the Internal Revenue Service in order to wear them down, even in cases where the law is unclear and subject to different interpretations. This abuse of taxpayers must stop. The Internal Revenue Service must recommit itself to serving the taxpayers. It must stop making criminals out of those whom it is charged with helping.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Madam President, I thank the Senator from Colorado and now yield up to 5 minutes to the distinguished Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Madam President, I thank my colleague from Georgia and I thank the Chair.

I rise today to address an issue of profound importance, as my colleagues have been addressing, and that is the urgent need for a complete overhaul of the tax system in this country.

Over this past week, we have all watched as the Senate Finance Committee has held important hearings on the administration of our current tax system. The testimony has demonstrated many things quite clearly, among them the fear of many taxpayers. But it has also been quite plain that for many taxpayers the root of their difficulties starts with the enormous complexity of the tax laws as they currently stand. Clearly, there is an urgent need to scrap the current tax law and start with a new system so that taxpayers can understand and follow the law in the first place.

As chairman of the Senate Committee on Small Business, I have heard in hearings from entrepreneurs all across the country that their biggest obstacle to staying in business is complying with the tax laws. The tax bill that we passed last summer did much to ease the tax burden for many small businesses. But at the same time it did nothing to reduce the complexity of the law which small enterprises must navigate in order to enjoy the lower tax bills. As a result, instead of leveling the playing field for small businesses we have made it more lopsided. Unlike their larger competitors, small businesses can rarely afford a staff of full-time professional employees to maintain the tax records and fill out the dozens of forms required each year. To put these duties in context, it has been estimated that Americans spend more than 5 billion hours each year complying with the tax laws. That is a staggering amount of time spent on completely unproductive activities.

One of the figures that we have heard in the Small Business Committee is that the average small business spends 5 percent of its revenues on figuring out how to comply with the tax laws. That is not paying the taxes, that is figuring out how much tax they owe and how to comply with the tax laws. Would it not be better for small businesses to spend that time making products, providing services, providing jobs—activities that they set out to do in the first place?

For the vast majorities of small enterprises there is only one person who handles all the tax matters and that is the small businessowner. That is the one person who has to deal with nearly 10,000 pages of tax laws, 20 volumes of tax regulations, and thousands and thousands of pages of instructions and other guidance, issued by the IRS. Sadly, much of that burden is more than most small businessowners can do on their own. Instead, they are forced to spend vast amounts of their limited capital to hire accountants to keep the records and prepare the tax returns.

For the small business that runs into difficulties on its taxes, the situation becomes even worse. The businessowner must spend additional funds on accountants and lawyers to handle the issue. Resolving these cases can take years, and cost tens of thousands of dollars in professional fees. Not infrequently, the end result is a tax bill that is inflated by the large amounts of interest and penalties.

Once again, we must keep in mind that every hour the small businessowner spends trying to resolve tax problems is taken away from the actual productive business of running his or her own company.

Madam President, the Small Business Committee will hold a hearing next month to elicit the views of small business on what the optimal tax system would look like, if we started from scratch. I look forward to constructive suggestions from the small business community. I expect they will say the system should be fair, simple, and easy for the average person to understand. It should apply a low rate to all Americans. It should eliminate taxes for individuals and families who can least afford to pay. It should not penalize marriage or families. It should protect the rights of taxpayers and reduce taxpayer abuse. It should minimize recordkeeping and reporting requirements. It should eliminate the bias against jobs, and investment. It should protect Social Security and Medicare and help ensure all Americans have access to health insurance.

The case cannot be clearer that we need a dramatic change in our tax laws, and we need it soon.

For the information of my colleagues, the full text of my remarks will be on the web site of the Small Business Committee at www.senate.gov/~sbc.

Mr. President, the case cannot be clearer that we need a dramatic change in our tax laws and we need it soon. Too much time, money, and effort are now wasted by individuals and businesses in this country that could be spent to improve our economy, our society, and the environment. I ask my colleagues to join me in raising the alarm and committing ourselves to do more than just talk about the problem. It's time to act—it's time for a new, fair, and simple tax system for all Americans.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Madam President, I thank each of the Senators who this morning commented on the extensive hearings under Chairman ROTH. They were very revealing. I believe there can be no doubt but that major reforms must be brought to the Nation in short order. Each of these Senators made a substantial contribution to further elaborating and making clear the urging of the Congress for this agency to reform itself. Remember that it works for the people, not the other way around.

I yield the floor. It is exactly 5 minutes after 10. I know the Senate is prepared to move to campaign reform.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

BIPARTISAN CAMPAIGN REFORM ACT OF 1997

The PRESIDING OFFICER (Ms. COLLINS). Under the previous order, the Senate will now proceed to the consideration of S. 25, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 25) to reform the financing of Federal elections.

The Senate proceeded to consider the bill.

Mr. WELLSTONE. Madam President, may I make a unanimous-consent request for 10 seconds?

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

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. I ask unanimous consent that Michael Smith, who is an intern in my office, be granted the privilege of the floor during debate today.

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

The majority leader is recognized.

Mr. LOTT. Madam President, today the Senate begins to formally debate what is probably the most discussed and least understood issue before the Nation, campaign finance reform. I have made clear, for the last several months, actually, that the Senate would, in due time, after finishing its work on the budget and the 13 appropriations bills, move to this matter. I indicated all along that I knew this issue would come up, that it should come up, and it should be debated. And, therefore, I have kept that commitment and we will begin our debate. We will have a full debate, and we will have some votes. Maybe not the votes that everybody would like to have, but critical, key votes on assessing where the Senate is.

Are we near a consensus yet? Are we prepared to stop trying to claim an advantage here or an advantage there and see if we can come together in a consensus in this area? I have my doubts that we have reached that point yet. But we begin the debate, I hope, in a respectful and thoughtful way. I trust no Member of this body doubted my intention to do what from the very beginning I said we would do, in terms of calling this legislation up.

We are taking up this issue now under a unanimous-consent agreement identical to the one I propounded a few days go and to which the minority leader did not at that time agree. So at the outset of this debate, I want to make this clear. President Clinton's standing on this subject of campaign finance reform is a case study of the problem, not an exemplar of the solution. Indeed, it would take the Senate, and the House too, staying in marathon session all the way through Christmas, just to trace the appalling campaign finance practices that were so large a part of President Clinton's reelection effort.

Just today I understand from WTOP radio news this morning, the President is in Houston after last night calling, trying to get Senators ginned up to come in here and speak on this subject. But what is he going to be doing in Houston? I have his whole schedule, off the wire service, as well as the remarks made this morning on WTOP. I will put it in the RECORD.

I ask unanimous consent to have it printed in the RECORD at this point.

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

Friday, Sept. 26
White House
President Clinton:
In Little Rock and Houston. All times local.
11 a.m. Departs private residence, Little Rock.
11:15 a.m. Arrives at Adams Field.
11:30 a.m. Air Force I departs en route Houston.
12:40 p.m. Air Force I arrives at George Bush Intercontinental Airport, Houston.
12:50 p.m. Departs airport en route San Jacinto Community College.
1:20 p.m. Arrives at San Jacinto Community College.
1:30 p.m. Addresses the college community.
2:40 p.m. Departs college en route downtime location.
3 p.m. Arrives at downtown location.
7:15 p.m. Addresses DNC dinner. Private residence.
8:10 p.m. Departs residence en route airport.
8:30 p.m. Arrives at airport.
8:45 p.m. Air Force I departs en route Little Rock.
9:50 p.m. Air Force I arrives in Little Rock.
10 p.m. Departs airport en route private residence.
10:15 p.m. Arrives at private residence for overnight.

WTOP RADIO REPORT SEPTEMBER 26, 1997, 9:30 EST

Mark Knoller, CBS News Reporter traveling with the President in Little Rock, Arkansas, filed the following story for CBS World News which aired on CBS radio affiliate stations including WTOP radio on Washington at 9:30 a.m. Eastern Time on Friday, September 26, 1997:

''It took the White House by surprise when Senate Majority Leader Trent Lott announced that the Senate would begin debate today on campaign finance reform. The White House thought it would have several more weeks to plot strategy for passing one version or another of the McCain/Feingold bill.

''So, as Mr. Clinton finished a five-hour round of golf last evening, he quickly placed calls to a handful of Senators to talk strategy for today's debate.

''The President has loudly proclaimed campaign finance reform as one of his top legislative priorities for the fall. And this week, he threatened to call Congress back into session if it adjourned without taking up the issue.

''With his own political fund raising practices the subject of a Justice Department review and the possibility that it could lead to the appointment of an independent counsel, there is a political component to the President being seen as Cheerleader-in-Chief for campaign finance reform.

''But as it turns out, the Senate debate begins on a day that will find the President on a day trip to Houston. His schedule there includes a fund raising dinner for the Democratic National Committee which expects to raise $600,000, some of it from contributions the President wants to outlaw.

''In Houston, the President will also talk about new data showing that his college tuition tax credit plan will help increasing numbers of people attend at least two years of college. With the President in Little Rock, I'm Mark Knoller, CBS News.''

Mr. LOTT. Among other things he will be doing in Houston today is attending a fundraiser tonight, where it is estimated they will raise $600,000, some of which if not much of which is exactly the kind of money that he has said, ''Oh, we ought to stop.'' What is he saying here, ''Oh, please stop me before I do it again?''

So, I think we need to start off making it clear what is going on here. A lot of what is going on is an effort to change the subject. ''Oh, gee whiz, the Governmental Affairs Committee has come up with some things that are a real problem. Gee, why won't the Attorney General appoint independent counsel? We have to have another subject on the griddle here.'' But that's OK. That's fine. Finally we will, maybe, shed a little light on what is going on here.

It seems that much of what will need to be done with regard to violation of the laws—before you start changing laws to try to see if you can fix problems, wouldn't it help if the laws already on the books were obeyed and enforced? Wouldn't it be better if we found out how people violated the laws last year? Who did it? What do we need to tighten it up with regard to illegal foreign contributions, direct and indirect?

But it seems that much of the task of what really went on will be left to others, unless the Attorney General can discover still more ingenious reasons for delaying what increasingly seems inevitable, the appointment of independent counsel.

For us here, we will do what we are going to do anyway, before Mr. Clinton's unnecessary and irrelevant letter. We will at least have the opportunity to lay before the American people the pros and cons of various proposals for campaign finance reform.

In the process, I think it will become clear that in campaign law, as tax law, there is no bad idea that cannot be made presentable by taking on the label of ''reform.'' This is our chance to see more closely some of the ideas that have been presented and whether or not they will really work—or not; whether they will be fair; and whether they will encourage discourse and expression of views and opportunities for candidates to go directly to the people instead of being filtered by the news media.

Let me offer this comparison. On the issue of campaign reform we have been like a customer in a used-car lot. The salesmen have been talking about this little beauty's wire wheels and leather upholstery, and it has all sounded pretty good. But now we get to look under the hood and find out why this deal looks too good to be true and, in fact, probably is.

Before we launch into the details, though, I want to pay tribute to those of our colleagues who have worked on this issue at great length and in good faith. Some of them I agree with and with others I disagree. And, hopefully, we will disagree without being disagreeable. But all those who have pursued this issue out of personal conviction, rather than political expediency, merit our commendation. My disagreements on this matter with Senator MCCAIN and Senator FEINGOLD are well known—and may well become more emphatic in the course of this debate. But I recognize the sincerity of their views and I thank them for their cooperation that has enabled us to take up other legislation without being intercepted or interrupted or heckled. They have been responsible. They deserve the right to talk about their bill and we deserve the right to point out where the problems are. And I think we have set up a way to consider this legislation in an orderly manner.

Senator MITCH MCCONNELL more than anyone else has argued against their position. Entirely apart from the part that I agree with him, he stands today as an example of political courage, someone who is willing to challenge the prevailing wisdom because it is incorrect and because it would violate or restrict the fundamental rights of Americans.

Legislation is never considered in a vacuum and this legislation is no exception to that rule. The Senate will be debating campaign finance reform against a background of lurid exposes about the campaign of 1996. All summer long the Nation has heard news about people ignoring the law, fleeing the country to avoid the law, explaining away the law, refusing to testify about their actions and the law. From

all that, some may conclude that we need more laws. Others may wonder why we don't enforce the laws we already have concerning campaign finance, and let the personal chips fall where they may.

The fact is, this country already has so many campaign laws and campaign regulations that to avoid breaking the law most congressional campaigns have to hire a battery of legal experts just to avoid fines and censure by the Federal Election Commission. No longer do you sit down, like I did in 1972, and fill out my campaign finance reports, you know, in longhand, and try to make sure it adds up, send it in and struggled to get it in on time. Nah. Now you have to have legal advice, you have to have a CPA, you have to have somebody familiar with the FEC laws. It becomes one of the burdens of elections. Why don't we, instead, go with freedom, open it up, have full disclosure and let everybody participate to the maximum they wish.

But, no, no, no, no; we keep tightening down, tightening down, tightening down. Do you know what really is involved here? There are a lot of people who don't want the people involved. They want the news media to dictate, through their editorial columns and their editorials in their news articles, who will be elected.

Boy, I know how that works. I have had to deal with that in my State. If I hadn't been able to get the money to get my message across, how could a conservative Republican be elected in the State of Mississippi, where the courthouses were all owned and operated by Democrats almost entirely, so I had the so-called court house gang fighting me and the biggest newspaper in the State bashing me regularly in its editorials and in its news stories in the form of editorials. You know, I took basic 101 journalism in high school and I know the difference between a news story and an editorial. But my friends in the print media quite often get that a little confused. As well as the largest television station in the State, which regularly took my head off any way they could.

So, how did I win? Because I had the opportunity to take my case to the people, raise the money to get my message across over the head of the opposition, and the people gave me the opportunity to serve in this body.

The fact is, today's political campaigns are forced to operate within a web of campaign law first devised almost a quarter century ago. No matter how unworkable some of them are, how out of date some of them are, instead of pulling back and clearing away, the temptation is always to add on.

That is what happened with the IRS. Can you believe it? The U.S. Senate Finance Committee, with jurisdiction over the Internal Revenue Service, this week had its first ever oversight hearing on the violations, abuses, intimidations, and threats from the IRS. We are partly to blame. We have been hearing about these problems for years. What did we do about it? More laws. We kept adding on. We kept putting on more pressures. Unfortunately, too often we added more taxes.

The same is true here. The temptation is to restrict and limit free speech. Add on another restriction, one on top of another, with regard to campaign spending or the ability to raise money. Add on another reporting requirement. Add on another financial incentive, often from the taxpayer's purse, for campaigns to behave or advertise in a certain way.

Remember now some of the things that have been advocated along the way, I believe, in the campaign finance reform bill proposed originally by Senators MCCAIN and FEINGOLD—a form of public financing of campaigns. People don't support that. Great; we are going to have the U.S. Treasury dollars go to candidates with a system of incentives and punishments and voluntary do this, don't do that; oh, by the way we will give you free broadcasting. The American people know there ain't nothing free. Somebody is going to pay. But that is kind of what the push has been.

I hope the debate we are starting today will break us out of that regulatory rut. We now have a chance to go back to square one and to reconsider the fundamental principles of what all along has been taken for granted.

For example, with today's computer technology—so rapid and so revealing beyond the imagination of the lawmakers of 1974 when the present law was enacted—perhaps the public good would best be served, not by restricting donations to campaigns, but by promoting them, with full disclosure—full, total, and immediate disclosure.

I wonder what would happen if every donation to a Federal campaign had to be logged onto the Internet as it was received by the campaign. Anyone interested in the integrity of that campaign, the identity of its donors, the possibility of undue influence or corruption, would be able to track the campaign's revenues dollar by dollar as they come in. Maybe we could agree on that.

Then let interested Americans donate as they will, for this one overriding reason: Because spending money to advance your own political views is as much a part of the right of free speech as running a free press.

I think the whole problem can be summed up in this one example. Suppose a distinguished surgeon feels strongly about a particular issue, whether it is Government control of health care or environmental policy or our entanglement in Bosnia. Her work is her life. She is saving lives every day. She has no time to devote to politics. Instead, she donates to candidates who agree with her views.

But her college-age son, on the other hand, has plenty of time, and he disagrees with his doctor-mother on just about everything, which wouldn't be unusual for a young college student to disagree with his or her parents. So he cuts back on his classes and volunteers 40 hours a week for the candidates who oppose her candidates. In the process, he saves those candidates a considerable amount of money doing for free what they otherwise would have to pay for.

Now, which of those two is a good citizen: The wealthy physician who writes checks to campaigns, or the pugnacious young man who gives them his time and labor?

My answer is both of them. Our campaign laws ought to encourage both their public spirit and their political involvement.

But our laws don't do that. They don't advert at all to the student volunteer or, for that matter, to the Hollywood personality whose donated performance brings in, say, $1 million for a Presidential campaign. For some reason, campaign contribution limits seem to stop right outside the gated driveways of some of the richest and most influential personages of the land.

But those laws do apply to the doctor and to everyone else who sits down to write a check, to put their money where their views are. I have made no secret of the fact that we need more such people, not fewer, and that our present campaign laws should be reformed so that they don't discourage citizen involvement of any sort.

That is especially important with regard to issue advocacy by the whole range of public policy organizations, left or right, liberal to conservative. The inclination by Government to regulate speech—or expenditures that are the equivalent of speech—is hard to contain.

It starts with the understandable wish to discourage slander and libel in campaigns. It proceeds to various schemes to review and control the content of campaign ads, and it ends up in attempts to restrict the essential right of private citizens to expose the records of candidates and reveal where they stand on crucial issues of the day.

Do I like this? When I am the brunt of some of that, no, I don't like it, and we can probably get bipartisan agreement that some of the negative aspects of it are not good. We don't like it. But how do we tell a private citizen that he or she can't pick a billboard and say, Congressman X or Senator X voted wrong on an issue? I think we need to think long and hard about that.

I hasten to add that, in its current form, the legislation before us does not do all of those things. I have been speaking more generally about various proposals that have won considerable credence in the media which, come to think of it, is the very last place those proposals should be tolerated. After all, once we lower the bar between Government and free expression of political ideas, we imperil that expression for everyone.

I am not suggesting that every aspect of campaign financing is so clear

or so simple that all well-meaning persons will inevitably come to the same conclusion about it. They won't. But there is one campaign finance issue about which that is the case, about which all persons of good will should, indeed, reach the same conclusion.

That is the principle that no person should be compelled to financially support a political campaign, especially a campaign with which he or she does not agree. Surely we can agree on that.

Our instinctive reaction is to say, ''Oh, that's out of the question; you can't be compelled to contribute to a candidate or campaign you don't agree with or against your will; it couldn't happen in America.''

Well, it does. It happens all the time, and it is happening now. I am referring to the great scandal in American politics, what is to my mind the worst campaign abuse of them all: The forceful collection and expenditure of business fees or union dues for political purposes. This is not something that is aimed at businesses or at unions because I am unduly critical of them. We want more business. We want jobs. We want them to be involved in the political process. I am the son of a shipyard worker, a pipefitter, who was a union steward for a while.

I think we should encourage union members to be involved and active in politics. My own father was and so were my grandfathers on both sides of the family. So I have made the point over the years to go into plants and mills and stand at the gates and go into union halls—yes, union halls. I have had some interesting times there, because I quite often ask union members, ''Do you agree with these things?'' and run down the list. They don't agree with them; they agree with me. It is the union ratings of who is voting right or wrong. The local union members in my hometown more often agree with me than they do with the union bosses in Washington.

Sometimes, by the way, I think businesses do this, too, that somehow you have to contribute fees, or some process is used to get your money and put it in campaigns. The individual should have the final say and total control over how that happens. They should either have to write out the check for a specific purpose or give specific approval before those dues or those fees could be used.

I have heard complaints from union members about how disgruntled they are about the way their dues are mishandled by the national union officers. I have heard their anger and frustration knowing their unions are financially supporting a candidate whom they oppose. When they ask me why this is permitted, how am I supposed to answer? ''Well, the law just allows that.''

The courts are saying that shouldn't happen, but, buddy, you are going to hear a lot of screaming and hollering on the floor of this body about, ''Oh, we can't have that opportunity for members or employees of a business or a union to direct where their contributions go, where their dues go.'' I think that is going to be pretty hard to defend for the average blue collar working man and woman wherever they are.

Should I tell them those who wrote our earlier campaign laws deliberately slanted those laws to hurt certain interests and advance others? Should I tell them that much of what passes for campaign finance reform today would only worsen those deliberate inequities?

As far as I am concerned, righting that wrong is the price of admission to campaign finance reform. If a Senator is willing to free employees and union members from that compulsory contribution of their hard-earned wages to political campaigns, then I can accept that Senator as a legitimate participant in the campaign reform debate, whether or not I agree with his or her views on the rest of the subjects. At least we know they want fairness, an opportunity for people to have some say where their dues, their fees, will go.

But anyone who is not willing to take that essential first step to protect the earnings and consciences of employees and union members against the political diversion of their fees or expenses or union dues, that person, in my mind, has no standing in the debate we are beginning today.

Madam President, I never deceive myself into thinking the American people follow every word that is spoken on the floor of the Senate. I hope not. They usually are too busy making America better by pursuing their own individual dreams. But this debate, I think, will catch and hold their attention for a while, and I think they are going to be interested in what they hear.

They may not have been able to read both sides in some of the news media, but hopefully they are about to hear it from me and from others and from the media that will tell both sides of the story and tell what the options are. At the end of what I think we are going to see this debate deliver will be a sea change in opinion as the public rethinks the role of candidates, of donors, of volunteers, of issue advocacy groups, and of Congress itself, whose track record on legislating on this issue has not been stellar.

In the past, the Supreme Court has had to overturn patently unconstitutional campaign reform legislation. Let us do nothing now to force a repetition of that rebuke. As a Member of the House and Senate over the years, I have heard, ''We can't worry about that; we don't know what they will do. Let's just do what we want to do and then we will see.'' I don't think that is very responsible. You can always argue what is constitutional and not constitutional, but free speech is pretty easy to discern, and it ought to be hard to limit.

In the very recent past, there were 38 Members of the Senate who were willing, on the record, to amend the Constitution to give a Federal agency, the Federal Election Commission, the power to limit the first amendment rights of individual Americans. That, I trust, is an idea whose time has come and gone and will never come again.

In closing, Madam President, I would like to recall a line from what was probably the first drama written and performed in America. It was called ''The Candidate, or the Humours of a Virginia Election.'' In it, a seasoned older candidate advises a younger one that when he makes promises he knows he cannot deliver, he should say, ''upon my honor,'' otherwise they won't believe you.

Well, thus far, in the national debate about campaign finance reform, much has been said ''upon my honor.'' Now comes the real test of ideas, so the American people can decide for themselves whom to believe and whom to trust about this matter that goes to the heart of their personal rights and their political liberty.

I yield the floor, Madam President.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Madam President, this Congress has spent many, many months and millions and millions of dollars to investigate perceived abuses in the 1996 election. There have been cries of outrage and shock. The American people are deeply cynical about whether Congress will ever pass campaign finance reform because they believe politicians' self-interests will, once again, override public good. If after all the hearings, all the press releases, all the statements, we do absolutely nothing, that cynicism is justified.

The American people are not dumb. They know the system is broken. They know we now have an opportunity to fix it, but they do not think we will. But we can use this opportunity, the next several days, to prove them too pessimistic. We need a sincere bipartisan effort to clean up our own house.

So, Madam President, this is a defining moment. People who think they can kill this effort with political gamesmanship—without anyone noticing—are wrong. If we squander this opportunity, it will not go unnoticed.

Today, we begin one of the most important debates that we will have in this Congress. We have sought this opportunity for almost a year. I appreciate the majority leader has now agreed to this debate. I hope his colleagues will not act to block meaningful reform now that we have the opportunity to deal with it. This is not only an easier way to resolve this issue, it is by far a better way. The American people have a right to hear full and open debate. And we have an opportunity and a responsibility to conduct it.

I appreciate, too, President Clinton's determination to see that we have a good debate and his willingness to take the extraordinary step—and I hope

that it will not be necessary—of calling a special session of Congress to make sure that there is sufficient time for a thorough debate.

It has been a generation since the last campaign finance reform laws were signed. Today, those laws are practically useless. Some have been circumvented by new loopholes. Senator LOTT has noted all of the attention to abuse and the fact that we have so many laws on the books today.

The fact is that many of those laws are unenforceable because they have been poorly drafted, because they intentionally, in many cases, created loopholes, because they are ambiguous, because we do not have the teeth in the Federal Election Commission system to deal with it.

Just today in the Wall Street Journal there is an article that the former chairman of the Republican National Committee, Haley Barbour, is now being investigated by a grand jury for fundraising infractions he may or may not have committed as chairman over the last couple of years.

So, Madam President, this is not a Republican problem or a Democratic problem. This is an American problem, an American problem evidenced by grand jury investigations, by special counsel investigations, by congressional investigations. The investigations go on and on. And if we do not deal with it, the cynicism will rise, the participation in democracy will fall, and we will all be the victims.

