General LUPIA. No environmental problems, sir.

Senator CRAIG. No environmental problems, viewed to be essential for mission?

Mr. BURNS. Mr. President, we have checked with Senator MCCAIN and his office. He requires no more time. The vote on this will occur at 6 p.m. this evening, I am told. We are prepared to yield back the remainder of our time, and I yield the floor.

PAYCHECK PROTECTION ACT

The PRESIDING OFFICER. Under the previous order, the clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 1663) to protect individuals from having their money involuntarily collected and used for politics by a corporation or labor organization.

The Senate resumed consideration of the bill.

Pending:

McCain amendment No. 1646, in the nature of a substitute.

Snowe amendment No. 1647 (to amendment No. 1646), to amend those provisions with respect to communications made during elections, including communications made by independent organizations.

The PRESIDING OFFICER. Who seeks time? Who yields time?

Mr. BURNS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Ms. SNOWE. Thank you, Mr. President. I think that the debate on the Snowe-Jeffords amendment has been very important in terms of underscoring the issues that need to be addressed in reforming our campaign finance system. I would like to review for the membership of this body exactly what the Snowe-Jeffords amendment would do, because we have heard so much about the impact of it and the misconceptions about the impact of the provisions included in this amendment.

The fact is, this amendment will affect several categories with respect to advertising by groups across this country during the course of an election designed to influence the outcome of a Federal election. We are not saying they cannot advertise. We are not saying that they cannot engage in political activity. But what we are asking these groups to do is to disclose their major donors if they advertise on either medium, radio or television, 60 days before a general election, 30 days before a primary, in which they identify or mention a candidate for Federal office.

They then would be required to disclose their major donors who contribute more than $500. That is more than twice the threshold for disclosure for Federal candidates.

So, unlike the suggestion of those who are opposed to the campaign finance proposal and the Snowe-Jeffords amendment that this is too invasive, too broad, it is not. In fact, it would meet the Buckley standards handed down in that Supreme Court decision of not being invasive. In that Court decision, they were considering the impact of requiring donors of more than $10 to be disclosed. Obviously, that is broad and invasive. But this would pass constitutional muster.

We are talking about groups that spend money on television or radio broadcasts in which they identify a Federal candidate 60 days before a general election, because, obviously, when those ads are aired at that point in time, they are intending to influence the outcome of an election.

The medium is radio and television. The timing is 60 days before a general election, 30 days before a primary. The ad must mention a candidate's name or identify the candidate clearly.

Targeting: The ad must be targeted at voters in the candidate's State.

And the threshold: The sponsor of the ad must spend more than $10,000 on such ads in the calendar year.

It is very narrow, it is very clearly targeted, very specific. And the Supreme Court has said that you can make a distinction of electioneering communications from other forms of speech. That is exactly what the Snowe-Jeffords amendment does. We are replacing the issue advocacy provisions of the McCain-Feingold legislation, section 201, that could raise constitutional questions. The proposals that Senator JEFFORDS and I are offering today are ones that have been designed by legal and constitutional experts based on court decisions.

What the Snowe-Jeffords amendment would not do, because, again, we have heard so much about what the impact would be and, in many cases, have been very erroneous in some of the circulations in Congress by various groups, it would not prohibit groups from communicating. If they want to advertise, they have every right to do that. They can communicate with their grassroots membership.

It does not prohibit them from accepting funds, corporate or labor funds. It would not require groups to create a PAC. They can continue what they are doing. But they are required to disclose if they are going to identify a candidate 60 days before an election in a television advertisement or radio broadcast.

It would not affect the ability of any organization to urge grassroots contacts with lawmakers in upcoming votes. They can say, ''Call your Senator, call your Member of Congress, using the 1–800 number,'' which is a popular means today. That is certainly allowed. There is nothing to discourage that. If they identify a candidate in a TV or radio broadcast 60 days before an election, then they have to disclose their donors of more than $500, and that is all we are requiring. So it is not invasive; it would not require them to give an advance of the specifics of their advertisement and the text.

What we are requiring in all of this is disclosure so that everybody understands who is financing these advertisements when they are designed to influence the outcome of an election.

It guards against sneak attacks. Doesn't everybody have the right to know? Absolutely. And that is why the Supreme Court made that distinction in Buckley and in other cases, to draw that bright line, which is what the Snowe-Jeffords amendment does.

The Court has never said that there is one route towards what can be distinguished in terms of electioneering communications. The fact of the matter is, it said you can make that distinction, that the U.S. Congress has the prerogative to make that distinction in a very narrow, very targeted way.

This amendment would pass constitutional muster. I think that is what causes some anxiety for some people, because they are opposed to this amendment because it will require disclosure of major donors.

Since when has disclosure been antithetical to good government, to campaign financing? Because that is the thrust of this amendment. It is disclosure. I think we all can concur that secrecy does not invite the kind of campaign that we want to see in America. We are entitled to know who finances these campaigns when it comes to major donors, when they are running ads that influence the outcome of these campaigns.

The fact is, these groups have spent at least, based on what we know because it is a guesstimate because they did not have to disclose, $150 million—$150 million. The best we can guess, because, again, it does not require disclosure, is a third of all the money that was spent was spent on campaign advertising in the last election cycle, and we do not know where one dime comes from. We don't have the identity of donors, and yet they play a key role in influencing Federal elections.

We had $150 million spent on issue ads in the 1996 election, and $400 million was spent for all the candidates: for the President, the Senate and the House. And yet, of this $150 million—this is probably a conservative estimate; this is based on the Annenberg Public Policy Center study; probably the most definitive study on issue advertising and issue advocacy. In fact, what they did was they analyzed advertising that was done by 109 organizations—109 TV and radio advertisements from 29 organizations. So we would expect that that estimate is pretty conservative. So what we are saying here is that there should be a means for disclosure.

The courts have never said that disclosure is not in the public interest.

The fact is that the Supreme Court has ruled time and again, and specifically in Buckley, that there is strong governmental interest that justifies disclosure, and that is why we have designed this amendment in the manner that we have.

We also restrict campaign spending by unions and corporations with their nonvoluntary contributions in television and radio advertising in which they mention a candidate 60 days before a general election and 30 days before a primary because, again, there has been a century-long decision by the Government as well as the Congress in which that distinction can be made.

The courts have made that distinction that Congress has the right to restrict spending by those entities because of those benefits that have been conferred on unions and corporations by the Congress, so that we are entitled to draw that distinction. And we do in this amendment.

The courts have ruled that the Congress has the right to enact a statute that defines electioneering as long as it isn't vague or overbroad, that we can develop a more nuanced approach, because I know the Senator from Kentucky has cited cases in which he said that the Court would not support this type of an amendment.

To the contrary, the fact of the matter is, this amendment is not vague and it is not overbroad. Not only will it pass muster, I think the Court would have the advantage of seeing what has happened over the past 22 years since it ruled in Buckley that has made a mockery of the campaign laws in ways in which the system works today. If they had had the advantage of that back when they made the decision in Buckley, I think there is no question that they would have indicated the approach that we have here today.

There is something wrong in a system where we have $150 million influencing Federal campaigns and we do not require disclosure, and that is what the Snowe-Jeffords amendment is all about.

Mr. President, I hope that Members of the Senate will see fit to support this amendment because I think it is in the interest of our campaign system, it is in the interest of good government. We have heard so much about these issues ads and the content of these so-called ''issue ads'' in the last election. Every group has the right to state their position. They have the right to communicate with their lawmakers. They have the right to even participate in the political process in advertisements and voting for or against. But I think they also should be required to identify their major donors when they are identifying a candidate 60 days before an election.

Now, there are different kinds of issue ads. The one that I am mentioning here in the content of so-called ''issue ads'' isn't pure issue advocacy because there is a difference between issue advocacy and candidate advocacy.

In this case, what we are seeing in what is so-called ''issue ads,'' 87 percent of what is called ''issue ads'' actually referred to a candidate or an official—87 percent.

So rather than just talking about an issue and informing the public or running an ad that says, ''Call your Senator or call your Congressman,'' it was one in which it was designed to influence the outcome of an election, because 87 percent of those ads referred to an official or a candidate.

In fact, according to the Annenberg study, 41 percent of those ads were ''pure attack''—41 percent—and yet not one dime is required when it comes to disclosure. So $150 million of this money was spent on so-called ''issue ads,'' and some of them were pure issue ads, but many of those ads, in fact 87 percent, referred to an official or to a candidate that, again, had the impact, or certainly had the intent, of affecting the outcome of an election, or otherwise they would not have mentioned the candidate's name.

Mr. GORTON. Mr. President, will the Senator from Maine yield for a set of factual questions about her amendment?

Ms. SNOWE. I am glad to yield.

Mr. GORTON. Mr. President, would the Senator from Maine tell us, am I correct in reading the requirements relating to electioneering communications, that they apply to broadcast stations, television and radio broadcast stations, but not to newspapers or to direct mail?

Ms. SNOWE. That is correct.

Mr. GORTON. Do they apply to the Internet?

Ms. SNOWE. Excuse me?

Mr. GORTON. Do they apply to the Internet?

Ms. SNOWE. No. Television and radio.

Mr. GORTON. So none of these requirements apply to newspapers or direct mail or to——

Ms. SNOWE. If I can answer the Senator's question, that is correct. I know the Senator from Kentucky has objected to any possibility of impacting the first amendment. We would all agree in that respect, that obviously we want to draw that bright and distinctive line. Because no one wants to chill the first amendment right of freedom of speech. So that is where you can invite the possibility of concerns when it comes to printed material and to direct mail and to newspapers. We also know that most of the money in campaigns is particularly in television, rather than radio, because it has the greatest impact. It can have the greatest effect. So as a result, we do narrowly target those two mediums.

Mr. GORTON. I take it the Senator from Maine believes it is constitutional to target one medium of communication but not to target a separate, a different, medium of communication?

Ms. SNOWE. That is correct.

Mr. GORTON. Does the Senator from Maine believe, in connection with the exceptions for the broadcasting stations' own editorial comments, which is granted here, that in fact she is granting that exception simply because she feels it to be desirable, or does she—let me rephrase the question. Does the Senator from Maine believe that she could have constitutionally applied these rules and regulations to the television station's communication of its own ideas?

Ms. SNOWE. Well, obviously, we are talking about political advertising that is sponsored by organizations. That is what we are identifying here because that is obviously playing the primary role.

Mr. GORTON. I understand what it is being aimed at. My question is, is this exception a part of the amendment of the Senator from Maine because the Senator from Maine believes that it is mandatory that she could not constitutionally apply these electioneering communications to TV stations? Or is she doing it because she does not think it is a good idea to apply it to them?

Ms. SNOWE. I think we are taking the approach in this amendment to draw it as narrowly as possible so that we do not affect the first amendment rights. So, we are taking the most prudent, most cautious approach in designing this amendment.

Mr. GORTON. So the Senator feels that——

Ms. SNOWE. If I might reclaim my time to answer the Senator's question. My concern—and I think shared by others, such as Senator JEFFORDS, who is a lead sponsor of this amendment as well—we are concerned about the political advertising that is in these campaigns, hundreds of millions of dollars, where there is no disclosure, that influences the campaigns. So we are creating a separate category of advertising called ''electioneering communication,'' in response to the question.

Mr. GORTON. I think I do understand the Senator's feelings on that. I was simply asking whether she is exempting the television stations because she thinks she is required to by the first amendment.

Ms. SNOWE. Yes.

Mr. GORTON. Or she thinks it is a good idea.

Ms. SNOWE. I think it is the most cautionary approach.

Mr. GORTON. Thank you.

Ms. SNOWE. The courts have allowed and made those distinctions in the past where we can draw a line in terms of methods of communicating and have allowed different rules for public airwaves. We are focusing on the most egregious abuses that have been identified in these campaigns in the past.

