of Federal elections in this country.

First, a flat-out prohibition on House and Senate candidates raising money outside their home State; Second, the abolition of PAC’s as we know them; Third, the creation of a strong disincentive to super-wealthy candidates throwing masses of family money into a campaign; Fourth, the elimination of “soft-money” contributions to political parties for activities such as voter registration drives and political advertising which indirectly—but intentionally—help one particular candidate.

I am pleased to see that this year’s legislation includes campaign finance reform ideas I initiated many years ago, specifically, a limitation on the amount of personal or family funds a wealthy candidate may contribute to his or her own race; and a limitation on the acceptance of out-of-State contributions.

Unfortunately, this year’s legislation also includes deeply problematic provisions. These provisions, so-called voluntary restrictions on spending, are based on the premise that spending caps are the solution to the problems with our current system.

The taxpayers will end up helping finance these campaigns because by accepting spending caps under this bill, candidates would receive steep discounts from the Federal Government in postal rates, as well as from television and radio broadcasters for advertising time. In addition, once candidates exceed voluntary spending limits, the Federal Election Commission (FEC) would raise the contribution limits for the opponents of these candidates.

These spending caps threaten first amendment free speech rights. Moreover, these voluntary spending limits create burdensome new regulatory responsibilities and powers for the FEC. If enacted, the legislation before us today will create a quagmire of regulations making Federal campaigns even more dependent upon professional campaign strategists and lawyers, and less dependent upon, and more distant from, our constituents.

For these reasons, while I firmly believe that we need campaign finance reform, I cannot support today’s proposed legislation in its current form. Mr. SMITH. Mr. President, I rise in opposition to S. 1219, the Senate Campaign Finance Reform Act of 1996.

There are several major campaign finance proposals that are now being considered by the Congress. I am pleased to offer my views on each of them.

The most far-reaching campaign finance reform proposals involve the taxpayer financing of congressional campaigns. I do not think that liberal Democratic taxpayers should be forced to finance my political campaigns any more than conservative Republican taxpayers should be forced to finance the campaigns of liberal Democratic politicians.

Other campaign finance proposals have sought to place limits on how much money campaigns can spend. Such proposals raise serious constitutional questions. In the case of Buckley versus Valeo, the U.S. Supreme Court held that it is unconstitutional for Congress to limit the ability of individual candidates to spend their own money in electoral campaigns. How is it fair, then, for Congress to limit the ability of candidates who are not wealthy to raise campaign money? If wealthy candidates can spend all of the money that they want while candidates who have the most modest means cannot, then we will soon have a Congress made up almost exclusively of wealthy individuals.

Still another approach is that which is embodied by S. 1219. Under the McCain-Feingold bill, voluntary campaign spending limits would be adopted and candidates who complied with those limits would be provided with free and—or sharply reduced rates of advertising by the news media. I do not favor this approach because I do not think that Congress should compel private entities to offer their services at below-market rates. Therefore, I simply cannot support this bill.

The McCain-Feingold bill, as well as others, also proposes the elimination of political action committees (PAC’s), I have voted for this reform in the past. I believe that the best way to reform our system of campaign finance is to find ways in which to encourage more participation by the public. I am proud to say that in my political campaigns over the years, I have been supported by many thousands of small contributors.

I also strongly support the current system under which congressional campaigns must disclose the sources and amounts of financial contributions from all entities—large and small. I believe that the public has a right to this information.

I believe that a responsible and meaningful package of campaign finance reform legislation can and should be developed and passed by the Congress. I support that effort.

Mr. ABRAHAM. Mr. President, I rise today to express my concerns regarding S. 1219, the Campaign Finance Reform Act of 1996, and to explain my vote against the cloture petition.

Let me begin by stating that I support campaign finance reform. However, the reform we need is not to be found in S. 1219. In my view, the biggest problem with the way our political campaigns are financed is that it gives rise to the perception that special interest donations are dominating the political agenda. Indeed, many Americans believe that special interest money is the source of great corruption in our political campaign system.

While we should try to address this problem statutorily, I feel it is unnecessary to do so without legislation before those of us concerned. To that end, when I ran for the Senate in Michigan in 1994, I personally imposed my own limits on the amounts I would accept
from both out-of-State sources and political action committees, and they were as strong or stronger than those in S. 1219. I lived up to that pledge and still won my seat.

Now I recognize that not everyone will agree with me. Personally, so I do believe we must seek to achieve a similar outcome legislatively. Unfortunately, S. 1219 is overly broad and, if anything, likely to tilt the field even further in the direction of special interest influence.

In my view the central question we must address in reforming campaign financing is “whose voice shall be heard during the campaign?” The proposals set forth in S. 1219 would have the ironic effect of limiting the speech of the special interest groups. The proposed legislation would encourage candidates to abide by certain expenditure limits, thereby restricting their ability to communicate with the voter. Conversely, it does little to curb the ability of special interest groups to spend their money independently of any restrictions. This allows interest groups to define the central issues of the campaign. It forces candidates who will have the lead of special interest groups, preventing the voters from hearing directly from the candidates and judging for themselves which candidate has the proper positions and the proper priorities.

I believe that the solution begins with limiting the amount of out-of-State/district contributions and PAC donations as I did in my own campaign. By limiting out-of-State/district contributions we can address the perception that House and Senate Members are not primarily focused on the priorities of their own constituents. Similarly, by placing a limit on the amount of PAC contributions a candidate may receive, we can address the concern that public officials are unduly influenced by special interest groups.

Mr. President, I am also concerned about provisions in S. 1219 which shift resources from the private sector to the candidates. These provisions, in effect, allow candidates to do as they please with other people’s involuntarily extracted money. The idea that taxpayers, through special postage rates, should subsidize complying campaigns, seems to me wrong. And, just as the taxpaying public has no obligation to finance someone else’s political speech, I feel it inappropriate to extract such subsidies from the owners of broadcast entities.

Mr. President, I believe that campaign finance reform should focus on limiting PAC and out-of-State/district money. I have codified these limits in my own campaign finance reform bill which I believe has the effect of permitting candidates to speak freely while the influence of special interest and out-of-State money is, in contrast, S. 1219 permits the increased influence of special interest money while curtailing candidates’ ability to communicate with the voters. For these reasons, I have voted against closure and look forward to advancing my own legislation in the future.

Mr. McCONNELL. Mr. President, I have just been handed two very timely additional letters, one an editorial in today’s Wall Street Journal, the other a letter, “Muzzling Campaign Speech” and a letter dated today from the American Civil Liberties Union noting in some detail their many objections to the McCain-Feingold bill. I would want to note the benefit of those who persist in mischaracterizing the proposed spending limits as “voluntary” that the first point in the ACLU letter is the emphatic assertion that they, in fact, are not. The bill would severely handicap a noncomplying candidate relative to a complying candidate so there really would be no choice other than to comply. At this point, I ask unanimous consent that the ACLU letter and the Wall Street Journal letter be printed in the Record. For the benefit of colleagues who have not yet read the editorial I would note that the closing sentence captures the essence of the bill before us today: “The Senate should vote rather than be intimidated by voluntary spending limits” it does to American democracy what Clinton-Care would have to do to medicine.

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

{From the Wall Street Journal, June 25, 1996; Muzzling Campaign Speech

Some 20 years after Congress first restricted campaign speech, the Senate will vote today on a campaign finance proposal that suggests the way to correct the problems those misguided “reforms” have created is with more restrictions. We don’t think so.

To the government goo-goos, led by Common Cause, money is the root of all evil in politics and should be pulled out regardless of the cost or the Constitution. They have convinced GPO Senator John McCain and Democrat Russ Feingold to propose a bill that would pass out subsidies for low-cost mail and television advertising to candidates who abide by “voluntary” spending limits. This is public financing under another guise. Subsidizing the mailing of more campaign literature alone could cost $300 million, more money the Postal Service would have to recoup by raising rates for other customers.

Having created a permanent entitlement to cut-rate campaign ads, the goo-goos would then demand more local political action committees. Advocacy organizations from Emily’s List to the Christian Coalition on the right would see their activities scrutinized and scrutinizers’ jobs at risk. The first is that the influence of special interest groups, which haven’t been indexed in past elections, would severely handicap a noncomplying candidate relative to a complying candidate so there really would be no choice other than to comply. At this point, I ask unanimous consent that the ACLU letter and the Wall Street Journal letter be printed in the Record. For the benefit of colleagues who have not yet read the editorial I would note that the closing sentence captures the essence of the bill before us today: “The Senate should vote rather than be intimidated by voluntary spending limits” it does to American democracy what Clinton-Care would have to do to medicine.

The American Civil Liberties Union, New York, NY, June 25, 1996.

Dear Senator,

The American Civil Liberties Union had the privilege of testifying before the Senate Rules Committee on February 1, 1996 and at that time we elucidated our objections to the “reform” proposals set forth in the Feingold-Feingold bill, S. 1219. Throughout the current Senate debate, our opposition has been repeatedly referenced. Rather than reiterate all of our objections in detail in this letter, I encourage you to read the testimony prepared on our behalf by Professor Joel Gora, of the Brooklyn Law School.

Congress is endeavoring to reform current campaign finance laws and regulations in an efficient manner so that all candidates may compete on the same plane of monetary contributions on federal elections. The call for reform is also punctuated...
The definition of "express advocacy" the bill would encompass the kind of essential issue advocacy which Buckley has held to be completely immune from government regulation and control. The bill broadly defines "coordinated" that virtually any individual who has had any interaction with a candidate or any campaign officials, in person or otherwise, is barred from making independent expenditures against the candidate, for, ironically, they will be deemed a contribution.

This bill gives unacceptable new powers of political censorship to the Federal Election Commission. The FEC would be permitted to go to court and seek an injunction on the alleged violation of what is essentially the right to present a viewpoint. A disaffected campaign worker or volunteer for example, who leaves the campaign because he or she thinks a candidate has acted improperly, is barred from making independent expenditures against the candidate, or, if they do, they will be deemed a contribution.

Mr. President, specifically, I have concerns that spending limits function as an incumbent protection act. Furthermore, the spending limits aid those without a primary. Look at the recent Presidential election. Senator Dole spent the maximum to get the GOP nomination—and is now virtually out of money with respect to the spending limits.

If we really want to change our system, we should have enacted term limits. Members of Congress should be more concerned with the next generation than the next election but the constant pressure of re-election affects votes in a similar fashion. Mr. President, any reform system should be tilted more in favor of public disclosure of campaign contributions. The Federal Election Commission's main mission should be to publicize campaign finance information to the people.

Finally, contributions limits from individuals should be adjusted to keep pace with inflation. The declining real dollar value of the maximum contribution from an individual to a Federal candidate is now worth only about a third as much as when it went into effect in 1975. This change would lessen reliance on political action committee contributions and shorten the time candidates must spend asking for money.

Remember, State candidates in North Carolina can accept $4,000 contributions per election while Federal candidates can only receive $1,000. Adjusting the contribution limits for individuals coupled with greater disclosure would be a significant improvement.

For this reason, Mr. President, I cannot support the McCain-Feingold bill in its current form. We share the goal of reforming the campaign finance system but there is a difference in the details. My suggestion for reform includes term limits, greater public disclosure of contributions, and increasing the limits on contributions from individuals to lessen reliance on political action committee contributions.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, to make concluding remarks, and later Senator MCCAIN will make other concluding remarks, let me again clarify the point about constitutionality. The Senator from Virginia said clarity of conscience prevents him from working for this bill because of the PAC ban.

But the fact is the Senator from Kentucky and the Senator from Virginia and the Senator from Washington all voted for the Pressler amendment 3 years ago that does exactly what our

by cries of corruption. If there is corruption then Congress does have the obligation to correct systemic problems, and to ensure that the Federal Election Commission is exercising consistent enforcement of the existing laws. But influence is not synonymous with corruption, and labeling certain monetary contributions as such perpetuates the view of corruption that has not been, in our view, adequately borne out by the hearings before the Senate Rules Committee.

While rooting out corruption is a worthwhile objective, S. 1219 goes much further than merely attempting to eliminate perceived independent expenditures before the Senate dramatically changes the rules concerning financing of federal campaigns in ways that do greater harm to civic participation than to electoral politics.

Valeo, 424 U.S. at 14±15, 78±80. This restriction does not live up to the most compelling government interest standard in regards to electoral advocacy as most of the speech and freedom of association. The bill's objection to the Feingold-McCain (S. 1219) and similar proposals include:

The bill's "voluntary" expenditure limits are constitutional First Amendment principles. The bill requires the receipt of public subsidies to be conditioned by a surrender of the constitutional right to unlimited expenditures. The bill grants postage and broadcasting discounts only to candidates that "volunteer" for spending limits. The bill raises an individual's contribution limit from $1,000 to $2,000 for those candidates that agree to spending limits and therefore fiscally punishes those candidates who wish to maintain their constitutional right to unlimited spending.

The bill's ban of Political Action Committees are a violation of freedom of association and in some cases, would mean a provision would result in a restriction in protected speech for any group the Federal Election Commission deemed a "political committee." All relevant constitutional precedent, including Buckley v. Valeo 424 U.S. 1, 57 (1976) and FEC v. National Conservative Political Action Committee 470 U.S. 480 (1985), clearly suggest that the Supreme Court would overturn such a ban.