So, Madam President, we have an opportunity today to build on the history.

In 1971 and in 1974, Democratic Congresses enacted major reforms that we thought would address many of these problems. We limited the amount of money in politics and required candidates to disclose where they got their money. But, unfortunately, many of those reforms, as we all well know, were thrown out by the controversial decision of the Supreme Court in 1976, Buckley versus Valeo.

For the last 21 years, since that decision, Democrats have tried to overcome obstacles put in place by that ruling. We have tried to find ways to address the complexities, the problems, the shortcomings of that decision.

It was 10 years ago, at the opening of the 100th Congress, that then-majority leader ROBERT C. BYRD introduced a bill to limit spending and reduce special interest influence. We had to fight through eight cloture votes, eight filibusters, in order to get the opportunity to finally vote on the issue. Democratic sponsors modified the bill to meet Republican objections. But in the end, Republicans continued to oppose the bill, and ultimately it died.

It was 8 years ago in the Democratic-led 101st Congress, both the House and the Senate passed campaign finance reform bills. President Bush threatened to veto the bill because it contained voluntary spending limits, effectively killing the bill.

Six years ago, in the 102d Congress, also a Democratic-led Congress, again the House and Senate passed campaign finance reform bills. And at that time the President—President Bush —vetoed the bill, with the backing of nearly every congressional Republican.

In the 103d Congress, we passed campaign finance reform with 95 percent of the Democrats in the Senate and 91 percent of the Democrats in the House voting for reform; 95 percent in the Senate, 91 percent in the House, voting for the reform. Yet, Republicans filibustered the move to take the bill to conference.

Senator MCCONNELL has boasted of that filibuster that ''My party did the slaying then.''

The 104th Congress, supposedly the ''reform Congress,'' also presented opportunities for campaign reform. It appeared reform might actually happen when President Clinton and Speaker GINGRICH shook hands in Vermont and pledged to create a commission on campaign financing. But the commission never materialized.

Then, Senators MCCAIN and FEINGOLD introduced their bipartisan reform plan. Again, reform seemed within reach. And 46 of 47 Senate Democrats voted for McCain-Feingold. Republicans in the Senate filibustered the measure. Meanwhile, Republicans in the House introduced a bill that would have allowed a family of four to contribute $12.4 million in Federal elections—125 times more than the current allowed amount. We did not get anywhere in that Congress either.

That brings us to this Congress, the 105th. In his State of the Union Address in January, President Clinton made it very clear the importance that he put on the priority that Democrats have reiterated throughout this year, that we pass campaign finance reform. He called upon us to do it by July 4.

During the balanced budget negotiations in February, the President and Democrats in Congress asked our Republican colleagues to make campaign finance reform one of the top priority issues on which a bipartisan task force could be established. They refused to do so.

In the House, Republicans have voted five times in this Congress against bringing campaign finance reform to the floor. Here in the Senate, we actually have had one vote on campaign finance reform. That was a vote this past March to kill a constitutional amendment that would have allowed reasonable limits on campaign spending.

The problem is very simple, Madam President. The problem is the amount of money, the decades of delay. In the two decades since Buckley versus Valeo, since the Congress passed the only real campaign reform laws on the books today, the amount of money in politics has skyrocketed. It is no accident, no coincidence, that voter turnout and public confidence in this institution has plummeted. Even Nero would have put down his fiddle before now. But we just keep on playing, while spending on political campaigns spins out of control.

That is the fundamental problem. We all know that. We hear talk in this debate about hard money and soft money, this money and that money. That isn't the core problem. The core problem is that there is too much money, period. Too much money.

Total congressional campaign spending has exploded in the last 20 years. We spent $115 million on Federal campaigns in the 1975–76 election cycle. Ten years later, in the 1985–86, we spent $450 million. In the last cycle, 1995–96, Madam President, we spent $765 million on Federal campaigns.

Each election cycle shatters another spending record; 1996 was no exception. Spending in Federal campaigns increased 73 percent over the previous Presidential cycle; 73 percent in four years. To put that in perspective, during the same period, wages rose 13 percent, college tuition rose 17 percent, but Federal campaign spending rose 73 percent.

The average cost of winning a Senate seat in 1996 was $4.5 million. To raise that much money, a Senator has to raise $14,000 a week, every week, for 6 years.

I am currently—I am sure the majority leader is, too—seeking candidates to run for the U.S. Senate. I wish I could give you some indication of how difficult it is to tell a candidate, ''I want you to run. I want you to seek one of the highest offices in the land. But to do that, you're going to have to somehow raise $4.5 million between now and next November. I know you don't have those kinds of personal resources. And I don't know how you'll raise the money. But never mind, you can do it. And I promise that you will never be indebted to any contributor. I promise that, regardless of how much you spend, you'll never have one of those contributors come back and ask you for something.''

Madam President, the system is broken. That experience is repeated over and over and over again. How many more times will we have to tell someone who may consider running for the U.S. Senate, ''You can't afford it. This is now a club for millionaires. You either have lots of money, or you're indebted to somebody for the rest of your life.'' But that is the choice. That should not be the American way. That should not be allowed to happen to the political system we have believed for all these years.

The average cost of winning a House seat in 1996 was $660,000. To raise that much money, Members in the House had to raise $6,000 a week, every week, for 2 years. It is demeaning. It is distracting. It takes us away from what we should be doing.

It used to be you worked the fundraisers around the Senate schedule. Now we work the Senate schedule around the fundraisers.

What I am describing now, Madam President, is a problem. We have not even reached the crisis stage yet. But we projected, given current rates of political inflation, what the typical Senate race will cost in our lifetime, 28 years from now, the year 2025. In the year 2025, if nothing changes, a typical Senate race will cost $145 million per candidate—per candidate. Are you going to tell your son or your daughter you want them to get into political life? Are you going to tell your son or your daughter that somehow in their lifetime, if they want to seek higher office, that they have to spend $145 million of their own money, or raise that much from other people? I do not even think JAY ROCKEFELLER could afford that.

The effect of the money, Madam President, is quite clear. Beyond the sheer amount of money is the effect the money has. At the very least, in the eyes of most Americans, the current system makes Congress appear to be for sale to the highest bidder.

A recent Harris Poll shows that 85 percent of the people in this country already think that special interests have more influence than the voters. Eighty-five percent think if you are going to come up against a special interest, Congress is going to listen to the special interest first.

Three-quarters of Congress think that we are largely owned by special interests today. Democracy cannot survive long in such a deeply cynical atmosphere, Madam President. We cannot survive that. It is no secret why voters are not going to the polls anymore. They do not think it makes any difference. ''What difference does it make as long as the special interests have the power, between the elections, to decide what we do?''

So, Madam President, if we do nothing at all, problems are going to worsen.

The recent explosion in the so-called ''independent expenditure ads'' is just another illustration, another example of what we are facing. It is a particularly virulent form of political advertising. In my view, independent expenditures are the ''crack cocaine'' of negative ads. They are potent, they are deadly, and they are going to kill the system.

They are not tied publicly to any candidate—no reporting, no accountability. We do not even know who is running the ads half the time.

In the last election cycle, Republicans spent $10 million on independent expenditures; Democrats spent $1.5 million. But those figures are nothing compared to what we are going to see in this cycle.

Independent expenditure ads push candidates to the margins. Candidates become bit players in their own races. The debate is defined by whoever has the most money. That is ultimately who dominates the media. We used to interrupt programs for ads. These days, we interrupt the political ads for programs.

The solution? Well, we have been grappling with that question for a long time. There are those who look at all of this and contend that nothing is wrong, that this is America, this is free speech. What is wrong with the system? You ought to be able to go out and raise $145 million if you want to be a U.S. Senator.

The majority leader just said last March, ''The system is not broken.'' Madam President, the majority leader, for whom I have great respect, in my view is wrong. We believe the system is badly broken, and so do the American people. Ninety-two percent think we spend too much money on politics today. Almost 9 in 10, 89 percent want fundamental change in our system.

I have great respect for the sponsors of the legislation. Senators MCCAIN and FEINGOLD have spent a tremendous amount of their time, at the expense of other issues, to fashion a bipartisan piece of legislation that will allow us to move ahead—not solve all the problems—but move the ball ahead.

It is not a perfect solution. It doesn't include the most critical component of reform, in my view, which is overall spending limits. But it gets us off dead center. If it doesn't address central problems, it does address several of the major problems we have in our system today. It bans soft money and regulates independent expenditures. It provides better disclosure, so people have a good idea of who is giving how much to what candidate and why. It limits the ability of the super-rich to buy political office.

Forty-six of forty-seven Senate Democrats already voted for the McCain-Feingold bill last year.

Now, earlier this month, all 45 Democrats in the Senate signed a letter reiterating their support for the legislation. Even after the bill was changed, Democrats would say we still support the McCain-Feingold bill unanimously. Every single man and woman in the U.S. Senate Democratic caucus would walk to the floor this afternoon and vote for it.

We are pleased that four brave Republicans have said they, too, will now support this effort. We only need one more Republican vote. I believe in the end we will have that vote and more.

The McCain-Feingold bill is the least we should do. Democrats will offer amendments to strengthen it. If we were in the majority, we would fight to cap spending. The Buckley versus Valeo decision was only 5–4, and 126 legal scholars have said spending limits are constitutional. But we don't want the perfect to be the enemy of the good. We hope those who disagree with us will resist the temptation to kill this chance with poison pills.

Our goal should be reform, not revenge. If one side or the other tries to use this debate to settle political scores or punish enemies, we will fail. We are confronted with a systemic problem and we need a systemic solution.

Madam President, as I said at the beginning, we spent a lot of time and a lot of money investigating abuses in past election cycles. We have all put out our press releases, expressed our indignation, our shock, and now the American people are waiting. They wonder whether politicians' self-interests will once again override the public good. They wonder if after all the hearings, all the press releases, if after all that we do nothing, what then? They know the system is broken. They know this is going to be our only chance perhaps this Congress to fix it. I hope we can demonstrate that their pessimism, their cynicism, in this case, is not warranted.

I hope we can rise up to what we did last July when Republicans and Democrats, against the odds, decided to come together and balance the budget in the next 6 years and put this economy on track well into the next century. We did it then. We did it with the Chemical Weapons Treaty last spring, and now we can do it again. With the leaders we have from Arizona and Wisconsin, with Democrats and Republicans working together, we can make it happen. This is our chance.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, the Senate now begins a debate that will determine whether or not we will take an action that most Americans are convinced we are utterly incapable of doing—reforming the way we are elected to office. Most Americans believe that Members of Congress have no greater priority than our own reelection. Most Americans believe that every one of us—whether we publicly advocate or publicly oppose campaign finance reform—is working either openly or deceitfully to prevent even the slightest repair to a campaign finance system that they firmly believe is corrupt. Most Americans believe that all of us conspire to hold on to every single political advantage we have, lest we jeopardize our incumbency by a single lost vote. Most Americans believe we will let this Nation pay any price, bear any burden to ensure the success of our personal ambitions—no matter how dear the cost might be to the national interest.

Mr. President, now is the moment when we can begin to persuade the people that they are wrong. Now is the moment when we can show the American people that we take courage from our convictions and not our campaign treasuries. Now is the moment when we can begin to prove that we are—in word and deed—the people's representatives; that we are accountable to all the people who pay our salaries, and not just to those Americans who finance our campaigns. Mr. President, now is the moment when we should take a risk for our country.

I am a conservative, and I believe it is a very healthy thing for Americans

to be skeptical about the purposes and practices of public officials and refrain from expecting too much from their Government. Self-reliance is the ethic that made America great, not consigning personal responsibilities to the State.

I would like to think that we conservatives could practice the self-reliance which we so devoutly believe to be a noble public virtue, and rely on our ideals and our integrity to enlist a majority of Americans to our cause, rather than subordinate those ideals to the imperatives of fundraising. I would like to think the justice of our cause, the good sense of our ideas will appeal to a majority of Americans without the need to fund that appeal with obscene amounts of money.

I am a conservative, and I believe in small government. But I do not believe that small government conservatives are chasing an idealized form of anarchy. Government is intended to support our constitutional purposes to ''establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and our posterity.'' When the people come to believe that government is so dysfunctional, so corrupt that it no longer serves these ends, basic civil consensus will suffer grave harm and our culture will be fragmented beyond recognition.

I am a conservative, and I believe that a conservative's primary purpose in public life is to give Americans a Government that is less removed in style and substance from the people, and to help restore the public's faith in an America that is greater than the sum of its special interests. That, I contend, is also the purpose of meaningful campaign finance reform.

Mr. President, opponents of campaign finance reform will argue that there is no public hue and cry for reform, despite the fact that more and more public polls show that the people support reform by ever-widening margins. A recent poll commissioned by my own party revealed that the public now considers campaign finance reform to be among the most important issues facing the country.

But no matter, opponents will note that they have stood for reelection and won with their opposition to reform on full public display. Thus, they will argue, the people don't really care about reform. But that is because the people don't believe that either the incumbent opposing reform, or the challenger advocating it, will honestly work to repair this system once he or she has been elected under the rules that govern it. They distrust both of us. They believe that this system is so thoroughly riddled with financial temptations that it corrupts us all.

The opponents will argue the people are content. I will argue that the people are alienated, and that this explains why fewer and fewer of them even bother to vote.

This problem should motivate all public officials to repair both the appearance and the reality of government corruption. Whether great numbers of elected officials are, in fact, bribed by campaign contributors to cast votes contrary to the national interest is not the single standard for determining the need for reform. Although, it would be hard to find much legislation enacted by any Congress that did not contain one or more obscure provision that served no legitimate national or even local interest, but which was intended only as a reward for a generous campaign supporter.

Mr. President, I do not concede that all politicians are corrupt. I entered politics with some of the same expectations that I had when I was commissioned an ensign in the United States Navy. First among them was my belief that serving my country was an honor, indeed, the most honorable life an American could lead.

I believe that still. Regrettably, many Americans do not.

I am honored to serve in the company of many good men and women whose public and private virtue deserves to be above reproach. But we are reproached, Mr. President, because the system in which we are elected to this great institution is so awash in money that is taken so disproportionately from special interests that the people cannot help but suspect that our service is tainted by it.

If most Americans feel they have sufficient cause to doubt our integrity, then we must seek all reasonable means to persuade them otherwise. Reform of our campaign finance laws is indispensable to that end.

As long as the wealthiest of Americans or the richest organized interests can make six figure contributions to political parties and gain the special access to power such generosity confers on the donor, most Americans will dismiss even the most virtuous politician's claim of fairness and patriotism.

And who can blame them when they are overwhelmed by appearance that political representation in America is measured on a sliding scale. The more you give, the more effectively you can petition your government. If a Native American tribe wants to recover their ancestral lands—pay up, the Government will hear you. If you want to build a pipeline across Central Asia—pay up, the President will discuss it with you. If you want to peddle your invention to the Government—pay up, you get an audience with Government purchasing agents. But if all you pay is your taxes, and you want your elected representatives to help you seek redress for some wrong, send us a letter. We'll send you one back.

Mr. President, this a dark view of our profession, and I do not believe it fairly represents us. I believe such instances of influence peddling are, thankfully, an exception to the honest government that most public officials work hard to provide this Nation. But we cannot blame the people for thinking otherwise when they are treated to the spectacle of influence and access peddling which assaulted them in the last election; when they are told repeatedly that campaign contributions are the only means through which they can petition their Government; the politicians are selling subway tokens to the government gravy train.

Mr. President, the opponents of reform will tell you that there isn't too much money in politics. They will argue there's not enough. They will observe that more money is spent to advertise toothpaste and yogurt than is spent on our elections.

I don't care, Mr. President. We should not concern ourselves with the costs of toothpaste and yogurt marketing. We aren't selling those commodities to the people. We are offering our integrity and our principles, and the means we use to market them should not cause the consumer to doubt the value of the product.

Mr. President, Senator FEINGOLD, Senator THOMPSON, Senator COLLINS, and the other sponsors of this legislation have but one purpose—to enact fair, bipartisan campaign reform that seeks no special advantage for one party or another, but only seeks to find common ground upon which we can all begin to restore the people's faith in the integrity of their Government.

Each of us may have differences as to what constitutes the best reform, but we have subordinated those differences to the common good, in the hope that we might enact those basic reforms which all Members of both parties could agree on.

It is not perfect reform. There is no perfect reform. We have tried to exclude any provision which would be viewed as placing one party or another at a disadvantage. Our purpose is to pass the best, most balanced, most important reforms we can. All we ask of our colleagues is that they approach this debate with the same purpose in mind.

Mr. President, on Monday, we will offer a substitute amendment to S. 25, which represents a substantial change to the original McCain-Feingold Campaign Finance Reform Act, but at the same time, maintains the core—the heart—of the original bill.

I strongly believe in all the provisions of the original bill. In fact, as the debate proceeds, we intend to offer a series of amendments that would restore the component parts of our original bill. We intend to proceed to those amendments in good time.

For now, I would like to outline for my colleagues the contents of our substitute.

Before I do, I want to stress the purposes upon which this legislation is premised:

First, for reform to become law, it must be bipartisan. This is a bipartisan bill. It is a bill that affects both parties fairly and equally.

Second, genuine reform must lessen the amount of money in politics.

Spending on campaigns in current, inflation-adjusted dollars has risen dramatically. In constant dollars, the amount spent on House and Senate races in 1976 was $318 million. By 1986, the total had risen to $645 million, and in 1996, to $765 million. If you include the Presidential campaigns, over a billion dollars was spent in the last election. And as the need for money escalates, the influence of those who give it rises exponentially.

Third, reform must level the playing field between challengers and incumbents. Our bill achieves this goal by recognizing the fact that incumbents almost always raise more money than challengers, and as a general rule, the candidate with the most money wins.

TITLE I

Title I of the modified bill seeks to reduce the influence of special interest money in campaigns by banning the use of soft money in federal races. Soft money would be allowed for State parties in accordance with State law.

In the first half of 1997 alone, a record $34 million of soft money flowed to political coffers. That staggering amount represents a 250 percent increase in soft money contributions over the same period in 1993.

We do differentiate between State and Federal activities. Soft money contributed to State parties could be used for any and all state candidate activities. Soft money given to the State could be used for any State electioneering activity.

If a State allows soft money to be used in a gubernatorial race, a State senate race, or the local sheriff's race, it would still be allowed under this bill. However, if a state party uses soft money to indirectly influence a Federal race, such activity would be banned 120 days prior to the general election. Voter registration and general campaign advertising would be allowed except in the last 120 days prior to the election.

To compensate for the loss of soft money, our legislation doubles the limit that individuals can give to State parties in hard money. The aggregate contribution limit in hard money that individuals could donate would rise to $30,000.

Our soft money ban would serve two purposes. First, it would reduce the amount of money in campaigns. Second, it would cause candidates to spend more time campaigning for small dollar donations from people back home.

TITLE II

Title II of the modified McCain-Feingold seeks to limit the role of independent expenditures in political campaigns. The bill does not ban, curb, or control real, independent, non-coordinated expenditures in any manner. Any genuinely independent expenditure made to advocate any cause which does not expressly advocate the election or the defeat of a candidate is fully allowed.

The bill does responsibly expand the definition of express advocacy, which the courts have ruled Congress may do. In fact, the current standards for express advocacy were derived from the Buckley versus Valeo case. As we all know, that Supreme Court case stated that campaign spending cannot be mandatorily capped. This bill is fully consistent with the Buckley decision, and I would ask unanimous consent that a letter signed by 126 constitutional scholars which testifies to the constitutionality of McCain-Feingold be printed in the RECORD at this time.

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

BRENNAN CENTER FOR JUSTICE,
New York, NY, September 22, 1997.

Senator JOHN MCCAIN,
Senator RUSSELL FEINGOLD,
U.S. Senate, Washington, DC.

DEAR SENATORS MCCAIN AND FEINGOLD: We are academics who have studied and written about the First Amendment to the United States Constitution. We submit this letter to respond to a series of recent public challenges to two components of S. 25, the McCain-Feingold bill. Critics have argued that it is unconstitutional to close the so-called ''soft money loophole'' by placing restrictions on the source and amount of campaign contributions to political parties. Critics have also argued that it is unconstitutional to offer candidates benefits, such as reduced broadcasting rates, in return for their commitment to cap campaign spending. We are deeply committed to the principles underlying the First Amendment and believe strongly in preserving free speech and association in our society, especially in the realm of politics. We are not all of the same mind on how best to address the problems of money and politics; indeed, we do not all agree on the constitutionality of various provisions of the McCain-Feingold bill itself. Nor are we endorsing every aspect of the bill's soft money and voluntary spending limits provisions. We all agree, however, that the current debate on the merits of campaign finance reform is being sidetracked by the argument that the Constitution stands in the way of a ban on unlimited contributions to political parties and a voluntary spending limits scheme based on offering inducements such as reduced media time.

I. LIMITS ON ENORMOUS CAMPAIGN CONTRIBUTIONS TO POLITICAL PARTIES FROM CORPORATIONS, LABOR UNIONS, AND WEALTHY CONTRIBUTORS ARE CONSTITUTIONAL

To prevent corruption and the appearance of corruption, federal law imposes limits on the source and amount of money that can be given to candidates and political parties ''in connection with'' federal elections. The money raised under these strictures is commonly referred to as ''hard money.'' Since 1907, federal law has prohibited corporations from making hard money contributions to candidates or political parties. See 2 U.S.C. §441b(a) (current codification). In 1947, that ban was extended to prohibit union contributions as well. Id. Individuals, too, are subject to restrictions in their giving of money to influence federal elections. The Federal Election Campaign Act (''FECA'') limits an individual's contributions to (1) $1,000 per election to a federal candidate; (2) $20,000 per year to national political party committees; and (3) $5,000 per year to any other political committee, such as a PAC or a state political party committee. 2 U.S.C. §441a(a)(1). Individuals are also subject to a $25,000 annual limit on the total of all such contributions. Id. §441a(a)(3).

The soft money loophole was created not by Congress, but by a Federal Election Commission (''FEC'') ruling in 1978 that opened a seemingly modest door to allow non-regulated contributions to political parties, so long as the money was used for grassroots campaign activity, such as registering voters and get-out-the-vote efforts. These unregulated contributions are known as ''soft money'' to distinguish them from the hard money raised under FECA's strict limits. In the years since the FEC's ruling, this modest opening has turned into an enormous loophole that threatens the integrity of the regulatory system. In the last presidential elections, soft money contributions soared to the unprecedented figure of $263 million. It was not merely the total amount of soft money contributions that was unprecedented, but the size of the contributions as well, with donors being asked to give amounts $100,000, $250,000 or more to gain preferred access to federal officials. Moreover, the soft money raised is, for the most part, not being spent to bolster party grassroots organizing. Rather, the funds are often solicited by federal candidates and used for media advertising clearly intended to influence federal elections. In sum, soft money has become an end run around the campaign contribution limits, creating a corrupt system in which monied interests appear to buy access to, and inappropriate influence with, elected officials.

The McCain-Feingold bill would ban soft money contributions to national political parties, by requiring that all contributions to national parties be subject to FECA's hard money restrictions. The bill also would bar federal officeholders and candidates for such offices from soliciting, receiving, or spending soft money and would prohibit state and local political parties from spending soft money during a federal election year for any activity that might affect a federal election (with exceptions for specified activities that are less likely to impact on federal elections).

We believe that such restrictions are constitutional. The soft money loophole has raised the specter of corruption stemming from large contributions (and those from prohibited sources) that led Congress to enact the federal contribution limits in the first place. In Buckley v. Valeo, the Supreme Court held that the government has a compelling interest in combating the appearance and reality of corruption, an interest that justifies restricting large campaign contributions in federal elections. 424 U.S. 1, 23–29 (1976). Significantly, the Court upheld the $25,000 annual limit on an individual's total contributions in connection with federal elections. Id. at 26–29, 38. In later cases, the Court rejected the argument that corporations have a right to use their general treasury funds to influence elections. See, e.g., Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). Under Buckley and its progeny, Congress clearly possesses power to close the soft money loophole by restricting the source and size of contributions to political parties, just as it does for contributions to candidates, for use in connection with federal elections.

Moreover, Congress has the power to regulate the source of the money used for expenditures by state and local parties during federal election years when such expenditures are used to influence federal elections. The power of Congress to regulate federal elections to prevent fraud and corruption includes the power to regulate conduct which, although directed at state or local elections, also has an impact on federal races. During a federal election year, a state or local political party's voter registration or get-out-the-vote drive will have an effect on federal elections. Accordingly, Congress may require

that during a federal election year state and local parties' expenditures for such activities be made from funds raised in compliance with FECA so as not to undermine the limits therein.

Any suggestion that the recent Supreme Court decision in Colorado Republican Federal Campaign Committee v. FEC, 116 S. Ct. 2309 (1996), casts doubt on the constitutionality of a soft money ban is flatly wrong. Colorado Republican did not address the constitutionality of banning soft money contributions, but rather the expenditures by political parties of hard money, that is, money raised in accordance with FECA's limits. Indeed, the Court noted that it ''could understand how Congress, were it to conclude that the potential for evasion of the individual contribution limits was a serious matter, might decide to change the statute's limitations on contributions to political parties.'' Id. at 2316.