If anything, I think the 1996 cycle highlighted the extent of the problem by the amounts of money that were placed in issue advertising that ordinarily would be, I think, a significant component in the campaign. But what has developed in the final analysis, as we all know, is sort of circumventing some of the restrictions that are currently in campaigns by what is masked

as issue ads but really are candidate advocacy ads. That is what we are highlighting in this amendment by requiring disclosures by those groups that support these advertisements on behalf of candidates or in opposition to candidates shortly before the election.

So we create a very narrow timeframe so that we do not engage in any possibilities of interfering with first amendment rights. We limit the medium to television and radio, again, so we do not invite any infringements on freedom of speech.

Candidates-specific. They have to identify the candidate. Again, if that advertisement is targeted to a candidate's State, or in terms of House of Representatives elections, towards that candidate's district, again it is a threshold so that we don't affect small groups. If the sponsor of the ad spends less than $10,000 in a calendar year, they would not be required to disclose.

Again, the Senator from Kentucky has mentioned Court cases like the NAACP v. Alabama in 1958, saying that the courts say you should not be required to supply your donor list because such disclosure could cause the fear of reprisal by its membership. Certainly there are exceptions to every rule, but you can have those exceptions without having the Court rule on its constitutionality. So, yes, there are exceptions, and the Court would require groups to obviously demonstrate that they had reasonable feeling that disclosing their donor base would be a reprisal. But there are exceptions, and there can be exceptions, but the law can be allowed to stand without suggesting that it will be ruled unconstitutional because there is an exception to that rule.

We have drawn this amendment to be as narrow as possible in order to be as protective of the first amendment rights, constitutionally. If even possible we could have gone further but we chose to be narrow so that we don't create any problems with this legislation, because one of the concerns originally with the McCain-Feingold legislation is we would have the ban on soft money, but the issue advocacy provisions very possibly would have been struck down. So we designed this amendment in order to address those concerns.

Mr. President, I yield such time as he may consume to Senator JEFFORDS, the other sponsor of this amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise to urge my colleagues to support this fair and reasonable amendment. I think it is important for us to take a close look at what this does to make sure that we understand that it is really hard for anyone to be against it as near as I can tell. It is not the end-all of the situation that we face or the problems that need to be handled, by any means, but it does take into consideration doing something where nothing is done now to alert the public to who is behind the things that are being thrown on television.

I can just imagine a candidate, and this happens now, I am sure, when they think they are running their campaign, they had it all organized and they are watching carefully the amount of money their opponent has, and then they wake up one morning thinking they are in fine shape and every channel they turn on on the television has this ad attacking them at the last moment, the last couple of weeks before the election, and they don't know who it is coming from or what to do about it; they were not aware of it.

All we say is, OK, that can happen; but at least 45, 50, 60 days before it happens, you know it will happen. That is all we are saying. So that you don't get the surprise attacks by somebody who is running so-called issue ads that did not place them under the FEC regulations with respect to supporting that candidate.

That is the real world we are faced with. It happened last time. It happened to the tune of $135 million. The least we could do, the very least, is to say at least you ought to know it is coming, first; and No. 2, where it is coming from so you have an idea when you get this last-minute flurry of advertising you are ready to do the best you can to protect yourself against it.

Again, I want to commend the Senator for the continued leadership on this very important issue. Senator SNOWE mentioned yesterday and today it is the duty of leaders to lead, and that means making some difficult choices in doing the right thing. On the issue, Senator SNOWE has been a true leader. Crafting a compromise is often difficult. I thank the Senator from Maine for leading this body to a logical resolution, one which is sensible and one which is so commonsensical it is hard to understand why anybody would be against it,

As was discussed yesterday, the basic tenets of the Snowe amendment are boosting disclosure requirements and tightening expenditures of certain funds in the weeks preceding a primary and general election. The amendment strengthens the McCain-Feingold bill in these areas in a reasonable manner. I could not support the McCain-Feingold bill until something was put into that area which is going to be the most used area. It is the first time it was used in the last election and we saw $135 million or more come in to the election. You have to remember that power is what those who are spending money seek. The money is going to follow that group which is most effective in gaining that power. Our job is to know where it comes from.

The last Presidential election shows how terrible our means are to trace the money now. This is an opportunity to trace effectively, to know where it is coming from, you have a chance to understand where it came from. The last few election cycles have shown the spending has grown astronomically in two areas that cause me great concern: First, issue ads that have turned into blatant electioneering; second, the unfettered spending by corporations and unions to influence the outcomes of elections.

As an example of how this spending has grown, a House Member from Michigan in 1996 faced nearly $2 million in advertisements alone before the fall campaigning season had begun. Campaigning really starts early and then there is a big boost at the end. Early on you want to knock the candidate out before he has a chance to get on the scene, and at the end it is because you know a large percentage of the people who vote really don't pay much attention until the last couple of weeks. The Snowe-Jeffords amendment addresses these areas in a reasonable, equitable, and, last but not least, constitutional way.

Mr. President, citizens across this Nation have grown weary of the tenor of campaigns in recent years. This disappointment is reflected in low voter participation and the diminished role of individuals in electing their representatives. Increasing the information available to the electorate will help return the power of this democratic aspect to the people who should have it—the voters. Expanded disclosure will bring daylight to this process. Increased disclosure will rid corruption; more disclosure will protect the public and the candidates.

How can we deny our electorate the ability to know the sponsors of electioneering communications? Give the people the information they need to better evaluate those Federal candidates that they will be voting on. Each of us should ask or be fully informed before we vote on a bill or amendment. How can we as Members of Congress stand here and say that the public should not have all the information they need before stepping into the voting booth?

Additionally, the disclosure required in the Snowe-Jeffords amendment will help deter actual corruption and avoid the appearance of impropriety that many feel pervades our campaign finance system. Armed with this information, voters are guaranteed access to the truth. This change will restore the public's confidence in the election process and their elected representatives.

As noted yesterday, the Annenberg Public Policy Center report figured there were somewhere between $135 to $150 million spent during the 1996 elections on so-called issue ads. This is a conservative estimate prepared very specifically not to lead to any exaggeration. The Annenberg report found that nearly 87 percent of these ads mentioned a candidate of office by name, and over 41 percent were seen by the public as pure attack ads. You ought to know who paid for them so we can better judge whether or not to believe them. This is the highest percentage recorded among a group that also

included Presidential ads, debates, free time segments, court candidates, and new programs. Clearly, these ads were overtly aimed at electing or defeating targeted candidates, but under current law these ads were not subject to disclosure requirements of any nature.

The second part of our amendment considers an area Congress has long had a solid record on: imposing more strenuous spending restrictions on corporations and labor unions. Remember, under the law, these are not given the same freedom of speech rights that individuals are, and rightfully so. Corporations have been banned from electioneering since 1907; unions, since 1947. As the Supreme Court pointed out in United States v. UAW, Congress banned corporate and union contributions in order to ''avoid the deleterious influences on Federal elections resulting from the use of money by those who exercise control over large aggregations of capital.''

Our amendment would ban corporations and unions from using General Treasury funds to fund electioneering communications in the last 60 days of the general election and the last 30 days before a primary. They still have the right to foster and to approve PACs, organizations for their employees or members of the union, to contribute to, in order that they individually, working together in the PACs, can influence the election process.

The Snowe amendment takes a reasoned, incremental and constitutional step to address the concerns many of my colleagues have voiced on campaign finance reform proposals.

Mr. President, some of our colleagues have expressed constitutional concerns with our amendment. Let me assure Members that we have taken great pains to craft a clear and narrow amendment on this issue in order to pass two critical first amendment doctrines that were at the heart of the Supreme Court's landmark Buckley decision, vagueness and overbreadth. Vagueness could chill free speech if someone who would otherwise speak chose not to because the rules aren't clear and they fear running afoul of the law. We agree that free speech should not be chilled and that is why our rules are very clear.

Any sponsor will know with certainty if their ad is an electioneering ad. There would be no question the way we have delineated within the bill.

Overbreadth could unintentionally sweep in a substantial amount of constitutionally protected speech. Our amendment is so narrow that it easily satisfies the Supreme Court's overbreadth concerns. We have asked the experts to check and give us advice on this. It is not just merely our opinion. We strictly limit our requirements to ads run near an election that identify a candidate—ads plainly intended to convince voters to vote for or against a particular candidate.

As the Court declared in Buckley, the governmental interests that justified disclosure of election-related spending are considerably broader and more powerful than those justifying prohibitions or restrictions on election-related spending.

Disclosure rules, the Court said, enhance the information available to the voting public. Who can be against that? Disclosure rules, according to the Court, are ''the least restrictive means of curbing evils of campaign ignorance and corruption.'' And our disclosure rules are immensely reasonable.

As James Madison said:

> A popular government without popular information is but a prologue to a tragedy or a farce or perhaps both.
>
> Knowledge will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power which knowledge gives.

Mr. President, our amendment will arm the voters in order to sustain our popular Government. I fear that without our amendment, and campaign finance reform generally, the disillusionment of the voting public will grow, along with the scandals, and the participation of our voting public will continue to decline, to the extent that we will be embarrassed. It is close to that point now when, many times, only half of the people even bother to go to the polls.

I ask that each Senator carefully consider the beneficial effects that our amendment will have and support us in moving this debate forward.

Mr. GORTON. Mr. President, I yield such time off of Senator MCCONNELL's time as I may use.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, it is with intense regret that it's my view that this amendment, representing a good-faith attempt by two of my friends and my Republican colleagues, it seems to me, is subject to even more widespread and deeper constitutional objections than the original McCain-Feingold bill—a bill that seems, to this Senator at least, to be unconstitutional on its face.

The fundamental objection to all of these attempts to limit the freedom of speech, of course, is that they fly in the face of the unrestricted language of the first amendment, language that does not—though the Senator from Maine might wish to permit it to do so—permit exceptions to every general rule.

This amendment, however, seems to me to violate the 14th amendment in many respects, with respect to both equal protection and due process. This amendment imposes broad and what some may consider to be onerous disclosure requirements with respect to what it calls ''electioneering''—on electioneering in certain ways through the mass media, but not at all in other ways, and even in the ways in which it covers electioneering by certain groups and organizations and not by other groups and organizations.

The Senator from Maine said, during the course of her comments, that she does not think that she could constitutionally apply these requirements to electioneering by mail. She has not applied them to electioneering through newspapers, nor has she applied them to electronic electioneering through the Internet, but only to electronic electioneering by television or by radio. She does that, she says in all candor, because those seem to be the most effective methods of electioneering, the methods of choice by those who have engaged in what the law now calls ''express advocacy'' and what she calls ''electioneering.''

Well, Mr. President, it seems to me hardly to be subject to argument that you can say that the Government can regulate your speech in one medium, but cannot or will not regulate it through another medium. That is a fundamental denial of the most fundamental of all of our constitutional rights. It does, however, illustrate the flaw in this entire debate, and that is that effective electioneering should be banned, or severely controlled, and that certain kinds of speech are so unfair or so late in a political campaign that we ought not to allow them; and if we have to allow them, we ought to impose on them such heavy restrictions as to discourage them, even though we are going to permit exactly the same kind of communication, as long as it is done in a relatively ineffective fashion. To claim, Mr. President, that the Constitution of the United States, in the first and 14th amendments, permits those distinctions is to fly in the face of all rationale, all logic, and all constitutional law.

But the amendment doesn't stop there. Even with respect to radio and television electioneering, it makes an exception. What is that exception? It is any news story, commentary, or editorial distributed through the facilities of a broadcasting station. So now we will have a law that clearly states that no matter how expensive, no matter how unfair, no matter how late in a campaign, a television station or a television network can do whatever it wishes without any of the restrictions of this statute; but no one else can without being subject to the restrictions of this amendment. Is there something that is so much superior in an editorial appearing on a television station over similar opinions expressed by a labor union, or by the Christian Coalition, or by any other political organization, that one should be discouraged and the other should be encouraged?