The limitation on out-of-state contributions is constitutionally suspect and is disturbingly circular. In-state limitations potentially deny underfinanced, lesser-known insurgent candidates of the kind of out-of-state support they may need. As long as citizens in one district are the only ones who select the candidate, how the candidate is financed is a less compelling concern. After all, Congress is our national legislature, and although its representatives are elected from separate districts and states, the issues it debates and votes on are of concern to citizens all over the nation.

The bill's disclosure requirements and regulations on "soft money" do not take into consideration the constitutional divide between independent expenditures, which are subject to some regulation, and all other non-partisan, political and issue-oriented speech, which are not. This restriction does not live up to the "most compelling government interest" standard in regards to electoral advocacy as required by the Supreme Court in Buckley v. Valeo, 424 U.S. at 14±15, 78±80. The restriction also does not satisfy the minimum scrutiny of a "compelling" state interest in the regulation of political parties as required by the Supreme Court in Ashby v. Republican Party, 479 U.S. 208 (1986).

The bill's new provisions governing the right to make independent expenditures unconstitutively renders the absolute protected area of issue advocacy. By broadening the definition of "express advocacy" the bill...

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bill does. It bans PAC's, but if the courts say PAC's cannot be banned, it has a voluntary limit on PAC's. The reason they voted for it then, the reason it is OK now, is because it is constitutional, and this is a red herring.

There is what this vote is going to be. This is the vote on campaign finance reform. I admire the candor of the Senator from Kentucky, who simply says he wants to kill campaign finance reform this session. He is not up here proposing an alternative. He admits that is his goal. That is the vote.

This is the first bipartisan bill in 10 years. Who will benefit from this bill? Many people will benefit. Incumbents will benefit from having more time to work on the issues, not to have their fractured attention, as the Senator from West Virginia indicated. Challengers will be the main beneficiaries. I just look at the real statistics. Incumbents blow challengers out of the water with PAC's and organized interests. Anyone else believes this bill would actually help incumbents? I can tell you as a former challenger, this bill would have made a tremendous difference and would have made the process more fair.

We benefit in this country from the inclusion of all the people who never choose to run. You heard the Senator from West Virginia say he never would have run for office if it would have involved this amount of money. I bet the former majority leader, Senator Dale, would not have run either. So there will be winners under this bill and especially people back home.

But there will be losers under this bill. The losers are the people who got together on April 30, all the lobbyists and all the PAC's in this town that have been cited by the other side. They all got together to kill this bill. They said it would prevent their free speech. But the fact is, they are the Washington gatekeepers. They are the people you have to go up to when you are running for office and say, “Will you give us the money?”

I used to go back and say to a banker in Wisconsin or a labor member in Wisconsin, “Can you provide us with some help?” Do you know what they would say? “We have to check in with Washington. Washington has to say yes.” This bill will drive people back to their own home States and take away the power from the gatekeepers.

How does it work? I mentioned it before. Here is one example. Here is a letter about how it works, and I will omit the name of the Representative.

During this year’s congressional debate on dairy policy, Representative [Blank] has led the charge for dairy farmers and cooperatives by supporting the federation’s efforts to maintain the milk marketing order program and export program markets abroad. To honor his leadership the federation is hosting a fundraising breakfast for [Blank] on Wednesday, December 6, 1995. To show your appreciation to [Blank], please show up at Le Mistral Restaurant at 8:00 a.m. for an enjoyable breakfast with your dairy colleagues.

PAC’s throughout industry are asked to contribute $1,000. That is how it is done in this town. That is what the gatekeepers want to keep, and that is what we have to crack down on and eliminate.

To make it crystal clear, let me say this thing has just gotten worse year after year. I want to finish by reading a few quotations from people who have been troubled about this over time. Woodrow Wilson:

The Government of the United States is a foster child of the special interests. It is not allowed to have a will of its own.

President Eisenhower:

Many believe politics in our country is already a game exclusively for the affluent. This is not strictly true; yet the fact that we may be approaching that state of affairs is a sad reflection on our electoral system.

From Barry Goldwater:

It is not “We, the people,” but political action committees and moneved interests who are setting the Nation’s political agenda and are influencing the position of candidates on the important issues of the day.

From Jack Kemp, explaining why he would not run for President in 1996:

There are a lot of grotesqueries in politics, not the least of which is the fundraising side... I don’t seem to be talking about the things that the fundraising people want me to talk about.

Finally, from Robert F. Kennedy, who said:

The mounting cost of elections is rapidly becoming intolerable for a democratic society, where the right to vote—and to be a candidate—is the ultimate political protection. For we are in danger of creating a situation in which our candidates must be chosen only from among the rich, the famous, or those willing to be beholden to others who will pay the bills.

Mr. President, what Robert Kennedy said over 30 years ago is even worse than he could have imagined today. What he feared has come to pass, and our bill would begin the process of recurring campaigns and elections, and yes, we, the Government, back to the people at home.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky?

Mr. McCONNELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 12 minutes.

Mr. McCONNELL. Mr. President, I do not think there is any issue which we debate where more clearly sums up the differences of the two parties toward American participation in politics than the issue of campaign finance reform.

Make no mistake about it, Mr. President, this is a partisan issue. The Republican National Committee opposes the bill. The Democratic National Committee supports the bill. There are a few Republicans who support it and a few Democrats who oppose it, but the heart of the matter is, this is a very partisan matter as currently presented to the Senate.

Why is it partisan? It is partisan, Mr. President, because Republicans for the most part, accompanied by some interesting allies, from the ACLU to the National Education Association, believe there is nothing inappropriate about American citizens participating in the political process. We think that ought to be applauded, not condemned. We are not offended by those exercising their rights to petition the Congress, those exercising their right to engage in free speech. We do not think that is bad for America, that is bad for America. We think it is good for America.

Whether our opponents on the other side of the aisle like it or not, the Supreme Court has been very clear that the speech of political candidates cannot be restricted. Thank God for Buckley versus Valeo, one of the great decisions in the history of the Supreme Court.

The speech of candidates should not be restricted. That is an extremely important principle. After all, if we make the candidates shut up and if we make the people who want to support them shut up, who controls the discourse, the debate? Why, someone else. Where will this transfer of power be placed? It will be placed in the hands of those exercising their right to engage in free speech, to the newspapers, most of whom love this legislation because they realize it will enhance their power as the campaigns’ power to communicate is diminished. So they think this is a territorial majoritarianism.

Many of the large membership interest groups are not particularly worried about this legislation because they know you cannot constitutionally restrict their ability to communicate with their own members, what we call nonparty soft money, or in any real way restrict their ability to communicate with the public, what we call independent expenditures, both of which, or the latter of which is certainly protected by the Constitution.

So what this is all about, Mr. President, is who gets to speak and how much—who gets to speak and how much—and whether or not private citizens can continue to band together and support candidates of their choice.

It is said that too much is spent, which means to say there is too much speech in the American political system. My view is that it is not inappropriate to ask, when you say too much is being spent—compared to what? In the last cycle we spent about as much on political speech as we did in 1996. Put another way, $3.74 per voter in the last cycle. I would argue, Mr. President, that is not too much political speech—not too much political speech.

Then they say, the public is clamoring for this reform. A comprehensive poll by the Tarrance polling group back in April of 1996 asked that question in the following way: Suf- fice it to say, one person out of the 1,000 interviewed thought this was an important issue confronting the country. There is no clamoring for this. The
interest in this all depends on how you ask the question. If you ask the question: Do you think it is a good idea to restrict my right to participate in the political process? Obviously, people are not in favor of that.

There is some debate about whether this is constitutional. Let me say maybe the other side has been able to scrape up a few people with a law degree calling this constitutional, but the heavies in this field do not think it is. The American Civil Liberties Union—sometimes we love them; sometimes we hate them; sometimes we do, boy, do they know a lot about the first amendment and have had a lot of success over the years in this country. They believe this matter is clearly and unambiguously unconstitutional.

Assuming it could get past the constitutional problems, Mr. President, pushing all these people out of the process and putting a speech limit on the campaigns, how would those speech limits play out? By, of course, the Federal Election Commission, which would soon be the size of the Veterans Administration trying to restrict the free speech of not only 535 additional political races, but also a bunch of outside interest groups. So there are going to talk and try to speak. So the FEC is given injunctive relief, so it can go into court and shut people up who are engaging in speech that the Government does not want to be expressed.

The FEC is about—building a massive Federal bureaucracy to restrict the speech of candidates and of groups in this country. This is one of the worst ideas we have debated around here since the last time a proposal like this was up on the Senate floor.

The Court said very clearly, if you want to try to entice campaigns into shutting up, and the Government wants to say it is not good for candidates to speak more than a certain amount of time that in the Presidential system and the nightmare that has become. As Senator Gorton pointed out yesterday, there is only one person in America who is told to shut up at that point, and that is one of two candidates who is running for President, Bob Dole. That is what we ought to be reforming, the Presidential system.

But the Court said, if you want to entice people into shutting up, not speaking and not offer them some kind of subsidy, a Federal subsidy. So the Presidential system says to the candidates running for President: You can only raise $1,000 per person. So, when looking at that difficult task of trying to put together a nationwide campaign at $1,000 a person, every candidate virtually, except Ross Perot and J ohn Connally, has said, “OK, I’ll shut you up. You bought me off. There is no way I can possibly raise enough money to run at $1,000 a person.” Then they get the Federal subsidy.

In this bill, in order to allow the sponsors to claim that there is no taxpayer money in it, they shift the subsidy to a couple of private industries. They say, we are going to call on the broadcasting industry to reduce the prices for political ads by 50 percent. What will happen? Why, of course, they will pass on the cost of that to all the other people who are paying. So, taxpayers are going to have to pay more for their product because of the Government-mandated program.

There is a second industry that is affected by this as well, Mr. President. That is the people who use the mails. They have been told virtually in here. The Postmaster General wrote me yesterday saying he opposed this. Of course, the Direct Marketing Association opposes this. Of course, the National Association of Broadcasters opposes this. They are not particularly interested in having to reach into the coffers of their businesses to pay for political views with which they might disagree.

So getting back to the direct mail subsidy, the rates of everybody else who is trying to go are going to be increased so a subsidy can be provided by those taxpayers to support the expression of views with which they may disagree.

So, Mr. President, spending limits are not a free ride. There is no way to concoct, under the Buckley case, any effort to shut people up that does not have some cost. You can shift it around and kind of claim it is not part of the Treasury. You can assess a business tax. Maybe.

So what is wrong with this bill? Just about everything you can think of. It is based on the fallacious assumption that too much is being spent. It is based on the notion that the public is clamoring for it. Neither of those propositions is true. It assumes there is some way to level the political playing ground for everyone, which is impossible to achieve. It is unconstitutional, clearly and obviously. It would create a gargantuan Federal Election Commission, which would shut people up all across America. It would call upon two industries, the broadcast industry and the direct mail postal users, to pay for the price of all of this big Government.

For all of these reasons, obviously, Mr. President, this bill should be defeated. The way to defeat this bill is to vote “no” on cloture.

Mr. President, I have a variety of magazine articles that have come out against this bill, including Weekly Standard, the Wall Street Journal, Rollcall, the National Review, and the Baltimore Sun, and I ask unanimous consent that the editorials be printed in the Record. There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Nov. 16, 1995]

THE MAN WHO RUINED POLITICS

So Colin Powell is not running for President. Neither is Jack Kemp, Bill Bradley, or any of the others. The one to watch is William Bennett. Voters are left with the likely choice between two rather tired war horses, Bill Clinton and Bob Dole. No other Democrat is challenging an obviously vulnerable incumbent, and Republican contenders such as Phil Gramm, Pat Buchanan and Lamar Alexander are so different and have so little credibility we now also have millionaire publisher Steve Forbes, who started from nowhere to grab the lead. Of course, billionaire Ross Perot still haunts the scene.

If you don’t like the remaining field, blame Fred Wertheimer and Common Cause, the organization he until quite recently, was trying to put together a nationwide candidate virtually, except Ross Perot and when looking at that difficult task of trying to ensure good government. One of their concerns is that money is the root of all political evil, that is, the engineered result of this is a rule outlawing individual political contributions of more than $1,000, and a bureaucracy called the Federal Election Commission to count angels on pinheads in deciding, for example, what counts as a contribution.

A serious Presidential campaign is likely to cost $20 million. This means a potential Presidential has to start by persuading 20,000 donors to pony up anything for anything. Even more important, it is a process virtually designed to drain a potential President of any residue of self-respect.

This may not be the only thing General Powell means when he says running requires a fire he does not yet feel, but it is certainly a big one. His adviser Richard Armitage explained, “Colin was looking for people for money and then spending all that money wasn’t attractive.” Mr. Kemp was similarly explicit in not wanting to undertake the fund-raising exercise, and it is no doubt said Mr. Cheney as well. On the Democratic side, finding 20,000 donors to challenge an incumbent is an even more daunting challenge; Senator Bradley and Senator Nunn decided to quit rather than fight.

For is no accident that the dropouts are precisely the types the goo-goo crowd would like to keep in politics, which is to say, those motivated by principle instead of sheer ambition. In 1988, to take an earlier example, the exploratory field included Don Rumsfeld, who had been a Congressman, White House Chief of Staff, Defense Secretary and a spectacularly successful corporate chief executive. But he threw in the towel rather than run up possibly unpaid debts—as a matter of principle, I will not run on a deficit.