In fact, the most relevant Supreme Court decision is not Colorado Republican, but Austin v. Michigan Chamber of Commerce, in which the Supreme Court held that corporations can be walled off from the electoral process by forbidding both contributions and independent expenditures from general corporate treasuries. 494 U.S. at 657–61. Surely, the law cannot be that Congress has the power to prevent corporations from giving money directly to a candidate, or from expending money on behalf of a candidate, but lacks the power to prevent them from pouring unlimited funds into a candidate's political party in order to buy preferred access to him after the election.

Accordingly, closing the loophole for soft money contributions is in line with the longstanding and constitutional ban on corporate and union contributions in federal elections and with limits on the size of individuals' contributions to amounts that are not corrupting.

II. EFFORTS TO PERSUADE CANDIDATES TO LIMIT CAMPAIGN SPENDING VOLUNTARILY BY PROVIDING THEM WITH INDUCEMENTS LIKE FREE TELEVISION TIME ARE CONSTITUTIONAL

The McCain-Feingold bill would also invite candidates to limit campaign spending in return for free broadcast time and reduced broadcast and mailing rates. In Buckley, the Court explicitly declared that ''Congress . . . may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations.'' 424 U.S. at 56 n.65. The Court explained: ''Just as a candidate may voluntarily limit the size of the contributions he chooses to accept, he may decide to forgo private fundraising and accept public funding.'' Id.

That was exactly the Buckley Court's approach when it upheld the constitutionality of the campaign subsidies to Presidential candidates in return for a promise to limit campaign spending. At the time, the subsidy to Presidential nominees was $20 million, in return for which Presidential candidates agreed to cap expenditures at that amount and raise no private funds at all. The subsidy is now worth over $60 million and no Presidential nominee of a major party has ever turned down the subsidy.

In effect, the critics argue that virtually any inducement offered to a candidate to persuade her to limit campaign spending is unconstitutional as a form of indirect ''coercion.'' But the Buckley Court clearly distinguished between inducements designed to elicit a voluntary decision to limit spending and coercive mandates that impose involuntary spending ceilings. If giving a Presidential candidate a $60 million subsidy is a constitutional inducement, surely providing free television time and reduced postal rates falls into the same category of acceptable inducement. The lesson from Buckley is that merely because a deal is too good to pass up does not render it unconstitutionally ''coercive.''

Respectfully submitted,

RONALD DWORKIN,
Professor of Jurisprudence and Fellow of University College at Oxford University; Frank H. Sommer Professor of Law, New York University School of Law.

BURT NEUBORNE,
John Norton Pomeroy Professor of Law, Legal Director, Brennan Center for Justice, New York University School of Law.

Mr. MCCAIN. Our bill establishes a so-called bright line test 60 days out from an election. Any independent expenditure that falls within that 60-day window could not use a candidate's name or likeness. Ads could run which advocate any number of causes. Pro-life ads, pro-choice ads, anti-labor ads, pro-wilderness ads, pro-Republican Party ads, pro-Democrat Party ads—all could be aired in the last 60 days. However, ads mentioning the candidates could not.

If soft money is banned to political parties, money will inevitably flow to independent campaign organizations. These groups run ads that even the candidates who benefit from them often disapprove of. Further, these ads are almost always negative attacks on a candidate and do little to further healthy political debate. As we all know, they are usually intended to defeat a candidate, and are often, in reality, coordinated with the campaign of that candidate's opponent. They are not genuinely independent, nor are they strictly concerned with issue advocacy.

Our bill explicitly protects voter guides. I believe this is a very important point. Some groups have unfairly criticized our original bill when they argued that it prohibited the publication and distribution of voter guides and voting records. While I view those arguments as misinformation, the sponsors have, nevertheless, worked to make our legislation even more explicit in its protection of such activities.

Let me stress—so no one can have any grounds to assume otherwise—this legislation completely protects voter guides. I will read the provision addressing this matter in the hope that it will allay any and all concerns about voter guides.

(C) VOTING RECORD AND VOTER GUIDE EXEMPTION.—The term express advocacy shall not include a printed communication which is limited solely to presenting information in an educational manner about the voting record or positions on campaign issues of two or more candidates and which:

(i) is not made in coordination with a candidate, or political party or agency thereof;

(ii) in the case of a voter guide based on a questionnaire, all candidates for a particular seat or office have been provided with an equal opportunity to respond;

(iii) gives no candidate any greater prominence than any other candidate; and

(iv) does not contain a phrase such as ''vote for,'' ''re-elect,'' ''support,'' ''cast your ballot for,'' (name of candidate) for Congress,'' ''(name of candidate) in 1997,'' ''vote against,'' ''defeat,'' or ''reject'' or a campaign slogan or words which in context can have no reasonable meaning other than to urge the election or defeat of one or more candidates.'

Mr. President, I hope this clear and concise language dispels any rumors that this modified legislation will adversely affect voter guides.

TITLE III

Title III of the modified McCain-Feingold bill mandates greater disclosure. Our bill mandates that all FEC filings documenting campaign receipts and expenditures be made electronically, and that they then be made accessible to the public on the Internet not later than 24 hours after the information is received by the Federal Election Commission.

Additionally, current law allows for campaigns to make a best effort to obtain the name, address, and occupation information of the donors of contributions above $200. Our bill would eliminate that waiver. If a campaign cannot obtain the address and occupation of a donor, then the donation cannot and should not be accepted.

The bill also mandates random audits of campaigns. Such audits would only occur after an affirmative vote of at least four of the six members of the FEC. This will prevent the use of audits as a purely partisan attack.

The bill also mandates that campaigns seek to receive name, address, and employer information for contributions over $50. Such information will enable the public to have a better knowledge of all who give to political campaigns.

TITLE IV

Title IV of the modified bill seeks to encourage individuals to limit the amount of personal money they spend on their own campaigns. If an individual voluntarily elects to limit the amount of money he or she spends in his or her own race to $50,000, then the national parties are able to use funds known as coordinated expenditures to aid such candidates. If candidates refuse to limit their own personal spending, then the parties are prohibited from contributing coordinated funds to the candidate.

This provision serves to limit the advantages that wealthy candidates enjoy, and strengthen the party system by encouraging candidates to work more closely with the parties.

TITLE V

Last, the bill codifies the Beck decision. The Beck decision states that a nonunion employee working in a closed shop union workplace, and who is required to contribute funds to the union, can request and be assured that

his or her money will not be used for political purposes.

I personally support much stronger language. I believe that no individual—a union member or not—should be required to contribute to political activities. However, I recognize that stronger language would invite a filibuster of this bill and would doom its final passage. As a result, I will fight to preserve the delicately balanced language of the bill, and will oppose amendments offered on both sides of the aisle that would result in killing campaign finance reform.

Mr. President, what I have outlined is a basic summary of our modifications to the original bill. I have heard many colleagues say that they could not support S. 25, the original McCain-Feingold bill for a wide variety of reasons. Some opposed spending limits. Others opposed free or reduced rate broadcast time. Others could not live with postal subsidies to candidates. Others complained that nothing was being done about labor.

I hope that all my colleagues who raised such concerns will take a new and openminded look at this bill. Gone are spending limits. Gone is free broadcast time. Gone are reduced rate TV time and postal subsidies. And we have sought to address the problem of undue influence being exercised by labor unions. All the excuses of the past are gone.

Mr. President, on Monday I will review the provisions of the substitute again and will lay the modified bill before the Senate. I look forward to discussing the specifics of the measure at that time.

Mr. President, the sponsors of this legislation claim no exclusive right to campaign finance reform. We offer good, fair, necessary reform, but certainly not a perfect remedy. We welcome good faith amendments intended to improve the legislation.

But I beg my colleagues not to propose amendments designed to kill this bill by provoking a filibuster from one party or the other. The sponsors of this legislation intend to have votes on all relevant issues involved in campaign finance reform, and we will use every resource we have under Senate rules to ensure that we do.

If we cannot agree on every aspect of reform; if we have differences about what constitutes genuine and necessary reform, and we hold those differences honestly—so be it. Let us try to come to terms with those differences fairly. Let us find common ground and work together to adopt those basic reforms we can all agree on. That is what the sponsors of this legislation have attempted to do, and we welcome anyone's help to improve upon our proposal as long as that help is sincere and intended to reach the common goal of genuine campaign finance reform.

Mr. President, when I was a young man, a long time ago, I would respond aggressively and often irresponsibly to anyone who questioned my honor. I am not a young man now, and while I have been known to occasionally forget the discretion which is expected of a person of my years and station, I lack both the will and the ability to address attacks upon my honor in the manner I once addressed them. I now prefer to clear up peacefully the misunderstandings that may cause someone to question my honor. That is the task which I believe the sponsors of McCain-Feingold have undertaken.

I remember how zealously a boy would attend the needs of his self-respect. But as I grew older, and as the challenges to my self-respect grew more varied, I was surprised to discover that while my sense of honor had matured, its defense mattered even more to me than it did when I believed that honor was such a vulnerable thing that any empty challenge threatened it.

Now, I find myself faced with a popular challenge to the honor of a profession of which I am a willing and proud member. It is imperative that we do all we can to address the causes of the people's distrust.

Meaningful campaign finance reform will not cure public cynicism about modern politics. Nor will it completely free politics from influence peddling. But, coupled with other reforms, it may prevent cynicism from becoming utter alienation, as Americans begin to see that their elected representatives value their reputations more than their incumbency. I hope it would even encourage more Americans to seek public office, not for the honorifics bestowed on election winners, but for the honor of serving a great nation.

Mr. President, we must not fear to take risks for our country. We must not value the privileges of power so highly that we use our power unfairly, and subordinate the country's interests to our own comfort. We may think that we trade on America's good name to stay in office and shine the luster of our professional reputations, but the public's growing disdain for us is a stain upon our honor. And that is an injury which none of us should suffer quietly.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I want to begin by once again expressing my admiration and gratitude to the senior Senator from Arizona for his extraordinary leadership on the issue of campaign finance reform. This effort has already been a long and difficult one, but it is all about his courage and his exceptional commitment to the good of this country. He is in a more difficult situation than I am in as a member of the majority party. But the fact is he is one of the greatest Republicans of our time. And they are lucky to have him.

Mr. President, I also want to thank Senator LOTT, the majority leader, for helping us get this bill up to the floor. And I also appreciate the fact that he took some time this morning to say a little bit about how he got here; about what it was like for him to try to be elected to the U.S. Senate.

I think those kinds of stories and accounts are going to be very important as this debate proceeds because we need to tell the American people just what is involved in running for the Congress these days. We need to tell them the truth about how many people are truly invited to participate in a process that is so awash in money that almost every American must feel like they are not invited to participate.

I also want to, of course, especially thank my leader, Senator DASCHLE, not only for his powerful statement on behalf of our bill but also for his leadership in working diligently to make sure that all 45 members of the Senate Democratic caucus are in support of the McCain-Feingold bill; a bill that has been initiated by a member of the other party. That is a great tribute to him and to the cause of bipartisanship in favor of campaign finance reform.

I also want to do something that may not be terribly popular out here as the debate goes on. I want to thank the President of the United States, because the fact is he has been diligent, consistent, and persistent in support of this particular piece of legislation. He has offered his personal help. He has offered the help of his staff. Before it is finished, before we claim our final victory on this issue, I am going to certainly repeat the fact that President Clinton has been fighting for reform.

Mr. President, it was just over 2 years ago that the Senator from Arizona and the Senator from Tennessee, Senator THOMPSON, and I began this long, sometimes tortuous, journey on the path to campaign finance reform. In fact, it was September 1995 when we first introduced our bipartisan reform proposal, a proposal that is centered on the premise that it is imperative that we reduce the role and influence of money on our electoral system.

For 2 years, though, Mr. President, the Senator from Arizona and I have been stymied by opponents of reform who desperately cling to the absurd notion that the more money you pour into the political system that our democracy somehow gets better. Sometimes the comparison is made that we spend as much money on elections as we spend on potato chips. I don't know what this has to do with the question of political reform but it is an argument we are treated to anyway. Of course, no one outside the Washington Beltway believes in that argument. No one outside of this town thinks we need more money spent on the political process. In fact, if you talk to any average American they will tell you they are just horrified by the amount of money that is spent on our electoral system. But they are tired of excessive spending. They are tired of the onslaught of negative attack ads all throughout a campaign season. And, yet, they are even more tired—they are

sick and tired—of the ongoing revelations of abuse and wrongdoing related to elected officials and campaign fundraising.

Nonetheless, our opponents, such as our colleague and our friend, the junior colleague from Kentucky, continue to argue that more campaign spending somehow strengthens democracy and expands citizen participation. Of course, I disagree with him on this point. And so do the facts.

The facts say this: The 1996 election speaks for itself. In 1996, candidates and parties spent in excess of $2 billion. That was an all-time record amount of campaign spending.

In a year where we spent more money on Federal elections than in any other year in our history, let's ask the question: Was democracy strengthened? Did we expand citizen participation? We all know the answer. Mr. President, we did not. Almost a year after the fact we are still feeling the fallout from the 1996 elections. After months of hearings by the Governmental Affairs Committee, led by the Senator from Tennessee, it is clear that we had widespread abuse and wrongdoing on both sides of the aisle. We have had congressional investigations, a Justice Department investigation, an FBI investigation, and even a CIA investigation, all relating to the way we elected our representatives.

That doesn't sound like the strengthening of democracy to me.

As for participation, we had the lowest voter turnout in 72 years—a clear sign that the electorate was not exactly energized by all this campaign spending. We know the truth. They were turned off.

Perhaps most disheartening, our campaign finance system just lacks any sense of fairness anymore.

In 1996, incumbents outspent challengers by ratios of 2 to 1 and 3 to 1, and to no surprise. The reelection rate for Members of the House and Senate remained well above the 90 percent level.

As the Senator from Arizona has said, the time for reform is right now.

Over the course of the last several months, the Senator from Arizona and I have had two clear consistent messages. The first was that our preference was to work with the majority leader in scheduling debate on bipartisan reform legislation. Thankfully for the kind of cooperation that serves this body very well, we have achieved that.

Of course, the majority leader has already begun the debate. He says we should not shift the subject. He wants to focus instead on the White House. But I think what we ought to focus on is the whole system. We ought to focus on the question of whether this system has anything to do with the principle that everybody's vote should cost the same.

We are already hearing talk about filibusters—about ways to make sure the legislation does not pass.

But I do want to say that I am very impressed with the way in which this bill came to the floor, and I am grateful.

Our first choice always was the cooperative approach.

Mr. President, our second message was one that the Senator from Arizona just made very plain once again. That is our willingness and continued willingness to make the changes that need to be made to do the right thing.

We demonstrated this willingness to compromise when we worked with the junior Senator from Maine who suggested a number of changes to our bill that I think actually strengthen the bill. I think there may be amendments out on the floor by either party that can make the bill stronger, and a better reform bill.

That is the spirit in which Senator MCCAIN and I come to the floor. We know that this bill isn't perfect. It is not the ideal Feingold bill. It is not the ideal McCain bill. That is how we got together—by compromises and trying to come up with a reasonable passage.

Prior to the August recess, the Senator from Arizona and I stood here on the Senate floor with some of our colleagues and expressed the hope that this debate would occur. We also said that if we were unsuccessful with that effort we would bring the legislation to the floor in September.

Mr. President, for opponents of campaign finance reform, for those Washington interest groups—whom I like to refer to as ''the Washington gatekeepers''—who joined with the Senator from Kentucky in opposing any changes to our current system, it is September. It is a Friday in September. And we hope for all of those who have declared this bill dead over and over again that today will be remembered for them as ''Black Friday.''

For the rest of the country, for the 90 percent of the Americans who believe we should be spending less on our elections, for the underfunded challengers who are consistently blown out of the water by well-entrenched incumbents, and for those who believe that the first amendment is a right belonging to all Americans, not just a commodity for the wealthy few, I hope this Friday will be remembered as the day we took the first step in providing with this reform proposal the first real opportunity to fundamentally change the nature of our political system.

The base package of reforms the Senator from Arizona and I have pieced together represents a solid first step on the path to more comprehensive reform.

As he has already highlighted, the package will ban so-called soft money. That means that the Washington soft money machine that has fostered the multihundred-thousand dollar contribution from corporations and labor unions and wealthy individuals will be shut down forever. The American people won't have to hear about outrageous levels of contributions that they couldn't even dream of giving even once in their lives.

The base proposal also modifies the current statutory definition of ''express advocacy.'' It does not affect issue advocacy. It redefines in an appropriate manner ''express advocacy'' to provide a clear distinction between expenditures for communications used to advocate candidates and, on the other hand, those used to advocate issues. And that is all it does.

It does not do, as the majority leader has suggested, ban billboards. Of course, it doesn't. It doesn't touch voter guides. We explicitly provide that voter guides are permitted. And it doesn't ban one single television or radio ad, ever. It simply does not do that. And we will repeat that statement as often as it needs to be repeated.

Candidate-related expenditures will be subject to current Federal election laws and disclosure requirements. Of course they will. But that is all.

No form of expression will be prohibited.

That statement is simply inaccurate.

The proposal will require greater disclosure of campaign contributions and expenditures, and provide the Federal Election Commission with the tools to better enforce our campaign finance laws.

It includes a strict codification of what is known as the Supreme Court's Beck decision, thus requiring labor unions to notify nonunion members that they are entitled to request a reduction of the portion of their agency fees used for political purposes. Of course, I find it laughable that anyone could believe that the central problem in the campaign finance system is an issue of union dues. That is laughable on its face.

What about corporations? What about all of the other special interest groups? Does anyone really believe that labor is the only problem? Nonetheless, we try to reasonably and appropriately address this issue rather than ignoring it.

Finally, the base package includes a provision that for the first time encourages candidates to abide by some kind of a voluntary fundraising restriction. That is a significant step.

As my colleagues know, the Supreme Court ruled in the decision in Buckley versus Valeo that it is fully consistent with the first amendment to offer candidates incentives to encourage them to voluntarily limit their campaign spending.

In fact, the Buckley Court specifically upheld the Presidential system that we have today which offers public financing in exchange for candidates agreeing to voluntary spending limits.

The Senator from Arizona and I have added a provision to this base package that tracks that concept.

Under current law, Mr. President, political parties are permitted to make expenditures in coordination with the Senate candidate up to a certain limit. That limit is based on the size of each State.

In California, for example, the parties are each permitted to spend about $2.8 million in coordination with the candidate.

Our proposal provides that candidates who decide to pour a great deal of their own personal funds into a campaign would simply no longer be entitled to those party expenditures on their behalf.

Specifically, if a candidate agrees to limit their personal spending to less than $50,000 per election, they will continue to receive help from their party committees. If they don't, they just won't receive that money.

It is a basic concept. If you want to pour millions and millions of dollars of your personal money into a campaign to try to buy a Senate seat, you should be able to do so.

We don't disagree with Buckley versus Valeo on that point. We don't disagree. We just do not think you should get some kind of a benefit, some kind of a privilege after you have done so.

It is very important to recognize that distinction.

That is what Buckley said, and that is what this proposal reflects. We should not reward such candidates. We should not give them the equal benefit with their opponent who is not a millionaire and who should be able to receive that.

So, Mr. President, that is the outline of our base package. It is modest reform. It is a strong step in the right direction, and it provides us with the vehicle to move campaign finance reform forward.

But there is another piece to our effort. The base package makes several important reforms.

But the one thing it does not do enough of is doing something about the position of incumbents and challengers in financing their campaigns. We know what the problems are. Incumbents consistently blow away challengers who lack the resources to run their campaign.

The flow of campaign cash through the corridors of Congress undermines public confidence and trust in this institution. Officeholders spend more time panhandling for campaign contributions sometimes than they do on the Nation's legislative business.

That is why the Senator from Arizona and I are announcing our intention to offer a McCain-Feingold amendment to our own vehicle. Why? Because we want some accountability on this issue. We want to see that the Members of the U.S. Senate are prepared to stand up in the public spotlight and tell the American people whether they are willing or unwilling to change a system that is so clearly rigged in their own favor.

Mr. President, that road is going to be a true test of reform. That will be one of the votes that tells us how serious the U.S. Senate is with fundamentally changing a political system that has spiraled out of control, and has led to so many charges of abuse and undue influence; and, yes, Mr. President, corruption.

Our amendment will again build on what the Supreme Court said was permissible in the Buckley decision. The amendment offers an incentive to candidates to encourage them voluntarily to limit their fundraising. The incentive in this case is a half-priced discount on television time. And that, of course, would have more to do with reducing the cost of campaigns than anything else.

Candidates who wish to receive the discounted television time would have to agree to three simple rules. First, they would have to agree to raise a majority of their campaign funds from people who live in their own State. That seems reasonable. Second, they must agree to raise no more than 25 percent of their total campaign contributions from political action committees. Finally, they have to agree again to spend no more than $50,000 of their own personal money on a campaign.

By doing so, Mr. President, we would provide candidates, for the first time ever, with the opportunity to run a competitive campaign without having to raise and spend millions of dollars. It tries to level the playing field. It is fair to both parties, and that provision, that amendment that we will offer, is clearly constitutional.

There will be a vote on that amendment, and we will find out if Senators favor or support changing the rules that have so clearly fallen apart in recent years. I look forward to that debate. I look forward to the other amendments that will be offered that could well improve this bill even more.

So before concluding, I do want to again thank my colleague from Arizona, but I want to make two points, two points that I think will be something of a road map to what will happen in the next few days.

First, there is going to be, if you have a scorecard, two different groups out on the floor. One group of Senators is going to try to force a filibuster. They are going to offer amendments and use procedural tactics in any way they can to force either the Democrats or the Republicans to filibuster. The majority leader already said today, with great pride, that he would get the other side to filibuster. He has already announced that that is his goal. But there is another group of Senators, Mr. President. That is the bipartisan group. That is not the filibustering group. That is the group of Senators from both parties who are working together to avoid a filibuster and reform our system. Keep your scorecard. There are two very clear groups—the filibusterers and the bipartisan Senators. That is where we are in the difference on this issue.

The second final point I want to make, Mr. President, is that not only are there two groups of Senators on this issue—and we will find out exactly who they are—there are also two different visions of our democracy represented in the Senate. One vision is the vision of a representative democracy. The other vision is what I like to call a vision, an acceptance of something that is more akin to a corporate democracy. We have become a corporate democracy.

What do I mean by that? When I was 13 years old, I received a gift of a share of stock. One of our relatives wanted to teach me how the stock market worked and how our economy worked. I think it was maybe a $13 stock in the Parker Pen Co., one of our great prides in Wisconsin and in my hometown of Janesville. My father told me that in addition to owning a share of that stock, I would have a vote at the stockholders' meeting. And being already interested in politics, I thought: Great. When is the election? When is the stockholders' meeting? I want to go vote. And he laughed. He said, ''Well, I better tell you something. The number of votes you get depends on how many shares you have. You don't have the same vote and the same power as everyone else because it is a corporation. It is based on how much money you are able to put into the corporation, and so you could go to the shareholders' meeting but your vote wouldn't count very much.''

Mr. President, sadly, that reminds me more of America today than ever before. This is not a democracy anymore of one person-one vote. If we keep this system of $300,000, $400,000 contributions and access to politicians based on contributions, we will have sealed this as a corporate democracy, not a representative democracy.

That is the question before us. Will we abandon all the other Americans who simply cannot afford the cash to play the game? We have to reject the corporate democracy, Mr. President. We have to return to a representative democracy. That is what this country is all about. That is what this institution is all about. Fortunately, in the coming days, we will find out who is on which side.

Mr. President, I yield the floor.

Mr. BENNETT addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I listened with interest to the opening statements made on this issue. I appreciate the sincerity of those who have made them. I wish to make this first personal point before I make some additional points. The Senator from Arizona said that there is only one purpose here, and that purpose is to enact fair and effective campaign finance reform. I wish to make it very clear that I accept that purpose on behalf of the Senator from Arizona, the Senator from Wisconsin, the Senator from Tennessee, or anyone else involved in this matter. I do not challenge for one moment their sincerity. Certainly we cannot challenge their earnestness. Certainly we cannot challenge their motives. I want it clearly understood that

I have that kind of feeling about what they are doing.

I want it equally understood that I think they are fundamentally wrong and that, in their effort to get to what they consider to be a sincere and proper goal, they could do irreparable damage to our Nation and to the fundamental freedoms about which I care just as passionately as they do. I hope they will grant to me the same sense of honor and integrity that I am more than willing to grant to them, and that we will not get into the name-calling business of saying, if you oppose McCain-Feingold, you are somehow opposed to anything that is true and beautiful and worthwhile.

I believe McCain-Feingold cuts at some of the most fundamental freedoms we have in this country, and I am going to outline that. I want everybody to understand that I am not acting because I believe something sinister or improper is going on here.