Mr. President, that is a terrible policy in any political debate, and it is clearly a policy that is so discriminatory as to run afoul of the equal protection clause of the 14th amendment. And, Mr. President, this discrimination doesn't even stop there in distinguishing between a communication paid for by a labor union or the Christian Coalition with one paid for by the facilities of the television station and network. Oh, no. The prohibitions do apply to a

television, or a radio station, or a network owned or controlled by a political party, a political committee, or a candidate.

So, Mr. President, we have the spectacle of all of these requirements being applied to a radio station or a television station owned by a candidate, but not applied to the National Broadcasting Company and, say, Tom Brokaw, the company owned by General Electric. So a corporation can purchase a television station or a network and do whatever it wants in politics. But a candidate can't and a political party can't.

Mr. President, how can that possibly, under any circumstances, be valid under the equal protection clause? How does that grant due process to candidates, political parties, or to any other organization, except for a corporate owner of a television station, a radio station, or a network?

The Senator from Maine also deals with the NAACP case and says, well, yes, the Supreme Court has ruled rather expressly that you cannot require a group expressing its point of view on a political subject to list its membership. She says every rule has its exceptions and there are certain kinds of organizations where that should be the case, but there are other kinds where it should not.

Last June, in testimony I think, on a bill like this, top officials of two organizations, Public Citizen and the Sierra Club Foundation, refused to expose the identities of their members.

''As I am sure you are aware, citizens have a first amendment right to form organizations to advance their common goals without fear of investigation or harassment,'' Public Citizen President Joan Claybrook told GNS.

We respect our members' rights to freely and privately associate with others who share their beliefs, and we do not reveal their identities. We will not violate their trust simply to satisfy the curiosity of Congress or even the press.

Evidently, the sponsors of this amendment feel that they need pay no attention to that proposition. But I look through the NAACP case without finding the slightest hint that the Supreme Court will oblige the sponsors of this amendment. The Supreme Court in that case said:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ''liberty'' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . It is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters . . . . In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgement of such rights, even though unintended, may inevitably follow from varied forms of governmental action.

The Court has recognized the vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action that might interfere with freedom of assembly, it said, ''A requirement that those in adherence of particular religious faiths or political parties wear identifying armbands is obviously of this nature. To compel the disclosure of membership in an organization engaged in the advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may, in many circumstances, be indispensable to the preservation of freedom of association.''

(Ms. COLLINS assumed the Chair.)

Mr. GORTON. Now, Madam President, that is not a statement of the Supreme Court of the United States that is going to admit exceptions and say, oh, well, we really didn't mean it in a political race, we really didn't mean it in connection with an advocacy organization like the Christian Coalition or the labor unions; though, perhaps, we did mean it with respect to television networks. They will not do that.

Madam President, with respect to this attempt to limit freedom of speech, the views of the American Civil Liberties Union are particularly eloquent, and I do want to share just a handful of them at this point on this specific amendment.

We are writing today . . . to set forth our views on an amendment to that bill dealing with controls on issue advocacy which is being sponsored by Senators SNOWE and JEFFORDS. Although that proposal has been characterized as a compromise measure which would replace certain of the more egregious features of the comparable provisions of McCain-Feingold, the Snowe-Jeffords amendment still embodies the kind of unprecedented restraint on issue advocacy that violates bedrock First Amendment principles.

They go on eloquently to discuss exactly this proposition.

They say, ''The Court''—referring to the Supreme Court—''fashioned the express advocacy doctrine to safeguard issue advocacy from campaign finance controls, even though such advocacy might influence the outcome of an election. The doctrine provides a bright-line objective test that protects political speech and association by focusing solely on the content of the speaker's words, not on the motive in the speaker's mind or the impact on the speaker's audience, or the proximity to an election.''

Madam President, this proposal is blatantly unconstitutional. It is overwhelmingly discriminatory among organizations engaged in identical activity. It is overwhelmingly discriminatory in treating the forum or the particular medium by which a group advocates its views differently depending solely on the sponsor's views on the effectiveness of that particular medium in influencing the outcome of an election. It discriminates between a commercial corporation ownership of a television or radio medium and a political ownership of the same medium.

Madam President, it is exactly these prohibitions that the first amendment of the United States to the Constitution of the United States was designed to prohibit. And, of all forms of speech, the first amendment was aimed primarily at political speech. Here we have an attempt not only to ration political speech but to discriminate against certain forms of political speech and in favor of other forms of political speech, thus accomplishing the goal of violating not only the first amendment but the 14th amendment as well.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Madam President, I will yield time to the Senator from Michigan. I just want to make a couple of points in response to the Senator from Washington and to Senator JEFFORDS.

Mr. LEVIN. I wonder if I might ask unanimous consent that immediately after the Senator from Maine is finished with her remarks I be recognized for 20 minutes.

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

Ms. SNOWE. The time off I yield to the Senator.

The PRESIDING OFFICER. Is that acceptable to the Senator from Maine?

Ms. SNOWE. With one exception: We would like to respond to the Senator from Washington briefly and Senator JEFFORDS briefly. We both have made our remarks. I want to yield to the Senator from Michigan 20 minutes.

Mr. LEVIN. Madam President, I ask unanimous consent that after the Senators from Maine and Vermont are finished with their responses to the Senator from Washington, I be recognized for 20 minutes and that the time be taken from the time of the Senator from Maine.

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

The Senator from Maine.

Ms. SNOWE. Thank you, Madam President.

Madam President, in response to what the Senator from Washington mentioned in terms of our amendment and the constitutional questions, it is interesting to note that his arguments suggest that in fact he prefers a broader amendment, which I think is interesting.

So I would certainly ask the Senator from Washington if he could tell us where in the Constitution it is impermissible to draw these distinctions and to draw these lines? The Constitution doesn't require us to address every problem. It certainly allows us to address some of the problems. And we know where some of the problems develop in campaigns today. The problems develop in the amount of money that is placed in television and radio advertising. That is what we are attempting to address.

So I think it is interesting that the Senator from Washington is talking about printed materials, newspapers, and direct mail. In fact, we are saying that isn't the source of the problem in these campaigns. The source of the problem is where you have $150 million being spent in television advertising by groups that do not have to disclose their donors That is all we are requiring—disclosure.

That is the thrust of our amendment. We are entitled to draw those distinctions. It would not be unconstitutional. We don't need to find something in the Constitution to justify every policy decision that we make.

Mr. JEFFORDS. Will the Senator from Maine yield on that point?

Ms. SNOWE. I am glad to yield to the Senator from Vermont.

Mr. JEFFORDS. I have known my good friend from Washington for 30 years, I guess. He is a master of the facts. Let us take a look at one of the glaring examples of that in his dissertation.

He takes a case involving the NAACP during the 1950s, when we had huge racial unrest, and the Supreme Court, in examining the case to expose all of the members of the NAACP in the South, said, when you have a paramount interest here of protecting people from bodily harm, then there is no way that you can require them to expose their membership so that you can go beat them up. This is a paraphrase.

In Buckley—someone raised that issue in this case—it said no. We are talking about different rights. We are talking about the rights of the public and the sacred right of casting a vote to know all of the information that can be available to them when they make decisions. That is a vital right, a sacred right. So that right overcomes any concern about releasing the names. You have to know. The voting public can't make decisions if they hear all of this coming out of the air at them and they do not know who said it.

So I don't think there is any question. But that is just an example of the erudite on constitutional law running through all of this, because I think this is clearly a situation where it is not in violation of the Constitution.

Ms. SNOWE. I thank Senator JEFFORDS for those comments. He is entirely correct on that issue. Obviously, there were legitimate fears of bodily harm and economic retribution in the 1950s in Alabama. That is what that case was all about. The court recognized that concern, and exceptions can be made, and have been made.

In fact, in response to the issue that was raised by the Senator from Washington and the Senator from Kentucky, several legal experts—Burt Neuborne, from New York University School of Law; Mr. Ornstein, of the American Enterprise Institute; Dan Ortiz, University of Virginia School of Law; and Josh Rosenkranz, from the New York University School of Law and the Brennan Center—wrote a response to these concerns.

These are legal and constitutional scholars in response to some of the groups suggesting that somehow they would fear the same reprisal. They said:

> These groups, like any other group, may be entitled to an exemption from electioneering disclosure laws if they can demonstrate a reasonable probability that compelling disclosure will subject its members to threats, harassment, or reprisal; but the need for these kinds of limited exceptions certainly do not make general disclosure rules contained in the Snowe-Jeffords amendment unconstitutional.

So, yes, exceptions can be made without making a broad ruling with respect to the constitutionality of any legislation that we might pass here.

To further buttress this point in terms of anonymity of donors, the courts have indicated in the past that there is no generalized right to anonymity. The Senator from Vermont mentioned the Buckley case upheld that.

Another case that has been identified here is McIntyre v. Ohio Elections. Justice Scalia said:

> The question relevant to our decision is whether a right to anonymity is such a prominent value in our constitutional system that even protection of the electoral process cannot be purchased at its expense.

The answer is clearly no.

He went on to say:

> Must a parade permit, for example, be issued to a group that refuses to provide its identity, or that agrees to do so only under assurance that the identity will not be made public? Must a government periodical that has a ''letters to the editor'' column disavow the policy that most newspapers have against the publication of anonymous letters? . . . Must a municipal ''public access'' cable channel permit anonymous (and masked) performers? The silliness that follows upon a generalized right to anonymous speech has no end.

Scalia went on to say that not only is it not a right, disclosure can be helpful in curbing ''mudslinging'' and ''character assassination'' and improving our elections.

So the point of it all is that disclosure is in our public interest. It is the public's right to know.

That is essentially the thrust of the Snowe-Jeffords amendment—to require disclosure of major donors over $500. It is in all of our interest to have such a requirement.

Now I yield to the Senator from Michigan 20 minutes.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, first, let me commend the Senators from Maine and Vermont for their leadership. This amendment will strengthen the chances of this bill passing and, indeed, in many ways strengthen the bill itself. I lost track of the number of times this body has debated a need for campaign finance reform and was presented with reasonable bipartisan efforts and, yet, failed to get the job done. This is an issue which will not go away, and it is an issue which should not go away.

Soft money contributions of hundreds of thousands of dollars, indeed, of millions of dollars, have made the contribution limits in Federal election laws meaningless. Both the Republican and Democratic National Committees, national parties, solicited and spent soft money and used it to develop so-called ''issue ads'' which are clearly designed to support or defeat specific candidates. These soft money and issue ad loopholes are used to transfer millions of dollars to outside organizations to conduct allegedly independent election-related activities that are, in fact, benefiting parties and candidates. These soft money and issue ad loopholes are used by tax-exempt organizations to spend millions of dollars from unknown sources on candidate attack ads to influence election outcomes.

The reality of our campaign finance system simply cannot be avoided. Soft money has blown the lid off contribution limits in our campaign finance system. Soft money is the 800-pound gorilla sitting right in the middle of this debate.

Just look at Roger Tamraz, a contributor to both political parties. He is a bipartisan symbol of what is wrong with this system. He served as a Republican Eagle in the 1980s during the Republican administrations, and a Democratic Managing Trustee in the 1990s during Democratic administrations. Tamraz was unabashed in admitting that his political contributions were made for the purpose of buying access to candidates and officeholders, and he showed us in stark terms the all too common product of the current campaign finance system—using soft money to buy access.

Despite condemnation by the committee and the media of Tamraz' activities, when he was asked at the hearing to reflect upon his $300,000 contribution in 1996, Tamraz said, ''I think next time I will give $600,000.''