The doleful effect of such limitations were immediately predictable; indeed, they were predicted here. General Powell and the Supreme Court partly upheld the 1974 Federal Election Campaign Act, we wrote that the law “will probably act like the Frankenstein monster it truly is. It will be awful hard to kill, and the more you wound it, the more it will come.” In the face of historical experience, of course, the goo-goo’s prescribed one of the sure points to where “campaign finance reform” has become the Holy Grail.

To be fair, the Wertheimer camp haven’t had its way entirely. The logic of the goo-goo impulse is public financing of political campaigns, an idea mostly hatched down by the ‘60s. It has two main elements: term limits—though in Presidential campaigns public finance serves as the carrot
getting candidates to accept the FEC nit-picking. And the Supreme Court, while backing away from the obvious conclusion that limiting political expenditures is prima facie an infringement of free speech, couldn't bring itself to say someone can't spend his own money on his own campaign.

Thus the millionaire's loophole. Mr. Perot was able to convince the last Presidential elections, going in, out and back in at will. So long as he doesn't accept public money, he can spend as he likes.

Mr. Smith was the interesting case, since he was chairman of Empower America, the political roost of both Mr. Kemp and Mr. Bennett. Who would have guessed that better asks that the Empower America candidate would be Steve Forbes. On the issues Mr. Forbes is perhaps an even better candidate than his colleagues—backing term limits where Mr. Kemp opposes them, for example—and without his message his money wouldn't do much good. Still, to have a better chance at ultimately winning, it would have been logical to bankroll one of his better-known colleagues. But that's against the law, thanks to Mr. Wertheimer, so Mr. Forbes has to hit the stump himself.

With widespread disaffection with the current field, and especially in the wake of the Powell decision, there are Frye lurks. The current rules is coming to be recognized. The emperor has no clothes, think tank scholars are starting to say—notably Bradley A. Smith of the Competitive Enterprise Institute. His article was published here Oct. 6. Following Mr. Smith, Newt Gingrich said last weekend we don't spend too much on political campaigns but too little. This heresy was applauded this week by columnist David Broder, who may herald a breakthrough in goo-goo sentiment itself.

Formidable special interests, of course, remain opposed to change in the current rules. Notably political incumbents who want campaigns kept as quiet as possible and have learned to milk other special interests who have money. So rather than having some public-employee unions, NARAL (the abortion movement), the Teamsters, the gay and lesbian lobby, the AFL says it devoted 35 full-time professionals and sent out 350,000 pieces of partisan mail for the cause. The Sierra Club and LCV spent $200,000 on 30,000 postcards, 300,000 telephone calls and 30 TV and radio spots accusing Republican Gordon Smith of "voting against . . . groundwater protection, clean air, pesticide limits, recycling."

The topper in the set, though, runs on seven stations in five cities, that is, in effect accused Mr. Smith of being an accomplice to murder because a 14-year-old boy died in an accident at one of his companies. "Gordon Smith owns companies where workers get hurt and killed. He has repeatedly violated the law. Those are the facts."

In fact, the ad had died after a fall in a grain elevator while being supervised by his father, who still works for Mr. Smith and doesn't blame him. An analysis of the ad by the Associated Press essentially concluded that the whole thing was false. (By the way, the ad was the work of Republican Scott Belden, who is part of Bill Clinton's reelection team this year and likes to say he believes in the politics of "terror." We trust Mr. Clinton will soon give him his post-Oklahoma City "civility" speech to read.)

Even Mr. Wyden felt compelled to criticize the rhetoric of the ad, but since it wasn't run by his campaign, he couldn't be blamed for it, even as it cut up his opponent. That's the beauty of these "independent expenditures": They work for a candidate without showing his fingerprints. Mr. Wyden even took the high road earlier this month and announced that both candidates should stop negative campaigning, while his allies left dumping garbage on Mr. Smith through the mail and on the airwaves!

Now, we understand that Republicans do this, too. The NRA doesn't play beanbag. But that's called business, Mr. Smith was able to spend enough of his own money to answer this stuff in his campaign. But candidates who aren't millionaires have to do it in other ways which means from people and interests that have money. Yet if Mr. Wertheimer and Common Cause get their way, nonrich candidates would find their ability to raise that money drastically limited. The special interests would still be able to sling their junk, while a candidate would lack the cash to respond. Something may be much like this probably cost Republicans the governorship last year in Kentucky, where the AFA spent lavishly for the Democratic member the Republican was humbled in by spending limits. And, of course, operations such as the AFA or the teachers unions have an unlimited supply of money from forced union dues, while other liberal special-interest groups get taxpayer subsidies that Republican Senators like Vermont's Jim Jeffords are refusing to kill. (Question: Who does Mr. Jeffords have against electing other Republicans?) If Congress tried to restrict such "independent" spending in some new reform, the Supreme Court might well strike it down as a violation of the First Amendment.

The bigger point here is that John McCain, Fred Thompson, Linda Smith and other Republicans who want access. So rather than having some of these liberal groups weighed in with what Common Cause need to rethink their allegiances. They're lending credibility to an exercise that is sure to backfire on their party, if not on them, and probably on our democracy. How ironic it would be, if in the name of controlling special interests, our sanctimonious reformers merely serve a purpose.

Mr. McCONNELL. I ask unanimous consent to have printed in the Record testimony on the constitutionality of the broadcast provisions in the bill prepared for the National Association of Broadcasters.

Mr. McCONNELL. Mr. President, I ask unanimous consent to have printed in the Record, as follows:

CONSTITUTIONAL INFIRMITIES OF PENDING POLITICAL BROADCASTING LEGISLATION (Prepared for National Association of Broadcasters by P. Bernard Kopta, Robert W. Lofton, of Davis Wright Tremaine)

Summary

Pending Congressional campaign finance reform legislation would substantially expand federal political candidates' "reasonable access" to broadcast time, raising fundamental issues under both the First and Fifth Amendments to the United States Constitution. Several bills would require broadcasters to provide free or heavily discounted time to political candidates as an incentive for candidates to comply with campaign spending limits. The goal of this legislation apparently is to reduce the cost of federal election campaigns for House and Senate seats and thereby enhance the integrity of the electoral process.

By requiring broadcasters to finance political campaigns, the pending legislation would compel broadcasters to engage in protected speech. Such a requirement could only be justified by compelling necessity, and then only if precisely tailored to the government's interest. Mandating that broadcasters, rather than candidates, pay to communicate partisan political messages would not advance the government's interest in enhancing the integrity of the electoral process. In addition, the government could advance that interest more effectively through numerous alternatives that do not involve encroachments on First Amendment freedoms.

Broadcasters historically have been subject to regulation and censorship by other media on their constitutionally protected editorial discretion, but the traditional rationale of spectrum scarcity no longer justifies singling out broadcasters for reduced First Amendment protection, particularly in light of the multiplicity of other outlets for diverse viewpoints. The pending legislation nevertheless could not survive even the "intermediate scrutiny" requirements of narrow tailoring to a substantial governmental purpose. Compelling broadcasters to finance political campaigns relation-ship to broadcasters' public interest duties, and would upset the delicate balance between their journalistic freedoms and their obligations as licensees of the public airwaves. By singling out broadcasting from other media and usurping broadcast facili-ties and time, the proposed legislation also denies broadcasters equal protection of the law and takes their property without just compensation, in violation of the Fifth Amendment.

For all of these reasons, it is our view that those aspects of the pending legislation that require broadcasters to provide free or subsidized time for political candidates' speech would likely be held unconstitutional by the courts.

Mr. McCONNELL. Mr. President, I ask unanimous consent to have printed...
in the Record a constitutional analysis conducted for the National Right to Life Committee.

There being no objection, the matter was ordered to be printed in the Record, as follows:

BOPP, COLESON & BOSTROM, ATTORNEYS AT LAW,
Tere Haute, IN, November 7, 1995.


DAVID O'STEEN, Ph.D.,
National Right to Life Committee,
Washington, DC.

Dear Dr. O'Steen: You have asked me, as General Counsel for the National Right to Life Committee ("NRLC"), to evaluate the proposed Senate Campaign Finance Reform Act of 1995 ("Act").

Based on our evaluation, we recommend that NRLC oppose the Act because of the effects it would have on NRLC activities. These are set forth below.

SECTION 201

Section 201 would abolish connected political action committees ("PACs"). The Act prohibits membership corporations, such as National Right to Life, from having a connected PAC. This would abolish National Right to Life PAC. This would severely affect the ability of NRLC to influence federal elections because NRLC would not have a connected PAC.

Section 201 also permits only individuals or political committees organized by candidates and political parties to solicit contributions or make expenditures "for the purpose of influencing an election for Federal office." This appears to do two things. First, it appears to prohibit independent PACs, so that persons associated with NRLC could not create an independent PAC to do expenditures in favor of or against candidates.

Second, it also appears to bar nonprofit, nonstock, ideological organizations—which under FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986), could do independent expenditures—from making such independent expenditures on behalf of or in opposition to candidates.

SECTION 201

Assuming that under the Act independent expenditures can be done by someone other than an individual,1 so that NRLC still could have a PAC capable of making contributions and expenditures, there remains a problem. There is the definition of independent expenditure in the Act.

The Act defines "independent expenditure" as an expenditure containing "express advocacy" made without the participation of a candidate. "Express advocacy" is defined extremely broadly:

"(B) The term "expression of support for or opposition to" includes a suggestion to take an election or political action with respect to an election, such as to vote for or against, make contributions to, or participate in campaign activity, or to refrain from taking such an action."

This extremely broad definition of "expression advocacy" would sweep in protected issue advocacy which NRLC does, as well as "expression of opposition to" a specific candidate. This phrase goes far beyond what the United States Supreme Court allowed when it regulated speech in the solicitation of votes in the case of Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the Supreme Court held that in order to protect issue advocacy (which is protected by the First Amendment), government may only regulate election activity where there are explicit words advocating the election or defeat of a clearly identified candidate. In sum, these provisions of the Act would prevent NRLC from engaging in constitutionally-protected independent advocacy.

SECTION 306

Section 306 of the Act authorizes an injunction where there is a "substantial likelihood that a violation . . . is . . . about to occur." Authorized to seek injunctions against expenditures which, in the FEC's expansive view, could influ- ence federal elections is the taxpayer or person aggrieved by the expenditures which NRLC does. These are set forth below.

1 There is no way this could happen. Apparently due to constitutional inequality of what Section 201 of the bill does (§ 324 of the FECA), the Act creates a fall-back position for times when those provisions might not be effective, i.e., might be enjoined for unconstitutionality. This fall-back provision is that during the time when the ban on connected PACs might be enjoined from enforcement the total that a candidate can receive from a "multicandidate" PAC is "20 percent of the applicable amounts spending limits applicable to the candidate for the election cycle." Thus, the fallback is that if connected and independent PACs are abolished, then the total contributions from such PACs would be capped. Of this provision, the ability of NRLC PAC to contribute to other candidates would be severely affected.

Sincerely,

JAMES BOPP, JR.
RICHARD E. COLESON,
Mr. McCONNELL. In addition, I have individual columnists like George Will and David Broder who have expressed opposition to various parts of this measure, and I ask unanimous consent that those columns be printed in the Record.

There being no objection, the matter was ordered to be printed in the Record, as follows:

[From Newsweek, Apr. 15, 1996]

CIVIC DEFENDANTS RATIONED (By George F. Will)

Surveying the constitutional and political damage done by two decades of campaign finance "reforms," friends of the First Amendment feel like the man (in a Peter De Vries novel) who said "In the beginning the earth was without form and void. Why didn't they just clean it up?" It should repent by repealing their handbook and vowing to sin no more. Instead, they are proposing additional constrictions of freedom that would further impoverish the nation's civic discourse.

The additions would be the Forbes-Perot Coalition, abolishing the person who can use his or her money to seek elective office. This will be called "closing a loophole." To reformers, a "loophole" is any silence of law that allows an actual expression that is not yet under strict government regulation.

Jack Kemp, Bill Bennett, Dan Quayle, Dick Cheney and Carroll Campbell are among the Republicans who were deterred from seeking this year's presidential nomination in part by the onerousness of collecting the requisite funding in increments no larger than $1,000. You may or may not re- gret the thinness of the Republican field this year, but does anyone believe it is right for government regulations to restrict important political choices?

There are restrictions on the amounts individuals give to elect the amounts that candidates who accept public funding can spend. Limits on individuals' giving force candidates who are less wealthy than Forbes or Perot to accept public funding. Such restrictions are justified as necessary to prevent corruption and promote political equality. But Prof. Bradley A. Smith of Capital University Law School in Columbus, Ohio, demolishes just such justifications in an article in The Yale Law Journal, beginning with some illuminating history. In early U.S. politics the electorate was small, most candidates came from upper-class factions and the candidates themselves paid directly what little campaign spending there was, which went for pamphlets, and for food and whisky for rallies. This changed with Martin Van Buren's organization of a mass campaign for Andrew Jackson in 1828. Democratization—widespread pamphleteering and newspaper advertisements for the increasingly literate masses—cost money. Most of the money came from government contracts, Civil War contracts, and civil service reform displaced patronage.