As to the second point, before I go into some of the specifics I want to talk about, I would say to Senator FEINGOLD, I think you ought to meet Senator MCCAIN. From the notes I have made in this morning's debate, Senator FEINGOLD said, if I quote him correctly, ''No form of expression will be prohibited,'' just after Senator MCCAIN said, ''No ad mentioning the name of a candidate will be allowed in the last 60 days of the campaign.''

I do not find those two statements coinciding with each other. Indeed, the Senator from Arizona, in his summary of the things that would be allowed and would not be allowed, gave us a whole list of that which would be allowed to take place and that which would be prevented. To me, we are debating ways in which Government power will be marshaled to control legitimate speech, and we are saying, with all of the intensity of middle-aged theologians debating how many angels can dance on the head of a pin, that this will be allowed and that will not; this is permissive but that is not; 60 days is legitimate but 61 is not, back and forth, in and out on all of these particulars. We are going to marshal the full power of the Federal Government of the United States of America and focus that power like a laser beam on this particular ad, this particular contribution, this particular activity, all in the name of campaign finance reform.

Mr. President, to me marshaling Government power to regulate what can and cannot be said in another context is called censorship. And marshaling the power of the Federal Government to censor political speech is not an activity in which I would lightly engage.

The statement was made by the minority leader that Buckley versus Valeo was a close call; it was only 5 to 4. On the issue of whether or not spending money in campaigns represented protected speech under the first amendment, Buckley versus Valeo was 9 to nothing. And in every subsequent decision from that time forward, the Court has reemphasized that. Let us understand that. We are talking about the most fundamental political right that we have in this country, the right of free debate and speech in a political campaign. I want to lay that down as the fundamental predicate, when we get into the details of this, when we argue with the Senator from Arizona about what is and what is not wise and proper, we are talking about tinkering with the fundamental right of Americans to engage in robust political activity. We should tread on this ground very, very carefully. I think that is why the Supreme Court slapped down the first attempt to tread on this ground by such an overwhelming margin.

Now, some specifics. The Senator from Arizona laid down the three principles that we are going to see preserved in the substitute bill to McCain-Feingold, S. 25. I am delighted there will be a substitute bill to S. 25.

I have gone through S. 25 reading it personally. If ever there were a maze of regulations subject to misinterpretation and reinterpretation by bureaucrats enforcing them, this is the maze.

This morning on this floor we had a series of speeches regarding the IRS and how the Tax Code is used and abused with ordinary citizens. I wonder what the IRS or regulators like those who work for the IRS would do with the provisions of S. 25? Saying, well, you could have run that ad, but you can't run this ad; you could have had this guide, but you can't do that guide; this was OK last Tuesday, but it is not OK on Thursday.

Now, the fundamental assumption here underlying what we are hearing is that money is the only factor in determining the outcome of an election, and that if we can only level the playing field, which we hear over and over again, in terms of money, then we will have fair elections.

Well, when we raise the issue of people who defeat incumbents without having as much money as incumbents have, we are told always, well, that is the exception that proves the rule. That is an aberration. That is not the way things normally happen; incumbents normally win. Yes, incumbents do normally win. And they normally win for a whole series of reasons, not necessarily connected with money.

I am interested that Senator FEINGOLD is raising this issue when he is one of the challengers who defeated an incumbent in order to get here. And, while I will not pretend to be an expert on his campaign, it's my understanding that he spent less than his incumbent opponent in order to do it, thus demonstrating that maybe the ability to communicate better than your opponent has something to do with who wins. Maybe the ability to write a smarter ad than your opponent does may have something to do with who wins. Maybe even having a more powerful message than your opponent has something to do with who wins. Or maybe which State you live in, whether it be predominantly Republican or Democrat, in terms of the leanings of the voters in the first place, has something to do with who wins. It is not necessarily money as the only ingredient in what happens.

All of us here, because we live in the beltway circumstance, saw the ad campaign that went on in the senatorial race in Virginia in 1996. You couldn't avoid it if you lived anywhere in the Washington area for any period of time. Mark Warner spent something like $25 million trying to defeat Senator JOHN WARNER. He didn't succeed. He outspent him overwhelmingly. What advantages did JOHN WARNER have to fight off that kind of money barrage as an incumbent? There are those here who will say his only advantage was, as an incumbent, he could raise more money. Clearly he could not raise more money. There is not enough money in the world to warrant raising more money than Mark Warner spent in that race.

I know my opponent in the primary race in Utah outspent me 3 to 1. He spent $6.2 million in a primary in Utah. When I say there isn't enough money—to spend more money, he was buying ads on Saturday morning cartoons. He had run out of places to spend it.

Yes, there are finite limits. I think Mark Warner reached those finite limits in Virginia. Why didn't he defeat JOHN WARNER if he had that kind of money advantage? JOHN WARNER had 18 years of service in the U.S. Senate, which means 18 years of answering phone calls, sending letters, attending bar mitzvahs, going to Rotary Clubs. JOHN WARNER was known as the most popular politician of either party in the State of Virginia. That is a fairly significant advantage for an incumbent to have, regardless of money.

JOHN WARNER has spent 18 years with name recognition against somebody of whom no one had ever heard. Yes, money buys name recognition. An incumbent doesn't have to spend any money to buy name recognition. That is a significant advantage.

JOHN WARNER had a staff. I can give that example. I didn't run against an incumbent Senator but I ran against an incumbent Congressman who had a congressional staff. When the Congressman wanted to come to Washington to attend a fundraiser with a PAC group, who paid for it? The taxpayer, because it was a trip back and forth from his congressional district to the Capitol. When I came to Washington challenging him, trying to hold a fundraiser among the PAC's, who paid for it? My campaign paid for it. I had to raise that money. It put us on a level playing field. Both have the same amount of money, I don't get to come to the fundraiser but my opponent does because he's an incumbent.

When my opponent put out a press release accusing me of committing a

crime, which he did—actually, that was one of the good things about my campaign. Everybody thought he had lost his mind, and I got some extra votes as a result of it. Nonetheless, when my opponent put out the press release accusing me of a crime, who prepared it? His press secretary. Who paid the salary of the press secretary? The taxpayers. He was an incumbent. He is entitled to a staff.

When my press people went to the press conference to say, ''No, BOB BENNETT did not commit that crime,'' who paid their salary? My campaign did. So let's put him on a level playing field. He gets his staff paid for as an incumbent by the taxpayers. I, as a challenger, don't get my staff paid for. I have to raise the money.

Incumbents have all kinds of advantages that have nothing to do with money. They also, sometimes, have some disadvantages that have nothing to do with money. We have the example—perhaps an extreme one but let's use an extreme one to make a point—back in the 1994 election, Mike Synar, the Congressman from Oklahoma, lost his primary. He spent $325,000. His opponent spent less than $10,000. His opponent's campaign consisted entirely of distributing his business card, sticking it under windshields in parking lots, and written on the back of the business card was the phrase, ''Not the incumbent.'' And he beat the incumbent. The incumbent in that circumstance had a $325,000 to, let's say, $10,000 money advantage; he had the disadvantage of a voting record that members of his particular congressional district didn't like.

We cannot let ourselves get into this notion that money is the only factor and then write laws based on that assumption because, if we do, we will do violence to the Constitution and freedom of speech.

Now, let me go down the three points that the Senator from Arizona made, as the core points of McCain-Feingold and the proposed change that we will have. First, he said it must be bipartisan. I will grant him that. McCain-Feingold will damage both parties equally, damage the process for everybody. It doesn't play favorites. It will be equally bad.

Second, he says we must lessen the amount of money overall in campaigns. If he had listened to the expert testimony that we have had in the Governmental Affairs Committee this last week, he would find that even people who support McCain-Feingold, who come out of the academic community and commented on this, told us you cannot control the amount of money in political campaigns. The Senator from Kentucky has said, ''Controlling political money is like putting a rock on Jello. You put it on one place and it squeezes out another.'' And these experts said the same thing. They said political money has been in the process ever since George Washington was President and will always be in the process, and we have had a continuing process of simply trying to control it. But you are not going to eliminate it. It is always going to be with you.

Mr. KERRY. Will my friend yield for a question?

Mr. BENNETT. I will be happy to yield.

Mr. KERRY. As I listened to my colleague suggest that you cannot control money, I can't help but think back to——

Mr. BENNETT. May I correct that? I said you cannot control the total amount of money. You can control where it flows.

Mr. KERRY. That is fair, Mr. President. Let me nevertheless ask the same question I was going to ask, because I think it is relevant. Last year in Massachusetts, Governor Weld and I agreed on a fixed amount of money that we would spend in our race. We agreed on a fixed amount of money for our media, and a fixed amount of money for the campaign on the ground, so to speak. We agreed, both of us, to have no money from the national political parties and no money from independent expenditures. We set up a mechanism whereby we were able to control not having those independent expenditures come in. In the end, we had a campaign that had no national money, no independent expenditures, and we spent the fixed amount of money that we said we would.

So I ask my colleague, how it is he can say that you can't control it when in fact there is evidence of it having been controlled in that race, as well as in Governor races and other races in the rest of the country where they have accepted limits?

Mr. BENNETT. I thank my friend from Massachusetts for an example that I think makes my point. You made the decision, your opponent made the decision, and you are in control in this circumstance of the amount of money that is spent. What McCain-Feingold does is take that decision out of your hands and put it in the hands of the bureaucracy.

When I say you can't control the amount of money, I should be more specific. You can't control it by Government fiat. You certainly can control it in terms of what happens in your own campaign, just as I made the decision in my campaign that there would be no negative ads. I refused to run any ads attacking my opponent. But I would oppose any Government rule that would say to me I could not make a different decision if I wanted to. And I would oppose any Government regulation that would say that you and Governor Weld could not have made that decision on the basis that you wanted to, instead of there being more particulars that would be imposed upon you by Federal law that would say, ''Well, you have come fairly close but we are going to put this regulation and that regulation on top of the decision that the two of you jointly made.''

I applaud you for what you did. I think every campaign would be better off if the candidates could sit down in advance and make that kind of a deal. But I want every deal to be a separate deal, made by separate candidates, rather than dictated from this Chamber.

Mr. KERRY. Will my friend yield for a further question?

Mr. BENNETT. I will be happy to yield for a question.

Mr. KERRY. I would ask him that, now having at least established one can arrive at a control, the issue is whether or not the Government might play a role in that? I ask the Senator if he is aware that, in a number of States and in a number of cities, they have in fact passed legislation where there is an accepted regime of control for how much is spent in a campaign, or for the mechanism for raising it? The city of New York, State of Maine, a number of other States have accepted this.

So, really, the question is not whether or not you can do it, I would submit to my friend, it is whether or not one is willing to do it, whether you have the desire of doing it. That is really the bottom-line question, I would suggest.

Mr. BENNETT. May I respond to my friend, and then I see the Senator from Kentucky wants to get into this.

In the first place, I think we ought to wait for some experience from these cities and States as to what happens before we rush to Federal legislation on the basis of the bills that they have passed. I think it is salutary that the States are being used as a lab, to see what works and what does not. I don't know that there has been any constitutional challenge to any one of these statutes yet. I would expect there would be. And I would like to have the reasoning of the courts before us before I rush to Federal legislation. Then, as I said, I would like to have some on-the-ground experience to see how it really works.

If I may give a separate kind of example, in the State of Utah we allow corporate contributions for statewide races—Governor, attorney general, Lieutenant Governor, what have you. There has not been a hint of scandal. There is no outcry to stop that. And we have had a series of outstanding Governors, both Democrats as well as Republicans, every one of whom has been a man of highest rectitude.

So, if you are going to look for a local example of something that works, you could say, based on my State's experience, that we ought to open the whole thing up and let corporate contributions come in as well as individual contributions. The one thing that we do have in Utah that has made it work is full and complete disclosure so that everybody knows that, if the Utah Power and Light Company has given to X campaign, that is on the public record. And when the Governor goes to deal with utility regulation, everybody knows how much the power company gave him.

Mr. McCONNELL. If the Senator will yield just for an observation?

Mr. BENNETT. I will be happy to.

Mr. McCONNELL. The Senator from Massachusetts was talking about State and local referenda. There have been some. Most of them have either been struck down by the courts, as in the case of Missouri, Minnesota, Oregon, and Cincinnati. The balance are in litigation, such as the new State law in Maine which virtually no one believes will be upheld by the Federal courts.

The Senator is correct, there has been some experimentation at the State and local level. Virtually all of them have been struck down or are on the way to being struck down.

Mr. BENNETT. I thank my friend from Kentucky for that additional information. Let me go back to the three points made by the Senator from Arizona: Must be bipartisan—I agree, this is bipartisan. Two, must lessen the amount of money overall in politics—if the experts that have testified before our committee are correct, and I believe they are, in a free society that is simply an impossible goal. You can disclose it, and I think we should; you should shine as much light, sunshine, exposure as you can, and I think we should. You should do things about getting people better informed of what is going on, and I think we should.

I am perfectly willing to talk about amending the current laws to go in that direction. But you should not kid yourself that in a free society, somehow Government can control the total amount of money people want to spend in political advocacy.

So we come to the third principle, laid down by the Senator from Arizona, that there must be a meaningful campaign finance reform, which is we must level the playing field between challenger and incumbent. We must help the challenger.

I have already made the point, and will make it again, that the best way you can help the challenger in the field of money is to allow the challenger to raise more money than the incumbent. If you level the playing field and say to the challenger—my own example again repeated—you cannot raise any more money than the incumbent, but the incumbent starts out with all of the name recognition, all of the years of going to Rotary Clubs and bar mitzvahs, all of the staff paid for by the taxpayer available to him, all of the record of answering letters and doing favors and congressional constituent service, and you can't spend any more to try to overcome that advantage in the name of campaign finance reform, you have decapitated the challenger and guaranteed that the incumbent is going to get reelected in virtually every circumstance.

Mr. McCONNELL. Will the Senator yield?

Mr. BENNETT. I yield for another comment.

Mr. McCONNELL. As an observation on what the Senator said about leveling the playing field, that was raised in the Buckley case, and the Supreme Court said it was constitutionally impermissible for the Government to try to level the playing field. In fact, the Court said:

> 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.

So my friend from Utah is correct, even if it were possible somehow for the Government to figure out how to micromanage and level the playing field, it is truly constitutionally impermissible for the Government to try to do that.

Mr. BENNETT. I thank my friend from Kentucky for that additional information about this particular issue.

Mr. President, I want to end as I began by expressing my deep concern over this whole attempt to tiptoe into the area of free expression in a free society regarding political activity and political speech. I know it is frustrating to see large amounts of money come into a campaign. I have heard my friend from Pennsylvania, Senator SPECTER, tell of his personal experience when Buckley versus Valeo was handed down, where he was in a Senate race with the man who became Senator Heinz. The story ends well because Senator SPECTER became Senator SPECTER as well, but not in that race.

He, Senator SPECTER, was running the campaign. There were spending limits. Buckley versus Valeo struck those limits down in terms of an individual American being allowed to spend whatever amount of money he wanted to spend in expressing his own point of view. As Senator SPECTER said, ''Senator Heinz had virtually unlimited resources and I did not. And Senator Heinz put those resources into the race and I was prohibited.''

''Now,'' says Senator SPECTER, ''my brother had enough money to fund my campaign, but my brother was forbidden to put that money into the campaign and, therefore, I was at an unfair disadvantage to John Heinz.''

My solution to that would be let his brother put the money in the campaign. If we are going to level the playing field, and Heinz has x amount of money that he can put in and Senator SPECTER has a brother who has x amount of money he can put in, in the spirit of the decision just described by the Senator from Kentucky, I would have no problem with saying, OK, let Senator SPECTER's brother put it in, let's level the playing field by letting both sides spend.

Now, if Senator SPECTER's brother put it in, it darn well better be disclosed where he got the money, where it came from and let people ask the question: What did ARLEN SPECTER's brother expect to get in return if ARLEN SPECTER took enough money from him to match John Heinz?

Or to put it in a more contemporary circumstance, we see in the Presidential situation where we have these kinds of limits, in this last election, Jack Kemp wanted to run for President. Those of us who know Jack and can read his body language could tell he was anxious to run for President. He looked at the fundraising problem that he faced under the present limitations, and he said, ''I can't physically do it. I have to go out and raise this much money at $1,000 apiece. I can't physically stand the wear and tear.''

Sitting at Jack Kemp's elbow, figuratively, was somebody who believed in everything Jack Kemp believed in. His name is Steve Forbes. Steve Forbes could have funded a Kemp campaign for President without noticing it. But under the circumstances in which we currently are operating, Steve Forbes is forbidden to do that. So, ultimately, what did he do? He ran for President himself. At some point in this debate, I will have some comments about that, too, and what happened with that injection of money coming from Steve Forbes.

But wouldn't it be a better kind of system if Steve Forbes could say, ''Jack, you're better known than I am, you have more experience in this arena than I do, you probably have a better chance of making it, you represent the same ideas I feel strongly about, here's a check for $15 million; go to it, Jack.''

The first question that Jack would have been asked is, ''What did you promise Steve Forbes in order to get $15 million?'' And that might be a very embarrassing question for Jack to answer. Indeed, Jack might say, ''Steve, I'm not going to take your money because I don't want to have to answer that question.'' But that is the kind of openness and honesty that I think would make the system a whole lot better than what we are talking about here.

Mr. McCONNELL. Mr. President, if the Senator will yield before he leaves, I would like to ask him a question.

Mr. BENNETT. I will yield for a question.

Mr. McCONNELL. I was listening with great interest to my friend from Utah in describing the Government controls over political speech that are a part of or actually at the heart of McCain-Feingold. I know, for example, that there is this distinction which the Senator from Utah referred to in terms of what is commonly referred to as issue advocacy. Do things on the 61st day before the election, but if it is the 60th day or closer, you can't do other things.

I am sure my friend from Utah knows this, but an agency of the Federal Government would be put in charge of making these decisions, would it not?

Mr. BENNETT. An agency of the Federal Government would decide what was permissible and what was not on the 60th day.

Mr. McCONNELL. So an outside group seeking to criticize a Member of Congress—they didn't like how he or she voted on day 58 before an election—

would then be prohibited by the Federal Government from expressing criticism of this incumbent during that period, would it not?

Mr. BENNETT. That is correct.

Mr. McCONNELL. And is it reasonable to assume, I ask my friend from Utah, if that would be an enormous advantage to incumbents?

Mr. BENNETT. Well, the assumption is that it would be an advantage to incumbents because it would give them freedom from criticism by an outside group in that period. My sense of smell tells me the outside group would, even under McCain-Feingold, probably find some way to try to get around that.

For example, as I understand the Senator from Arizona, he said there can be no criticism by name of a candidate, so perhaps the outside group would say, ''The Congressman from the Third Congressional District of Utah is terrible, but we didn't name him.''

Mr. McCONNELL. But this agency would have to decide whether that was specific enough.

Mr. BENNETT. The agency would have to decide, and once the agency decided, yes, it is all right to attack the Congressman but not to attack him by name, or, no, you can't say the Congressman from the third district, but you can say some Congressman, or whatever, you would, again, have Government dictating that which was permissible speech in terms of the content of the ad.

Mr. McCONNELL. I say to my friend from Utah, looking at the McCain-Feingold bill, section 303, it gives the FEC the authority to seek an injunction. So the FEC could choose to go to court and shut this group up, could it not, under this authority?

Mr. BENNETT. It could.

Mr. McCONNELL. So you can imagine a group of aggrieved citizens who have been dramatically and adversely affected by a vote of an incumbent Member of Congress on the 57th day before an election essentially shut up because of the proximity to the election, quieted by the heavy hand of the Federal Government, unable to criticize an official action of a Member of Congress during that time period. Is the Senator from Kentucky right in assuming that would be the likelihood of this?

Mr. BENNETT. I believe the Senator is partly right. I think either that would be the likelihood, that a group would be deprived of its right to exercise free speech in that area, or another equally likely outcome, in my view, is that the outcry from the group over the injunction would be sufficiently significant in the press that it would override any discussion of substantive issues from that point forward and the last 60 days of the campaign would be spent bickering over whether or not the group really should or should not have had that right. Either way, it distorts the political dialog in a way I find corrosive and damaging to the intent of the Constitution.

Mr. KERRY. Will my colleague yield?

Mr. BENNETT. Let me yield to the Senator from Massachusetts, and then I will come back to the Senator from Kentucky.

Mr. KERRY. Mr. President, I thank the Senator from Utah for his effort to have a good discussion, and I think that is a very important part of what we are trying to achieve here. I, obviously, want the Senator from Kentucky to be a part of that.

The allegation has been made by the Senator from Kentucky that somehow someone is being shut up or shut out of the system. Wouldn't it be true, notwithstanding the effort to seek an injunction as to expenditure for ads under the aegis of this entity, that they would, nevertheless, be free to participate, like every other citizen, by raising so-called hard money, money for the campaign for the candidate, by participating in the campaign itself, by holding fora, by holding any kind of participatory effort that they want, which, in effect, is only limiting the clutter and the impartiality of the last 60 days of a race because of the undue influence of money.

My question is, wouldn't America be better off to have a participatory process where people are encouraged to come out of their offices and into the meeting halls and candidates are encouraged to go into the living rooms rather than simply rely on money to distort the process?

Mr. BENNETT. I respond to my friend from Massachusetts by saying that, of course, the country would be better off if all of those things happened. There is no reason whatsoever to believe that the prohibitions of one kind of expression that are outlined in McCain-Feingold would automatically produce all of the other more beneficial kinds of expression that the Senator from Massachusetts has described.

There is no credible cause-and-effect relationship between the two. We are back to the fundamental point that I am trying to make in this entire presentation, which is, we are talking about ways in which the Government will regulate speech. And that, in any other context, is called censorship. And I am opposed to it.

Now, I must go back to the Senator from Kentucky.

Mr. McCONNELL. I say to my friend from Utah, this is an interesting hypothetical to discuss, but there is virtually no chance the courts would allow the kinds of restrictions on issue advocacy in the McCain-Feingold bill. The Supreme Court addresses issue advocacy; that is, the way others are able to criticize our records.

What the Senator from Massachusetts is saying, I think, is that he would like that criticism to be less effective. In other words, do not use something really effective like television, just go out and go door to door. There isn't any chance the Supreme Court is going to say, ''Deny to an aggrieved group the opportunity to use the most effective way to criticize our records,'' which we all know requires: (a) The expenditure of money, and (b) the use of television. That is the easiest way for that criticism to have an impact.

The good news is—the good news is—there is virtually no chance that any court in America would uphold the kinds of restrictions on issue advocacy by groups that are contained not only in the original McCain-Feingold bill but in the substitute that in all likelihood will be offered Monday. That is the good news.

I thank my friend from Utah.

Mr. BENNETT. Does the Senator from Massachusetts ask me to yield further for an additional comment? If he does, I will be happy to do so.

Mr. KERRY. Mr. President, I ask the Senator simply to acknowledge what I think he would acknowledge is the state of the law, which is that there is a distinction that the Court has drawn between issue advocacy of the kind the Senator from Kentucky was referring to—which I would not seek to restrict; I understand the first amendment—and express advocacy of a candidate.

There is a clear distinction the Court has drawn between a legitimate effort to talk about an issue in the abstract and an effort to help a candidate get elected. I think that most Americans would feel, in fact, in answer to the Senator saying, ''Well, there's nothing in here that connects the amount of money to the effort to get people, you know, into the living rooms and out of their offices,'' I suggest respectfully to my colleague, there is, because the more the money, the more there is this effort to simply have these distorted 30-second advertisements, the less people feel connected or need to connect to the politician or the process and the more they are in fact alienated from it.

In the experience of Massachusetts, where we set a limit on what we would do, I in fact felt an enormously greater incentive to go out and organize at the grassroots level because I knew it was that much more important.

So would my friend from Utah acknowledge that in fact there is a distinction between express advocacy and issue advocacy and there is in fact a connection in the way that we can begin to bring people back into the process by getting rid of the cynicism that they have and the sense of being absolutely separated from all of this money?

Mr. BENNETT. I can respond to the two questions by my friend from Massachusetts.

Yes; there is clearly. The answer to his first one, an attempt to define the difference between issue advocacy and express advocacy in terms of a candidate, how that would play out under McCain-Feingold in terms of the 60-day rule is still very troubling to me and, in my view, does indeed cross over the line and become censorship.

Now, as to his second question, this is a matter of political experience. Obviously, every Member of this Chamber

has his or her own political experience to draw back on. I will only comment in terms of my own, that I am known in Utah as a politician who believes perhaps more strongly than any other in the importance of grassroots organization.

I am currently spending all the money that I am currently raising in building such an organization. Some of the people who work for the Senator from Kentucky under the other hat he wears as chairman of the Republican Senatorial Campaign Committee are a little disturbed that I do not have more money left in the coffers from the amount I have raised, and where has its gone?