Now he was taunting us. He was flaunting the fact that he had given $300,000, indicating that it's perfectly legal and you folks like it that way or else you would change it. That's what Tamraz told us. And the truth of the matter is, he was right. It is a sad truth. We can change it if we want to change it. And the next time he will give $600,000 or $1 million to do the same thing, to buy access to candidates and to officeholders.

Most of the 1996 excesses involved activities that were legal, and they all centered around that 800-pound gorilla, soft money. Virtually all the foreign contributions that concerned the committee that just held hearings involved soft money. Virtually every offer of access to the White House or the Capitol or the President or to Members of the Senate or the House involved contributions of soft money. Virtually every instance of questionable conduct in the committee's investigation involved the solicitation or use of soft money.

The opponents want to pretend this monster doesn't exist, but it is sitting

right in the middle of this debate. It is not going to be removed until we address it.

The bipartisan McCain-Feingold bill would do an awful lot to repair this system. It is not a new bill. It has been before this body for years now and it has received sustained scrutiny from Members on both sides of the aisle.

The truth is that the soft money loophole exists as long as we in Congress allow it to exist. The issue advocacy loophole exists because we in Congress allow it to exist. Tax-exempt organizations spend millions televising candidate attack ads days before an election without disclosing who they are or where they got their funds, because we in Congress allow it.

It is time to stop pointing fingers at others and take responsibility for our share of the blame for this system. We alone write the laws. Congress alone can shut down the loopholes and reinvigorate the Federal election laws.

When the Federal Election Campaign Act was first enacted 20 years ago in response to the Watergate scandal, Congress enacted a comprehensive system of laws including contribution limits and full disclosure of all campaign contributions. The requirements are still on the books, at least in form. Individuals are not supposed to give more than $1,000 to a candidate per election. Corporations and unions are barred from contributing to any candidate without going through a political action committee. Campaign contributions and expenditures have to be disclosed.

At the time that these laws were enacted, many people fought against those laws, claiming that they were an unconstitutional restriction on first amendment rights to free speech and free association. And the law's opponents, including the ACLU, took their case to the Supreme Court.

The ACLU is sometimes right and the ACLU is sometimes wrong, but they are always eloquent. And the reason they are always eloquent is that the first amendment is eloquent. But so are clean elections an eloquent idea. So are elections which are free and clean and democratic an eloquent idea.

So the Supreme Court, in Buckley, had to weigh the ACLU opposition to the campaign contribution limits against the need for elections which were free and clean, both of corruption and the appearance of corruption—both. And the ACLU lost that issue in Buckley.

It is frequently forgotten around here that there was an attack on the campaign contribution limits, which are now the law, that attack was led by the ACLU in the Buckley case, and the ACLU lost. The Supreme Court in Buckley upheld contribution limits and disclosure limits. It upheld them despite the eloquence of the ACLU in opposition to those limits in Buckley.

Now, this is what the Supreme Court said in Buckley:

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

And then the Supreme Court said the following in Buckley:

> Of almost equal concern is . . . the impact of the appearance of corruption, stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.

And the Court went on:

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

So the Supreme Court weighed the free speech arguments of the opponents of campaign contribution limits and weighed that against the argument about the need to have elections which are free and clean, and to avoid the appearance of corruption. And they decided in Buckley that we, Congress, ''could legitimately conclude that the avoidance of the appearance of improper influence is critical if confidence in the system of representative government is not to be eroded to a disastrous extent.''

The same Court upheld tough disclosure requirements, effectively prohibiting anonymous or secret contributions to candidates and parties, despite arguments in Buckley that disclosure collides with first amendment rights of free speech and free association. The Court in Buckley said the following:

> Compelled disclosure has the potential for substantially infringing on the exercise of first amendment rights. But we have acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the free functioning of our national institutions is involved. The governmental interests sought to be vindicated by the disclosure requirements are of this magnitude.

So, despite the arguments of opponents of contribution limits and opponents of disclosure who base their arguments on first amendment concerns, the Supreme Court in Buckley said you can limit contributions and you can require disclosure because the governmental interests sought to be vindicated, the free functioning of our national institutions, is involved. And Congress can consider that. They used a balancing test, and that is the test that they would use when we pass McCain-Feingold.

Now, relative to the question of the so-called magic words test on issue ads, it is true that two circuits have said that the Supreme Court has ruled that only if certain magic words are present can you then limit those ads to being paid for by regulated contributions. But another circuit, the ninth circuit, in the Furgatch case, has held that this list of magic words referred to so frequently here ''does not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate.''

And of equal importance to the fact that the circuits are divided on the question of what constitutes issue advocacy and what constitutes candidate advocacy is the fact that the Federal Election Commission just recently, on a bipartisan basis, reaffirmed its commitment to a broader test that goes beyond the magic words test to unmask ads that use the guise of issue ads to advocate the election or defeat of a Federal candidate.

The Supreme Court has not yet ruled on whether the FEC regulation is constitutional. But when you have at least one circuit and the FEC saying that you can have a broader test than the ones that have been adopted in the other circuits, there is a division of authority here which means that at least there is a reasonable chance that the Supreme Court will affirm the FEC regulation.

I wonder how much time I have remaining?

The PRESIDING OFFICER. The Senator has 7 minutes and 27 seconds.

Mr. LEVIN. I thank the Chair.

Relative to the Snowe-Jeffords amendment, this amendment strikes an acceptable balance between the need to protect the integrity of our electoral process and the need to protect the rights to free speech. It would address issue ad abuse by creating a new category of electioneering ads, defined as ads that refer to a clearly identified candidate up for election and which are broadcast on the regulated media of television or radio close in time before an election.

Now, why radio and television? The answer is that the Supreme Court itself has held that, due to the fact that these media, radio and television, are regulated, are licensed, and that the spectrum is limited, you can regulate these media in ways in which you cannot regulate newspapers or the printed word. The Supreme Court has ruled that there is a difference between Government regulating licensed media and unlicensed media, and where Government issues a license—gives out a license of great value for public media—it can indeed regulate the media in a reasonable way, ways it can't possibly even think of regulating newspapers or other print media, which are not regulated media.

Indeed, the FCC has regulations on what can be said on radio and television. There are rules against obscenity on radio and television. There are rules about the numbers of commercials and the types of commercials on children's television. There are all kinds of rules for the regulated media of television and radio which do not exist relative to newspapers. So, it is not an uncommon distinction. It is a

distinction which has been affirmed by the Supreme Court and it is not the effectiveness which is so much the issue, it is the fact that they are regulated, licensed media which, in my judgment at least, represents a significant difference.

The Snowe-Jeffords amendment would impose a limited set of contribution limits and disclosure requirements on commercials on these licensed media. No corporate or union funds could be used to pay for them. Donors who provide more than $500 would have to be disclosed. These limits are well within the bounds of the contribution limits and disclosure requirements which have been upheld in Buckley as a constitutional means for protecting the integrity of our electoral process.

Madam President, this is not the first time that loopholes have eroded the effectiveness of a set of laws. This happens all the time. The election laws are just the latest example. We saw that true with lobbying disclosure. We saw that true with gift bans. You adopt a set of rules and then people who want to try to evade those rules or push the envelope find loopholes. And then Congress has a responsibility to come along to try to close these loopholes in order to carry out the original intent of the statute.

The question is whether or not we are going to do this now with the campaign contribution laws. We passed a law saying there is a $1,000 contribution limit to a campaign and now there is really no limit on how much you can contribute. All you have to do is give your millions to a party and have the party, then, spend the money on ads which are indistinguishable from ads attacking or supporting candidates. These ads are indistinguishable. You can put up two ads next to each other, ask any reasonable person, ''Do you see the difference between this candidate support ad and this issue ad?'' and people will look at those ads and say, ''There is no difference at all.''

We saw that in committee hearings, which the Presiding Officer and I and others participated in, in the Thompson committee, where we put up side by side a so-called candidate ad and an issue ad, with three words difference, one of which had to be paid for with limited funds and the other one which could be paid for with soft money or unregulated funds, and we had expert witnesses, including two former Members of this body, Senator Kassebaum and Vice President Mondale, who could see no distinction in those ads. And there is none.

So we now have a farce. We have a sham. The campaign contribution limits, for all intents and purposes, do not exist. There is no $1,000 limit on giving money to a candidate. Just give $1 million to the candidate's party, have that party put a so-called issue ad on in that candidate's election, and it is indistinguishable from the so-called candidate support ad which has to be paid for with regulated funds.

The question is whether we are going to do anything about it. The time for shedding crocodile tears about the 1996 campaign funding raising is over. We ought to wipe away these tears from our eyes and see clearly what the American people see.

Over 80 percent of them, according to a recent Los Angeles Times poll, believe the campaign fundraising system needs to be reformed; 78 percent of the American people think we ought to limit the role of soft money. A majority of this body wants to limit it. We saw that in the vote yesterday.

The question now is whether or not the majority will of this body and the majority will of the American people are going to be carried out, and that is where we are.

I hope that the chief sponsors—I am one of them, but I hope that the key named sponsors of this amendment will stick to their position and will insist that we finally be able to have an up-or-down vote on the enactment of McCain-Feingold.

Last year, the Senate took up the issue of campaign finance reform, but never got past superficial gamesmanship.

The misnamed Paycheck Protection Act, as their version of campaign finance reform, was offered last year to the McCain-Feingold as a killer amendment that singled out unions in an effort to punish them for their participation in the 1996 elections, perhaps even for the last victory won on the minimum wage. The amendment was not even limited to campaigns—it sought to defund unions and stop them from spending money on any political activity, including for example lobbying the Senate to enact another minimum wage increase. The purpose of the amendment wasn't to change the law, but to kill the bill—and that's what it did.

This year, the same legislation was offered by the Republican leadership as their version of campaign finance reform. It is a killer bill—not intended for enactment but to kill campaign finance reform.

A way around that killer legislation has been found by Senator SNOWE, Senator JEFFORDS, Senator FEINGOLD, Senator MCCAIN, myself and others working on a bipartisan basis. Hopefully, the Snowe-Jeffords amendment will prevent campaign finance reform from being derailed again.

Campaign finance reform is an issue that could convert a dedicated optimist into a doomsayer. But it is not doomsday yet. We have a bipartisan bill that provides the key reforms. We have a bipartisan coalition willing to defeat last year's killer amendment. We have an election around the corner in which our constituents can let opponents of reform know what they think of their opposition.

So let's turn off the crocodile tears about the 1996 elections. Let's stop complaining about weak enforcement of the election laws, when the wording of those laws makes them virtually unenforceable. Let's stop feigning shock at the law's loopholes, while allowing them to continue. It is time to enact campaign finance reform. That is our legislative responsibility and our civic responsibility.

Madam President, I would like to ask my friend from Maine about one of the changes that her amendment would make to the McCain-Feingold campaign finance reform legislation, to make it clear for the record the reason for that change.

Ms. SNOWE. I would be happy to respond to my friend from Michigan for that purpose.

Mr. LEVIN. I thank the Senator. The Snowe-Jeffords amendment, of which I am a cosponsor, proposes removing from the McCain-Feingold legislation all of Section 201, a section which would have codified several legal tests for determining when an expenditure expressly advocates the election or defeat of a candidate. The reason for striking those provisions is not because you or any of the other cosponsors of the Snowe-Jeffords amendment do not want to stop candidate attack ads that pretend to be issue ads, but because you are willing to leave that battle for the courts, is that right?

Ms. SNOWE. My friend from Michigan is correct. Stopping issue ad abuse is critical to meaningful campaign finance reform. But distinguishing candidate ads from issue ads based on ad content is the Supreme Court's approach in Buckley versus Valeo; it is an approach that the courts are now examining; and I am willing to defer to the courts at this point.