Government actions—Civil War contracts, then corporate contributions, then the election protectionism—did much to create corporations with an intense interest in the composition of the government. Then government protected regulations to tame corporate power, further prompting corporate participation in politics. Smith says that in 1888 about 40 percent of Republican national campaign funds came from Pennsylvania businesses, and by 1904 corporate contributions were 73 percent of Teddy Roosevelt's funds. Democrats relied less on corporate wealth than on the largesse of a small number of sympathetic tycoons: in 1904 two of them provided three quarters of the party's presidential campaign funds. By 1928 both parties' national committees received about 60 percent of their contributions in amounts of at least $1,000 (about $9,000 in today's dollars). Only a few campaigns have raised substantial sums from broad bases of small donors. These campaigns have usually been ideological insurgencies, such as Barry Goldwater's in 1964 ($5.8 million from 410,000 contributors). George McGovern's $2 million from contributions averaging about $20) and Oliver North's 1994 race for a U.S. Senate seat from Virginia (small contributors accounted for 94 percent of funds that enabled North to outspend his principal opponent 4 to 1 in a losing effort).
The aggressive regulation of political giving and spending began in 1974, in the aftermath of Watergate. Congress, itching to "do something" about political comportment, put limits on candidates spending by candidates—even of their personal wealth. Furthermore, limits were placed on total campaign spending, and even on party committee spending, and candidates spending with any candidate or campaign. In 1976 the Supreme Court struck down the limits on unaffiliated groups, on candidates' spending of personal money, and on independent spending ceilings. The Court said these amounted to government stipulation of the permissible mode of political expression and therefore violated the First Amendment.

But in a crucial inconsistency, the Court upheld the limits on the size of contributions, limits that deliberately chill the political expression by government of total campaign spending. And such suppression constitutes government rationing of political communication, which is what most political spending finances. Furthermore, in presidential campaigns, limits on the size of contributions make fund raising more difficult, which in turn means that at least those who flush than Forbes or Perot) into accepting public funding. Acceptance commits candidates to limits on how much can be spent in part during the nominating process, and on the sums that can be spent in the pre- and post-convention periods.

Now a moment of reflection: the question of whether the "reformers" responsible for all these restrictions remember the rule that Congress shall make no law abridging the freedom of speech. But why, in an era in which the United States has virtually eliminated restrictions on pornography, is government multiplying restrictions on political expression? And the thought rich possibilities: Would pornographic political expression be un regulaible?

When reformers say money is "disturbing" the political process, it is unclear, as Smith says, what norm they have in mind. When reformers say "too much" money is spent on politics, Smith replies that the annual sum is half as much as Americans spend on yogurt. The amount spent by all federal and state candidates and parties in a two-year election cycle is approximately equal to the annual sum of the sector's total advertising budgets (those of Procter & Gamble and Philip Morris). If the choice of political leaders is more important than the choice of detergents and cigarettes, it is reasonable to conclude that far too little is spent on politics.

The $700 million spent in the two-year election cycle that culminated in the November 1994 elections (the sum includes all spending by general-election candidates, and indirect party spending by expenditures by both parties and all indirect political spending by groups such as the AFL-CIO and the NRA) amounted to approximately $1.75 per year per eligible voter (the dollar sum of $350—about what it costs to rent a movie. In that two-year cycle, total spending on all elections—local, state and federal—was less than $10 per eligible voter, divided among many candidates. And because of the limits on the size of contributions, much of the money was not spent on the dissemination of political discourse but on the technological mechanism of raising money in small amounts. Furthermore, the artificial scarcity of money produced by limits on political giving and spending has strengthened the political expression that delivers maximum bang for the buck—harsh negative advertising.

Does a money advantage invariably translate into a political advantage? True, the candidate who spends most usually wins. But as Smith notes, correlation does not establish causation. Money often follows rather than produces popularity; many donors give largely to candidates who are not sure they will get contributions purchase post-election influence? Smith says most students of legislative voting patterns agree that three variables are more important than campaign contributions, liberal egalitarians is in danger of losing the ability to see the First Amendment as anything but a libertarian barrier to equality realities. As Smith notes, correlation does not establish causation. And liberal egalitarians support restrictions on campaign giving and spending serve to entrench the status quo. As regards limits on giving, incumbents are already well known and can use their public offices to seize public attention with "free media" coverage.

The rage to restrict political giving and spending serves as both a mask of liberals against money and commerce. There are, after all, other sources of political influence besides money, sources that liberals do not want to restrict and regulate in the interests of "equality." Some candidates are especially articulate or energetic or physically attractive. Why legislate just to restrict their power? Can someone raise or raise money? Smith notes that one reason media elites are apt to favor restricting the flow of political money, and hence the flow of political communication by candidates, is that such restrictions increase the relative influence of the unrestricted political communication of the media elites.

To justify reforms that amount to government rationing of political speech, reformers resort to a utilitarian rationale for freedom of speech: freedom of speech is good when it serves the interests of self-expression. Indeed, it has a distinguished pedigree. But it has recently been repudiated in many of the Supreme Court's libertarian construings of the First Amendment. Those construings of the First Amendment in the interest of individual self-expression, have made, for example, almost all restrictions on pornography constitutionally problematic. And such libertarian decisions generally have been defended by liberals—who are most of the advocates of restrictions on campaign giving and spending.

But liberals of another stripe also advocate campaign rationing. One is the "political equality liberals" other word, "self-expression liberals." They favor sacrificing some freedom of speech in order to promote equal political opportunity, as they understand that. Such liberal egalitarians support speech codes on campuses in the name of equality of status or self-esteem for all groups, or to bring up to equality groups designated as victims of America's injustices. Liberal egalitarians support restrictions on pornography because they say, pornography "corrupts" the minds of bystanders or degrading them. And liberal egalitarians support restrictions on political expression in order to achieve equal rations of political communication.
CONGRESSIONAL RECORD — SENATE
S6803
June 25, 1996

What is more striking is the extent to which the Democrats—the self-styled party of the people—have begun to rely on affluence as the criterion for picking their Senate candidates.

In Colorado, New Hampshire, South Carolina and Virginia, the favored candidates for the Senate are the men of independent means, and in many cases, without wealth would not be considered to have Senate credentials. In Illinois, North Carolina, and New Jersey, candidates of similar backgrounds are given a chance of winning nomination because of their bankrolls. It is not a new pattern. Among the Democratic Senate candidates in 1994 is Oklahoma Democrat D. (Jay) Rockefeller IV of West Virginia, who spent more than $10 million of his own money to be elected in 1994.

Returning Sen. Bill Bradley (D-N.J.), a banker's son who earned big money as a New York Knicks basketball star, writes about the advantages wealth confers on a politician in his newly published memoir, "Time Present, Time Past." Bradley recounts how he decided he could afford to give or lend a quarter-million dollars to his first Senate campaign in 1978—about one-fifth of his budget. "It assured me that I could compete even if I didn't raise as much as I had hoped," he writes. "I expected that my self-generated cushion, I was able to raise more. When potential contributors see a campaign with money, they assume it's well- run and will contribute more. Everyone likes to be with a winner, whether in basketball or politics."

Bradley points out that he was a piker compared with many of his colleagues. "Four years later in New Jersey, Frank Lautenberg, a wealthy computer executive with a financial stake of $9.5 million, spent over $3.5 million of his own money to win a U.S. Senate seat. ... In Wisconsin in 1988, Herb Kohl promised to spend primarily his own money in his Senate campaign; $7.5 million later, he won."

Financial disclosure statements show that at least 26 of the 100 sitting senators have a net worth of $1 million or more—many of them much more. Michael Huffington, a Texas oil man, spent $28 million of his own money in trying for a California Senate seat in 1994. "He is rich enough to be going up," one White House source said.

Wealth is not a determinant of votes in the Senate. There are liberals like Rockefellers and Ted Kennedy along with conservatives, like Orrin G. Hatch (R-Utah). But wealth confers an unfair advantage in the campaigns for the Senate, and makes it much harder than it should be for people of talent, but not wealth, to succeed.

The main reason for this disadvantage is the unrealistically low limit on individual contributions. The law, as Bradley notes, provides that "whereas a candidate could contribute as much of his own money as he chose, he could accept individual contributions of only $100,000 to $150,000 for the primary and $1,000 for the general election."

The contribution limits were set 22 years ago and have never been adjusted; inflation has eroded their value by two-thirds since then. Raising contribution limits is far down the list of proposals of most campaign finance reformers. Many would relax, ease or even do away with them, but it is foolish populism that insists it despoils the influence of wealth, and then resists liberalizing campaign contribution limits.

Rich men understand that. It's too bad the reformers can't figure it out.

[From the Washington Post, Jan. 31, 1996]"

FRONTLINE" S EXERCISE IN ExAGGERATION
(By David S. Broder)

As if the cynicism about politics were not deep enough already, PBS's "Frontline" last night presented a documentary called "So You Want to Buy a President?" whose thesis seems to be that campaigns are a charade, that policy debates are a deceit and only money talks.

The narrow point, made by Sen. Arlen Specter (R-Pa.), an early critic of the 1996 presidential race, about millionaire publisher Malcolm S. (Steve) Forbes Jr., is that "somebody is trying to buy the White House, and apparently it is for sale.

The broader indictment, made by correspondent/narrator Robert Krulwich, is that Washington is gripped by a "barter culture," in which politicians are for sale and public policy is purchased by campaign contributions.

The program rested heavily on a newly published paperback, "The Buying of the President." Author Charles Lewis, the head of the modestly titled Center for Public Integrity, was a principal witness, and Kevin Phillips, the conservative author who wrote the book's introduction, was also a major figure in the documentary.

It dramatized the view asserted by Lewis in the conclusion of his book: "Simply stated, the wealthiest interests bankroll and, in effect, help to preselect the specific major candidates months and months before a single campaign ad casts any shadow. The people have become a mere afterthought of those we put in office, a prop in our own play."

Viewers say a number of corporate executives—no labor leaders, no religious leaders, no activists of any kind, for some reason—who have raised and contributed money for presidents and presidential candidates and thereafter been given access at dinners, private meetings or overseas trade missions.

It is implied—but never shown—that politicians changed because of these connections. As Krulwich said in the midst of a media interview distributed, along with an advance tape, with the publicity kit for the broad- cast, "We don't really have any reason to think that these people are bad guys or good guys...I'm not really sure we've been able to prove, in too many cases, that a dollar spent bought a particular favor. All we've been able to show is that over and over again, people who do give a lot of money to politicians get a chance to talk to those politicians face to face, at parties, on planes, on missions, in private lunches, and you and I don't."

If that is the substance of the charge, the innuendo is much heavier. At one point, in the conclusion of his book: "Simply stated, the wealthiest banks roll down the hall and shake hands on the issue of changing policy debates to a deceit and only money talks..." Viewers say a number of corporate executives—no labor leaders, no religious leaders, no activists of any kind, for some reason—who have raised and contributed money for presidents and presidential candidates and thereafter been given access at dinners, private meetings or overseas trade missions.

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and the Heritage Foundation's Robert Rec­tor have had more influence in the last decade than any fund-raisers or contributors, because candidates have turned to them for policy advice.

John Rother of the American Association of Retired Persons and Ralph Reed of the Christian Coalition work for organizations that are substantially nonpartisan and accept campaign contributions at all. But their membership votes—so they have power.

The American political system is much more open to influence by any who choose to engage in it—all the more so when the proponents of the "authoritarian" theory of democracy understand, or choose to admit, the immense influence of money, send a clear message to citizens that the game is rigged, so there's no point in playing. That is deceitful, and it's dangerously wrong to feed that cynicism.

Especially when they have nothing to sug­gest when it comes to changing the rules for the money game.

At one point, Phillips said that the post­Watergate reforms succeeded only in having "forced them [the contributors and politi­cians] to be more subtle." That is true. Those reforms, which mandated the disclo­sure of all the financial connections on which the program was based, also created publicity which, as Skull and Bone­man and Skull and Sword ad­mitted, foiled the "plots" of some contribu­tors. And Krulwich, for his part, suggested very helpful, very high-profile measures for change:

"How about changing the kind of journalism that tells people that politicians are bought­and-paid-for puppets and you're a sucker if you vote for them?"

"If you want to change something, that's the kind of thing you can do to make your voice heard?"

Mr. McCon­nell. Mr. President, over the years working on this issue I have written several pieces which I ask unanimous consent to have printed—one in the Washington Post and one in the USA TODAY—in the RECORD.

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

JUST WHAT IS A SPECIAL INTEREST?

[By Mitch McConnell]

President Clinton, in his State of the Union address, beseeched Congress to enact campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence. Campaign finance reform to reduce "special interest" influence.

The simple fact is that communication with America's nearly 200 million eligible voters is expensive. For instance, one full­page color campaign ad in a Friday edition of USA TODAY would cost $104,400. Tele­vision and mail are also essential means of communicating with voters.

For the general public, the fact is that campaign spending would limit political discourse by candidates, thereby enhancing the power of the media. That is bad public policy.

But for all the whining, the fact is that congressional campaign spending (less than $4 per eligible voter in 1994) is paltry relative to what Americans spend on consumer items like bubble gum and yogurt. What we should do is adjust the individual contribution limit for inflation.