It is going right now into building a precinct-by-precinct, voting-district-by-voting-district campaign organization so that if I have no money for television, I have at least one person for every 10 or 20 households who will go out and knock on doors on my behalf. I am building that organization right now. I believe in that fundamentally.

However, my personal experience says that I cannot energize these folks without some ads on television. I can give them all the letters, I can give them all the phone calls, I can tell them all how wonderful they are, but until they see something on the screen, they are not convinced I am a serious candidate.

Mr. KERRY. Will the Senator yield further?

Mr. BENNETT. If I may finish.

At the same time, my experience in the last campaign is that when there were ads attacking me, I found that the general public did not pay any attention to them and did not care. But my own troops all panicked until I was able to get back on television and answer those ads. And they heaved a gigantic sigh of relief.

By the same token, I am told by my opponent's people—Utah is a small enough State that virtually all the politicians talk to each other, particularly when the campaign is over—that it was one of my ads puncturing my opponent's attack on me that took all the starch out of their door-to-door grassroots organization.

The former chairman of the Democratic State committee said, ''I was shaving in the morning, feeling good about the campaign. We were closing the gap on you. Our attacks were taking hold. I had the radio on and heard your voice come on on the radio. At the end of 60 seconds, I said, 'It's all over. He has just punctured our balloon. There's no way we can get anybody going again.' ''

So, these things play hand in hand. Everyone has his or her own experience in it. We come back to the basic posture that I took. We, as candidates, should be in charge of our campaigns. We, as candidates, should make the decision as to what is said, when it is said, how it is said. We should make the decision whether we use grassroots or television or radio or billboards or handbills or newspapers.

Those around us who want to get into it should be free to make their own decisions in that regard. The heavy hand of the Federal Government should not be in that circumstance saying, ''This group can; that group cannot. And 61 days is OK; 60 days is not. The public is not smart enough to sort through all of this and make their own decisions. We must regulate how the money is raised. We must regulate how it is spent.''

I am perfectly content to have the Federal Government regulate from whom it is raised. I think the ban we have had on corporate contributions since Mark Hannah's days is legitimate. In terms of direct contributions to candidates, I think that is a legitimate restriction which we have had in this country for longer than I am old. I have no problem with that.

I am perfectly willing to have the Federal Government involved in requiring full disclosure so that everybody knows if I take money from FRED THOMPSON, I am going to have to answer for that, that everybody knows what I am doing. I have no problem with that.

But I have serious, serious fundamental problems, in terms of my devotion to the Constitution, people who know me know on the floor how strongly I feel about this—I think we are treading on very, very sacred ground when we say the Federal Government is going to start to make these kinds of decisions for candidates and groups and ordinary Americans, and it is going to do it in a way that carries the full punitive power of the Federal Government behind it.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I want to commend the distinguished Senator from Utah for his very enlightening presentation. Since I have not yet spoken on issue advocacy, I want to pick up for a few moments what we were discussing at the end of the colloquy with the Senator from Massachusetts. On the question of issue advocacy, the Court has not been vague on this at all. This is not a gray area.

The Court has been quite precise in the area of issue advocacy. Issue advocacy is criticism of us. Groups are entitled to do it at any time they want to and as loud as they want to. We never like it. We can stipulate that we never like it. Now, the biggest group in America in the field of issue advocacy on television is the AFL–CIO, and it is mostly targeted to Members of my party. We can stipulate that we do not like it worth a darn. But no effort to try to restrict that through legislation in the Congress is going to change it.

It is not a gray area. The Nation's experts on the first amendment, I think we would all agree, is the American Civil Liberties Union. In a letter to me earlier this year, they said this about the provisions in McCain-Feingold dealing with issue advocacy. This is the exact quote, Mr. President:

> Worst of all is S. 25's blunderbuss assault on issue-oriented speech. The weapon is an unconstitutional expansion of the definition of ''expressed advocacy'' in order to sweep classic issue speech within the zone of regulation as independent expenditures.

So let me just make it simple. There isn't any chance, Mr. President—no chance—that through legislation, we can shut up all of these groups who seek to criticize us. We can stipulate that we do not like it, but they are going to keep on doing it. No amount of standing up here on the floor of the Senate and arguing that somehow we are going to be able to purify the process and get rid of all these critics is going to get the job done.

In this whole field, Mr. President, at the end of the day we get back to the Constitution. You begin and you end this debate with the First Amendment to the U.S. Constitution, as the Senator from Utah has pointed out. This is core political speech, according to the U.S. Supreme Court. That is not MITCH MCCONNELL's interpretation. That is not BOB BENNETT's interpretation. This is the law of the land. As the Senator from Utah said, when you start moving around in this field, you better tread lightly. The courts were not only good in the Buckley case, they have been good since. The whole trend has been to more broaden the area of permissible political discourse in this country.

The Court has said it is impermissible for us to decide how much political speech is enough—impermissible. In spite of that, the reformers persist in promoting the notion that it is somehow desirable for the Federal Government to determine how much political discourse we are going to have in our campaigns in this country.

You hear them say time and time again—we heard it this morning, and we will hear it next week—''We're spending too much in American politics.''

Remember what the Supreme Court says that means: that they are saying, ''We're speaking too much. We're speaking too much.'' How much is too much?

Last year, there was a lot of political speaking because there was a war on out there for the future of the country. We had a change in 1994, and a Republican Congress came in for the first time in 40 years. The status quo forces didn't like it, and they fought back in 1996. A good deal was said. That is speech. A lot of it cost money, and spending did go up.

When all was said and done, I say to my friend Utah, we spent per eligible voter last year $3.89, about the price of a McDonald's value meal. Looking at it another way, of all the commercials that were shown on television last year, 1 percent of them were political commercials. And they say we are speaking too much. They think it is a good idea to shut all these people up, shut down those outside groups that are criticizing us, put a cap on how much a campaign can say.

Who gets the power then? Conspicuously exempted—and I am not arguing we ought to take away the exemption—but conspicuously exempted from the Federal Election Campaign Act is the press.

I have looked and I have searched to see whether there is any provision in here, and I say to my friend from Utah, that the press cannot criticize us in the last 60 days of an election. I have been looking feverishly to see if I can find if there is any prohibition on the press endorsing candidates in the last 60 days of the election. Maybe I just have not read this carefully enough, but I cannot seem to find it.

So what we are talking about here is a transfer of power away from groups that want to comment about our record and talk about us, frequently in an unfavorable way. The original version of McCain-Feingold wanted to shut up the campaigns themselves so they could not talk too much. And I hear from Senator McCain, he is going to offer an amendment to try to bring that back.

We shut down the campaigns and we shut down the issue groups. Who gets to talk? Who gets to talk about Government interference in the last 60 days of the election? Why, the press gets to talk. We know darn good and well that all of this issue advocacy restriction in here is flatout unconstitutional and is not a question in anybody's mind that knows anything about the Supreme Court.

OK, so issue advocacy survives in the courts. Even if we passed it here, somehow that spending limits on campaigns survives, so you are going down the home stretch, you are in the last few days, and the campaign runs out of money and you can't say anything. But the labor unions are there with issue advocacy, they have raised their money by checking off union dues, taking it in many instances from people involuntarily. They are hammering away at you, the liberal press is running exposes on the front page and endorsing your opponent on the editorial page—welcome to the brave new world of campaign finance reform where the groups are shut up, the candidates are shut up, and the press is running the game.

Now, the good news is the Court will not allow this to happen. But what is sad is that anybody would even be proposing this. What is disturbing is that anybody would even be suggesting that it would be a good idea to have less political discourse in this country.

There is a lot of discussion going on all the time about public affairs in this country. The press is talking about it every day. Most objective studies would indicate that 85 to 90 percent of the people in that line of the work are on the left. Hollywood is making statements all the time about what kind of society we have. Many of us feel about 100 percent of them are on the left. So you have the press on the left, you have Hollywood on the left, and the candidates and the groups with the Government clamping down on what they can say in the heat of a campaign. It sounds like something straight out of Orwell's ''1984.'' Yet there is serious discussion here on the floor of the U.S. Senate that this somehow would be an improvement in the American political system.

Write it down—we are not speaking too much in the American political process. We are not going to pass this unconstitutional piece of legislation. If we were foolish enough to do it, the courts would strike it down. The argument we hear is the people are crying out for us to do this, that they are just desperate for us to pass this kind of legislation. Let me say in a survey taken just a few months ago by a reputable polling firm which I was just looking at this week, they asked 1,017 registered voters open-ended what they thought the most important problem in America was, and not a single one of them mentioned campaign finance reform. Then the pollsters thought maybe it will be different if they put it on the list, so they put it on a list of 10 topics. It came in dead last of the 10.

We will hear time and time again, as I have today, and we will hear it more next week, that everyone is clamoring for us to pass this big Government solution to this nonexistent problem of too much political discussion in this country. Eighty-seven percent of the people, by the way, would be less likely to vote for a Member who supports unconstitutional reform.

Now the proponents of this legislation this week sent out a press release saying they had found 126 people who said this bill was constitutional. My reaction to that is that I could probably find 126 people who say the Earth is flat. But the people who handle this litigation, America's experts on the first amendment—the American Civil Liberties Union, and clear and unambiguous decisions by the U.S. Supreme Court—make it abundantly clear that this is unconstitutional.

Now, the people of the United States did not send us up here to pass blatantly unconstitutional legislation. Sure, you can craft a question that will get the answer you want. Spending limits on the surface sounds like a good idea. If you ask people if they are in favor of spending limits they will say yes. On the other hand, if you rephrase the question and say do you think there ought to be a limit on how many people can participate in your campaign, 99 percent of them will say no. The same issue expressed a different way.

So the people are not clamoring for us to shut down political discussion in this country. They are not clamoring for us to push people out of the process. They are not asking us to make it impossible for them to criticize our records in proximity to an election. Sure, if you ask them about the influence of special interests they will say that is a terrible thing. Do you know the definition of a special interest, Mr. President? Special interest is a group that is against what I am trying to do. But of course the organization I belong to—whether it is the VFW, the Farm Bureau, the National Rifle Association or the Electrical Workers Union—we are not a special interest. We are a bunch of Americans trying to do the right thing for our country. The term special interest is meaningless. It is a pejorative term applied to any group opposed to what we want done.

As a practical matter, the founders of this country knew that there would be a seething cauldron of special interests. They expected us to organize. They expected us to contribute to campaigns. They expected us to be criticized if we came here to serve in the Senate or in the House. We were not to be above criticism. They envisioned lobbyists. That is another part of the First Amendment. It gives people the right to petition the Government. A lobbyist, of course, is a person working for a group trying to do something I'm against. But the person we have hired to represent our group in Washington is doing the right thing.

Mr. President, this is going to be a good debate. There may be an effort in this bill to shut off campaigns, to quiet the voices of independent groups who want to criticize us, but there is going to be plenty of discussion on this issue here in the Senate. I hope, Mr. President, that many people will take an opportunity to listen in because when they hear the words ''campaign finance reform,'' they don't understand that generally means somebody is trying to put the Government in charge of their ability to participate in the American political process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, proponents of campaign finance reform say it is an assault on the Constitution. I say that McCain-Feingold is an assault on an incumbent's protected system that is rapidly losing faith with the American people. These claims about government takeover, and government regulation, and big government, of course, resonate with me as well as they do many other people, because I'm against that. I'm against the more intrusive government and I'm against more and more regulation, and I'm against government doing things that it should not be doing, especially the Federal Government.

However, I think we have too quickly divided up into liberal and conservative counts and Democrat and Republican counts on this issue. As I read my history, Senator Barry Goldwater, the father of modern conservatism, in many people's view, was one of the most avid proponents of campaign finance reform a few years ago.

So let's go back to the basics. People who are basically conservative think that the Government ought to do the things the Government ought to do and

not things that it shouldn't. What should the Government be doing? Mr. President, if the way we elect our Federal officials and the motivations that they come to Washington with is not relevant and is not something that we ought to be concerned with, then what is? That is the basis of Government. Government does a lot of things it should not be doing, but how we elect our Federal officials, who are the arbiters of everything else in society anymore, seemingly, is certainly the subject of our attention.

As I listen to this debate today, it is almost like under the current system we don't have regulation and that we are trying to impose regulation on an otherwise pristine system. We have the most heavily regulated system in the area of campaign finance reform than almost any other area in the country. Under the current system, you have a Federal Election Commission with detailed rules, timeframes, limit frames and so forth. You have $1,000 limitation; you have $5,000 limitation for PACs; you have $20,000 limitation as far as committees are concerned; an overall $25,000 limitation as to how much you can contribute in 1 year. You have soft money rules, you have hard money rules, you have percentages of soft money you can do certain ads with—there has to be a certain percentage of soft and hard money. You have transfers of money going back and forth between State and national parties, all under a detailed set of rules that nobody understands. To run in a political campaign any more nowadays you have to have a team of lawyers and a team of accountants and a team of people keeping up with all the regulation.

That is our current system. My friend from Utah talks about our friend Jack Kemp and Mr. Forbes and how it would be much better if we had a different kind of system in our Presidential primaries. That is our current system he is complaining about. I think he makes some good points there. I think we ought to look at limitation amounts there. I think they are somewhat ridiculous and too low. All of that is our current system.

So, what we are doing here, it looks to me like in McCain-Feingold is basically two things: One is a ban on soft money; secondly, it is saying about independent expenditures, that if you have candidate expenditures, you call them that and treat them that way.

Under the current law, express advocacy is regulated now. It is regulated now. This idea that we are going to cut off somebody from saying something or that we are going to shut people up and close people off is simply not true. That makes interesting rhetoric but it is not in this bill, it is not in this legislation.

What it basically says is two things. In 1974 we passed a law and we went along for almost two decades, electing Presidents under that law. Not a breath of scandal as far as campaign finance reform under that law and under the rules that we set forth then, for soft money problems in that entire period of time.

Mr. McCONNELL. Will the Senator yield?

Mr. THOMPSON. I yield.

Mr. McCONNELL. Did I hear the Senator say since the passage of the Presidential system it has been scandal free?

Mr. THOMPSON. Up until——

Mr. McCONNELL. Until 1976, the year in which the explosion of soft party money occurred, was right in the Presidential election cycle.

Mr. THOMPSON. No, the soft money problem really rose its head in about 1988, but it really didn't become a major problem until this last election.

Mr. McCONNELL. But the Senator is referring only to years in which there are Presidential elections, which are the years of the system he is applauding, where you have voluntary spending limits that the Court upheld; has the Federal system been effective, I ask my friend from Tennessee?

Mr. THOMPSON. For about two decades we did not have a soft money problem because people abided under the rules laid down in 1974.

What has happened since that time is that soft money has come into the system and now we have about $262 million in soft money in the system that we didn't have back in 1974 when we laid down the rules at that time.

Mr. McCONNELL. Let me make sure I understand what the Senator is saying. The soft money problem has arisen in the Presidential years, for the most part. Is it not reasonable to assume that the reason the candidates having been spending the limit of the taxpayer funds, turning to soft money, it is a way to get around the spending limit, is that not correct?

Mr. THOMPSON. Yes, yes, that is absolutely true.

That, therein, lies the problem. We had a system for about two decades whereby people made a deal with the Government to run for President, and that is we will take millions of dollars in public money and we don't raise any private money.

The Supreme Court held that up, it worked fine, no scandal, no constitutional problem, until we decided that there was not enough money in the system and that there were ways that we could get more money for our Presidential campaigns. We have just seen the results of that. The soft money situation started. We figured out a way that money could be given to the parties for the benefit of the Presidential candidates, and you could just add that, to the public financing that we already had. And so in this last campaign we had about $262 million in soft money, in addition, which was about 10 times what it had been a decade before. And that is the situation that we have now.

So some people are saying, look, let's basically go back to what we thought we were doing in 1974. A lot of people disagree with that, certainly. A lot of people don't think we ought to do that. A lot of people don't like things that smack of public financing at all. A lot of people don't realize that we have public financing for Presidential campaigns in this country, as anathema as that phrase is. But now, after a situation that worked pretty good for a while, nobody was saying there wasn't enough money in our Presidential campaigns. I don't think anybody was saying we didn't have enough commercials during the Presidential years. It worked pretty good. But now we have this additional influx. We had a system that some people opposed and that some people thought was good. It was our system. To say that it was totally laissez faire, free market, unregulated is simply unfair. We had a system. Now we have seen a gaming of the system, whereby millions of dollars in addition though that is put on the plate.

Now, at a minimum, if that is what we ought to want to do, we ought to revisit this as Congress. This is not something Congress came up with. Congress didn't say soft money was a good idea. Congress didn't say the current system we have is what we want. It was done little by little, by the FEC, by a court decision here, and by the FEC; advisory opinions. And then one party would see an opportunity for soft money and the other party, instead of blowing the whistle, would jump on the bandwagon, too. So we now have tremendous sums of money poured into our Presidential campaigns that we did not envision in 1974.

Now, again, if we think that is a great idea, let's come back as a Congress and put our stamp of approval on that. But just under the idea of congressional prerogatives alone, under the idea that we should not let some commission downtown set such important rules for us, where we have legislated something quite different, under those ideas, we ought to revisit it. That is another good reason why we are having this debate.

On the other hand, some of us don't think that is such a good idea, that we should not only revisit it, but we should do something about it. I think that, basically, what we are doing in the soft money debate here is going back originally to where we were when we last legislated in this area. When we passed the current law in 1974, we did not say it was OK for major corporations and major labor unions to give hundreds of thousands of dollars for the benefit of Presidential candidates in addition to what was publicly financed. We have gotten totally away from what we said we wanted.

Mr. SPECTER. Would my distinguished colleague yield for a question?

Mr. THOMPSON. Certainly.

Mr. SPECTER. On the issue of soft money and where it has gone, there is

a very strong point that if the definition of issue advocacy, issue commercials, contrasted with advocacy commercials, if that distinction was sharpened up—my colleague and I discussed this at some length with Attorney General Reno when she appeared before the regular judiciary oversight hearing back on April 30 and the questions were propounded to her about these commercials on both sides, Republican and Democrat—Republican commercials extolling the virtues of Senator Dole, and Democrat commercials extolling the virtues of President Clinton, and knocking each other in reverse. Those were somehow viewed as being issue commercials as opposed to advocacy commercials.

The question I take up with my colleague at this point, which is a corollary to the soft money, is whether the soft money would really have so much effect, and whether we couldn't contain it by congressional enactment on the question of constitutionality. I would be interested in the answer to two questions of the Senator, the distinguished lawyer Senator THOMPSON. If we said that—short of saying vote for President Clinton or vote against Senator Dole, instead if the likeness appears and the language is very strong urging the election of one and the defeat of another, I ask if that would satisfy constitutional muster, in the Senator's opinion, and what effect that would have on limiting the utility of all this soft money that we found in the 1996 Presidential election?

Mr. THOMPSON. As the Senator knows, much of the soft money went for those kinds of ads. I would not be supporting a provision that I did not think would pass constitutional muster. What this bill does is basically what the Senator says. It says that you look to the circumstances. If something is called an issue ad, but it is really an ad for a particular candidate, it is called such. If it walks, quacks, and acts like a duck, we are going to call it a duck. You can still say whatever you want to say. Nobody is shutting anybody off. There are no free speech implications here. But if you are really going to do a candidate ad—and in some cases, we have candidates going around coordinating with independent groups, and the groups run an attack ad on their opponent, the candidate dictates where and when that ad is going to be, and all the details and the composition of it, and it is called an independent expenditure.

What this would do would be to say we have a regulatory system. Whether anybody likes it or not, we already have a regulatory system. If it is an express ad for a particular candidate, it is already regulated. What this legislation would do is say you would look at the factors, look at the given situation. If it is an express ad, if it is really for a candidate, we are just going to call it that, and it is going to be regulated under the same system express ads are regulated under now.

Mr. SPECTER. If the Senator will yield further, on the issue of so-called independent expenditures, they appear in many cases—if not most—not to be independent at all, and that there is, in fact, coordination. Some people on the independent expenditure group are members of the candidate's staff collaterally, and there is good reason to flout the law because the remedies taken by the Federal Election Commission are often very late and very ineffectual. One piece of legislation that is pending would sharpen the requirements as to independent expenditures, calling for a tough affidavit with strong penalties, in addition to the regular perjury penalties, for the person who makes the so-called independent expenditure. And then finally, the FEC would require a corollary affidavit by the candidate on whose behalf the expenditure was made and the campaign committee to try to do something with teeth in it to stop the so-called independent expenditures, which are in fact coordinated. Would my colleague think that would be of some help to stop that pernicious practice?

Mr. THOMPSON. Well, I think that is a direction that we are trying to head in. I am not for trying to sit down and detail what somebody can say or not say. That is clearly unconstitutional. You can't do that. The Buckley case made a distinction between contributions and expenditures. Basically, it said you can't regulate expenditures. Independent groups ought to be able to do whatever they want to do whenever they want to do it. But we decided a long time ago that, as far as campaign finance was concerned, we were electing the judges of our society in a way—you know, when we go to elect judges in our system, they are supposed to be independent. The litigants on either side can do things and get paid large sums of money, and so forth, but what you can do with regard to a judge is highly, highly narrow, in our system, and is regulated.

In a sense, we are the same way. I mean, we get elected by people—one vote, one person; it is an equal deal. No matter how poor or rich you are, or your status in society, your vote counts as much as anybody else's. We are elected. I represent all of the people of the State of Tennessee, no matter how many votes I get. The President represents all of the people of the country. We come up here and we are supposed to represent everybody. We are supposed to pass legislation evenhanded. We have different views on different things. We have support here and opposition there. But we are supposed to try to give it our best objective shot as to representing all of the people.

Given that situation in a democracy, we decided a long time ago that we were going to place some rules on it, because it didn't look good and it didn't make us feel good and didn't give us confidence in our system if we saw hundreds of thousands of dollars going into the pockets of people from interests who we were regulating or who we were passing laws on, when the people maybe on the other side of the issue didn't have the money to do that. Are you going to be able to take money out of campaigns? Of course not. But we decided once upon a time that a person ought to have a limit of $1,000—I personally think that is too low—and $5,000 for a PAC, and $25,000 overall.

We have a regulated system now because we know in our democratic society there needs to be some kind of control on the amount of money that goes into the pockets of politicians. It is pretty simple and basic. The Supreme Court or nobody else has ever said otherwise. The Supreme Court, in Buckley, has recognized that we do and we can regulate on the contribution side of things—on the contribution side—how much money we can get. There is no question in my mind that we can regulate the soft money that is now coming into our system. This is not a constitutional argument. What we have now is a system that protects incumbents. It is a system that is becoming more and more isolated, more and more specialized, making it so that only a professional politician who has been out there raising money all his life, or some wealthy individual, is going to be able to be a part of the system anymore.

My friend from Utah, a few minutes ago, made a very effective case that not only do incumbents have tremendous fundraising advantages, but they have other advantages. I agree with that. But that just makes the fundraising advantages that much more. The money goes to the incumbents. Maybe I just haven't been at it long enough. I have never run for office before this one. I had never run before about 3 years ago. I have run as a challenger against a person who was a congressional incumbent, and then I have run as an incumbent. I don't think we ought to get too bogged down with our own personal war stories, but I have seen it from both sides. I have had the disadvantages and the advantages of both sides of it. But all I know is that all the PAC money goes to incumbents. It doesn't matter what anybody believes anymore; it is their likelihood of getting reelected. Incumbents get reelected 90 to 95 percent of the time. The more upset the American people get with us, the more heavily incumbents become entrenched. I wonder why that is.

Well, I think that part of it is what we are dealing with here today. For those who want to make this out as some kind of new regulatory, big Government scheme that we are imposing on an otherwise pristine system that we have here now, we heard some testimony the other day in the Governmental Affairs Committee, and I had heard things like it before. This was from a businessman, a gentleman representing a bunch of businesses in this country. He said, "We are tired of this

system, tired of this soft money, tired of being hit up. We are tired of the extortion overtones of what is happening.'' What we have now is a system, and what we had in this country in this last Presidential race was people sitting in the White House—and it could have come from a Senate office or congressional office, or anyplace of power—making calls to individuals saying, ''I think it would be a good idea if you would send us $50,000 or $100,000.'' And they feel that it probably would be a pretty good idea, from their standpoint, to maybe go ahead and send it on.

Now, for those who are concerned about the coercive nature of big Government, chew that one over for a little while. That is what we have now. We have gotten to the point now that, since the soft money situation is totally unlimited, any politician can call up, and as long as they go through the guise of running it through one of the parties, which, in turn, will inure to their benefit, they can ask anybody for any amount of money.

So I think the American people look at that, and they don't think the system is on the level.

It all gets back to pretty basic stuff for me. I think the American people look at a system where we spend so much time with our hand out for so much money from so many people who do so much business with the Federal Government who we are basically regulating and legislating on, and they look at that system and the amounts of money that are involved nowadays, and they don't have much confidence in it.