Mr. LEVIN. The courts have divided on whether the Buckley test, which includes providing so-called ''magic words'' which make an ad subject to the federal election laws, is the only way to determine when an ad is covered, or whether, as the Ninth Circuit decided in the Furgatch case, the Buckley magic words do not ''exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate.'' Just a week or so ago, the Federal Election Commission reaffirmed its commitment to a broader test—one that goes beyond the magic words. I urged FEC to take that position, and I think it's the right one to take. Am I correct that it is not the Senator's intention or the intention of any of the cosponsors of the Snowe-Jeffords amendment to send a message critical of the FEC's position?

Ms. SNOWE. That is correct—our amendment is not intended to convey any criticism of the FEC. The Buckley magic words test is a very narrow one, and has proven completely ineffective in stopping phony issue ads that attack candidates. My amendment offers a new approach to this problem, by creating a new category of ''electronic ads'' that name candidates in broadcasts close in time to an election. But my amendment does not foreclose or

criticize other approaches to the problem. The FEC and the courts must continue to wrestle with clarifying when ads advocate the election or defeat of a candidate, and I fully support that effort. In fact, it is because the courts are still wrestling with the constitutional issues that makes me comfortable with waiting awhile longer before we legislate.

Mr. LEVIN. The Snowe-Jeffords amendment does not, then, imply any disagreement with the FEC, the Ninth Circuit or any of the rest of us who believe that the magic words test is not enough to stop candidate attack ads masquerading as issue ads, and that such a narrow test is not constitutionally required.

Ms. SNOWE. That is correct. The Snowe-Jeffords amendment is fully consistent with the view that the Furgatch decision and the FEC regulation may be a constitutional approach for detecting ads that pretend to discuss issues, but are really attacks on candidates. If that's where the Supreme Court ends up, I will be glad to see it, but it will be a separate approach from the Snowe-Jeffords amendment's treatment of broadcast ads that name candidates just before an election.

Mr. JEFFORDS. I join in the remarks of my friend from Maine.

Mr. LEVIN. I thank both Senators for that clarification.

I thank, again, the leaders of this effort to reform a system that is long overdue for reform. I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, Senator LEVIN and I had a discussion about the Furgatch case back in October. I am going to talk a good deal about the Furgatch case a little later.

My good friend and colleague Senator ENZI from Wyoming is here and would like to speak. I yield him whatever time he may need.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Thank you, Madam President.

Madam President, I rise in opposition to the amendment that is on the floor and to the McCain-Feingold substitute on campaign finance. Rather than ''reform'' the way that campaigns are financed, this substitute would infringe on the first amendment rights of millions of American citizens and place enormous burdens on candidates running for office.

While the McCain-Feingold substitute claims to ''clean up'' the elections, it does so by placing unconstitutional restrictions on citizens' ability to participate in the political process. For the past few days, we have heard Members of the Senate bemoan the fact that various citizens groups and individuals have taken out ads criticizing them during their elections. I have to admit that I can sympathize with my colleagues who have been the object of often pointed and critical campaign ads. In fact, during my last campaign, some ads were aired against me that were downright false. That is why I support truth in advertising, but this isn't truth in advertising. At the same time, I believe that in a free society it is essential that citizens have the right to articulate their positions on issues and candidates in the public forum.

The first amendment to our Constitution was drafted to ensure that future generations would have the right to engage in public political discourse that is vigorous and unfettered. Throughout even the darkest chapters of our Nation's history, our first amendment has provided an essential protection against inclinations to tyranny.

Just a moment ago, the Senator from Michigan mentioned loopholes that we are plugging up. One of the things that always disturbs me about legislation, while legislation is being designed, loopholes are being thought out, loopholes nobody intends to disclose until after they have an opportunity to use them.

I suggest to you that this piece of legislation and the amendment before us is subject to loopholes. There are people who have already decided how they can get around it. These are not the ethical people. These are the unethical ones. That is unenforced responsibility, that is what unethical activity is. It is also what ethical responsibility is, unenforced responsibility. You can't make somebody who intends to be bad be good, not if they intend to be.

What we do by placing some of these restrictions on people is say to those who are willing to conform to the rules that they have limitations and those who don't have, don't have limitations. ''Oh, well, we will build in penalties, we will make this tough, we will take away the right of those people who intend to follow rules the opportunity to address an issue while it is timely, an issue that really concerns them,'' and an issue in this day and age may cost more than they can give to that candidate. We will take that right away from them. But the person who isn't worried about being punished after the fact will go ahead and do exactly what they have been doing all the time. So we are going to put in place a rule that takes away a constitutional right, adds additional burden, builds bureaucracy and takes away the freedom of speech. We are doing it in the name of making contests fairer. But, again, there are people out there thinking of the loopholes as we speak, and there are a lot of them in this.

The Supreme Court has consistently interpreted the first amendment to protect the right of individual citizens and organizations to express their views through issue advocacy. The Court has maintained for over two decades that individuals and organizations do not fall within the restrictions of the Federal election code simply by engaging in this advocacy. No time limits, no disclosures, they just do not fall within the restrictions of the Federal election code simply by engaging in advocacy.

Issue advocacy includes the right to promote any candidate for office and his views as long as the communication does not ''in express terms advocate the election or defeat of a clearly identified candidate.'' As long as independent communication does not cross the bright line of expressly advocating the election or defeat of a candidate, individuals and groups are free to spend as much as they want promoting or criticizing a candidate and his or her views. While these holdings may not always be welcome to those of us running in campaigns, they represent a logical outgrowth of the first amendment's historic protection of core political speech.

Madam President, this amendment, which parades under the guise of reform, would violate these clear first amendment protections. The amendment impermissibly expands the definition of express advocacy to cover a whole host of communications by independent organizations. The McCain-Feingold amendment attempts to expand bright-line tests for issue advocacy to include communications which, in context, advocate election or defeat of a given candidate. Are we comfortable with giving a Federal regulatory agency the power to determine what constitutes acceptable political speech?

The substitute gives expansive new powers to the Federal Election Commission. This is one Federal agency which has abused the power it already has to regulate Federal elections. Just last year, the Fourth Circuit Court of Appeals strongly criticized the Federal Election Commission for its unsupportable action against the Christian Action Network. The network's only crime was engaging in protected political speech.

The Court of Appeals required the FEC to pay the network's attorney's fees and court costs since the FEC's prosecution had been unjustified. Congress should not condone flagrant administrative abuses by giving the FEC expanded new powers and responsibilities.

What we have talked about for a year and a half while I have been here is the inability to really look into situations that appear to be pretty flagrant. Now we want to expand their right, after they have not been able to do the job and have enforced their actions in court actions that have been decidedly abusive, we want to give them more power.

The McCain-Feingold substitute also includes within its new definition of express advocacy any communication that refers to one or more clearly identified candidates within 60 calendar days preceding an election. These provisions would allow the speech police

to regulate core political speech during the most crucial part of the election cycle. The amendment that is on the floor right now also talks about that most crucial part of the election cycle.

They would also place an economic burden on thousands of small radio and television stations which carry these ads. I don't think we in Washington should be placing any more restrictions on America's small businesses. Our Founding Fathers drafted the first amendment to protect against attempts such as these to prohibit free citizens from entering into public discourse on issues that greatly affect them.

I cannot support legislation that stifles free speech of American citizens and gives expanded new powers to the Federal bureaucracy. For these reasons, I must oppose the McCain-Feingold substitute and the current amendment. I ask my colleagues to join me in paying tribute to the first amendment and opposing the McCain-Feingold substitute and this amendment and any other amendment that unconstitutionally restricts the rights of citizens to participate in the democratic process. I thank the Chair, and I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Madam President, I thank my good friend from Wyoming for his important contribution to this debate. He obviously understands the issue well, and I don't say that because he clearly shares my own biases on this subject. I thank my good friend from Wyoming.

Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator has approximately 1 hour and 28 minutes remaining.

Mr. MCCONNELL. Madam President, there has been a lot of discussion about what some have called sham issue advocacy. Among the most appalling spectacles we have witnessed on the Senate floor in recent years is that of Senators standing around casting judgment on whether particular ads by citizens groups transgress some notions of what is appropriate.

Sham issue advocacy is the reformer's favorite pejorative term of art for first amendment protected speech which those pushing the regulatory scheme in McCain-Feingold and the Snowe substitute do not regard as legitimate. They say it is sham speech because—brace yourself—it might actually affect an election. Well, by all means.

We are admonished that any communication by a private citizen or group that might have any impact on a Federal election should be regulated by the Federal Government, should be reported to the Federal Election Commission. The citizens who gather together to pay for it to exercise their constitutional right of association ought to be disclosed to the Federal Government, so the argument goes, so that they may be judged.

Many in the media beat the drums for Government regulation of this so-called sham issue advocacy. Roll Call last month actually had the audacity to besiege the Congress to get this speech—now listen to this—to get this speech under control. Of course, if you really want to have influence, if you really want to affect the course of an election to favor certain candidates over others, repeal certain legislation or certain issues and you are wealthy, you can always buy a newspaper or become a newspaper editor, write editorials, headlines, stories.

A lot of people would like to get those sham editorials under control. I thought about that from time to time over the years, but the first amendment would not allow it, and I don't know of anyone advocating it, certainly not Roll Call.

Fortunately for the media, they benefit from a provision in the Federal Elections Campaign Act, I might call it a loophole, that exempts their issue advocacy, their express advocacy, and only theirs, from the definition of expenditure.

The presumption underlying the notion that issue advocacy needs to be gotten under control is a remarkably arrogant one, or perhaps, in some instances, an ignorant one. The premise is that the politicians, all of us, own these elections and, therefore, politicians must control them, and politicians must not be drowned out by all this other independent speech issue advocacy by private citizens and groups.

Good heavens, the politicians may wish to keep the race on a particular issue or two or perhaps they rather not talk about legislative issues at all. Perhaps they prefer to keep the emphasis on personality, resume or some other nonissue qualities.

And there could be some citizen group with all their ''sham'' issue advocacy spoiling the election, messing the election up, fussing the election up with issues, for goodness sake—with issues. A group of citizens may feel strongly that character is an issue, one that should be injected into a particular race, and so they broadcast, through paid ads, some misdeed of a candidate because it is relevant to character. Reformers write such communications off as ''negative'' and somehow unbecoming in a democracy.

They do this without the candidate's permission. The temerity of these folks presuming they have a constitutional right to participate in elections, to weigh in on issues, to influence public opinion. Private citizens and groups interjecting themselves into American elections? How dare they do that. What do they think this is? A democracy?

A so-called compromise is being shopped around—actually it is the one we are considering—it is a compromise insofar as it seeks to pick up some additional Republicans, enough to invoke cloture at some point down the road. Its proponents claim it addresses the constitutional shortcomings of McCain-Feingold. Its authors have created a new label, a sort of new category of speech that exists nowhere save for the talking points here on the floor. They rephrase ''sham'' issue advocacy, calling it instead ''electioneering.''

Electioneering. What sinister overtones this term must evidently hold to reformers. This is positively subversive stuff, this ''electioneering.'' It warrants, in the reformer view, Federal regulation. Those who contribute to it should, we are told, be disclosed to the Federal Government.

We are advised by proponents of McCain-Feingold and the Snowe-Jeffords substitute or addition, that this ''sham'' issue advocacy, this ''electioneering'' is a new phenomenon, a new scourge which must be routed out, regulated, and disclosed to a Federal agency, the FEC.

Here is a news flash: Issue advocacy—''sham'' or otherwise—is neither novel nor ripe for Federal regulation. The legal minds at the Brennan Center who are building the case for McCain-Feingold and the Snowe-Jeffords proposal do not like the Buckley case. They do not respect the Buckley case. And their mission is to overturn the Buckley case.

Their theory—really a desperate hope, actually—is that the Court will look at 20 years of election activities since the Buckley decision and decide things differently, even obliterate the ''bright-line'' standard, the ''express advocacy'' tripwire.