Mr. McCon­nell. Mr. President, some information about the cost to the Postal Service, estimated by this post­age, is also a worthy reform that would enable voters to make informed decisions on Election Day.

By comparison, the so-called "good govern­ment" groups' campaign-finance schemes would be disasters. Delay is preferable to the enactment of such constitutional monstros­i­ties.

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For the general public, the fact is that campaign spending would limit political discourse by candidates, thereby enhancing the power of the media. That is bad public policy.

But for all the whining, the fact is that congressional campaign spending (less than $4 per eligible voter in 1994) is paltry relative to what Americans spend on consumer items like bubble gum and yogurt. What we should do is adjust the individual contribution limit for inflation.

The simple fact is that communication with America's nearly 200 million eligible voters is expensive. For instance, one full­page color campaign ad in a Friday edition of USA TODAY would cost $104,400. Tele­vision and mail are also essential means of communicating with voters.
Mr. McCONNELL. Mr. President, calling the McCain-Feingold voluntary does not make it so. Its proponents call it voluntary. Anyone who dared not to comply with its voluntary limits would have to: pay twice as much as their opponent for TV ads and more for postage, with half the contribution limit; and forgo 30 minutes of free time in the broadcast section which causes us great concern.

The new provision would give to the U.S. Court of Federal Claims exclusive jurisdiction over challenges to the constitutionality of the broadcast rate and free time provisions. Further, by its terms it precludes any injunctive relief, providing only for money damages. It is unclear whether this is an attempt to somehow deny us the opportunity to bring a First Amendment claim against these provisions. The provision of the bill appears to have the same requirement and we do not understand why the broadcast provisions are given a different avenue for judicial review.

We must oppose the substitute to S. 1219, and we continue to support your efforts in this area. In the event of further assistance, please do not hesitate to phone.

Sincerely,

Edward O. Fritts,
President.

The provision for "voluntary" spending limits in Senate campaigns violates the free

speech principles of Buckley v. Valeo. The outright ban and severe fail back limitations on PACs violate freedom of speech and association, as do the limitations on "bundling." The unprecedented controls on raising and spending "soft money" by political parties and even non-partisan groups intrude upon First Amendment rights in a manner well beyond the scope of government interference. The revised provisions governing the right to make independent expenditures both improperly obstruct that core area of electoral activity and impermissibly impinge upon the absolutely protected area of issue advocacy. The reduced record-keeping threshold for contributions, which drops from $5,000 down to $50, invades associational privacy. And the new powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin "a violation of ...'' 424 U.S. at 1,57 (1976). Nor could the Congress try to help "equalize" political speech and the ability to influence the outcome of elections by imposing restraints on some speakers: "... the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." Buckley v. Valeo, 424 U.S. at 48-49.

Unfortunately, in Buckley the Court upheld the Act's contribution limits of $1,000 for individuals and $5,000 for political committees. The Court did this because of its stated concern that giving to candidates was a recipe for corruption, a ruling that ensured the two decades of frustration and unfairness that have ensued. With no limitations on overall spending or on contributions to wealthy candidates, and with independent campaign committees, issues groups and the press free to use their resources to comment upon and support candidates in unique and creative ways, with less well-funded candidates hampered in their ability to raise money from family, friends and supporters, the stage was set to make this part of the advantages of incumbency and the dependency on PACs. The advantages of incumbency meant that public resources such as franking privileges, government funded newsletters and free television coverage (C-Span) made it easier for Members of Congress to communicate with the voters, whereas challengers have to spend restricted amounts of money in order to achieve the same visibility.

The dependency on PACs resulted from severe limitations of money that individuals can contribute directly to candidates, coupled with the markedly increased cost of campaigning, which made PACs a very important and in some cases the primary source of campaign funding. And the individual contribution limit was kept at $1,000, which, adjusted for inflation, is probably worth about $400 in real dollars today.

That is why for twenty years candidates have had to look more to PACs order to raise money from supporters all over the country, they cannot be made to surrender those rights in order to receive public benefits.

The Court suggested that Congress could establish a system whereby candidates would choose freely between full public funding with expenditure limits and private means without these limits as the candidate remains free to engage in unlimited private funding and spending instead of limited public funding." Republican National Committee v. Federal Election Commission, 487 F. Supp. 280, 284 (S.D.N.Y.), aff'd mem., 445 U.S. 955 (1980). See Buckley at 57, n. 65. Contrary to its supporters' claims, S. 1219 does not establish such a regime of voluntary campaign spending limits. Rather, the bill denies significant benefits to and imposes burdens on those candidates who refuse to agree to limit their expenditures, while conferring a series of advantages upon those candidates who agree to the limits.

First, by banning PAC contributions entirely, the bill makes it more difficult for candidates to raise and spend money at all, which will make them more susceptible to accepting the expenditure and other limitations. Candidates who do not agree to the spending limits have to work harder to raise funds because the limits on contributions to their opponents are raised automatically from 75% to 90% of the maximum. And candidates have to pay full rates for broadcast and postage. Finally, the expenditure ceilings of their opponents are raised by 20% to make it easier to cut off the messages of "non-complying" candidates.

In short, this scheme does everything possible to help the candidate who agrees to spending limits to overwhelm the candidate who does not. That is not a level playing field.

Indeed, in Buckley the Court upheld public funding of a President's campaign because its purpose was "not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." 424 U.S. at 92-93. S. 1219 fails this test, for its purposes and effect are to limit speech, not enhance it. Recent cases have invalidated other schemes for making candidates "voluntarily" agree to expenditure and other restraints by penalizing those who do not agree, as in Shrink Missouri Government PAC v. Maupin, --, 64 Law Week 2409 (8th Cir. 1995) (restricting funding sources of those who refuse to agree to abide by expenditure limits). Unfortunately, in Buckley the Court held that the power of incumbency as the single most significant factor in politics. Limits on giving and spending make it harder for those subject to the restraints to raise funds and easier for those outside the restraints to bring their resources to bear on politics. Limiting individual contributions to $1,000 per candidate, while allowing PACs, made legitimate by the "reforms," to contribute $5,000 per candidate, would make it harder to raise money from individuals and make candidates who have often representing entrenched interests, would be more likely, though far from inevitably, to prefer incumbents to challengers as beneficiaries of their largesse. The Act would stifle not expand political opportunity.

What you had, we warned, was an unconstitutional law, enacted by Congress, approved by the President, and enforced by an agency, the Federal Election Commission, beholden to each, and designed to restrain the speech and association of those who would criticize or challenge the elected establishment. Talk about the powers of incumbency. That's why we called the Act an "Incumbents Protection Act." In Buckley v. Valeo, the Supreme Court held that any government regulation of political funding—of giving and spending, of contributions and expenditures—is regulation of political speech and subject to the strictest constitutional scrutiny. The Act's limitation on political expenditures—by the very fact of its name—creates, no matter how wealthy—flatly violated the First Amendment. Nothing can justify the government telling the people how much they can spend on their candidates or causes. And it should be observed that what triggers benefits for some candidates and burdens for others is not that a candidate approaches or spends relevant spending limits but simply refuses to agree to be bound by them.

The ACLU believes that the receipt of public subsidies or benefits can never be conditioned by acceptance of unreasonable limitations on the freedom of speech and association. And the new powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin "a violation of the Act" pose an ominous and sweeping threat of prior restraint and political censorship.

S. 1219 suffers from many of the same flaws as the original statute at issue in Buckley v. Valeo. There the ACLU contended that the Federal Election Campaign Act of 1974 was bad constitutional law because it cut to the heart of the First Amendment's protections of political freedom. It limited the ability of groups like the ACLU and others to gather, to speak, to publish, to join together in the pursuit of political and public concern. This constitutional protection of the right of the people to speak, to discuss, to publish, to join together in the pursuit of political and public concern. This constitutional protection is the genius of American democracy.

And this is particularly vital in connection with election systems when issues, arguments, candidates and causes swirl together in the public arena. Yet, the 1974 Act imposed sweeping and Draconian restrictions on the ability of citizens and groups, candidates and committees, parties and partisans to use their resources to make political contributions and expenditures, to support and emboody their freedom of speech and association.

The ACLU also insisted the Act was poorly crafted "political restructuring" rather than real reforms. It not only impaired the equality of political opportunity, enhances dependence upon money and moneyed interest of PACs and other restraints by penalizing those who do not. That is not a level playing field.

And for twenty years, the ACLU has suggested the way to solve these various disparities and dilemmas is to expand political participation, improve public financing or support for all legally qualified candidates, without conditions and restrictions, not to restrict contributions and expenditures which enable groups and individuals to communicate their message to the voters. Unfortunately, in all of its critical aspects, S. 1219 fails. The Campaign Finance Reform Act of 1995 fails to facilitate broader political participation and it also unconstitutionally abridges political expression.

Mr. President, the proponents of this bill are very mistaken if they believe the spending limits are constitutional. The ACLU differs: Title I of the bill, providing "spending limits and benefits" for Senate election campaigns, is an attempt to coerce what the law cannot command: limitations on overall campaign expenditures and on the use of personal funds for a candidate's own campaign. And it is an attempt, by way of the spending limits—which inevitably benefit incumbents—in violation of the essential free speech principles of Buckley v. Valeo and the Buckley Amendments. And the new powers given to the Federal Election Commission to go to court in the midst of a campaign to enjoin "a violation of the Act" pose an ominous and sweeping threat of prior restraint and political censorship.
by campaign expenditure laws that neces-

sarily have the effect of limiting the quantity of political speech in which candidates for public office are allowed to engage." 1 d. al.-t.

Moreover, even if the Act did create a level playing field, the incumbent starts the game 30 points ahead of greater campaign spending ability, name recognition, access to the news media and other benefits of incumbency. All things being equal, the incumbent starts with an advantage. Any law which imposes fi-
nancial penalties and disincentives on speech because of the interaction between the status of the speaker and the content of the speech is fatally suspect. See Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board, 502 U.S. 105 (1991) (law improperly escrowed profits from writing a novel's criminal activities). The National Federation of the Blind, 516 U.S.—(1995) (invalidating overbroad hoon-
orarian ban on moonlighting speeches and ar-
ticles by federal employees). Schemes of pub-
lic benefits for political action which are structured in such a fashion that the government seems to be showing favoritism to cer-
tain candidates and penalizing others also have been held to be a form of unconstitutional political discrimination, violative of both free speech and equality principles. See, e.g., Bolger v. Boger Collect. Bd., 468 F. Supp. 756, 774-78 (E.D.N.Y. 1980) (preferential mailing rates for major parties struck down as violative of equal protection). The Island Chapter of the National Women's Politi-
cal Caucus v. Rhode Island State Lottery Comm'n, 600 F. Supp. 1403, 1414 (D.R.I. 1985) (allowing major parties but not other groups to conduct fundraising lottery events viol-
ated the First Amendment); McKenna v. Reilly, 419 F. Supp. 1179, 1188 (D.R.I. 1976) (state statute permitting tax-exempt foundation to fund to endorsed candidates and exclusion of funds to unendorsed candidates violated First Amendment).

Finally, some of the strings attached to the benefits offered would impose unprece-
dented controls on political speech by dictat-
ing the format of campaign speech. The re-
quirement that free air time cannot be used for campaign commercials of less than 30 seconds is an impermissible interference with the content of political speech. See McIntyre v. Ohio Elections Comm'n, 115 S. Ct. 1511, 1518 (1995). The only conceivable purpose for this restriction is that Congress thinks commercials are commercially objectionable. That is the kind of con-
tent-based judgment that Congress cannot make, even when it is conferring a benefit; nor can Congress compel the structure of political speech. The re-
quirement that free air time is presumed to be the purpose of influencing an election for Federal office—except those made by politi-
cal parties and their candidates—Section 201 of the First Amendment's protection of freedom of polit-
ical speech and association. It gives a perma-
nently political monopoly to political parties and their candidates which is fatal-
ally objectionable. That is the kind of con-
tent-based restriction which proudly proclaims that it enacts the First Amendment.

Mr. President, earlier I mentioned a handful of old-time dissenters whom the Court upheld a total ban on PAC contributions to Federal Election Activities'' and "Political Campaign Act into the PAC Magna Carta Act.

We tend to think of the real estate PACs or the Trial Lawyers' PAC or the insurance and medical PACs or the tobacco-related PACs. But the ACLU's first encour-
gagement with a "PAC" was when we had to defend a handful of old-time dissenters whom the government claimed were an illegal "political committee." The small group had run a two-page advertisement in The New York Times, urging the impeachment of President (and re-election candidate) Richard Nixon for bombing Cambodia and praising those who had marched against the war and who had voted against the bombing. In the summer of 1972, before the ink was dry on the brand new Campaign Act of 1971, the Justice Depart-
ment used the "campaign reform" law to haul the little group into court, label them a "political committee" and threaten them with injunction and fines unless they com-
plied with the law—"for publicly speaking their minds on a key political issue of the day. The Court of Appeals quickly held that the group was an ad hoc issue organization, not a covered "political committee." But we got an early wake-up call on what "campaign reform" really meant.