We will continue to see those lists in the newspapers of the hundreds of thousands and millions of dollars of contributions and the pieces of legislation put up against those contributions, the implication being that there indeed is a quid pro quo. People look at that, and there is a very little wonder that we are now having less than half our people voting. My understanding is we only have 6 percent of the American people making political contributions.

So during the last few months we have had hearings that I think have been very enlightening. I want to talk about that a little bit later in a little bit more detail in terms of some of the things that have come out that in large part have to do with the actions of individuals and the ability that we gave them to pursue unlimited amounts of soft money.

I think that the first thing we have to do, of course, is have accountability for those who have violated the law, for those who engage in improper activity, as part of what we have to be about.

I think the public record is developed now so that without question there needs to be an independent counsel to look at this entire mess—not who made a phone call from what room and just focus on that—this entire mess that we have seen over the last several months. We need someone independently to take a look at that.

But, my friends, if we think that accountability is going to solve our problem as far as the system we have in this country, we are making a terrible mistake because whoever is in power, if they have the right to pressure people for unlimited amounts of money, our system is constantly going to be and will remain a scandal waiting to happen. I hope that we will have learned that from this last one.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, first of all, I thank the Senator from Tennessee for his comments and his leadership on a lot of these issues with respect to this legislation, and this issue in general.

I associate myself with the comments that he has made about the impact that our current system is having on the politics of our country. That is what this debate is about. In my judgment, this is the most important debate which we will have in the Senate this year—perhaps the most important debate and opportunity that we have had to address the concerns of the American people, and with respect to this system, in many years.

I heard the Senator from Kentucky, for whom I have great respect for his capacity of advocacy and depth of his commitment to this issue. No one should doubt that he is passionately committed to the interpretation he has both of the Constitution and the issues at stake.

But, as the Senator from Tennessee has just pointed out, while it sounds good to suggest to people that somehow regulating campaign finance is going to shut down debate, the fact is the Supreme Court has already approved of that kind of regulation. What we see today is an abuse of what the Supreme Court intended to take place. The Supreme Court drew a distinction between express advocacy and issue advocacy, and properly so.

I am confident that the Senator from Tennessee and I would agree that both of us want a healthy and robust debate in this country and no limitation on the first amendment right to discuss an issue. But there is a distinction between an issue and what some of the money under the guise of issue expenditure is seeking to do. What it is clearly seeking to do as an abuse of what the Supreme Court established is not to simply talk about the issue but rather to affect the election and impact express advocacy.

The Supreme Court has made it very clear that express advocacy is something that seeks to defeat or help a candidate. Issue advocacy can discuss Social Security, it can discuss welfare reform, and it can discuss any of the issues that we vote on and argue about in the Senate without talking about a candidate—without attacking the candidate's record—which properly ought to be left to the campaign, in the judgment of the Supreme Court.

We will argue, I think, considerably over this in the next days. I am prepared as we go further in this debate to discuss at considerable length what the Supreme Court has actually said and not said and how, in fact, there is nothing in McCain-Feingold that is impermissible constitutionally.

What I think we need to focus on as we go forward here is the overall disarray of the system that the Senator from Tennessee has referred to and that all of us need to address as we think about how we are going to bring people back into a good-faith relationship with their Government. There isn't anybody in politics today—neither an observer nor a critic nor a pundit nor a participant—who could properly say that the American people believe this system is on the level or believe that somehow this whole process is responsive to their real needs.

The poll data show that 92 percent of Americans believe that money is what gets something done in Washington; 88 percent of the people believe that if you give money, you will get something back in return; 49 percent of Americans believe that the special interests, the lobbyists, et cetera, basically run the Government.

I don't know how you can be in public life and not be concerned about that kind of impact on the body politic of our Nation.

If that many people believe that their representatives are affected by money, we ought to be concerned about it. If that many people in America believe that the way you get something done is by contributing money, we ought to be concerned about it.

All you have to do is listen to a fairly candid statement by one person before the committee the other day who, in giving something like $400,000 or $300,000, said that it was clearly given directly to affect that person's access and that person's ability to be able to get something done.

Mr. President, this isn't the first time that we have heard this discussion here—not by any means. We have had a century of different efforts to try to plug what most people have accepted at one point or another as a series of loopholes and try to do justice to the relationship that we want to have with the voter.

Mr. President, four decades ago, another Senator from Massachusetts, Senator John F. Kennedy, warned of the rising costs of political elections and the dangers they posed to the American political process. He said that there was the danger of political contestants ''becoming deeply obligated to the big financial contributors from the worlds of business, labor, and other major lobbies,'' and that there was the danger of equal access to the political system being shattered.

That is what former President Kennedy said before he became President. The fact is that today equal access has been shattered. It has been shattered.

The truth is today that all of us understand the impact of money on American politics, on the capacity to be elected, and on people's perceptions of our politics.

Back in 1959 when John Kennedy said a solution must be found to the soaring costs of political contests, the total amount of money spent back then on all congressional races, both the House and the Senate total, was $6.3 million—on all the House and Senate races, just about 1960.

The median cost of a single candidate race for the U.S. Senate today is $2.6 million.

In the Presidential contest prior to Senator Kennedy's remarks back in 1959, the two Presidential candidates spent a total of $12.9 million. In the last Presidential election they spent more than $150 million just in the money that is allowed to go directly into their campaigns, and over $600 million, maybe $700 million, if you count all the soft money that flowed as an excuse to do away with the other limits that have been put in place.

Mr. President, it is very, very clear that the American people have reached a point where they understand that the rising costs of campaigning is nothing less than outrageous. Last year the House and Senate candidates spent more than $756 million—a 76 percent increase just since 1990.

There is nothing in our economy, nothing in the increases in the costs of campaigning, that justifies a 76 percent increase, except the Armageddon of the new arms race we have for money in campaigns.

The more money you get, the more you can blast your opponent, the more you can put out whatever your message is, the more you can distort the electoral process.

Last year more than $4 billion was spent on all elections, and 20 years ago it was less than $600 million.

The American people, as Senator THOMPSON just pointed out, business people and others, are tired of having politicians call them and say, ''Well, we need $20,000, we need $50,000, we need $75,000.''

I think it is clear that the damage that such amounts of political money have done to the increase of our public cynicism is inescapable. These amounts heighten the perception that Federal lawmakers respond to the special interests and not to the public interests; that Federal lawmakers favor those who are greedy over the needy; the Federal lawmakers are, in reality, increasingly becoming Federal lawbreakers.

We know that power has its own corrupting capacities. History has proven that many times over. Now we are seeing that money and power are becoming one and the same, and both together are having an increased corruptive and corrosive process on our system. Even if it were only the perception that that were happening, that perception is something that we ought to be sensitive to and willing to respond to.

It seems to me that the headlines of the last months, while they have been singularly directed at our party—my party—I don't think anybody here in a candid discussion of this issue could not in fairness agree that they have embroiled both parties —all politicians; the entire system.

Only a few months ago we were seeing memos circulated where leadership members of the Republican Party were chastising openly those people who give money, suggesting that they were going to get hurt in the legislative process if they continued to give to Democrats. Senator THOMPSON just talked about the sort of extortion air that hangs over this city and our system as a consequence of those kinds of threats. All of us are harmed by that.

All of us ought to be reaching for a means of being able to get rid of the capacity of any member of the electorate to make those kinds of determinations.

In the latter part of the 19th century, the chieftains of industry in this country found that the use of wealth served them well, and they used it brazenly by purchasing Senate seats from the State legislatures in Colorado, West Virginia, Illinois and Pennsylvania. The 17th amendment to our Constitution put an end to that practice, but Congress still had to use taxpayer money in order to investigate and determine the results of congressional elections in Michigan, Pennsylvania, Virginia, Illinois, and other States as a consequence of that.

Abuse of campaign funds has obviously contributed to the worst scandals that we have known in this country—the Teapot Dome scandal and the Watergate scandal. And today now we are living through another investigation of the impact that money has on the political process.

Mr. President, it just really is time for us to find a commonality of ground where we can come to some kind of compromise and agreement that the current system cannot continue to work. It seems to me clear that ''the power of the Government to protect the integrity of the elections of its officials is inherent.'' It is something that we ought to adhere to.

That is not my comment. That was something Theodore Roosevelt said in his fourth annual message to the Congress. He said then, ''There is no enemy of free Government more dangerous and none so insidious as the corruption of the electorate.''

That is what Senator Kennedy was speaking to 40 years ago when he talked about how ''adequate Government regulation of the elective process [is] the most vital function of self-government.''

Mr. President this actually goes back to the very Founding Fathers' efforts with respect to the kind of Government they tried to put up. In the Federalist Papers, James Madison pointed out, ''The aim of every political Constitution is * * * to obtain for rulers men who possess the most wisdom to discern, and the most virtue to pursue the common good of the society.'' And the second aim he said was ''to take the most effectual precautions for keeping them virtuous while they continue to hold the public trust.''

''Keeping them virtuous while they hold the public trust.''

I do not think they could have conceivably imagined the degree to which our capacity to go to voters and ask for their vote has become tied to our ability to be able to raise large sums of money.

Mr. President, when I came to the Congress in 1985, and when I ran in 1984, I made a decision then to try to run for office without taking the larger sums of money. I did not suggest then at any time, and in debates since then on campaign finance reform I have made it very clear, that if regulation of some level of political action money were part of the reform system I would take it. I don't think there is an inherent problem with political action committee money. But I do think that what people object to is the perception that the large amounts of money are what somehow distort the system. And so I have run now for the Senate three times without taking PAC money. I may be the only Member of the Senate who has been three times elected since PAC money was allowed and not taken it. I am proud of that, but I have to say that I do not know if I can continue to do that with the current rate of escalation in the cost of campaigns.

Last time I ran for office in 1996, I had the most expensive Senate race in the United States of America—$12 million. I raised more money without PAC money than any other person running for the Senate—$10 million, but obviously simple math shows that that left me a gap of $2 million. And so now in my first year of my third term in the Senate I continue to spend time raising money for the race that took place a year ago. I continue to have to try to put away a debt assumed in order to run for office. I do not think people should have to assume debt to run for office, but countless Senators have done that, countless candidates are forced into doing it.

If I believe strongly in the ideas and policies I do believe in, if I want them to be heard, if I want to be able to fight for them, the way the American system is now set up, I have to do that. You have to go out and look for the money. Clearly, as we have learned, this institution is increasingly an institution which is represented by people who either have their own money or have enormous access to great sums of money. And the truth is that challenger after challenger after challenger falls short for lack of capacity to stand on the same ground as the incumbent.

Now, are there examples like the Senator from Utah gave where, indeed, a challenger may be well-heeled and an incumbent does not spend as much? You bet there is. I spent less than each

of my opponents when I was an incumbent because I was not able to raise as much as they were because they had their own money and they would write their own check. I believe that our system is out of kilter because of that inequity as well as the result of the amount of money that people have to go out and raise in the system. It seems to me we have an opportunity here to be able to address all of those concerns.

I know that my colleagues on the other side of the aisle have a particular concern about the capacity of some of our supporters to be able to use their structure to unfairly imbalance the playing field—specifically, obviously, the labor movement and some other entities. I would want to say that I think that is a fair concern. If we are going to approach this fairly, then we have to find some measure of defining what that fairness is and of understanding that a fair playing field is not a fair playing field that gives our side an advantage over theirs or vice versa.

But something is very clearly wrong or defined in this debate when 45 Democrats have already signed up saying we are prepared to vote for this reform and only four Republicans have joined that effort. We are now at the magic number of 49—49 Senators prepared to vote for campaign finance reform. And since the only votes left to get are votes that must come from the Republican Party, it is fair for America to ask the Republicans to step up to fair reform. It is fair for the Republican Party to be asked now to become part of this effort to reestablish a connection between the American voter and those of us elected to represent them.

Hopefully in the course of this debate we can find that common ground. But let us not hide behind phony arguments about the Constitution, what it does or does not say about free speech. Let us acknowledge that the Supreme Court has already defined the difference between express and issue advocacy. Let us be honest about the fact that the Supreme Court has already said we are permitted to regulate campaigns; that we are permitted to regulate contributions. None of those things does violence to the Constitution. And let us also be fair in not having some artificial debate about the new protections for labor.

No one in this country is suddenly going to believe that the Republican Party is adopting the labor movement and is going to protect every member of the unions and they are going to be the ones to come to the floor and protect them by offering some measure that somehow gives them new freedom. We are prepared to codify Beck, and we are prepared to codify the notion that people ought to be given the right to choose, but what we believe they will offer is something that seeks to go much farther than that and becomes nothing less than an effort to kill campaign finance reform.

So my hope is that this opportunity will be an opportunity that the American people will ultimately be proud of and they will make a judgment that we came together in a legitimate, bona fide effort to find common ground.

McCain-Feingold-Thompson and others, myself included, is not a bill that many people on this side feel goes far enough. There are many of us who have already compromised significantly in coming to the place of McCain-Feingold, which may be at the very edge of what may be permissible to get some kind of compromise. The truth is that many of us on this side of the aisle think anything that leaves you going out raising money leaves you exposed to the question: Well, who did you get it from? Why did they give it to you? What did you do after they gave it to you?

That is the central question that is being asked in the hearings that we are going through right now. The fact is that is the only way you will ever get away from that question: Why did that person give you the money? And particularly if it is large amounts of money. You will continue to have the corrosive connection that makes people so apprehensive about the current system. And ultimately I personally believe America will come to a conclusion that the way you eliminate the corrosiveness is to get the special interest money out of politics, allow people time to debate, allow them time to take the issues, organize, have adequate money to run a campaign, but do not make them go out with their hands out always asking for money.

That is not what we do here. We do something less than that. But the truth is that even if we were to pass McCain-Feingold as it is currently, people are going to have to go out and raise pretty large sums of money still and they are still going to be left with people asking: What did they give you? What did you do with the money? What did you do for them? I think we are better off if the question doesn't have to be asked and we do not have the suspicion hanging over our heads.

In addition to that, it seems clear to me that McCain-Feingold seeks also to have increased enforcement. We have no enforcement today. People wonder why the current system is out of control. It is out of control because it is set up in a way that perpetuates a lack of control. You have an FEC that can never make a decision; they are unwilling to make a decision. It is divided up evenly between Republican and Democrat representation so there is an even number of votes, nobody can break a tie, and nobody wants to come in. If we can't have regulation of laws we put in place, of course, we are going to have violations.

So all we are seeking to do in this legislation is put a little teeth into the concept of enforcement. The other thing we try to do is have some kind of limitation on the capacity of wealthy candidates to be able to simply walk in unfairly and pour enormous sums of money into the campaign. We do it in a way that is totally constitutional because they are still allowed to go out and do it if they want, do it under another structure, but it seems to me that all we do is have an incentive for them not to do it because obviously under the Constitution we cannot limit their right to spend their own money.

I cannot imagine that most people believe this institution ought to be an institution exclusive to those who have enormous amounts of wealth. And there is a disproportionate representation already with respect to that relative to most of the country. And that is not, I am confident, what the Founding Fathers envisioned. The McCain-Feingold base package that has already been scaled back from the original McCain-Feingold is really already a significant compromise by many people in the effort to achieve reform, and over the course of the next week or so we will have an opportunity to test the constitutional issues, an opportunity to test whether or not anybody is left out.

I might just comment about that. I heard my colleague from Kentucky talk about how people would be diminished in their ability to participate. Well, once again, I point to the experience of what happened in Massachusetts. We had a very robust debate in Massachusetts, Mr. President. Many people might say we had too many debates. We had nine 1-hour televised debates—nine of them. I think five or more were statewide televised, others were on C–SPAN, a couple of them were local. But together with the coverage of the free media, the press, which I think did a good job of trying to bend over backward to present both points of view, both sides, a side-by-side presentation of issues, there was no lack of dialog and no lack of debate. But what we did was keep the craziness out; we kept the cacophony out; we kept out of this wild extraordinary race for the extra dollar the group that distorts. We had a campaign where people could hear the issues. We had a campaign where people could listen to the candidates. We had a campaign where there was a premium for people on the ground to be involved organizing, street for street, community for community.

That is what American politics is supposed to be. And I proudly say that the campaign we conducted in the State of Massachusetts for the Senate in 1996 has been written up by most critics across the country as one of the best Senate campaigns in years. I know that for myself I never ran one so-called hard negative advertisement. Every one of our advertisements was comparative, so to speak. And if I had my choice, we would have spent half what we spent on paid advertising. But I was unable to secure an agreement from the Governor that we would spend less than the amount he chose to spend.

I spent twice what I have ever spent in any Senate campaign on media. My

belief is that ultimately it was not money that made the difference. It was the debate and the public dialog and the capacity of our fellow citizens to learn and understand where we stood on the issues, what we believed, what we had done or had not done and what we wanted to achieve on their behalf.

And so I believe there is a better standard, and I believe there is something that we can do that can be regulated here, that puts both candidates on an even keel but does not commit our entire system to a perpetual money chase and to the perpetual and increasingly corrosive perception that this system is up for grabs for the money which hurts every single one of us.

It is my hope, in the course of the next days, as we debate this, that we will have an opportunity to really vote on substantive amendments, and that we can find the common ground for compromise.

I have just a couple of quick comments. I know the Senator from Missouri wants to speak.

I understand some of the fears that colleagues have on the other side. As I said earlier, I think, in my judgment, if we look at this fairly we ought to be able to find ways to address some of those fears. But in the end, notwithstanding some of the constitutional arguments made and notwithstanding some of the opposition that is grounded in sort of how the politics are played, it seems to me there are some people who just don't want to give up the money, who like the money, who recognize the advantage they have because of the money and who are willing to place the entire relationship of our Government and our citizens in jeopardy as a consequence of the advantage that money gives them.

I hope, over the course of the next days, the American people will join this debate. Americans must make it clear that they want this change now. It is on the floor. If they are adequately forceful in letting their Senators know that this is something that does matter, I believe it can have an impact and ultimately make a difference.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank you for this opportunity to express myself regarding a challenge which faces the United States of America. It is the challenge of making sure that our political system operates to allow the real representatives of the people, representatives who will express the view and the will of the people, to inhabit the positions of responsibility in Government.

The American people, I think, are convinced that the current political system is flawed, and I believe they are right. But I do not believe that the answer is some sort of broad campaign finance legislation that restricts core political speech; or even that says we will penalize people who are wealthy if they want to spend their own money so only the people who are even more wealthy can pay both the penalty and finance their campaign. I believe the focus should be on enforcing existing laws, not creating new ones. This administration's concerted policy of selling access to the White House and using any and all means to raise money is reprehensible. As a matter of fact, I think it is illegal. And the answer to such law breaking is law enforcement, not law proliferation.

No doubt the administration's disregard for the law has contributed to public discontent. But at a deeper level, I believe that the sentiment that the system is broken stems from the fact that elected representatives of the people are out of touch with the people on all manner of important issues. I am reminded of Federalist Paper No. 57 in which James Madison emphasized that legislators must be given ''a habitual recollection of their dependence on the people.''

The best way to solve the problems we face, in my judgment, and to provide the much-needed ''recollection of [our] dependence on the people,'' is not through making it impossible for people to express themselves, not by limiting what people can say, not by calling our opponents special interests. It is, though, by doing something that Americans have found to be a workable solution all across this country, and they have embraced it from the very highest office in the land to the very lowest office in the land. It is the concept of term limits. Term limits will provide true reform.

I believe that incumbency is the real problem in our system. Incumbency is, and always has been, the single greatest perk in politics. It is the single greatest obstacle to true political reform. It is the way in which people obscure the view of the political universe by inhabiting the podium themselves, and the challenger does not have a chance. Committee assignments translate into campaign contributions; bills mean big bucks; and over and over again, no matter how you structure it, no matter what you say about it, the incumbent continues to win.

People who have been on this floor throughout the debate so far as it relates to the so-called campaign finance reform talked about the fact that sometimes incumbents are outspent, sometimes they are not. But if you look at the data, the data are that in 90 percent of the cases—more than 90 percent of the cases in the Congress—incumbents win.

The value of incumbency is as strong as ever and, in my judgment, after witnessing what happens when you have campaign reform, you almost inevitably elevate the value of incumbency.

One of the speakers who spoke not long ago here on the floor indicated he wanted to limit the amount of money that would be spent in a campaign. He would have done so voluntarily. Well, of course. People who have 100 percent name recognition will always want to limit the amount of money that is spent. Hershey's doesn't need to advertise that it sells chocolate. It is the new company that needs to advertise. Kleenex doesn't need to advertise that it sells tissues. It is the new one that does. And the incumbents will always want to put limits on challengers. Because whenever you limit what someone can say about you, and you are an incumbent, you have the only access to the marketplace. You have the only access to the podium. It is no revelation to find that those who inhabit public office want to keep the expenditures down. They don't want competition to be able to talk about what they have done or how they have performed, or to compete with them for a position in the marketplace. They don't want the competition to be able to walk in and say, ''We can do a better job.''

We have watched it over and over again. In the 1996 congressional elections, which were heralded as highly competitive, here is the data: 94 percent of all Members who sought reelection were returned to Washington. Incumbency remains the biggest perk of all. The best way to get reelected is to be elected and then to stay here. And if you have a chance once you are here, vote for campaign reform, which makes it harder and harder for anyone else to challenge your message or the information you send out under your frank on the letter that you don't have to pay postage on, financed by the Government.

What competition there was, in 1996, came as a result of voluntary departures, not any weakening of the power of incumbency. Term limits, in my judgment, are a tried and tested reform. I happen to be a person upon whom term limits have operated. I was the Governor of my State. It's an awful good job being Governor. If anybody ever offers you the chance to be Governor, take it. I know a number of you in the Senate have previously been Governors. They are such good jobs that people would struggle to keep those jobs.

Sometimes jobs are so good that people will do illegal things to keep them. I won't cast any specific aspersions, but we saw an awful lot of activity in the national election in 1996, where people were apparently willing to have dealings with some pretty shady characters, even folks from overseas, even overseas governments, in an effort to keep jobs.

It seems to me one of the things we ought to do is to say to people: These jobs don't belong to you. They belong to the people of this country. We ought to level the playing field, occasionally, and make it possible for people to come in. If we are really interested in offering the opportunity to new individuals and to people who have not traditionally had access to power—for example, minorities and women—we ought to have term limits. Term limits will open the door and we will find out

something important about the American people, and it is this: The American people are capable.

There is kind of a myth around here that the Senate is an exclusive club of 100 people; somehow 100 people who are exclusively endowed with the capacity to run the U.S. Senate and our country. It is the idea that we are the only smart ones who could get this job done. That is probably as close to coming to real humor as we get in this body; it is laughable. The American pool of talent is not shallow. It is deep. There are millions of people in this country—yes, there are millions who could do the kind of job that is necessary to run America. That is the virtue of a democracy. The virtue of a democracy isn't that you get a few people at top and you keep them there to impose their will on the country. The virtue of a democracy is that the will of the people is imposed on those who govern. We are not here to impose our will on them. We are here to reflect the will of the people.

I don't think making sure we can stay here forever and retire here, or be carried out feet first, is what this country is all about. Let's try what has already happened in a number of other settings politically. Mr. President, 41 Governors are subject to term limits. Why? Because the people want a fair system. They want public officials who are reminded constantly of their responsibility to the people—20 State legislatures have term limits, countless State and local officials nationwide; the President, since 1951, has been term limited. As a result, term limits are enormously popular.

People know they work. This is not a proposed sort of reform about which people know nothing. This is a proposed reform with which people are intimately familiar. They have seen it work in 40-plus States for Governor. They have seen it work in their city councils, they have seen it work in the Presidency of the United States. They think ''give someone else a chance'' is a good idea, and so do I.

In Maine, 64 percent of the public voted in favor of term limits. In my home State of Missouri, voters have supported every term limits proposal ever placed on the ballot, by majorities as high as 2 to 1. In California, 63 percent of the people voted for term limits. In Florida, term limits passed by better than a three-fourths majority. Even most incumbents do not win by these margins, and rightly so. Most incumbents don't reflect the will of the people as dramatically as term limits do. Term limits mean no more politics as usual.

What do I mean by that? It is just this simple. A think tank known as the Cato Institute issued a study that compared the voting behavior of recently elected Members, those who have just come from the people, and compared it with long-serving Members who have been ensconced as incumbents. They concluded that term limits would have made an enormous difference. Here is what it said. The study concluded that, recently elected Members exercise greater fiscal restraint—were more careful with the public's money—and were more responsive to voters. Why am I not surprised? Those findings were confirmed by a study of the National Taxpayers' Union.

Specifically, the Cato study found that based on the voting patterns of recently elected Members, a term-limited Congress would have defeated the tax increases of both President Bush and President Clinton, and would overwhelmingly have supported the balanced budget amendment to the Constitution. No wonder people want term limits as a way of restoring confidence in government, because it would do what we really need to have done, and that is that we need to make sure that the will of the people is what is reflected here.

You know, low-cost elections are not the ultimate objective. The ultimate objective is that the will of the people should be the supreme law of this land. Above all else, term limits serve the much-need function of providing legislators with this awareness that they need to have, according to Madison in the Federalist Papers, ''a recollection of their dependence on the people.''