More likely is that the Court will go the other way toward my view and that of those who think the first amendment that passed back before 1800 is America's premier political reform—not the Federal Election Campaign Act of 1974.

The Court is not going to look at the proliferation of issue advocacy and say, ''Whoa, we need to get that under control.'' No. I think the Court is going to say, ''We told you so.''

The Court, in Buckley two decades ago, anticipated that which the reformers now identify as a horrible ''loophole,'' which has recently opened up somehow and must be closed.

In Buckley, the Court anticipated exactly what we are discussing this afternoon. It said in that case:

> It would naively underestimate the integrity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign.

The Court was emphatic in Buckley that issue advocacy—''sham'' or otherwise—was at the core, the very core, of the first amendment. To regulate it in any way is unconstitutional, even a ''reform'' so seemingly innocuous as ''disclosure'' of donors.

In NAACP v. Button, in 1963, which was quoted in Buckley, the Court said:

Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.

The Court went on to say in Buckley:

. . . the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.

So the Court anticipated exactly what has happened.

Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.

The Court said in Buckley:

Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.

The Court went on the say:

[W]hether words intended and designed to fall short of invitation would miss that mark is a question both of intent and effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.

The Court went on:

The constitutional deficiencies described in Thomas v. Collins can be avoided only by reading [the 1974 independent expenditure provision regarding advocacy of election or defeat] as limited [very limited] to communications that include explicit words of advocacy of election or defeat of a candidate. . .

. . . in order to preserve the provision against invalidation or vagueness grounds, [it] must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.

So, Madam President, the Court understood that an issue advocacy was very much to be, to some viewers or listeners, indistinguishable from express advocacy that they said the first amendment requires its protection.

So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, [the Court said] they are free [I repeat, free] to spend as much as they want to promote the candidate and his views. The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitations's effectiveness as a loophole-closing provision . . .

. . . yet no societal interest would be served by a loophole-closing provision . . .

So summing up Buckley's observations about issue advocacy, they anticipated this. They wanted people to have wide latitude to discuss the issues or the pros and cons of candidates for office, up to and including proximity to an election. And they wanted them to be able to do that without having to file with the Federal Election Commission or to conduct their speech with hard-money dollars.

The Supreme Court reiterated the explicit words requirement for a determination of express advocacy in the 1986 Massachusetts Citizens for Life case—citing, again, footnote 52 as a guide. And here is what they said:

Buckley adopted the ''express advocacy'' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons. We therefore concluded in that case that a finding of ''express advocacy'' depended upon the use of language such as ''vote for,'' ''elect,'' ''support,'' etc.

Now, those who advocate McCain-Feingold and the Snowe-Jeffords proposal, which involve regulatory regimes, have precious few court cases upon which to base their arguments. Most prominent among these is the ninth circuit's Furgatch decision, dating back to 1987, which my colleague from Michigan, Senator LEVIN, made reference to a few moments ago. Frankly, it is a mighty slim reference. The Furgatch limb upon which their issue advocacy regulation case rests is a pretty weak limb.

While Furgatch is not my favorite decision, it is certainly not the blank check for reformers who seek to shut down issue advocacy either. Furgatch was an express advocacy case. It hinged on the content of the communication at issue—words, explicit terms—just as the Supreme Court required in Buckley and reiterated in Massachusetts Citizens for Life.

The words in Furgatch were not those contained in Buckley's footnote 52. Indeed, no one—least of all the Supreme Court—ever intended that the list, typically referred to as ''footnote 52'' was exhaustive. That would defy common sense.

Desperate for even the thinnest constitutional gruel upon which to base their regulatory zeal to extend their reach to everyone who dares to utter a political word in this country, the FEC leapt at Furgatch and will not let it go. FEC lawyers misread it, misrepresent it, and are rewarded with loss after loss after loss in the courts.

In last year's fourth circuit decision, which Senator ENZI referred to, ordering the FEC to pay one of its victims, the Christian Action Network's attorney's fees, the ''Furgatch-as-a-blank-check-for-issue-advocacy-regulation'' fantasy, was thoroughly dissected, debunked and dispensed with.

The court in the Christian Action Network case puts Furgatch in the proper perspective.

And let me read some portions of the Christian Action Network case.

On the authority of Buckley v. Valeo and FEC v. Massachusetts Citizens for Life, the district court dismissed the FEC's action against the Network for failure to state a claim upon which relief could be granted, holding that, as ''issue advocacy intended to inform the public about political issues germane to the 1992 presidential election,'' the advertisements were ''fully protected as 'political speech' under the First Amendment.''

Further on in the case, Madam President, the Court said:

Because the position taken by the FEC in this litigation was foreclosed by clear, well-established Supreme Court caselaw, and it is apparent from the Commission's selective quotation from and citation to those authorities that the agency was so aware, we conclude that the Commission's position, if not assumed in bad faith, was at least not ''substantially justified''. . .

Seven years later, and less than a month following the Court's decision in MCFL, the Ninth Circuit in FEC v. Furgatch, could not have been clearer that it, too, shared this understanding of the Court's decision in Buckley. Although the court declined to ''strictly limit'' express advocacy to the ''magic words'' of Buckley's footnote 52 because that footnote's list does ''not exhaust the capacity of the English language to expressly advocate election or defeat of a candidate,'' curiously, the Ninth Circuit never cited or discussed the Supreme Court's opinion in MCFL, notwithstanding that MCFL was argued in the Supreme Court three months prior to the decision in Furgatch and decided by the Court almost a month prior to the Court of Appeals decision. The Ninth Circuit does discuss the First Circuit's opinion in MCFL, but without noting that certiorari had been granted to review the case. Thus, the Furgatch court relied upon Buckley alone, without the reaffirmation provided by the Court in MCFL, for its conclusion that explicit ''words'' or ''language'' of advocacy are required if the Federal Election Campaign Act is to be constitutionally enforced.

The entire premise of the court's analysis was that words of advocacy such as those recited in footnote 52 were required to support Commission jurisdiction over a given corporate expenditure.

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The Court explained that individual words or sentences of the message cannot be considered in isolation, but, rather, must be considered together with the other words and sentences that appear in the communication, in determining whether the message is one of election advocacy:

* * * * *

Then, although noting how ''[w]ords derive their meaning from what the speaker intends and what the reader understands,'' the court declined to place too much importance on intent because ''to fathom [the speaker's] mental state would distract [the court] unnecessarily from the speech itself.'' And, finally, although the Court refused to foreclose resort to contextual considerations external to the words themselves, it explained that external context must necessarily be an ''ancillary'' consideration because it is ''peripheral to the words themselves,'' and it pointedly noted that such ''context cannot supply a meaning that is incompatible with, or simply unrelated to, the clear import of the words.''

Having established that the emphasis must always be on the literal words of the communication, with little if any weight accorded external contextual factors, the court proceeded to outline what it considered to be ''a more comprehensive approach to the delimitation of 'express advocacy.'" In so doing, the court repeatedly emphasized that the message of candidacy advocacy must appear in the speech, in the words, of the communication if the expenditure of corporate funds for that communication is to be prohibited:

The court's almost exclusive focus on ''speech,'' and specifically ''speech'' defined as the literal words or text of the communication, could not have been clearer. . . .

This standard can be broken into three main components. First, even if it is not presented in the clearest, most explicit language, speech is ''express'' for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, speech may only be termed ''advocacy'' if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be ''express advocacy of the election or defeat of a clearly identified candidate'' when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other [kind of] action.

We emphasize that if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements.

It is plain that the FEC has simply selected certain words and phrases from Furgatch that give the FEC the broadest possible authority to regulate political speech and ignored those portions of Furgatch quoted above, focusing on the words and text of the message. The ninth circuit did not use other soft language when describing the framework within which the express advocacy determination is to be made. Madam President, let me just say the case is replete with refutation of the Furgatch decision. Clearly, the Furgatch decision is not controlling when it comes to reaching a decision about the appropriateness of the language in the Snowe-Jeffords proposal.

Madam President, I ask unanimous consent the excerpts of this case that I was going to cite be printed in the RECORD.

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

EXCERPTS

434(c) so as to prevent speech that is clearly intended to affect the outcome of a federal election from escaping, either fortuitously or by design, the coverage of the Act,'' *id.* at 862. Under the facts of the case, these broader observations were obviously *dicta*.

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. . . to the extent that they do represent an intentional departure by the Ninth Circuit from the standard set forth by the Supreme Court in *Buckley* and *MCFL*, they were just that.

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Against this overwhelming weight of (and, in the case of the Supreme Court decisions, dispositive) authority, the FEC argued before the district court and before us the concededly ''novel'' position, . . . that, even though the Christian Action Network's advertisements did not include any explicit words or language advocating Governor Clinton's defeat, the expenditure of corporate funds for these advertisements nonetheless violated section 441b because, considered as a whole with the imagery, music, film footage, and voice intonations, the advertisements' nonprescriptive language unmistakably conveyed a message expressly advocating the defeat of Governor Clinton. That is, the FEC argued the position that ''no words of advocacy are necessary to expressly advocate the election of a candidate,'' . . .

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Stripped of its circumlocution, the FEC's argument was (and is) that the determination of whether a given communication constitutes ''express advocacy'' depends upon all of the circumstances, internal and external to the communication, and could reasonably be considered to bear upon the recipient's interpretation of the message. The right to engage in political speech would turn on an interpretation of the ''imagery'' employed by the speaker. . . . It would depend upon the perceived ''charge'' of the ''rhetoric'' used . . . and upon the timing of the communication . . . The right would be contingent upon one's mere identity or association, as the following exchange between the court and FEC counsel reveals.

''The Court: And [the advertisement is] only bad if you believe that the voters disagree with the message about homosexuality there. For those voters who agree with the message, why is it a negative ad?

''Mr. Kolker: Well, I think, I think it's clear to a reasonable person that the Christian Action Network thinks these things are bad . . . I think that the ardent gay rights activist would view this ad as a message from the Christian Action Network to vote against Clinton. That they believe his views on homosexuals are wrong. . . .

''The Court: That's only if you bring to the table an understanding of what the Christian Action Network is:

* * * * *

''Mr. Kolker: It's a self-defined group using the label Christian Action.''

The FEC thus argues that ''[w]hen included as part of the message, the speaker's identity becomes part of the communication itself, and what matters is not what the viewer or the courts will infer about the speaker's intent, but what a reasonable person, informed about the speaker's identity (and thus potential biases and passions), understands the communication to mean.''

. . . Under certain circumstances, as the following exchange shows, the right could even be withdrawn merely because the speaker expresses disagreement with a candidate over a particular issue:

''Mr. Kolker: . . . If all you're doing is mentioning an issue to say that their candidate's position on it is wrong, it is not a real discussion of the issue, the focus of the ad is the candidate——

''The Court: —So you can't link the candidate with the issue, that's what——

''Mr. Kolker: No, I think you can but not if all you're doing is saying the candidate believes X and X is the wrong position. . . .

* * * * *

''Mr. Kolker: [I]t's clear from the ad that the way that final [rhetorical] question [in the television ad] forcefully is spoken, that from the speaker's perspective, it's the wrong vision. And what I'm saying is the candidate has a position, he's wrong on the position. There's no real issue discussion. It's just an attack on the candidate.'' Oral Arg. Trans. at 15–16.

To quote the following passage, in which the FEC articulates some of the multitude of factors that would be considered under its interpretation in determining whether a given communication was prohibited, is to appreciate the breadth of power that the FEC would appropriate to itself under its definition of ''express advocacy'':

''[E]xpress electoral advocacy [can] consist[] not of words alone, but of the combined message of words and dramatic moving images, sounds, and other non-verbal cues such as film editing, photographic techniques, and music, involving highly charged rhetoric and provocative images which, taken as a whole, sen[d] an unmistakable message to oppose [a specific candidate].''