First of all, it means unrestrained spending, i.e., those that give or spend money to or on behalf of fed-
ceral candidates, come in all sizes and shapes. They can be purely ideological or primarily self-interested, or both simultaneously. And they span the political spectrum. Labor PACs were organized first, in the 1940's, usu-
ally to provide funds, resources and person-
nel to assist political candidates, usually Democrats. Corporate PACs came on line in the early 1970's, usually on the Republican side. And both corporate and labor PACs were legitimized and liberated by the "re-
forms" of the FECA, which allowed those and all other PACs to contribute five times as much money to federal candidates as indi-
viduals. And finally, the Federal Election Campaign Act into the PAC Magna Carta Act.

We think all that PAC activity is simply a reflection of the myriad groups and associa-
tions that make up so much of our political life. And so many of them are an effective way for individuals to maximize their politi-
cal resources, I think commercialize polit-
cally objectionable. That is the kind of con-
tent-based judgment that Congress cannot make, even when it is conferring a benefit; nor can Congress compel the structure of speech in that fashion. See McElory, supra; Woolley v. Maynard, 430 U.S. 705 (1977); Riley v. National Federation of the Blind, 487 U.S. 781, 797 (1988).

The McIntyre and Riley decisions also call into question the provisions of the Bill (Sec-
ction 302, Campaign Advertising) that mandate specific identifications and dis-
closures in the text of print, display or broadcast political advertisements. In McIntyre the Court confirmed the historic right of political anonymity and invalidated a re-
quirement that leaflets on referenda issues state name and address of person responsible for the publications. And in Riley, the Court struck down a compulsory disclosure state-
ment on charitable solicitation literature, finding that the settled law was that the First Amendment encompasses "the decision of both what to say and what not to say," 487 U.S. at 797.

2. The same objection pertains to the "fall-
back" restrictions of Political Action Commit-
tees which suggests that the Court would uphold a total ban on PAC contributions to federal candidates. Political contributions are fundamentally protected by the First Amendment. Mr. President, earlier I mentioned a handful of old-time dissenters whom the Court is not likely to let you still all those voices.

Moreover, banning PAC contributions is futile as a reform. All the PAC money that candidates will recoup if the ban is lifted will go instead into an upsurge of independent expenditure campaigns for favored or against disfavored candidates.

BANING PAC CONTRIBUTIONS

There is not a word in Buckley v. Valeo or any of the other relevant cases on regulation of PACs which suggests that the Court would uphold a total ban on PAC contributions to federal candidates. Political contributions are fundamentally protected by the First Amendment. Mr. President, earlier I mentioned a handful of old-time dissenters whom the Court is not likely to let you still all those voices.

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The Supreme Court made it clear that independe PAC expenditures are at the core of the First Amendment and totally off limits to restrictions. Federal Election Com-
mision v. National Conservative Political Ac-

The same objections pertain to the ban on "bundling" of individual PAC contributions. This fallback proposal would abridge free-
dom of association which the Supreme Court has recognized as a "basic constitutional freedom." Kusper v. Pontikes, 414 U.S. 51, 57 (1973).

The Court has pointedly observed that "the practice of persons sharing campaign funds to be used in independent expenditures is protected by the First Amendment since one person cannot be required to contribute funds based on the political resources, even a few hardy Members of Congress who had voted against the bombing. In the summer of 1972, before the ink was dry on the brand new Campaign Act of 1971, the Justice Depart-
ment used the "campaign reform" law to haul the little group into court, label them a "political committee" and threaten them with injunction and fines unless they com-
plied with the law—"for publicly speaking their minds on a key political issue of the day. The Court of Appeals quickly held that the group was an ad hoc issue organization, not a covered "political committee." But we got an early wake-up call on what "campaign reform" really meant.

Of course, one can point out that even if the Constitution is being flouted or violated, there is no article, or even the structure of such a thing as the government seems to be showing favoritism to cer-
tain candidates and penalizing others also have been held to be a form of unconstitutional political discrimination, violative of both free speech and equality principles. See, e.g., Bolger v. Boger Collect. Bd., 468 F. Supp. 756, 774-78 (E.D.N.Y. 1980) (preferential mailing rates for major parties struck down as violative of equal protection). The Island Chapter of the National Women's Politi-
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Moreover, banning PAC contributions is futile as a reform. All the PAC money that candidates will recoup if the ban is lifted will go instead into an upsurge of independent expenditure campaigns for favored or against disfavored candidates.
continued adherence to the views represented by the group. The proposed bill would severely restrict ideological groups like Emily’s List, which have made a critical contribution to organized political activity and free-ness for years. By the campaign expenditure ceilings applied to that election. But this restraint also seems to impinge upon the protection of speech recognized by the First Amendment. For one thing, if the campaign expenditure ceiling comes very attenuated in this setting, and the rationale for the overall 20% limit seems weak against First Amendment standards. Once PACs are capped, candidates and PACs, in effect, would be banned totally from political interaction with one another, which would seem as constitutionally vulnerable as a total ban and have the effect of a limitation on campaign expenditures. And what of new groups that wanted to support a candidate after the candidate’s PAC quota had been reached, especially if the campaign turns on an issue—abortion for example—of great moment to that group? Finally, efforts to resemble yet another backdoor effort to limit overall campaign expenditures, in violation of Buckley’s core principles.

LIMITING OUT-OF-STATE POLITICAL CONTRIBUTIONS

Somehow, I have always found particularly troublesome those proposals to limit the amount of out-of-state or out-of-state contributions to candidates. Section 301 of Title III does not seem to operate as a direct ban on out-of-State contributions. Rather it provides that a candidate must receive not less than 60% of contributions from individuals who reside within their election districts. This seems to give state individuals in order to remain in compliance with the spending limits and receive the statutory benefits. Obviously, this is a backdoor effort to limit PAC contributions to candidates, since so many PAC contributors come from States different from the candidates their PACs contribute to, as do the PACs themselves. It also seems to be an effort to insulate incumbents from well-funded challenges supported from another State.

Any potential justification for this ban seems highly unlikely to pass constitutional muster. Analogizing this restriction to a voter’s residency requirement fails short after McIntyre v. Ohio State Board of Elections (1990) which held that restrictions on political speech about candidates or referenda cannot be upheld on the grounds that they are merely ballot or electoral regulations, because, in reality, they are free speech limitations. Indeed, a federal court in Oregon recently held in overturning a requirement that state and local candidates had to return all their campaign funds from individuals who resided within their election districts. Vannatta v. Kesling, F. Supp. (D. Ore. 1995).

Moreover, in-state limitations could deprive particular kinds of underfinanced, in-state candidates of the kind of out-of-state support they need. Just as much of the civil rights movement was funded by contributors and supporters from other parts of the nation, so too are many new and struggling candidates supported by interests beyond their home states. This proposal would severely harm such candidates. Perhaps, that is its purpose.

Finally, Congress is our national legislature, and although its representatives come and are elected from separate districts and states, they deal with an array of national issues that transcend district and state lines and may be of concern to citizens all over the nation. When such issues become central in certain campaigns, people and groups from all over the country should be entitled to have their views and participation heard. And another approach takes a disturbingly insular and isolated view of political accountability and the obligations of a Member of Congress.

The new “soft-money” contributions and expenditures are unprecedented and unjustified restraints on political parties. Rather it provides not seem to operate as a direct ban on out-of-State contributions. Rather it provides that a candidate must receive not less than 60% of contributions from individuals who reside within their election districts. This seems to give state individuals in order to remain in compliance with the spending limits and receive the statutory benefits. Obviously, this is a backdoor effort to limit PAC contributions to candidates, since so many PAC contributors come from States different from the candidates their PACs contribute to, as do the PACs themselves. It also seems to be an effort to insulate incumbents from well-funded challenges supported from another State.

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cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

The proposed bill, however, so broadly defines coordination that virtually any person who interacts with a candidate or any campaign official, in person or otherwise, is barred from making an independent expenditure. For example, under Section 316, a candidate’s expenditure is deemed coordinated, and not independent, if the person making it “has advised or counseled” the candidate or his agents on any matter relating to any election, for the same political consultant or firm as the candidate you are likewise deemed coordinated.

These restrictions embody a new and impermissible version of “guilt by association,” and a new kind of “gag rule” by association. See De Jonge v. Oregon, 299 U.S. 553 (1936) (a speaker cannot be punished for organizing a meeting and appearing on the same public platform where radicals were also speaking). Indeed, it could have some perverse disaffected campaign worker or volunteer, who leaves a campaign because he or she thinks a candidate has acted improperly, is barred from making independent expenditures against that candidate, for, ironically, they will be deemed a contribution.

The other way in which the provision governing independent expenditures is fatally flawed is in its expanded definition of “express advocacy,” which is defined as a communication “in such a way as to suggest to those to whom it is addressed that there is a certain candidate or candidates for a public office who will be helped. I have enjoyed working with her times, including staying up all night, a confidence that this is really a limited free time benefit. The PRESIDING OFFICER. The Senator has 16 seconds remaining.

Mr. McCONNELL. Mr. President, I thank Senator Frist of Tennessee and Lani Gerst for their good work on this most important issue. Tam and I have been through these battles a few times, including staying up all night, a couple years ago. She has been a great help. I have enjoyed working with her, I want to thank her for her service to the Nation.

The PRESIDING OFFICER. The Senator from Wisconsin has 9 minutes.

Mr. FEINGOLD. Mr. President, I thank Senator Lankford of Oklahoma and Senator Kennedy for their good work on this important issue. Tam and I have been through these battles a few times, including staying up all night, a couple years ago. She has been a great help. I have enjoyed working with her, I want to thank her for her service to the Nation.

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Mr. McCONNELL. Mr. President, I thank Senator Frist of Tennessee and Lani Gerst for their good work on this most important issue. Tam and I have been through these battles a few times, including staying up all night, a couple years ago. She has been a great help. I have enjoyed working with her, I want to thank her for her service to the Nation.

The PRESIDING OFFICER. The Senator has 16 seconds remaining.
With respect to the 50-percent discount, it should be noted that this provision is really the linchpin of the legislation. Without public financing, there must be some alternative incentive to encourage candidates to voluntarily limit their campaign spending. Such an incentive is to somehow make it more difficult for challengers to run against incumbents that currently have and how it affects challengers and incumbents. I don’t think that anyone can dispute that the current campaign finance system confers significant benefits on incumbent Senators that provides incumbents an overwhelming advantage over challengers. Incumbents start out with more name recognition. Incumbents are permitted to send out free mass mailings to the voters of their States, which often are little more than thinly disguised campaign newsletters. And most importantly, as virtually every legitimate study has shown, the campaign cash overwhelmingly flows to incumbents. Whether it is PAC money, soft money, bundled money—you name it. The campaign money almost always flows to incumbents. To suggest that spending limits will somehow make it more difficult for challengers to run for office is to suggest that challengers have access to the kind of money that incumbents have access to. That assertion is just factually false. Challengers cannot raise millions of dollars as incumbents can. The few challengers that are able to mount credible campaigns are those few challengers that are millionaires, and that is why more and more Senate campaigns are turning into races between an incumbent and a millionaire. As this first chart demonstrates, money does matter. In 1990, 1992, and 1994, the Senate average winning candidate not only outspent the loser in that particular race, but far outdistanced them.

In fact, in most cases, the winning candidate doubled—doubled—Mr. President, what the losing candidate spent. That means that for every television
spot the losing candidate was able to run, the winning candidate was able to run two television spots—in some cases, three or four or five times as many spots.

Now the fact that money is clearly the most determining factor in influencing the outcome of Senate elections is troubling by itself. It is a harsh indictment of the current limitless-spending campaign spending that the junior Senator from Kentucky is defending.

But if we know that the candidate who spends the most money is likely to be the winning Senate candidate, the next logical question is, who's getting the money? As you can see, Mr. President, incumbents are getting the money. Not only are they getting the money, they are blowing challengers out of the water.

That is the current campaign finance system—a system in which the candidate who spends the most money is the likely winner, and a system in which the money flows overwhelmingly to incumbents. The current system is rigged to protect incumbents, and our proposal, for the first time ever, will provide challengers who do not have access to millions and millions of dollars to run a fair and competitive campaign.

We have spending limits in the Presidential system. Mr. President. Have they protected incumbents? They didn't protect President Ford. They didn't protect President Carter. And they didn't protect President Bush. The Presidential system, thanks to voluntary spending limits, has produced fair and competitive elections for 20 years now. The congressional system, with unlimited campaign spending, has produced the opposite.

The evidence is clear, Mr. President, and I am hopeful my colleagues will see through the phony and absurd argument that spending limits hurt challengers.

THE CONSTITUTIONAL ARGUMENT

Mr. President, I have listened to the arguments of the Senator from Kentucky, the Senator from Washington, and others, with respect to the constitutionality of this campaign reform proposal. I share his concern that we should not pass legislation that would be a clear violation of the first amendment. I stand behind no one when it comes to defend the amendment and the principles it stands for. That is why I will not support a constitutional amendment that would allow us to impose mandatory spending limits. At one time, I did vote for a sense of the Senate resolution regarding public financing. However, I have come to believe that we should respect the Supreme Court's rulings on this issue, and that these rulings have provided enough guidance and direction that we can write a constitutional proposal that would be upheld by the Supreme Court.

I have to say that what the Senator from Kentucky is suggesting, that the voluntary spending limits might be found by the courts to be unconstitutional, is unfounded. Mr. President, this argument is a giant red herring meant to divert attention away from the real issues.