Term limits provide a reminder that the power of legislators comes from the people, and that it is no hardship to return to live as one of the people. As a matter of fact, it would be a condition to be imposed on everyone, were we to embrace term limits.

Experience has proven that we do not need a professional legislature. It has been a professional Congress, on the other hand, that has brought us such successes as the House bank, the midnight pay raises, and the savings and loan debacle.

What is wrong with the McCain-Feingold campaign finance reform proposal? I will say this, it will make matters worse by strengthening incumbents.

The McCain-Feingold proposal, scaled down or not, is an incumbent protection proposal masquerading as reform. This should not come as a surprise to us, because it is certainly no surprise to the American people. Laws written by incumbents in Washington cannot realistically be expected to have any effect other than to entrench the incumbents in Washington.

The McCain-Feingold proposal does nothing to address the problem of incumbency. Indeed, it makes it worse. The proposal would actually strengthen incumbents by regulating the one route by which challengers can hope to offset the advantages of incumbency, and that is free and open discussion of the issues. No matter how you slice it, McCain-Feingold is a restriction on the ability of people to discuss public issues, some of which could be substantial embarrassments to incumbents.

I think it is fine to restrict the politicians, but I am not in favor of restricting the people. Perhaps that is the difference between these two proposals. McCain-Feingold would restrict the people in their ability to speak. Term limits would restrict the politicians in their ability to perpetuate themselves in office.

The trappings of office provide an incumbent with a highly visible lectern. You can get to the podium easily if you are in the Senate or the House, and you can address the voters. The incumbent's voice can be easily amplified from this position of power to drown out all others. Any proposal that limits the ability of challengers and their supporters to present a different vision—whenever you say that the guy on the outside can't speak clearly, can't speak effectively, can't speak loudly, can't compete with the guy on the inside—impoverishes the very foundation of America, which is public debate. You exacerbate the problems that exist within the system that we have, and that is that incumbents are already too strong. They should be limited.

We limit the President. We limit Governors. We limit members of the houses and senates of many States. We limit city councils. We limit terms in the PTA. We ought to limit terms in the U.S. Congress. Let's put limits on the politicians, not limits on the people. Let's limit the perpetual service of politicians, not the political activity of our citizens.

Nothing—nothing—is more threatening to an incumbent than an informed individual who votes on the basis of principle rather than on the basis of personality. What good is an incumbent's name recognition with voters who want to focus first and foremost on the issues? And what does the proposal do? This proposal would limit the ability of people to express themselves and spend money to talk about issues. Of course, if it is all just down to name recognition, I bet there are a lot of incumbents who would like a proposal that would just eliminate the ability of people to talk about issues.

Cutting back on issue advocacy limits the ability of voters to inform themselves and to discuss the issues. Here we have a proposal that is going to cut down on the ability to form groups, to feel free about being involved in those groups, cut down on the ability of people to make contributions to those groups, cut down on the ability of those groups to discuss the issues.

The McCain-Feingold proposal is not just bad policy, though; it is, in my judgment, unconstitutional. Proponents of campaign finance reform talk in terms of reforming the campaign finance system because they are afraid to say what they are really advocating. What they are really advocating is the banning of political speech. I know everybody gets tired of political speeches, and we all make our jokes about political speech, but there is nothing closer to the heart of liberty

itself, there is nothing closer to the core of what it means to be free people than to have free, uninhibited, unbridled capacity in the culture and among its citizens to speak politically. Political speech is noble. It is the opportunity to put feet to freedom, to actually make a difference.

In a world in which it costs money to reach voters, if you limit spending, you are going to limit the ability of people to speak. It is that simple. Oh, we limited spending before, and what did it do? It meant that the nonincumbent had a tough time, and it also meant that people who were very, very wealthy could find their way into the U.S. Senate and House of Representatives. I submit to you that we have our share of very, very wealthy people here. Of course, we know that there is no way ultimately to limit what a person spends out of his or her own pocket because the Constitution has been so interpreted.

So all we do when we limit everyone else is to say we want the wealthy to have more and more advantage as they singularly and uniquely can approach the podium and be heard in a society which ought to hear the voice of every man and every woman based on merit rather than based on their own personal wealth.

These proposed limits on speech are flatly unconstitutional. The Supreme Court said as much 20 years ago in Buckley versus Valeo. The text of the first amendment has not changed and cannot be changed in this Chamber.

The scaled down version of McCain-Feingold still violates the first amendment, in my judgment. The only thing truly scaled down by this new version of the legislation is the people's right to free speech. The people's right is scaled down, their right to speak freely, to express themselves, those on the outside to challenge those of us on the inside. It is compressed. I sometimes wonder why I wouldn't want to stop people from being critical of me. But you know, I think we ought to be above and beyond our own personal interests here. We ought to be talking about the public interests, not the personal or political interests of incumbents.

Specifically, the law attempts to limit the ability of groups to associate a candidate with his record on issues that matter most to the group. Now wait a second. The law attempts to limit the ability of groups to associate a candidate with his record. I can understand how there would be a lot of folks in this Chamber who would not like for groups of people to know what they have done or to be able to tie a candidate for reelection with his record.

Mr. McCONNELL. Will the Senator yield just for a short observation on this very point?

Mr. ASHCROFT. Go ahead.

Mr. McCONNELL. In fact, the Senator from Missouri is absolutely correct. It would give the Federal Election Commission new powers to go to court to seek an injunction on the allegation of a ''substantial likelihood that a violation is about to occur.''

In other words, the point the Senator from Missouri is making, the FEC would be going to court to get an injunction to shut people up so they couldn't criticize our records.

Mr. ASHCROFT. I thank the Senator for his comment. It is a chilling comment to think that the FEC, related to the Congress, could intervene to ask a court to stop someone from criticizing the Congress. It makes you wonder whether or not this is not a bill to transport us all to some regime in some other land. The soil of America would find such activity to be so repugnant that you would think it might cause an earthquake the dimensions of which have never before been understood.

America stands for something profoundly different. America stands for something. And it says that when you vote for something here, you should have to stand and answer to the people and you shouldn't be protected by an election committee or some campaign finance reform which would keep you from being charged with having voted as you did, which would keep the people from holding you responsible. God forbid the day in America when someone is free to vote here and not be responsible for that vote and can call upon some part of Government to protect himself or herself from having to respond to the people and explain the vote. Such an endeavor, as pointed out by the Senator from Kentucky, is flatly unconstitutional, and it is a shocking outrage to the conscience of freedom-loving Americans.

Incumbents enjoy the ability to trumpet the favorable aspects of their record through franked mail. They enjoy high name recognition. We get to stand on the floor of the Senate, and C–SPAN proclaims our message. We speak it ourselves. And so-called campaign finance reform, is to come in and deprive our competitors from the opportunity to speak their message. I can't believe that a nation based on competition would want to yield the potential for that competition.

It certainly does not cure the bill's unconstitutionality that it restricts issue advocacy only during the weeks leading up to the election. Those happen to be the weeks that are relevant. The suggestion is that, well, we are going to allow people to do issue advocacy but not right before the election, so we will only forbid it when it really counts.

The first amendment of the U.S. Constitution is not something to be taken lightly. Free speech, political speech, is not something to be taken lightly, not something to be tampered with, not something to say, ''Well, we'll allow you to have free speech so long as it doesn't matter, but when it gets to be important, when it is time for that speech, you lose it.'' Well, I see the hands of time are running out and you all are being victimized again by another so-called short Senate speech which is going rather long.

I want you to know that I do not believe this so-called campaign finance reform is real reform. I believe that this is the kind of thing that would impair our ability to have the kind of political dialog and debate that is fundamental and necessary, and I intend to propose as a substitute to this, term limits, which are a real reform. They have been tried and tested. They are no pig in a poke.

Since 1961, the Presidency of the United States has been term limited; 41 States across America have term limits for Governors, for State legislators in a number of States, city councils, as I indicated, clubs, PTAs. People know what term limits can do. They know about the need to rotate fresh ideas and people close to the constituency through public office. Term limits provide true reform; campaign finance provides the illusion of reform.

I plan to offer term limits as a substitute for the McCain-Feingold version of campaign finance reform. I want to force a vote on true political reform, not illusory reform that will be struck down by the courts.

There is just one clear answer as far I am concerned. The answer is to limit the politicians, not to limit the citizens. Limit terms, not speech. A viable and vigorous political debate in this country is essential to the survival of this democracy. We know we can do with a new set of politicians in office. As a matter of fact, in many offices across this Nation, we have seen that when we rotate people through those offices, we get better service. No wonder people endorse term limits. We should limit politicians, not speech.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. Thank you very much, Mr. President.

Mr. President, I would like to take a few moments and discuss some of the points raised by my colleagues today on the subject of campaign finance reform.

Proponents of campaign finance reform have expressed concern over the cost of Federal election campaigns. One Senator stated that the cost of campaigns has increased 73 percent over the last 10 to 20 years. However, the cost of most things in life have also increased. For example, the Federal Government has grown so much over the last three or four decades that it spreads out and touches nearly part of our lives. In fact, there was a study which found that the Government involves itself in about 60 percent of everything we do today.

The Federal Government's intrusion in the lives of my constituents has led many of them to either become involved in campaigns or travel to Washington to have their voices heard about the role of the Government in their lives. Congress should not suppress the

ability of Americans to have their voices heard.

If we go back to the level of Government that we had in 1930, we would not see the need for the number of people who have to travel out here day after day, year after year to get their points across, to let the Government know how certain legislation is going to affect them, good or bad.

We often hear the phrase, ''The system is broken.'' The average campaign today costs about $4.5 million on average and the cost should be debated. However, the cost of political campaigns is still less, as we heard many times, than we spend every year on advertising for potato chips, yogurt, or toothpaste.

So are the campaigns getting out of hand in the amount of money we spend? No. In fact, there are those who argue that we need to have more Americans involved in politics to have their voices heard. That is what makes a great democracy. The more involved you can get in what the Government does, the more that Government is going to respond to your needs and the needs of the country.

Mr. President, the system is broken. It is a club for millionaires or could become a club for millionaires. If we continue to impose new restrictions, that is exactly what would happen. It would only be millionaires who would be able to run for office. So, in other words, we would cut off the average American's chance of ever running or holding any public office, to come and bring concerns to the floor of the U.S. Senate, the House of Representatives, or even in the State houses.

I have also heard people say that ''Fundraisers used to be held around Senate schedules. Now it's just the opposite, that the Senate schedules are held around fundraisers.''

That isn't true in my office. We try to spend the vast majority of our time doing the work that we were sent here to do. Yes, we are going to face a campaign; yes, we are going to have to raise money, but we are sure not going to make the work that we were elected to do a lesser priority. I do not believe most of our colleagues have done that. But that is one of the charges issued today.

If we increase the limits on the ability to raise *X* amount of dollars or we are required to accept smaller contributions, we will discourage many individuals who would like to campaign and serve in Congress. These individuals will have to spend more time trying to raise money than doing the job that they were elected to do. It gets to be a money chase, as we have heard here many times today.

Each election, however, is like a basic ad campaign. Every candidate needs to communicate a message. Every candidate needs to be able to go out and talk to the voters to tell them what he supports, what his agenda will be, how he is going to vote on the important issues.

If he does not have a chance or the opportunity to communicate his view to the voters, how are they going to know what this candidate represents? How are they going to know what to expect from him, and how are they going to make a decision between candidate A and candidate B?

When you look at costs—I believe it was said earlier, too, today it is about $1.2 million to buy a 30-second ad during the Super Bowl. Now, we are not going to advertise during the Super Bowl. But if you go into an average television market across the country, an average spot for 30 seconds today is going to cost you over $3,000. Now, again, that is a lot of money, but you are going to have to run a decent campaign again to deliver your message.

We need to inform our voters. If we cannot, as candidates cannot tell our voters how we are going to vote, what our values are, what we are going to stand up for, how we are going to vote on special issues, you can bet somebody is going to tell them that. But they are not going to tell it probably the way you would like. In other words, we are going to have opponents out there. You are going to have special interest groups, independent expenditures, or, more terrifying, you are going to leave it up to the media, you are going to allow the media to frame this debate.

I do not want a newspaper or TV station, liberal or conservative, to be out there telling the voters what they think my position is or to frame my campaign in their words. As we know, I have views about how a lot of these stories and editorials are written. So if we leave it up to the editorial pages of our newspapers, or television reports and other stories, I do not think they are going to get the accurate picture of the campaigns or the candidates involved. A truly informed electrorate will result from preserving the free speech of people to become involved in these campaigns and the right of candidates to communicate their agenda.

What we are hearing today in the Senate is to put on more limits. ''The system is broken.'' We hear that again. ''The public is cynical.'' I do not think they are cynical about honest campaigns. But they are from the headlines of those who have broken campaign laws. That is what you should be cynical about.

We heard Senator KERRY here just a few minutes ago talking about his last campaign, spending in the neighborhood of about $12 million. That was a tough race. That is a lot of money. But have we heard any charges of illegalities involved in the race? No. So did the amount of money corrupt the race? Evidently not.

So it isn't the money. But it is real chutzpah—if you know what the term is; that is really ''in your face''—when we have those who are out there calling the loudest for campaign finance reform saying that it could even involve a special session of Congress. I would call that ''a good defense being a good offense.'' In other words, let us deflect the real problem of the issue today, and that is over the problems of past campaigns, those who have broken the laws but yet are calling for new laws to be implemented. In other words, the chutzpah is similar to a saying in this morning's paper, ''It's like the person who killed his parents and then argued for mercy from the courts because he was an orphan.'' ''Stop me from killing again. Do not allow me to go out and break these laws again. Let's have new laws on the books,'' just like somehow new laws are going to prevent the intent of breaking them.

There has been discussion about independent expenditures and establishing new limits. But, again, we cannot muzzle everybody. We are going to allow the unions to continue spending and collecting millions of dollars. No attempts really to rein in that abuse. So in other words, when it comes to reforms, it is OK to reform only if it limits my opponents more than it would limit me. Now, that would be good reform, but, again, in whose eyes? If we cannot do across-the-board reform, then no reform is good reform.

A good defense is a good offense, again, to divert attention from the problems at hand. A lot of people are looking at hearings going on in Congress this year, and you hear the rhetoric or the spin that this is all about campaign finance reform.

This is about those who broke existing laws, who abused the laws in the last campaign. That is what these hearings are supposed to flush out and look at, not by putting new limits on what we can say, who can say it, when we can say it. Who is going to determine that? Who is going to become a new censor?

What that would do is take away more of your rights as individuals to participate in any campaign, whether Democrat, Republican, independent, whatever it might be. New limits would only mean average Americans would have new constraints placed on how they could become involved in the political process. In this instance, groups, individuals and candidates would be muzzled in a free country.

Again, who would be out there talking? Again, ''The system is broken.'' Their answer, ''Put more controls on free speech.'' But in order to do that, it means bigger Government. ''More Government is the answer. If we can only put a few more controls, put a few more limits, spend a few more dollars somewhere else, somehow that is going to fix the system.''

The system may need some reforms. It may need some tinkering. It may need some changes. But I think overall our system is not broken. Have laws been broken? Has the system been abused? Yes, it has. That is exactly what the Thompson hearings have been trying to find out. But they have been blunted by those who have been accused and, yes, even charged with

breaking those very laws. They say, ''Well, if we did, we're sorry, but we need to push for new laws. We need new changes.''

If there are those in Congress or any place else who would sell their integrity for a $2,000 contribution rather than representing the millions of people back home—by the way, an individual contribution is somewhere around the neighborhood of $25 per contribution—if there are individuals who would do that, they would be easily found out. If they are going to vote that way or betray the trust back home, they are going to be found out. If they are found out, they should be thrown out.

But I believe nearly all, if not all, Members in this body are very honorable men and women who work very hard to try to serve their constituents back home, Republicans and Democrats, having the best interests of their constituents back home at heart. They try do that with a lot of honesty.

But what are Americans to think if they hear day after day that campaigns, that Congress, is corrupt, that it is for sale to the highest bidder? Again, if there are such individuals, they will be found out and they will be thrown out. But I believe the public concern of campaigns in a large part is not because of the system itself but because of those who have abused the system, those who have broken the laws, and they remain unpunished.

New laws, I do not believe, will cure the intent of those who want to break them. So I say, let us open the system, let us have full disclosure—Who contributed to the campaigns? How much did they contribute? —so that the public can judge who is supported by whom, which groups are involved, what are the issues at stake.

Let us not put the Federal Government in control. Isn't public involvement better than having censorship by the Federal Government? You know, most people have a real concern today about big Government. A lot of people say they do not think a bloated bureaucracy can provide the best service today. They have sent many of us here to Washington with the charge of streamlining and downsizing the Federal Government that they believe is out of hand, unwieldy, spending too much money.

Is the way to fix the campaign finance system by putting more control of the system into the hands of the Federal Government, to give them more control, more power, and, yes, even censorship on what you can say, when you can say it? Is it negative? Is it positive? Who is going to decide all of that?

I believe Americans as a whole want the ability to participate and to participate in the elections as they choose.

With that, I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Let me thank my colleague from Minnesota for a fine contribution to this very important debate and assure him I agree with his views virtually 100 percent. An outstanding contribution.

I yield the floor.

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from New Jersey.

Mr. TORRICELLI. Thank you, Mr. President.

Mr. President, at the outset for my participation in this debate I congratulate Senator FEINGOLD and Senator MCCAIN for their months of effort in constructing a comprehensive program to deal with the problem of campaign finance and for bringing the Nation and the Senate to this moment of debate, but also Senator DASCHLE, whose tireless efforts have also brought us to this moment of judgment, and Senator LOTT for scheduling this debate.

I, also, in listening to this morning's discussion, want to compliment Senator MCCONNELL. For, while I do not share his ultimate judgments on the McCain-Feingold bill, he reminds us of an important principle in the debate. And that is, there may be problems in how we finance our campaigns, the problems of money in American politics, but Senator MCCONNELL reminds us there are real constitutional limitations in how we approach this issue and that ultimately the Nation does not suffer from too much political discussion or too much debate among candidates but too little. So while I differ with his ultimate judgment, I think the Senate is well served by his limitations in how we approach this question.

Mr. President, for my own part, I enter this debate with a reminder to all of my colleagues that there is nothing short of the credibility of our entire form of Government that is at issue. The world's oldest constitutional democracy, founded on the principle of majority rule, is now threatened by the fact that only a minority of Americans participate. It is therefore a question of our entire credibility of governance. The United States has experienced for more than a generation the continuing relentless decline in voter participation.

In the last elections in 1996, 49 percent of the American people participated in choosing the leadership of the Federal Government. It is, Mr. President, a serious issue. For a long time the leaders of the U.S. Government have found reasons to excuse the fact that most Americans do not participate in this form of Government, that the United States alone among the great democracies may now be governed by the judgments of a minority of our people alone.

I have heard all of these debates. First, we convinced ourselves that it was not convenient for most Americans to participate in our elections. So we enacted postcard registration to make it simpler. But still the American people did not come.

Then we convinced ourselves it was because people were not aware of the timing of elections. So through public service announcements and then the hiring of campaign workers, we filled the airwaves, we called people on the phone, we visited their homes to remind them, and still they did not come.

On more than a few occasions we appealed to people's patriotism to participate in the electoral system. And after all these efforts, most Americans are still not participating.

Perhaps, Mr. President, there is another reason, painful to admit, but unmistakable: The majority of Americans who are not participating in Federal elections did not forget to vote, it wasn't inconvenient to vote; but by their failure to participate they were expressing themselves. Not participating in an American election is a means of expression. It is a vote of no confidence, not simply in the candidates or the political parties, but in the process itself.

In truth, there are myriad reasons. The sterility of the debate, perhaps because people perceive no real choices, no relevancy of the political discussion to their own lives. Perhaps it is because the decline in the quality of journalism itself, where character assassinations become a substitute for discussion of real issues. Or perhaps most important, most insidious, it is how we are financing our campaigns. The sense of most Americans that voting is not a determinant of a decision, where money has become the principal determinant of the outcome of struggles for political power.

There is perhaps no better witness for this argument than one Roger Tamraz, who appeared before the Governmental Affairs Committee only last week. By his own words he had come to the conclusion that though an American citizen, he did not vote in Federal elections because contributing $300,000 was a better and more effective means of participating than ever casting a vote for a candidate of his choice.

Mr. President, I will admit that I rise on the floor of the Senate today as an advocate of the McCain-Feingold campaign finance bill by a circuitous route. Like many of my colleagues, I have feared campaign finance reform because of the threat of Government regulation of political speech. I have believed that free, fair and open competition among the political parties was the best means to assure that all parties were heard and that the American people ultimately ruled by majority will.

I can no longer, after the expense of the 1996 election and my own involvement in the U.S. Senate campaign in my own State of New Jersey, remain with that conclusion. The campaign reform bills of 1974 and their revision in subsequent years are no longer working. There is no governing electoral authority in the Federal statutes.

Through a series of decisions by the Federal courts, the practical expense of the political parties, the governing statutes are being evaded, violated, or are simply irrelevant. There is no governing authority in this country today for the financing of Federal campaigns. While this Congress has addressed the issue innumerable times, we have made no progress. In a decade, this Senator has voted on 113 occasions to reform campaign finance and come to no conclusions. The Senate has considered 321 pieces of financial reform legislation, heard 3,361 speeches, and filled 6,742 pages of the CONGRESSIONAL RECORD with debate. It cannot go on. We are at a genuine critical point in the political history of this country.

Some would argue that there are some modifications that can be enacted without fundamental reform, and we will meet our responsibility to improve the process, declare success and simply move on to another Federal election in 1998. I am of a decidedly different view. I believe it would be worse to deal with this problem in the margins and declare that we have done much than to deal with this properly and fail and at least be honest with the American people that the problem exists. That is the choice because many, I will predict a majority, of the U.S. Senate, will decide that we can ban the use of soft money in the political process, do nothing about independent expenditures, express advocacy, the cost of television time, overall campaign spending, and still declare success.

To me, Mr. President, that will be the worst outcome because this problem is not only serious, it is complex, and goes to every aspect of the campaign finance system.

First is the problem of controlling express advocacy groups. There is a real threat that the national political system is evolving into a debate where special interest groups will argue over the heads of the American people in multimillion-dollar campaigns in which neither candidates nor political parties are able to participate. Single-issue advocacy groups with virtually unlimited funding, distorting the issues, steering the campaigns, with candidates who are unable or without the resources to even participate. An American political system with campaigns by surrogates.

The McCain-Feingold bill, by at least attempting to limit the ability of these organizations to distort candidate's positions or enter into the debates as their surrogates, addresses this issue. But without this provision, the overall legislation would be meaningless, and indeed in my judgment, counterproductive.

There is, of course, the issue of foreign money where not only must the law be clear, but the penalties high, where people who seek to participate in our system but do not share our nationality. There is the obvious problem of soft money, unregulated, undeclared, unknown participants in the financing of Federal campaigns who opened a door which has now become a monstrous window through which millions of dollars flow, distorting the very purpose of campaign finance disclosure or control.

There is the effort at the prompt disclosure of campaign contributions so that every American makes their own judgment about who is contributing, how much, what they represent, and whether they can then identify with a candidate receiving those contributions. They are all a part of the McCain-Feingold legislation, each critical, but each an integral part that if eliminated from the legislation weakens the whole effort at reform.

But then finally there is one aspect of the McCain-Feingold bill that has not survived to this debate on the floor of the Senate, but in my judgment must be added before genuine reform has been achieved and this Senate concludes this debate. It is the issue of reducing the cost of television advertising. Behind the spiral of rising campaign costs is the issue of the cost of television advertising. There is no increased cost in American campaigning without the cost of television advertising. They are one and the same—inescapable in the conclusion. The cost of campaigns have increased 72 percent in the last 6 years alone. That is overwhelmingly driven by network television. In my own campaign for the U.S. Senate last year, 84 percent of all the money raised went to television advertising.

An amendment will be offered to this legislation, appropriately called the challengers' amendment, because largely incumbents will always raise the funds necessary to feed the television networks but challengers cannot. Unless and until we reduce the cost of television advertising, this becomes a process open to incumbents or multimillionaires only. The average American will never be able to participate in this process and will be excluded at the Senate door.

But make no mistake, the vote for campaign finance reform is not a vote for the McCain-Feingold financial legislation. It is a vote for the challengers' amendment. Consider a process where as in the State of New Jersey the average cost of a television advertisement is $50,000. Some single 30-second ads can cost $100,000. What is it that is being purchased? The television networks control this time by a public license. The air time belongs to the American people. It is granted to the television networks by license, for free. They then return to candidates for public office who seek to debate public policy issues, to communicate with the American people who own this air time and charge millions upon millions of dollars.

Now here I agree with the Senator from Kentucky. The answer is not to reduce the amount of time that candidates have on the air to discuss their issues. It is not to regulate what those candidates communicate to the American people.