Opp. Mem. at 8. This is little more than an argument that the FEC will know ''express advocacy'' when it sees it.

C.

The FEC's enforcement action against the Christian Action Network in this case brings into relief the extent to which, under the FEC's interpretation of ''express advocacy,'' political speech would become hostage to the vicissitudes of the Commission, because, although a viewer could interpret the Network's video as election advocacy of the defeat of Governor Clinton, another viewer could just as readily interpret the video as issue advocacy on the question of homosexual rights. Indeed, the commercial and advertisements that the FEC here contend fall squarely within its regulatory purview are precisely the kinds of issue advocacy that the Supreme Court sought to protect in *Buckley* and *MCFL*; and the FEC's interpretation of these advertisements is exactly that contemplated by the Court when it warned of the constitutional pitfalls in subjecting a speaker's message to the unpredictability of audience interpretation, . . .

* * * * *

Yet, the FEC would have us confer power upon it to regulate these advertisements because, in its assessment, ''[t]o the ordinary viewer in 1992, the CAN video unmistakably encourages voters to defeat Bill Clinton. The video communicates the following: A group explicitly aligning itself with Christian, heterosexual, and traditional family values graphically depicts a specific presidential candidate supporting homosexual men vividly asserting their sexual preferences; the message attacks Clinton's moral judgment and alleged policy agenda; those positions involve steps that only a federal elected official could take; the message is delivered to viewers who live in states where Governor Clinton has no contemporaneous authority to set policy; the message is televised shortly before the presidential election; and the message employs powerful symbolism and persuasive devices unique to the medium of video. . . . The video admittedly contains no literal phrase such as ''Defeat Bill Clinton.'' But it contains a special kind of charged rhetoric and symbolism that exhorts more forcefully and unambiguously than mere words.''

Appellant's Br. at 37–38. Or, because, in the words of the ''expert'' whom the FEC retained to assist it in its action against the Christian Action Network.

''[T]his 30 second television spot expressly advocated the defeat of candidates Clinton and Gore in the upcoming presidential general election. It did so by employing the techniques of audio voice-overs, music, visual text, visual images, color, codewords, and editing. In their totality, these techniques said voters should defeat Clinton and Gore because these candidates favor extremist homosexuals and extremist homosexuals are bad for America.''

* * * * *

. . . the FEC's position was based not only ''on a misreading of the Ninth Circuit's decision in *Furgatah*,'' but also on a ''profound misreading'' of the Supreme Court's decision in both *Buckley* and *MCFL*.

From the foregoing discussion of *Buckley* and *MCFL*, it is indisputable that the Supreme Court limited the FEC's regulatory authority to expenditures which, through explicit words, advocate the election or defeat of a specifically identified candidate. In the portion of *Buckley* in which the Court addresses the overbreadth of the Federal Election Campaign Act and adopts its limiting construction of section 608(e)(1)'s term ''relative to,'' the Court does not even use the phrase ''express advocacy,'' upon the purported ''ambiguity'' of which the FEC builds its diffuse definition. In this most important portion of the opinion, *cf.* DNC Br. at 5, the

Court *only* refers to ''explicit words of advocacy,'' ''express terms'' and ''express words of advocacy.'' *See Buckley*, 424 U.S. at 43–44. It is not until the Court interprets the statutory term ''expenditure'' in section 434(e) to include the same limitation as in section 608(e)(1), forty pages later in the opinion, that the Court even uses the phrase ''express advocacy,'' *see id.* at 80. But even there, the Court confirms through footnote 108's cross-reference to footnote 52, in which the Court lists the kinds of words that would warrant exercise of the FEC's regulatory authority, that it meant by the phrase ''express advocacy'' nothing more or less than ''express words of advocacy.'' *In other words, the Court itself in Buckley confirmed that it intended the phrase ''express advocacy'' simply as a shorthand for the ''explicit words of advocacy of election or defeat'' ''of a clearly identified candidate for federal office,'' which it had held earlier in the opinion were required in order to save the Act from constitutional infirmity.*

Were this alone not sufficient to establish that the Court meant by ''express advocacy'' ''express words of advocacy,'' then the Court's subsequent discussion in *MCFL* removes all doubt. There, because it was interpreting the statutory term ''expenditure,'' the Court cited to *Buckley*'s discussion of section 434(e), rather than to that case's discussion of section 608(e)(1), and used the shorthand phrase ''express advocacy.'' *See MCFL*, 479 U.S. at 248–49. The Court then went on to define ''express advocacy,'' again through citation to its footnote 52 in *Buckley*, to mean ''express words of advocacy.'' *See id.* at 249 (citing *Buckley*, 424 U.S. at 44 n.52). It even stated that in *Buckley* it had concluded ''that a finding of 'express advocacy' depend[s] upon the use of *language* such as 'vote for,' 'elect,' 'support,' etc.'' *MCFL*, 479 U.S. at 249 (citing *Buckley*, 424 U.S. at 44 n.52) (emphasis added).

The FEC is fully aware that the Supreme Court has required explicit words of advocacy as a condition to the Commission's exercise of power, as evidenced by its own dissembling before this court.

* * * * *

The FEC argues throughout its submissions that the Supreme Court ''never suggested that communications can constitute express advocacy only if they include specific words from a special list.'' Appellant's Br. at 23. This is true, but it is a red-herring. Most certainly, the Court never said this. But, just as certainly, the Court never suggested that communications with no words of advocacy at all can nonetheless be considered ''express advocacy.'' In fact, as we show, it actually held precisely the opposite.

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The agency even goes so far as to quote the very sentence from page 80 of *Buckley* in which the Court uses the phrase ''express advocacy'' and defines that phrase in the sentence's footnote 108 to mean ''express words of advocacy,''

* * * * *

The FEC resorts to the same slight-of-hand in its discussion of the Ninth Circuit's decision in *Furgatch*. According to the FEC, the court of appeals in that case said that ''courts must take care to avoid an unnecessarily narrow application of express advocacy to prevent 'eviscerating the Federal Election Campaign Act.'" Appellant's Br. at 18. In fact, what the Ninth Circuit said was that ''[a] test requiring the magic words 'elect,' 'support,' etc., or their nearly perfect synonyms for a finding of express advocacy would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the Federal Election Campaign Act.'' 807 F.2d at 863. In light of our discussion herein, the difference is of enormous significance.

* * * * *

That the Commission knows well the Court's holdings in *Buckley* and *MCFL* is further confirmed by the agency's subsequent action in *Furgatch*, which we referenced *supra* at 8–11. Because *Furgatch*, despite its narrow holding, does include broad *dicta* which can be read (or misread) to support the FEC's expansive view of its authority, the agency vigorously opposed *certiorari* in the case. Wishing to have the opinion preserved intact, the Commission in its submissions there, in contrast to its submissions before this court, quoted *Buckley* as ''requir[ing] 'explicit words of advocacy of election or defeat of a candidate.'" . . . The Commission even took the position that *Furgatch* did, as we noted above, interpret the Federal Election Campaign Act's corporate disclosure statutes as ''narrowly limited to communications containing *language* 'susceptible to no other reasonable interpretation but as an exhortation to vote,'"

. . . Moreover, the FEC argued to the Supreme Court that *Furgatch* was fully consistent with *Buckley* and *MCFL* precisely because the opinion focused on the specific language of Furgatch's advertisement and concluded that express advocacy existed only because the advertisement ''explicitly exhorted'' voters to defeat then-President Carter. Thus, there is no doubt the Commission understands that its position that no words of advocacy are required in order to support its jurisdiction runs directly counter to Supreme Court precedent.

* * * * *

. . . the Supreme Court has unambiguously held that the First Amendment forbids the regulation of our political speech under such indeterminate standards. ''Explicit words of advocacy of election or defeat of a candidate,'' ''express words of advocacy,'' the Court has held, are the constitutional minima. To allow the government's power to be brought to bear on less, would effectively be to dispossess corporate citizens of their fundamental right to engage in the very kind of political issue advocacy the First Amendment was intended to protect—as this case well confirms.

Mr. MCCONNELL. I yield the floor.

Ms. SNOWE. Madam President, I am delighted to yield 20 minutes to my colleague from Wisconsin, Senator FEINGOLD. I want to commend him for his perseverance and tenacity to ensuring that campaign finance reform reached the floor.

The PRESIDING OFFICER (Mr. FAIRCLOTH). The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Thank you, Mr. President. I thank the Senator from Maine.

Let me first say that it was an interesting comment by the Senator from Kentucky that those of us trying to pass campaign finance reform don't like Buckley v. Valeo. I don't have strong feelings on liking or not liking Supreme Court cases. I just consider them the law of the land.

In this case, instead of taking the route that some people would like me and others to take of supporting a constitutional amendment to achieve campaign finance reform, something I vigorously opposed, I have instead, working with Senator MCCAIN and others, chosen to find a way to pass a bill that is within the Court's rulings and holdings in Buckley v. Valeo.

So I happen to think that is the controlling law. And the suggestion that somehow we don't consider that to be a valid case is simply wrong. Our efforts for 3 years have consistently been to craft a bill that the United States Supreme Court would say is constitutional in every respect. In fact, the Senator from Kentucky, after years of trying to suggest that the voluntary spending limits and the soft money ban are unconstitutional, now is only focusing on suggesting that a redefinition of phony issue ads is somehow unconstitutional. I think that is not at all an established proposition. I might add, I think our efforts here on this bill, with the help of the Snowe-Jeffords amendment, are getting stronger. Every day we are getting a little stronger on this bill, and it is a good feeling.

So it is my pleasure to rise today to speak in support of the amendment that the distinguished Senators from Maine and Vermont have offered. It reminds me of the tremendous help that the Presiding Officer, the other Senator from Maine, gave us when she had some ideas about how we could improve our bill. This is how you get a good bill. People with good ideas come together and gradually it gets improved, you gain support, until the point where it becomes obvious not only that a majority of the body supports the bill, which we have already achieved, but obviously it is in the interests of the people of this country that we simply get on with the business of the country and pass it. So I am a cosponsor of that amendment that has been offered, along with Senators LEVIN and LIEBERMAN on our side of the aisle and Senators MCCAIN, THOMPSON, COLLINS and CHAFEE on the Republican side.

When the debate on campaign finance reform reached a stalemate last fall, Senators SNOWE and JEFFORDS indicated they did intend to continue through the winter months looking for a solution to the deadlock. Those were not idle words. They were true to their word.

The Snowe-Jeffords amendment that has taken shape over the past 2 weeks is a sincere effort to address the two primary sticking points that have caused our efforts to be delayed: alleged first amendment concerns with the provisions of our bill dealing with issue advocacy and express advocacy, and the use of corporate and union treasury money for what amount to campaign attack advertisements in the closing days of the campaign.

Let me talk for a moment how the Snowe-Jeffords amendment navigates the difficult political and constitutional shoals that face us in this debate.

The first thing the amendment does is more clearly define a category of communications in the law. We call them electioneering communications.

These electioneering communications are communications that meet three tests: First, they are made through the broadcast media, radio and television, including satellite and cable. Second, they refer to a clearly identified official candidate—in other words, they show the face or speak the name of the candidate. And third, they appear within 60 days of a general election or 30 days of a primary in which that candidate is running.

The Snowe-Jeffords amendment provides that for-profit corporations and labor unions cannot make electioneering communications using their treasury funds. If they want to run TV ads mentioning candidates close to the election, they must use voluntary contributions to their political action committees. We firmly believe that this approach will withstand constitutional scrutiny because corporations and unions have for a very long time been barred from spending money directly on Federal elections.