Let us be very clear about what the Supreme Court held in the Buckley versus Valeo decision in 1976. The Court said two very important things in the Buckley decision:

First, the Court made a distinction between mandatory limitations on expenditures by candidates, and mandatory limitations on contributions to candidates. The Court said that we cannot place mandatory spending limits on all candidates, because that would infringe on the first amendment rights of those candidates who may wish not to abide by the spending limits.

Second, the Court upheld mandatory limitations on campaign contributions, declaring that such contributions could have, or appear to have, a corrupting influence on the recipient of those contributions, and contributions could therefore be limited.

Now, I have heard the Senator from Kentucky say on many occasions that the Supreme Court has said that money equals political speech and that since we cannot limit political speech, we cannot limit the flow of money. As the Senator from Kentucky just asserted, money is speech and we can't limit it. However, Mr. President, the Supreme Court did not, in fact, say that money is speech and cannot be limited, and saying it over and over again doesn't make it any more true.

The Court did say that money is a form of speech, and can only be limited by the Government in certain circumstances. And as I said, one of those circumstances is in the form of limits on campaign contributions. If the Supreme Court had held that money equals absolute speech, then they would not have upheld limitations on campaign contributions.

Besides contribution limits, the Supreme Court has also said that there are other ways we can constitutionally limit the flow of campaign money, including campaign expenditures. As the Court said in the Buckley decision:

"Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations. That candidate may, voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.

In short, the Presidential system is a completely voluntary system that offers incentives in the form of public financing to candidates who agree to limit their spending. That, the Court said, was perfectly constitutional. And that sort of voluntary system, specifically upheld by the Supreme Court in the Buckley decision, is what the McCain-Feingold-Thompson legislation is modeled after. We provide a voluntary system of spending limits and benefits. No one is forced to participate, no one is coerced into participating, and there are no penalties, not even a single one, for candidates who choose not to voluntarily comply.

The assertion that the Senator from Kentucky is making, that voluntary spending limits tied to benefits is unconstitutional, is a challenge that has been specifically rejected by the courts. Let me repeat that Mr. President. The argument that the Senator from Kentucky is making, that voluntary spending limits tied to benefits is unconstitutional, has specifically been rejected by the Federal courts.

The case was Republican National Committee versus Federal Election Commission, and in that case a three-judge federal panel explicitly upheld the constitutionality of voluntary spending limits and rejected the argument put forth by the Senator from Kentucky. That decision was summarily affirmed by the U.S. Supreme Court.

It is true that unlike the Presidential system, the McCain-Feingold-Thompson proposal does not have public financing. It would have been my preference to have public financing, but I do not wish to forego a proper public financing as a part of this compromise proposal.

Instead, we offer broadcast and postcard discounts that will substantially reduce the costs of running for a Senate seat. And the outlandish suggestion has been made by a few—very few indeed—that this distinction, between public financing and advertising discounts, is what makes our legislation unconstitutional.

Mr. President, that is an absurd proposal. The only way a voluntary system could possibly be unconstitutional is if the system were not truly voluntary, or in other words, if candidates were essentially coerced into participating. How do you coerce a candidate into participating? By making the benefits so incredibly valuable and by imposing tough penalties against those who choose not to comply, so that there really is not choice for a candidate to participate or not.

This is where this public financing from Kentucky's—Senator McConnell—argument completely falls apart. The Court ruled in the Buckley case that public financing was not coercive. So for our bill to be unconstitutional, the benefits would have to be even more valuable than direct public financing.

Mr. President, the benefits in our bill are very valuable. The 50 percent broadcast discount alone will cut a candidate's advertising costs in half. But these benefits do not even come close to the value of direct public financing.

Suppose you are a Federal candidate running a $1 million campaign. And
I should also say, Mr. President, that a proposal to not only ban PAC contributions, but also to prohibit PAC’s from engaging in independent expenditures as the Pressler-Durenberger amendment did, can actually be found in another reform proposal introduced by the junior Senator from Kentucky. I am somewhat surprised that the junior Senator from Kentucky, who has condemned such a proposal as unconstitutional and a blatant violation of the first amendment, would include a PAC provision in the reform bill he wrote.

So, Mr. President, just a couple of years ago, 86 Senators went on record in favor of a PAC ban coupled with fall-back limitations in case of an unfavorable Supreme Court ruling. The provision in our proposal is actually far less restrictive than that included in the Pressler-Durenberger amendment, as we only limit PAC contributions, not their independent expenditures. If 86 Senators, including the Senator from Kentucky, believed a complete PAC prohibition to be constitutional enough that they could vote for it, I see no reason why the same number, or even more Senators now could not support a far less restrictive reform.

In closing, Mr. President, I want to assure my colleagues that I believe, and the Senator from Arizona believes, that the key provisions of this legislation would be upheld by the courts. Moreover, we would have nonpartisan experts from around the country, including the Congressional Research Service, who do not have a prejudice one way or the other on this proposal, have told us that these provisions are constitutional.

I ask unanimous consent that a statement designating that the broadcast provisions in the bill would have only a relatively nominal impact in the broadcast industry be printed in the Record.

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

CONGRESSIONAL RESEARCH SERVICE, LIBRARY OF CONGRESS, WASHINGTON, D.C. FEBRUARY 8, 1996.

TO: Honorable Russell Feingold, Attention: Andy Kutler.


SUBJECT: Estimated value of free and discounted TV time under S. 1219—the Senate Campaign Finance Reform Act of 1995.

This memorandum provides information regarding the estimating the value of the free and discounted TV air time that would be offered to Senate candidates under S. 1219, the Senate Campaign Finance Reform Act of 1995.

S. 1219, introduced by Senator McCain and you, establishes a system of voluntary expenditure limits for Senate candidates, in exchange for three added benefits: (1) 30 minutes of free TV time; (2) additional TV time at 50 percent of the lowest unit rate (LUR); and (3) a reduced postal rate for two mailing per eligible Senator. This memorandum focuses on estimating the value of the first two benefits, dealing with TV time.
As I have explained to you, and as has been reinforced in my conversations with all my sources, both these tasks are highly speculative, and the resulting estimates I have derived are subject to challenge on any number of grounds. I have used different methodologies and sources for each of the two tasks, relying in both cases on a combination of actual cost figures, published estimates, and educated guesses and assumptions by appropriate authorities. While these assumptions can legitimately be challenged, I believe this effort to be reasonable, in an attempt at a rough approximation of the dollar value of the proposed benefits. Appropriate caveats and sources are noted herein.

**BENEFIT NO. 1: FREE TV TIME PROPOSAL**

The bill would provide 30 minutes of free television air time to participating candidates, to be used: (1) in the general election period (i.e., once the candidate has qualified for the general election ballot); (2) on Mondays-Fridays, between 6 PM and 10 PM (unless the candidate elects otherwise); (3) in segments of between 30 seconds and 5 minutes; and (4) within the same time frame as an adjacent State, but with no more than 15 minutes on any one station.

**METHODOLOGY**

Our goal was to make a reasonable determination of the dollar value of 30 minutes of television advertising time which Senate candidates would use during a general election period. At the outset, one is faced with the fact that there are enormous variations in costs of TV time. First of all, there are 211 media markets in the U.S., with substantial differences in the market share. Second, the broadcast market is a commodity market, subject to the laws of supply and demand. Hence, there are wide variations in costs within the same market, from broadcast station to broadcast station, even for comparable periods of time on comparable TV stations. Furthermore, there are no sources on the exact cost of TV ads, because of the extraordinary system for buying and setting rates for TV time. Finally, our task was compounded by the uncertainties involved in a political campaign setting, with candidates using broadcast time for the benefit unknown and with the way in which candidates might use the benefit (within the parameters outlined in your legislation) unknown.

In undertaking this project, I was fortunate in obtaining assistance from two Washington-area media buyers who are substantially involved in campaign work. Although they evaluate the advertising media, they do not provide specific cost information for broadcast time. However, they were able to provide cost information for broadcast time and the cost of producing the ad. They estimated the cost of producing the ad at $1,500. This estimate includes producing the ad, but does not include the cost of the air time.

In order to get a cost figure for an actual 30-second spot, one must multiply the cost per point by the number of points which a particular program (or TV show) commands. We chose five shows in Monday through Friday prime time, and then averaged their national rating point numbers. The shows (and the national rating point numbers) were: 60 Spots of 30 seconds each; the candidate would be reasonable to assume that 95 percent of the ``electronic media advertising'' total went for broadcast time purchases. This cost was divided by 95 percent of the total, or $70.1 million, and assumed the remaining 5 percent of the ``electronic media advertising'' total went for air time purchases. This leaves $73.8 million for broadcast time purchases. Several other factors must be taken into account in making the data in this study applicable to our purposes. First, the electronic media figure includes radio advertising; our interest is solely in television. In a telephone discussion on February 1 with Dwight Morris, one of the authors, we agreed that it was a reasonable assumption that 46 percent of the total went for television. Hence, subtracting another 5 percent, or $3.7 million, leaves $70.1 million for TV air time cost.

**BENEFIT NO. 2: DISCOUNTED TV TIME PROPOSAL**

Your bill also provides participating Senate candidates the benefit of buying additional broadcast time at 50 percent of the lowest unit rate. This benefit would be available during the last 60 days of the general election period. In our phone discussion, on February 1 with Dwight Morris and I agreed that it would be reasonable to assume that 50 percent of the media expenditures occurred in the general election period. Therefore, we used a cost of $70.1 million yields $7.0 million for primary TV air time spending and $63.1 million for TV air time in the general election.

Because the data unavoidably include production costs and consultant fees (which are irrelevant to the benefits in S. 1219 concerning air time), it is necessary to estimate the percentage solely for air time. The authors report that most media consultants add a 15 percent charge to media buys for their services (which include producing the ads). However, this cost would be unreasonable; hence, we multiplied by 0.15, or $13.0 million, and assumed the remaining 85 percent of the “electronic media advertising” total went for air time purchases. This leaves $73.8 million for broadcast time purchases. Several other factors must be taken into account in making the data in this study applicable to our purposes. First, the electronic media figure includes radio advertising; our interest is solely in television. In a telephone discussion on February 1 with Dwight Morris, one of the authors, we agreed that it was a reasonable assumption that 46 percent of the total went for television. Hence, subtracting another 5 percent, or $3.7 million, leaves $70.1 million for TV air time cost.

**ESTIMATED TOTAL**

To derive a national figure, we made a simple calculation, based on the assumption of 66 major party general election candidates, with no qualifying minor party candidates. Of course, this is a considerable assumption that all major party nominees would participate. Nevertheless, this is the way it is that no minor party candidates would qualify. But as your bill calls for an hour of free time per State, having minor party candidates would not change the total. Hence, multiplying $92.400 by 66 candidates yields a national total of $6,098,400, rounded to $6 million.

As I have explained to you, and as has been reinforced in my conversations with all my sources, both these tasks are highly speculative, and the resulting estimates I have derived are subject to challenge on any number of grounds. I have used different methodologies and sources for each of the two tasks, relying in both cases on a combination of actual cost figures, published estimates, and educated guesses and assumptions by appropriate authorities. While these assumptions can legitimately be challenged, I believe this effort to be reasonable, in an attempt at a rough approximation of the dollar value of the proposed benefits. Appropriate caveats and sources are noted herein.
general election is bought in the last 60 days. Morris and I agreed (as did some of the media buyers I worked with in the first estimate) that at least 55 percent of the air time would be purchased in these periods. Hence, subtracting an additional 5 percent in each case leaves an estimated $6.7 million for TV air time in the last 30 days of a primary and $35.6 million for the entire time in the last 60 days of a general election.

GENERAL ELECTION BENEFIT

Step 1. Starting with $86.8 million total for electronic media advertising, I subtracted the estimated cost of $13.0 million for consultants, $3.7 million for radio time, $7.0 million for primary spending, and $3.5 million for time purchased before the last 60 days of the general election. The resulting $59.6 million (for TV air time in the final 60 days of the general election) represents approximately 69 percent of the total $219.1 million in total Senate candidate expenditures in the Morris/Gamache study.

Step 2. Although the comparable 1994 data are not yet available, it may be instructive to apply the 27 percent figure cited above to the total expenditures reported to the FEC by 1994 Senate candidates. The 1994 total of $283.3 million spent by major party Senate general election candidates in the 1993-1994 election cycle represents an estimated $76.5 million in total expenditures reported to the FEC in the Morris/Gamache study.

Step 3. The estimated cost of TV air time of $96.6 million and the 1994 estimate of $76.5 million can be averaged (in case one of the years was an anomaly in the context of overall spending trends) to yield $86.1 million, rounded to $86.8 million for convenience. While this is just an estimate, subject to all the caveats inherent therein, I would feel fairly comfortable with this basic figure. Further estimates you may wish to make, specifically that the value of the broadcast discount would be 50 percent of this, or roughly an estimated $43.4 million.

PRIMARY ELECTION BENEFIT

The process for estimating the benefit in the primary period is complicated by the fact that one primary data source not only does not distinguish between primary and general spending, but it leaves out candidates who lost the nomination contest. Hence, I added a fourth and fifth step to the process: (1) use the Morris/Gamache 1992 data on cost breakdowns, apportioning amounts to specific functions; (2) apply the same percentages to the 1994 figures; (3) average the 1992 and 1994 figures; (4) examine 1992 and 1994 FEC data on primary losers, apply an appropriate percentage, and average the two dollar figures; and (5) average the figure from step 4 to the figure in step 3.