The Senator from Kentucky said less than 1 percent of all the advertising last year in the most expensive political race in American history was political advertising. In the midst of deciding about the American future debating these important critical national questions, American people were still hearing more about the sneakers of choice, the best and worst toothpaste, or how it is they should feed their cats and dogs. There is not too much political discussion, but it is too expensive. It is wrong.

In a proper process, the great corporations that own the television networks as a means of political responsibility should have come forward and offered this time for candidates to debate or reduce the cost of advertising to discuss their respective issues, but they have not. They were challenged and they failed. Now it is up to the Congress.

Some would say it is unconstitutional. It is the taking of property of the television networks. But indeed we crossed that threshold a long time ago in reducing only marginally the cost of advertising for charities and political debates. The problem is we reduced it only marginally, leaving the cost far, far too high. There is no right of a corporation to own a license. It is a license for air time that belongs to the public. It is granted and it is responsible that costs should be reduced.

Sometimes it is almost unbearable as a Member of the Senate to hear the television networks with their anchors on the evening news berating the political system, challenging the candidates for public office, the President and the Members of the Senate to do something about campaign finance reform, reduce its cost, reform the process. The problem is the cost being charged by the television networks themselves. What are all these fundraisers? What is it we are doing running around the country raising money endlessly, from interests where we should never be seeking money, spending time that should be spent with citizens debating issues? It is to feed the networks that are demanding this money. When the challengers amendment we will have a chance to do something about it, to reduce the costs.

Mr. President, that comes to a final objective in McCain-Feingold and the whole system of reform. Every American knows that there is a problem of too much money. I have made clear my own belief that there is also a problem of too much cost in advertising. But there is one other element that drives this reform effort. If most of the problems of the American people were represented by those who had money, this reform legislation would be much less important because there is more than enough contact between candidates for the U.S. Senate and the House of Representatives and people who are able to donate and attend fundraisers. We see

thousands of Americans at hundreds of fundraisers. There is no lack of communication or discussion of public policy issues. The problem is that most of the American people who have the most serious problems in their own lives don't have the money to attend these events. And since they cannot attend these events, they are not being heard and their problems are not getting addressed. They are outside the process.

What is driving the need for campaign finance reform, in my judgment, is to free the candidates to once again discuss issues, to campaign on the streets of America with people who have no money but do have real concerns.

Mr. President, this is a debate that it would be difficult to overestimate in its importance. The McCain-Feingold legislation is about campaign finance reform, but it is also about something much more fundamental. We are debating the integrity of the U.S. Government, whether or not the American people, a majority of whom no longer participate in this electoral process, can once again identify with the national political debate and at some point in the future return to participating in this system of government.

I do not know how long, if we fail to reform this process, levels of participation will continue to decline while the Nation maintains political stability and a belief in this system of government. But I know it cannot go on forever. We may or may not succeed with the McCain-Feingold legislation. Perhaps some will succeed in passing a lesser measure dealing in the margins of reform and leaving the larger problem unanswered. If they do so, they do a disservice to the Senate and to the country.

Mr. President, before this debate has concluded in the coming days and weeks, I will return again. But I am grateful for this chance to share a few opening thoughts on what is a critical moment in the life of the Senate.

Mr. President, I yield the floor.

Mr. McCONNELL. Mr. President, before the Senator from New Jersey leaves, if I might just impose upon him for a few moments. I was listening to his comments and his enthusiasm for the portions of the McCain-Feingold bill that seek to make it more difficult for citizens to engage in issue advocacy and to change the rules with regard to independent expenditures.

I make reference to a letter I received from the American Civil Liberties Union earlier this year discussing those two types of citizen expression. Quoting from the letter:

> Two basic truths have emerged with crystal clarity after 20 years of campaign finance decisions.

That is after a whole string of cases, beginning with Buckley.

> First, independent expenditures for ''express electoral advocacy'' by citizens groups about political candidates lie at the very core of the meaning and purpose of the first amendment.

> Second, issue advocacy by citizen groups lies totally outside the permissible area of Government regulation.

I say to my friend from New Jersey, on what basis does he reach the conclusion that there is any chance whatsoever that these portions of the McCain-Feingold, since there is no hint that the courts are ever going to tamper with express advocacy—there is a whole line of cases, the most recent one about 3 months ago—does my friend from New Jersey think there is going to be some revelation in the courts? Are they going to rethink 20 years of decisions in this area? Or does he think we ought to just pass, blatantly, unconstitutional legislation regardless of what the Supreme Court says?

Mr. TORRICELLI. In response to the Senator from Kentucky—though it is not the thrust of his question—I will return to the major inquiry. I will share publicly what I discussed with the Senator previously privately; that is, my concern that if he is correct that the Federal courts will not allow McCain-Feingold, as currently written, to deal with express advocacy or independent expenditures, then we face a fundamental problem in that express advocacy and independent expenditures would be unregulated while we would be reducing the ability of the political parties or candidates to express themselves. We would, therefore, be dealing with campaigns by surrogates over the heads of the political parties and the candidates.

In my judgment, that does not constitute reform, and it raises the question, as I expressed to the Senator privately, whether there should be a severability clause at all in this legislation because, in my judgment, if you cannot constitutionally deal with express advocacy and independent expenditures, I, speaking only for myself, do not believe that we can regulate the candidates in the political parties as envisioned by this legislation. That issue remains before the Federal courts.

Now, finally, dealing with the Senator's question, it is my own belief that the Constitution can be satisfied, and I hope we can gain the Federal Court's approval, by allowing express advocacy of issues by people who do not name candidates or a campaign in their express advocacy and, hopefully, channel people's interest and finances to the political parties and the candidates separately. Therefore, every citizen has two routes of involvement—the political parties and a candidate of their choice or express advocacy without advocating an individual candidate independently. But I will concede to the Senator from Kentucky, I believe it is an open constitutional question. There is an invitation here to the Federal courts. I simply hope we can get an affirmative reaction from the courts. But I do not disagree with the Senator from Kentucky; it is an open issue.

Mr. McCONNELL. Mr. President, if I may regain my time. The Senator from Washington has been waiting to speak. Mr. President, it is not an open constitutional question; it is a closed constitutional question. There is no chance that the courts are going to allow these kinds of restrictions on independent expenditures and issue advocacy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, many of the constitutional questions that are debated here today in the context of the validity of this bill have already been debated this year in a more open and more refreshing manner. When those who propose to limit free speech on political issues had the courage to propose an amendment that would restrict the first amendment right of free speech on political issues, while they were, in my view, entirely wrong, while they proposed a disaster to the most fundamental basis of free government, they at least had the intellectual integrity and consistency to recognize that what they wanted to do was inconsistent with the first amendment as it has existed from the time of the first Congress until this day.

Now they produce a bill with two fundamental flaws. In most respects—many at least—it is clearly unconstitutional and, in every other respect, it is bad policy. I think I would like to make a few remarks about the way in which political debates are conducted in this country surrounding election campaigns. I will try to deal a little bit about the way the McCain-Feingold bill treats these various communications. And perhaps I will elicit a few additional remarks from my friend from Kentucky in doing so.

In 1974, when the present campaign finance law was passed—with the support, I may say, of just those people and organizations and newspapers that now find how great a failure that 1974 law was and, like the drunk waking up the morning after with a hangover, prescribed the hair of the dog that bit them—their focus was on candidates, on the source of money for candidates to express their ideas through the mass media. In that focus, they prohibited a wide range of sources of money and greatly limited other sources of money, so that a candidate may not take more than $1,000 per election from an individual, or more than $5,000 from a political action committee, an organization that was created, in effect, by that 1974 law. So they placed severe limits on the one kind of political debate for which each candidate is totally responsible. No candidate can avoid responsibility for what he or she says in public, in print, or on television. This forum of advocacy is now subject to severe limits as a result of the 1974 law.

Now, it is interesting to note that much of the support for the kind of bill or the kind of ideas that are reflected in McCain-Feingold, the kind of ideas

that have just been presented by the Senator from New Jersey, stem from the fact that mass campaigning costs money, the money has to be raised by individual candidates, and the candidates don't like to spend the time raising money that the 1974 law requires. So we are told that the candidates ought to be supported by a subsidy from the Federal Government or a subsidy from the private sector in the form of noncompetitive prices for television advertising.

Mr. President, I can certainly sympathize with the views of those who do not like raising money for their own candidacy. I couldn't possibly claim that I do myself. But to exactly the extent that it takes candidates too long to do so is a direct result of the reforms of 1974. And this reform in McCain-Feingold will make that situation far worse because the limitation on sources for candidates are tightened. So candidates, in order to get their own message out, will have to spend more time raising money.

As an incidental, I think it is not at all unhealthy that we who have this rather exalted status as U.S. Senators should be forced to go hat in hand to our constituents and to others interested in the political process and show a little bit of humility and ask for that support. Many of the supporters of reform feel that that is somehow demeaning, and that the Government ought to come up with the money that they use to engage in their candidacies. Personally, Mr. President, I think they might just as well advocate lifetime terms for Senators. Certainly no one would be subject to pressures from campaign contributors under those circumstances. But the very mention of that process simply shows that an attempt to avoid responsibility is an attempt to avoid responsibility, whether it is called lifetime terms and avoiding democracy entirely, or whether it simply comes in the guise of saying that the Government ought to pay for these campaigns.

In any event, Mr. President, the first defect, though perhaps not an unconstitutional defect, of this bill is that it takes the very set of rules that have created the demand for more rules for indirect spending and makes them worse. It takes the very criticism of the time candidates spend raising money and requires them to spend more time making money, and does it in the one area in which the candidate can be called to order, can be held responsible by his or her constituents: that is to say, spending directly by a candidate on his or her own campaign.

The immediate result of a restriction of this first form of free speech—that on the part of candidates—was to push those who are vitally interested in the decisions that we and other candidates across the country make with respect to public policy away from supporting candidates into supporting political parties.

Most academics over the course of the last 30 or 40 years have decried the decline of political party discipline and accountability, and have said that one of the shortcomings of American democracy is that parties don't mean very much; that they have very little political influence even over the candidates who are elected using the party name, and have called for methods of creating a greater degree of cohesion and party responsibility. Yet, when the two major political parties have discovered a method of raising money and are advocating directly or indirectly the election of candidates carrying their name, that very system is now considered by the reformers to be such a terrible tragedy as to cause the introduction of a bill that will make it practically impossible for either major political party to raise sufficient amounts of money, either to call for a certain degree of responsibility on the part of its candidates, or to get its message across to the American people.

I think I do agree, I say, Mr. President, to my friend from Kentucky, that that portion of constitutional opinion of the 126 scholars, or whatever the number was that he mentioned, with respect to limiting contributions to political parties, is probably correct. I seriously doubt a form of contribution can be prohibited. But on the basis that contributions to candidates can be limited, contributions to the parties can probably be limited. It doesn't make it a desirable course of action. It makes it a highly undesirable course of action.

Mr. McCONNELL. Will the Senator yield at this point?

Mr. GORTON. I will.

Mr. McCONNELL. I think the Senator from Washington is correct. There are simply no cases on the issue of whether the Congress could in effect federalize the two national parties; what McCain-Feingold seeks to do. Soft money by definition means non-Federal money. Our two great national parties get involved in Governors' races, county commissioners' races, legislators' races, and so on.

This bill seeks to basically turn them into Federal parties, and take away their ability to participate outside the Federal system.

The Senator from Washington is entirely correct. There simply aren't any cases on that point because nobody has ever thought that was a good idea before.

So I think my colleague is correct. Even if maybe some court would rule that you could do it, it is not a desirable result.

Mr. GORTON. The answer to that from my perspective, as the perspective from the Senator from Kentucky is, of course, it is not. Of course, it is highly undesirable. It will atomize the political system. It will make Members far more free than they have been even in the past from any loyalty as a party, and thus reduce the ability of a Congress or of any other body to reach coherent decisions, but, more importantly than that, will reduce the ability to communicate a coherent set of political ideas to the people of the United States in connection with election campaigns. That is why it is so tremendously undesirable. Even if I am correct that it is constitutional to create such limits, they certainly violate the spirit of the first amendment which is designed to create a field in which the widest range of political ideas can be communicated in the broadest possible fashion.

However, when we get to the third way in which money can be spent to communicate political ideas, I find myself in total agreement with the Senator from Kentucky. That has to do with direct expenditures on advocating the election or the defeat of candidates by persons unconnected with political parties.

Before I get to that, we started with the fact that money that is given to and spent by candidates certainly carries with it a huge responsibility. Candidates cannot avoid responsibility for what their political ideas are that they express with their moneys they spend on their own campaigns. They get a degree of protection from their own political party when it spends money. They can say ''No, that really wasn't quite right. I didn't really believe in that attack on my opponent.'' It is hard to shed that responsibility completely because each candidate has chosen a political party, and its political party's name appears beside his or her name on the ballot. But the responsibility of a candidate is only indirect.

In other words, the party's advertisements, the party's communications bluntly can be less responsible than the candidate's own expressions. The candidate has a certain degree of invulnerability from any such irresponsibility.

But, by definition, when another group, or another wealthy individual, decides that the election, or the defeat of a candidate, is important enough to want to spend a significant amount of money on it and engages in that activity without consulting the candidate or the party, that communication beyond the slightest shadow of a doubt is protected by the first amendment—beyond the slightest shadow of a doubt.

This complex and Byzantine form of regulation in the present law, which would be made more complex and more Byzantine by the passage of McCain-Feingold, raises this question of whether or not expenditures are actually independent, and creates a bonanza for lawyers and for accusations. But it doesn't need to exist in an intelligent system. But clearly when those expenditures are independent, they can advocate the election, or the defeat of a candidate, with entire impunity. They are protected by the first amendment. They ought to be protected by the first amendment. They will continue to be protected until we repeal, or modify, that first amendment, and decide that we ought to choke off free speech on political ideas.

Well, obviously, the candidate who benefits from these independent expenditures has absolutely no responsibility for them whatsoever. However scurrilous or inaccurate they may be, they are not the candidate's fault. They are independent of the candidate. The organization of the individual who was presenting them or paying for them and does not appear on the ballot can't effectively be held responsible in a political sense for that form of communication.

So, first, in 1974 we forced expenditures from the most responsible use to a less responsible use. Now, if we pass McCain-Feingold, we force them into an entirely irresponsible channel, even when we are dealing directly with the election or the defeat of candidates. But, Mr. President, the real point is we cannot stop the money from being spent.

The decisions made by the Congress are vitally important to people's lives, and the people whose lives are affected by them are going to try to affect elections for membership in this body and in the House of Representatives. Obviously, they have to have that right in a free society.

Well, then we move on to the fourth method of communicating ideas. That goes to the benefit of this debate under the title of ''issue advocacy.'' Again, any individual, any group, has a total complete protected right to communicate ideas or views about political ideas. Again, these reforms create this totally artificial lawyer-enriching distinction between an independent expenditure on behalf of a candidate and issue advocacy, an issue different but a distinction in the real world, but one that suddenly becomes very important when you want to get Government involved in all of these ideas.

Were the advertisements by the AFL–CIO all through the last election campaign that said, ''Tell Congressman X to stop destroying Medicare'' issue advocacy? That is what the AFL–CIO claims. In fact, of course, they were designed to defeat candidate X in the next election.

Mr. President, let us be absolutely certain that the AFL–CIO and every other organization has a perfectly totally protected constitutional right to engage in that activity, and to engage in independent expenditures directly at the same time.

That is a separate question as to whether or not we ought to require a labor union, or any other voluntary organization organized primarily for one purpose, to not spend the money of its members on an entirely different political purpose without their consent. Clearly, we can require that consent in any reasonable way which we propose, but once that consent is granted, the constitutional right is absolute.

Then, fifth, Mr. President—and the Senator from Kentucky outlined this question I thought with great simplicity and clarity and elegance a couple of hours ago—fifth, of course, we have the newspapers and the television and radio stations, the forms of mass communication in this society which enter into this struggle gleefully, at great length, continuously and totally protected by the first amendment.

We on this side of the aisle can complain about the fact that most of the major metropolitan newspapers, editorial writers and their reporters are biased to the left, but none of us for a moment claim the right to control their speech or to say that they can't write editorials or that we have the right to say their news stories are biased and keep them out of the newspapers or out of television stations.

I must say, and I trust that the Senator from Kentucky will agree with me, when we use this pejorative ''special interest,'' these newspaper editorial writers do have a special interest in restricting all other forms of free speech about politics so that they can occupy the field alone or almost alone and greatly increase their influence over the actions of the voting public.

Mr. McCONNELL. If I could ask my friend from Washington, I listened carefully to his observations about independent expenditures, which are so-called hard money, federally regulated within the FEC jurisdiction, and his observations about non-Federal money, soft money, which is outside the Federal jurisdiction, both of which there are whole lines of cases—I have counted 13 here just in the few moments I was listening to Senator from Washington—making it abundantly clear there is nothing we can do here in the Congress to restrict either.

My question to my friend from Washington is, if a Member of Congress were sort of cynically approaching this issue and his real goal was to weaken, for example, the Republican National Committee, would he not be pretty safe to advocate some kind of new restrictions on independent expenditures and issue advocacy since there is literally no chance the courts would uphold it and take the gamble that a court might, never having ruled in a whole area of party soft money, weaken the parties with a ruling saying it is possible to federalize the two parties; organized labor would then, as the biggest force engaging in issue advocacy, still be totally unrestricted, as you and I think they should be. And since the Republican National Committee responds to those issue advocacy campaigns with its soft money, would not such an approach benefit substantially, it could be argued, our dear colleagues on the other side of the aisle for whom the AFL-CIO issue advocacy is almost 100 percent favorable?

Mr. GORTON. There is little question but that that would be the result. In fact with my own views on where the constitutional line is likely to be drawn, it seems to me that would be almost the inevitable result of the passage of McCain-Feingold. Its restrictions on money to political parties might well be upheld, probably would be upheld at least in part. It is possible that they would be upheld in their entirety. Their other restrictions will inevitably be found to be unconstitutional.

So we have now restricted the candidate's ability to communicate his or her ideas. We have restricted the political party's ability to reflect their ideas and the ideas of their candidates, the Democratic Party as much as the Republican Party. But because, at least as politics are constituted today, those additional interests, especially organized labor, are primarily on the Democratic side, we have enhanced their ability to communicate, or we have increased their competitive ability to communicate. Let's put it in that fashion. More of the airwaves, more of the mass media will reflect their views. For that reason, because of the general bias of most newspapers and their reporters and their editorial writers and television commentators, Republican candidates historically depend far more on their own ability to raise money and the ability of their party to raise money than have candidates on the other side.

But there is a risk. The law of unintended consequences could easily result in a few years in a reversal of that situation, and the benefits of the spending might very well end up on this side of the aisle. Certainly the unintended consequences of 1974 are exactly what we are dealing with here today.

My focus, however, is on the fact of responsibility. It is appropriate for voters to hold candidates responsible for the ideas that they communicate. It is reasonably appropriate for them to hold political parties responsible. But they cannot hold candidates responsible for a form of communication over which the candidates have absolutely no control. So negative campaigning, it seems to me, will increase rather than decrease with the passage of this bill. Irresponsible charges, unprovable charges, false charges will increase rather than decrease if we should pass this proposal.

But the fundamental point is the amount of money in the political system will not decrease at all because those who feel vitally affected by what happens in politically elected bodies will find a way to spend that money, will be protected by the Constitution in their spending of that money, and will just do it in less responsible channels than they do today.

That, it seems to me, is the policy argument against this proposal. In fact, if we want to make campaigns more candidate oriented and more issue oriented, we would at the very least raise the limitation on contributions to candidates to the level at which they were in 1974 by reflecting the ravages of inflation since then, and we would encourage contributions to political parties. What we would do—I am certain that the Senator from Kentucky agrees with me—is we would see to it the

source of those funds is reported contemporaneously and prominently. The immense amount of time and effort and money that is being spent on investigating the Democratic National Committee and the Presidential election of 1996 would, I am certain, have been absolutely unnecessary had all of these contributions and all of their sources and all of these activities been public knowledge at the time at which they were given, the time at which those actions were taken. Why? Because it would not have happened that way.

Mr. MCCONNELL. If my friend will yield, in fact the Democratic National Committee had the option to report in October, chose not to, for the very reason we all know now, that it would have been horrible publicity. So the act of rather contemporaneously disclosing, as my friend is pointing out, would have created at least a decision on their part, Are we going to take the money and take the heat or are we going to forgo the money? Disclosure would have been the best disinfectant.

Mr. GORTON. As it was they could take the money and avoid the heat.

I thank the Senator from Kentucky for his courage in this matter and the clarity with which he speaks on it. We simply cannot, consistently with the Constitution of the United States, limit political speech. We can only limit responsible political speech. We can only force money from responsible challenges into less responsible ones. We can only increase the power of the press, the very group that is most anxious to limit speech by others than its own members, and/or do what some proposed to do just a few months ago, say the first amendment doesn't work anymore and we better change it. As I said at the beginning of my remarks, that may have been, as it was, terrible policy, but it was at least intellectually honest. To present us with an unconstitutional bill is neither.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank my good friend from Washington for his really quite straight observations about this debate. They are right on point. He has articulately pointed out that in a country where the Government is $1.6 trillion a year, it is not unreasonable to assume that people would want to influence in whatever way they could the decisions that are made that affect their lives so greatly. The Court has made it perfectly clear that the ability to speak and to influence the course of events in any way that is constitutionally permissible is going to be protected, and the only really honest debate, as the Senator from Washington pointed out, was from those who stood up and said we ought to amend the first amendment for the first time in 200 years to give the Government the power to control political discourse. The good news is, Mr. President, only 38 Members of the Senate voted to amend the first amendment for the first time in 200 years. The first amendment is going to be secure today and it is still going to be secure when the debate on McCain-Feingold is over.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Mr. MCCONNELL. Mr. President, I ask unanimous consent the Senate now proceed to the consideration of S. 1227 introduced earlier today by Senator JEFFORDS.

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

The clerk will report.

The bill clerk read as follows:

A bill (S. 1227) to amend title I of the Employee Retirement Income Security Act of 1974 to clarify treatment of investment managers under such title.

Mr. MCCONNELL. I ask unanimous consent the bill be considered read a third time and passed, the motion to reconsider be laid on the table, and any statements relating to the bill appear at this point in the RECORD.

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

The bill (S. 1227) was considered read the third time, and passed as follows:

S. 1227

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INVESTMENT MANAGERS UNDER ERISA TO INCLUDE FIDUCIARIES REGISTERED SOLELY UNDER STATE LAW ONLY IF FEDERAL REGISTRATION PROHIBITED UNDER RECENTLY ENACTED PROVISIONS.

(a) IN GENERAL.—Section 3(38)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(38)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by striking ''who is'' and all that follows through clause (i) and inserting the follow: ''who (i) is registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is not registered as an investment adviser under such Act by reason of paragraph (1) of section 203A(a) of such Act, is registered as an investment adviser under the laws of the State (referred to in such paragraph (1)) in which it maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary;''.

(b) AVAILABILITY OF DOCUMENTS VIA FILING DEPOSITORY.—A fiduciary shall be treated as meeting the requirements of section 3(38)(B)(ii) of the Employee Retirement Income Security Act of 1974 (as amended by subsection (a)) relating to provision to the Secretary of Labor of a copy of the form referred to therein, if a copy of such form (or substantially similar information) is available to the Secretary of Labor from a centralized electronic or other record-keeping database.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on July 8, 1997, except that the requirement of section 3(38)(B)(ii) of the Employee Retirement Income Security Act of 1974 (as amended by this Act) for filing with the Secretary of Labor of a copy of a registration form which has been filed with a State before the date of the enactment of this Act, or is to be filed with a State during the 1-year period beginning with such date, shall be treated as satisfied upon the filing of such a copy with the Secretary at any time during such 1-year period. This section shall supersede section 308(b) of the National Securities Markets Improvement Act of 1996 (and the amendment made thereby).

VISA WAIVER PILOT PROGRAM REAUTHORIZATION ACT OF 1997

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to consideration of Calendar No. 164, S. 1178.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1178) to amend the Immigration and Nationality Act to extent the visa waiver pilot program, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

EN BLOC AMENDMENTS NOS. 1254, 1255, 1256

Mr. MCCONNELL. There are three amendments at the desk, a Kyl-Leahy amendment No. 1254, a Hutchison amendment No. 1255, and an Abraham-Kennedy amendment No. 1256. I ask unanimous consent the amendments be considered as read and agreed to en bloc, the bill be considered read a third time and passed as amended, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed at this point in the RECORD.

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

The amendments considered and agreed to are as follows:

AMENDMENT NO. 1254

At the end of the bill insert the following section:

SEC. 3. REPORT ON AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

(a) Within six months after the date of enactment of this Act, the Attorney General shall report to the Committees on the Judiciary of the Senate and the House of Representatives on her plans for and the feasibility of developing an automated entry-exit control system that would operate at the land borders of the United States and that would—

(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States; and

(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.