

were strictly a case of endorsing his views as opposed to mine. But the FEC has never been a body where that has been a litmus test applied to Presidential nominees.

Whether or not this nominee is confirmed will not determine the real issue for Congress—and that is whether we will pass meaningful campaign finance reform laws to restore the public's faith in our elected system of Government.

The fundamental problem we face is not whether Bradley Smith is on the FEC, but whether or not this body, before we adjourn this Congress, is ever going to address the fundamental campaign laws that some of us would like to see modified, including the McCain-Feingold legislation, which has been before this body in the past.

It is time, in my view, to confirm these nominees to ensure that this agency has a full complement of dedicated, talented Commissioners sworn to uphold the laws on the books.

It is time to get on with the work of the Senate to reform our campaign finance laws and give the FEC the resources it needs—both financially and statutorily—to restore the public's confidence in our electoral system.

I yield the floor at this time.

The PRESIDING OFFICER. The Chair recognizes the Senator from Kentucky.

Mr. MCCONNELL. Mr. President, let me say briefly to the ranking member of the Rules Committee, I listened carefully to his statement. I thank him very much for respecting the process by which we have selected our nominees for the Federal Election Commission. He made it clear that, had the choice been his, he would not have picked Professor Smith. I will make it clear a little later that had the choice been mine, I would not have picked Commissioner McDonald. This is the way the FEC is supposed to work. I thank my colleague for honoring that tradition.

The PRESIDING OFFICER. Under the previous order, the Senate is to recess at 12:30.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I be recognized at that point to use such time as I am allotted.

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

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:49 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. INHOFE).

NOMINATION OF BRADLEY A. SMITH, OF OHIO, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION—Continued

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Wisconsin is recognized.

Mr. FEINGOLD. Thank you, Mr. President.

Today we are debating a nomination that may be just as important to the cause of campaign finance reform as any bill that has been considered by the Senate in recent years. Tomorrow's vote on the nomination of Brad Smith may be just as significant for campaign finance reform as any of the votes we had on those bills.

The issue here is the nomination of Brad Smith to a 6-year term on the Federal Election Commission, and I oppose that nomination.

Like other speakers, I take note of the photograph of Brad Smith's family shown today on the floor only to make a point that this nomination is certainly not analogous to treatment that has been given to judicial appointments, where we have had to wait for years and years for a confirmation vote. Mr. Smith was just nominated a couple of months ago. So this has not been a long drawn out delay of his nomination that would do harm to him, his family, or anybody else. In fact, I rejected that kind of approach to his nomination because, as far as I know, Professor Smith is a perfectly reasonable man in terms of his integrity and his academic ability and the like. He deserved a vote on the floor and he is going to get it, a lot faster than many judicial nominees that President has sent to us.

The problem is that Professor Smith's views on Federal election laws as expressed in Law Review articles, interviews, op-eds, and speeches over the past half decade are startling. He should not be on the regulatory body charged with enforcing and interpreting those laws.

So when words are used on the floor such as "vilification," or questioning his integrity, or any other excuse not to get to the real issue, I have to strongly object. This debate is simply on the merits of what Professor Smith's views are of what the election laws are or should be.

Over the course of the debate—and I note that a number of my colleagues will be joining me on the floor to set out the case against Professor Smith—we will explain, and I hope convince, our colleagues and the public that this nomination has to be defeated.

Let me again make it clear, because I think there was some attempt to suggest the opposite, that I hold no personal animus towards Professor Smith. It is not a matter of personality. I am sure he is a good person. I do not question his right to criticize the laws from his outside perch as a law professor and commentator. But his views on the very laws he will be called upon to enforce give rise to grave doubt as to

whether he can carry out the responsibilities of a Commissioner on the FEC. It just isn't possible for us to ignore the views he has repeatedly and stridently expressed simply because he now says he will faithfully execute the laws if he is confirmed.

We would not accept, nor should we accept, such disclaimers from individuals nominated to head other agencies of government. Sometimes a cliché is the best way to express an idea. Professor Smith on the FEC would really be the classic case of the fox guarding the hen house.

Let me illustrate this by pointing out the views of Bradley Smith that caused me and many others who care about campaign finance reform to have a lot of concern about his being on the FEC.

Professor Smith has been a prolific scholar on the first amendment and the Federal election laws, so there is a rich written record to review. Let's start with one of his most bold statements. In a 1997 opinion in the Wall Street Journal, Professor Smith wrote the following:

When a law is in need of continual revision to close a series of ever changing "loopholes," it is probably the law and not the people that is in error. The most sensible reform is a simple one: repeal of the Federal Elections Campaign Act.

That is right. The man who we may be about to confirm for a seat on the Federal Election Commission believes the very laws he is supposed to enforce should be repealed. Thomas Jefferson said we should have a revolution in this country every 20 years. He believed laws should constantly be revised and revisited to make sure they are responsive to the needs of citizens at any given time. Yet Professor Smith sees the need for closing a loophole in the Federal elections laws as evidence that the whole system, the whole idea of campaign finance reform laws, should be completely scrapped. In other words, what would be the purpose of the Federal Elections Commission under his view of the world?

A majority of both the House and the Senate have voted to close the loophole in the law known as soft money. We know that loophole is undermining public confidence in our elections and our legislative process. We have seen that loophole grow until it threatens to swallow the entire system. Many Members think it already has. A majority of the Congress wants to fix that problem. We are willing to legislate to improve an imperfect system. But Brad Smith wants to junk the system entirely and let the big money flow, without limit.

So what are we doing? We are about to put somebody with that view on the body charged with enforcing laws we pass. I don't think this makes any sense.

Another statement by Professor Smith that I think should give us pause, in a policy paper published by the Cato Institute, for whom Professor