Step 1. To apportion the share of primary election candidates expenditures that were spent on TV air time in the last 30 days of the primary, I started with the $86.8 million total for electronic media advertising in the Morris/Gamache study. I subtracted the estimated cost of $13.0 million for consultants, $3.7 million for radio time, $63.1 million for general election spending, and $3.5 million in time purchased before the final 30 days of the primary. This leaves an estimated $6.7 million as being spent by 1992 major party Senate candidates for TV air time in the final 30 days of the primary election. This figure represents approximately 8 percent of the figure listed for electronic media advertising and 3 percent of the $219.1 million in total Senate candidate expenditures in the Morris/Gamache study.

Step 2. I next applied the 3 percent figure cited above to the total expenditures reported to the FEC by 1992 Senate candidates. Again, I started with the $270.7 million spent by major party Senate general election candidates in the 1992 election cycle, and then added the $12.6 million these candidates spent from 1989 to 1992. Applying the 3 percent figure from 1992 to the resulting total of $283.3 million produces an estimated $8.5 million for the cost of TV air time in the last 30 days of the primary election.

Step 3. Applying this estimated value of $8.5 million to the 1994 estimate of $8.5 million, I got an estimated $16.6 million for the cost of TV air time purchased before the final 30 days of the primary by candidates who went on to compete in the general election.

Step 4. Major party Senate candidates who were defeated in primary elections spent a total of $75.9 million in 1992 and $45.9 million in 1994. Because all of this money was spent on the primary candidates, I did not add only for consultant fees, radio time, and time purchased before the final 30 days. I assumed the same total percentage of money spent for TV air time purchases by all candidates as in the six-year period leading up to and including 1992. I added the $12.6 million 1992 Senate candidates spent from 1989 to 1992 (which I calculated in the press release appendix). I arrived at a total of $283.3 million spent by major party Senate general election candidates in the entire six-year period. Assuming the same total amount of spending went for TV air time in the last 60 days of the general election, I got an estimated 1994 figure of $75.9 million.

Step 5. The estimated cost of TV air time of $96.6 million and the 1994 estimate of $76.5 million can be averaged (in case one of the years was an anomaly in the context of overall spending trends) to yield $86.1 million, rounded to $86.8 million for convenience. While this is just an estimate, subject to all the caveats inherent therein, I would feel fairly comfortable with this basic figure. Further estimates you may wish to make, specifically that the value of the broadcast discount would be 50 percent of this, or roughly an estimated $43.4 million.

FOOTNOTES

1. Carole Mundy, of Fenn-King-Murphy-Putnam Communications, Inc. in Washington, D.C., assisted in developing the database listing source material. Gay Neylan, of Neylan & Roy—Independent Media Buying service, provided guidance in correlation of data. My colleagues and I worked closely with Mundy.


3. Those cost per (rating) point is the standard unit used by media buyers in evaluating relative costs of delivering one percent of the audience share in different markets.


5. More thorough effort might involve looking at each state’s media dynamics, given the variations in media market configurations. A candidate in New Jersey, for example, has to buy time in both the New York and Philadelphia markets. Hence, more than 90 percent of California voters are reached by seven markets, all within that state's boundaries. Hence, a more accurate estimate, involving undue time investment, and raised significant, complex additional questions.

6. One caveat, of course, is that this approach is based on current candidate behavior, not on account prospectively increased TV air time purchases because of the lower cost. While this could well offset the lower cost, the money would be described by the overall campaign spending limits to which participating candidates must agree.


11. It may seem counterintuitive that primary losers would spend twice as much on TV as primary winners, and this may indeed be the case. But it is often the case that well-funded primary candidates (or individ
tuals) spend large sums of money in losing attempts at nomination, while in perhaps the majority of cases the primary candidates (or incumbents) have little or no real opposition in the primary.
State, write legislation, and participate in debates like this one, let alone read as much as I can.

There are several important aspects of campaign finance reform.

First, we must address the limits on campaign spending. The root of our problems with the current system is that campaigns spend too much. To me limitations are one of the most important elements of reform.

Second, we must end the practice of using soft money to evade contribution limits. Soft money originally was intended to be used for party building activities, but in many cases, it has turned into a negative campaign apparatus.

There are many approaches to campaign finance reform. I favor the Feinstein bill because it recognizes the rights of organizations of every political persuasion to participate in the political process by gathering small donations to candidates.

I speak from the heart when I say that we must pass campaign finance reform this year and begin to restore the faith and confidence of the American people.

Mr. MCCAIN. Mr. President, the Senate is about to determine whether bipartisan campaign finance reform will be an accomplishment of this Congress or not. I noted yesterday, the members of the 104th Congress can point with pride, well-earned pride, to the substantial institutional reforms that were passed by this Congress. But the reform which the public believes to be most necessary and most urgent—campaign finance reform—is not yet among the accomplishments of this reformed Congress.

Today, the Senate has an opportunity to begin remedying that deficiency, and to take a giant step toward becoming one of the most important reform Congresses in American history. Invoking cloture cannot guarantee that this legislation will be enacted into law, but it will be well on the way, Mr. President. Momentum toward final passage may well prove irresistible in the wake of a successful cloture vote.

But should we fail short of that goal today, it will not mean a permanent end to this effort. Mr. President, we will have campaign finance reform; if not this year, then next; if not the 104th Congress, then the 105th. We will have campaign finance reform because the people demand it. The people have perceived in the manner in which we finance our reelection a profound inequity which serves to disadvantage the threatened; an inequity which serves to disfranchise Members of Congress from the people's will; to further estrange the public from their representatives; to make un- and overwhelmingly advantaged over their opponents.

Opponents of this measure, who are my friends, argue eloquently that we who propose this reform are the enemies of the first amendment; that we are engaged in that most un-American bill to encourage—factual statements to abide by these limits, and disincentives to encourage candidates from exceeding them. But if a candidate feels that circumstances necessitate campaign expenditures in excess of these voluntary limits, he or she is free to make those expenditures.

Their opponent, however, should not be unfairly disadvantaged by the other candidate's refusal of spending limits. So, we have included provisions in our legislation to help a candidate who abides by the limits keep pace with the campaign of the candidate who rejects the limits.

I want to commend the Republican and Democratic sponsors who have worked together to create a bill whose argument has prevailed. We sent to give voice—a greater voice—to challengers than is usually the case under the present system of campaign financing. These are voluntary spending limits we have proposed. Yes, there are incentives in this bill to encourage candidates to abide by these limits, and disincentives to discourage candidates from exceeding them. But if a candidate feels that circumstances necessitate campaign expenditures in excess of these voluntary limits, he or she is free to make those expenditures.

Again, these are voluntary spending limits. They are voluntary and they are fair.

Mr. President, the opponents of campaign finance reform are as passionate in their opposition as we are in our support. I do not seek to diminish their conviction that too little money is spent on campaigns today. I disagree, of course, but I cannot challenge their earnestness nor resent the passion with which they advance their arguments. It is in most elections that incumbents are undefeatable; on a few they meet genuine and overwhelmingly advantaged over their opponents, and another.

I commend them for their willingness to extensively and openly debate this legislation, so that the public may judge from our arguments who has carried the day. The cloture vote will indicate legislative failure or success today, but it will not necessarily indicate whose argument has prevailed. Nor, as I noted at the beginning of my remarks, will this vote, should we fail to reach cloture, signal an end to this campaign for reform. We will be back next year. We will ultimately prevail.

Before I conclude, Mr. President, I want to again commend the Republicans and Democrats who sponsored and helped to craft this first genuinely bipartisan campaign finance reform bill. They have all distinguished themselves in this debate, and in this crusade to keep faith with the people's just demands for reform. First among these friends is my partner, the Senator from Wisconsin, Russ Feingold. The Senator is a man of honor, and his sense of honor prevails over his sense of politics. That is a virtue, Mr. President, a sometimes inexpedient virtue, but a virtue nonetheless, and one which I greatly admire. I am a member from Wisconsin and I came to the Senate to argue with one another. We came to the Senate with different ideas about the proper size and role of Government in this country. We came here to serve our constituents by serving those ideas, and we want to spend our time here in open, fair, and honest debate over whose ideas are the most sound. We did not come here to spend the majority of our time raising vast funds to ensure our reelection. Nor did we come here to incur obligations to a few narrowly defined segments of this country. All Americans deserve fair representation by their Congress.

Mr. President, despite our philosophical and political differences, Senator Feingold and I have made a common cause in our pursuit of genuine campaign finance reform. To do so, we both knew that we would have to relinquish all partisan advantages that had underpinned legislative attempts at reform. We were determined to be fair, Mr. President, and on no occasion—no occasion—did Senator Feingold, or
I believe we should encourage particip-

tion in our political process by indi-

viduals who get together not because

they have some narrow economic inter-

est in a particular bill but because

they have a broad interest in the direc-

tion of government. That is exactly the

kind of grassroots participation that

Americans are used to, and yes, I un-

derstand the public's respect for the insti-

tutions that are derived from their consent.

Vote for cloture. Vote for reform.

The PRESIDING OFFICER. Under

the previous order, the hour of 1

o'clock having arrived, the Senate will

now stand in recess until the hour of

2:15 p.m.

Thereupon, the Senate, at 1:02 p.m.,

recessed until 2:15 p.m.; whereupon,

the Senate reassembled when called to

order by the Presiding Officer (Mr.

COATS).

CAMPAIGN FINANCE REFORM

The Senate continued with the con-

sideration of the bill.

Mr. DASCHLE. Mr. President, the

McCain-Feingold campaign finance re-

form bill is not a perfect bill. But it is

a good bill. More important, it provides

a good start on what ought to be one of our

top priorities: loosening the grip of big-

money special interests on politics.

I will vote for cloture not because I

think this bill cannot be improved—it

can—but because we must change the

way campaigns are financed, and this is,

for now, the only means we have to

make that change.

There are those who say they oppose

cloture because they want to be able to

amend this bill and improve it. But let

me say this: If we amend this bill in a

way that fundamentally alters the funda-

tamental intent of S. 1219, I will vote

against the amendment. I want to see

this legislation strengthen, not weaken,

the intent of this bill.

To block reform with calls for debate

is more than cynical. It is dangerous.

A while back, the Kettering Institute

conducted a survey of Americans’ atti-

dudes about the influence of money on

politics. The survey found a widespread

belief that “campaign contributions
determine more than voting, so why bother?” It described “a political sys-
tem that is perceived of as so autono-
mous that the public is no longer able
to control or direct it.”

People talk about government,” the

study said, “as if it has been taken over
by alien beings.”

We will never restore faith in govern-

ment if people believe the political sys-
tem is rigged against them, if they be-

lieve it serves the wealthy, the power-

ful, and the politically connected at

their expense.

I have found the experience liberat-

ing, and I hope it has been the same for

all of my colleagues. I urge all of my colleagues to join us in this necessary endeavor, to

accept the public will and restore the

public's respect for the institutions that

are derived from their consent.

I commend specifically Senator

McCAIN, Senator FEINGOLD, Senator

THOMPSON, and others who have spon-
sored this legislation on the qual-

ty of their cooperation and debate.

I also commend the courage, once

again, of the outstanding leader of the

opposition to this campaign finance re-

form, Senator MCCONNELL. He has done

a magnificent job. I think we should

recognize that.

I think this is an important issue

which we will address, I am sure, again

in the future. But I think it is too im-

portant to address right at this point

in the heat of the national election de-

bate.

I do not think we have the solutions

here. So I urge that cloture not be

invoked.

I hope the Senate will not invoke

clojure on the McCain-Feingold substitute

amendment to S. 1219.

We all agree that campaign finance

reform is an important issue. But it’s

because too important to deal with it
during the heat of a national election.

It is already too late in the calendar
year to make this bill’s provisions

apply to the elections of 1996. So we are

not going to lose anything by waiting

until early next year to get this job

done.

When we do it, we have to do it

right—the first time. We should not

make the same mistake the Senate

made back in 1974, when it hastily cobbled

together a campaign reform bill that

later came apart at the seams before

the Supreme Court.

Since the Court’s decision in Buckley

versus Valeo in 1974, the Congress has

been on notice that, when it comes to

imposing rules and restrictions on the

financing of political campaigns, we

must be scrupulously careful of the

first amendment.

In short, our good intentions must

pass constitutional muster. My per-

sonal judgment is that this bill does

not do so.

I recognize that others may disagree,

but when it comes to the free speech

protections of the first amendment, I

prefer to err on the side of caution,

rather than zeal.

I need not go into all the details al-

ready covered by other speakers, but I

note that one of the key provisions in

this legislation—concerning political

action committees—has a fallback pro-

vision, in case the original provision is

overturned by the Supreme Court as a

violation of the first amendment.

What that means to me is that we

know at least some parts of this bill

are shaky ground. I think we should

craft campaign finance reforms that

are rock solid.

Two of our colleagues from the Re-

publican side of this aisle have played

crucial roles with regard to this legis-

lation. Both have acted out of con-

science and principle, and have come to

opposite conclusions.