The Senator from Kentucky suggested we lack case law for these propositions, but the Supreme Court upheld the ban on corporate spending in the Austin v. Michigan Chamber of Commerce case. Mr. President, it is noted that a Michigan regulation that prohibited corporations from making independent expenditures from treasury funds prevented ''corruption in the public arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.'' According to the Court, the Michigan regulation ''ensured that the expenditures reflect actual public support for the political ideas espoused by the corporations.''

We are merely saying through this amendment that actual public support, shown by voluntary contributions to a PAC, must be present when corporations and unions want to run ads mentioning candidates near in time to an election.

The Snowe-Jeffords amendment goes on to permit spending on these kinds of ads by nonprofit corporations, if they are registered as 501(c)(4) advocacy groups, and other unincorporated groups and individuals. The rules about corporations and unions do not apply in the same way to these groups, but the amendment, but it makes one requirement. It requires disclosure of the groups' large donors whose funds are used to place the ads once the total spending of the group on the electioneering communications reaches $10,000. It only applies if the total spending over a total amount of $10,000.

A few things should be noted about the disclosure requirement that entities other than unions and for-profit corporations are subject to if they engage in these kinds of electioneering communications. The disclosure required here is not burdensome; it simply requires a group placing an ad to report the spending to the FEC within 24 hours, and to provide the name of the group, or of any other group that exercises control over its activities, and of the custodian of records of the group, and finally of the amount of each disbursement and the person to whom the money was paid.

Second, this disclosure requirement is triggered by the spending of $10,000 or more on these kinds of ads. If a small group that spends only a few thousand on radio spots wants to do that, and they stay under $10,000, they will never have to report a thing. There is no new requirement there.

Third, the disclosure of contributors required is really quite limited. It does not require all contributors of all amounts to be disclosed. Only large donors who contribute more than $500 must be identified, and they have to be identified only by name and address. And a group that received donations from a wide variety of purposes, including some corporate or labor or treasury money, can set up a separate bank account to which only individuals can contribute, pay for the ads out of that account, and then they only have to disclose only the large donors whose money is put in that account. So any individual who doesn't want to be disclosed can easily ask that the group not spend his or her money on that kind of activity.

The net result will be that the public will learn through this amendment who the people are who are giving large contributions to groups to try to influence elections. If a group is merely a shell for a few wealthy donors, as we suspect that many of the groups who ran the nastiest ads in 1996 were, then we will know who these big money supporters are and we will be in a lot better position to assess their real agenda. On the other hand, if an established group with a large membership of small contributors under $500 wishes to engage in this kind of activity, it doesn't have to disclose any of its contributors under this amendment because it can pay for the ads freely from small donor money routed to the special bank account for individual donors.

Mr. President, I believe these disclosure provisions will pass constitutional muster. But the Senator from Kentucky and also the Senator from Washington earlier in the debate today have argued that even these reasonable disclosure requirements somehow violate the Constitution, and they cite the case of NAACP v. Alabama from 1958. That is a very important case in the history of our country and the history of the first amendment, and one with which I fully agree, but the conclusion that the Senator from Kentucky draws from it with respect to the Snowe-Jeffords amendment is simply wrong.

At the height of the civil rights struggle, the State of Alabama obtained a judicial order for the NAACP to produce its membership lists, and fined it $100,000 for failing to comply. The NAACP challenged that order and argued that the first amendment rights of its members to freely associate to advance their common beliefs would be violated by the forced disclosure of their membership lists. They pointed out many instances where the revealing of the identities of its members exposed them to economic reprisals, loss of unemployment, and even threats of physical coercion. The Court held that the State had not demonstrated a sufficient interest in obtaining these lists that would justify the deterrent effect on the members of the NAACP exercising their rights of association.

Now, Mr. President, everyone in this body should know that the Snowe amendment is totally different from what the State of Alabama tried to do in the NAACP case. The Snowe amendment doesn't ask for any membership lists. The Senator from Washington stood up and read quotes about how the NAACP case doesn't allow a requirement that a group disclose its membership list, but the Snowe amendment doesn't do anything of the kind. It is a simple red herring with regard to what we are asking in the Snowe amendment. All the Snowe amendment does is ask for is the very limited disclosure of the names and addresses of large contributors to a specific bank account used for the single purpose of paying for certain kinds of electioneering communications.

So, Mr. President, contrary to the claim that this is somehow like the NAACP case, most membership groups won't have to disclose anything if they receive sufficient small donations to cover their expenditures on these types of communications. And even if contributors want to give more, they don't have to be identified, as long as their money is not used for the kinds of ads that would be subject to this kind of disclosure.

Finally, the disclosure requirement can be avoided altogether by crafting an ad that does not specifically refer to a candidate during the short window of time right before an election. This is nothing like asking the NAACP or the NRA or anyone else to divulge their complete membership lists. This is a false analogy.

Mr. President, the Supreme Court has shown much more willingness to uphold disclosure requirements in connection with election spending than the Senator from Kentucky has been willing to recognize so far in this debate. In Citizens Against Rent Control v. the City of Berkeley, a 1981 case, for example, the Court struck down a limit on contributions to committees formed to support or oppose ballot a measure. But the court, Mr. President, noted specifically:

> The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions.

Mr. President, it is worth noting that the opinion in that case was by Chief

Justice Warren Burger and the vote was 8–1. The only dissenter, Justice White, thought the limits themselves on contributions should be upheld. So with regard to this issue, it was essentially unanimous.

In U.S. v. Harriss, the Court upheld disclosure requirements for lobbyists, despite the alleged chilling effect that those requirements might have on the right to petition the Government. Of course, the Buckley Court itself, which the Senator from Kentucky frequently refers to, upheld disclosure requirements for groups who make independent expenditures.

Now, of course, the Court will have to analyze the Snowe amendment when it gets there and the type of communications that trigger it and determine if they pass constitutional muster. I will not proclaim that there is no argument to be made at all that this provision is unconstitutional. Of course there is, and I am sure groups like the National Right to Life Committee will make it. But to say that there is no chance that this provision will be upheld, as the Senator from Kentucky has said, is just not right. There is ample and substantial constitutional justification and precedent for this provision.

As the Brennan Center for Justice wrote in its letter analyzing the Snowe-Jeffords amendment:

> Disclosure rules do not restrict speech significantly. Disclosure rules do not limit the information that is conveyed to the electorate. To the contrary, they increase the flow of information. For that reason, the Supreme Court has made clear that rules requiring disclosure are subject to less exacting constitutional strictures than direct prohibitions on spending . . .. There is no constitutional bar to expanding the disclosure rules to provide accurate information to voters about the sponsors of ads indisputably designed to influence their votes.

Mr. President, it is also important to note that the Snowe-Jeffords amendment contains provisions designed to prevent the laundering of corporate and union money through nonprofits. Groups that wish to engage in this particular kind of advocacy must ensure that only the contributions of individual donors are used for the expenditures.

Because the prohibition in the Snowe-Jeffords amendment is limited to unions and corporations spending money from their treasuries on these kinds of ads, many of the concerns that opponents of McCain-Feingold voiced about the effect of the bill on speech by citizens groups are eliminated. Keep that in mind. One of the things people claimed was the real problem of McCain-Feingold—there has been sort of a shifting bottom line of what the real problem is—but that portion has been modified in Snowe-Jeffords.

Senators who oppose this amendment must be willing to stand on two positions now that I think are both unsupportable. First, Mr. President, those who still oppose McCain-Feingold, if it is amended by Snowe-Jeffords, must defend the rights of unions and corporations using treasury money—not citizens groups like the National Right to Life Committee or the Christian Coalition or the Sierra Club—to run essentially campaign advertisements that dodge the Federal election laws by not using the magic words ''vote for'' or ''vote against'' or to finance those ads through other groups. So that is the conclusion: Corporations and unions, apparently, should just be allowed to do this freely, despite the almost unanimous complaints by Members of the Senate with regard to this question.

Secondly, those who are still holding out, even though they represent a minority of the Senate, in terms of supporting McCain-Feingold as it will be amended, argue that the public is not entitled to know, in the case of advocacy groups that run these ads close to an election, what the identities of these people are. They say that they should not be known to those who are about to vote. Many opponents of McCain-Feingold have trumpeted the virtues of full disclosure and say that is what we need—disclosure; not McCain-Feingold. I have, at times, doubted how serious they were about disclosure because they would never acknowledge the important advances our bill provides with regard to disclosure.

Now, when we vote on the Snowe-Jeffords amendment, we will see how sincere the opponents of this bill are about the importance of disclosure, because the Snowe-Jeffords amendment requires nothing more of advocacy groups than full disclosure. In fact, it requires a lot less because the groups only have to make these disclosures if they run these ads close to an election and if they spend more than $10,000 on those electioneering communications.

Mr. President, our agreement on the Snowe-Jeffords amendment means that a clear majority of this Senate supports bipartisan campaign finance reform. Further, we will vote as a block to defeat any ''poison pill'' offered by opponents. This agreement puts the onus of killing reform, if that is what happens, back where it belongs—on those who would put a partisan attack on unions over the greater good of abolishing soft money.

I urge my other colleagues on the Republican side to join this effort and recognize, as Senators SNOWE and JEFFORDS have done, along with Senators THOMPSON, COLLINS, SPECTER, and the original author, Senator MCCAIN, before them, and that a strong majority of the American people understands, that the McCain-Feingold bill is a balanced, reasonable, and fair step toward reform and that we can achieve that reform if we put our heads together and work out our differences.

Once again, Senator MCCAIN and I are more than willing to talk to anyone who sincerely wants reform or to talk about changes to our bill that will bring us closer to the 60 votes we need to get past the filibuster that opponents have promised. The fruitful negotiations that have produced the Snowe-Jeffords amendment have shown that we are serious about passing McCain-Feingold this year.

Mr. President, with that renewed invitation, I yield the floor.

Mr. MCCONNELL. Mr. President, I yield such time as he may need to Senator GRAMS from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. GRAMS. Mr. President, throughout Minnesota's history, its residents have been considered among America's most civic-minded citizens, who are interested in public affairs and concerned about how government decision-making affects their daily lives. I have been well-served by the counsel of thousands of Minnesotans who have expressed concerns about high taxes, balancing the budget, and, most recently, U.S. military involvement in Iraq.

During the 105th Congress, I have also heard from many Minnesotans who are concerned over the reports of alleged illegal or improper campaign contributions to the Democratic National Committee and White House during the 1996 campaign cycle. These reports have raised the perception among some Americans that access and votes can be bought in Washington and that the system for financing our federal campaigns is corrupt and ''broken.''

As the Senate considers campaign finance reform legislation, I am not surprised that many constituents have contacted me about this issue—but out of great concern for its potential impact upon their First Amendment right of free speech guaranteed by the U.S. Constitution. Regrettably, the consideration of the McCain-Feingold amendment is not the first time that Congress appears to have misinterpreted the will of the people.

Mr. President, I recently received a letter from President Clinton concerning the McCain-Feingold legislation. In his letter, the President urged my support for this measure because it would ''make our democracy work better for all Americans.'' Many of my colleagues received a similar letter last fall from the President in which he encouraged Congress to work with him and ''restore the public trust'' by supporting the modified McCain-Feingold bill.

As someone who has heard first-hand of the public's growing mistrust of their government, I strongly agree with the President's belief that the people's trust in their government should be restored and their participation in our democracy encouraged. However, I respectfully disagree with the President's recommended method for achieving these goals—through passage of new campaign finance laws.

I believe the people's faith in our democracy can be restored through greater enforcement of our existing laws, rather than passage of new laws. Congress should also require frequent and

fair disclosure of every contribution, and allow all Americans to participate in the political process. These measures, not new limits or government controls, will restore the public trust and allow Americans to participate in our democracy.

Most importantly, Congress should ensure that one of our country's most fundamental freedoms, the right to speak freely and openly in our society, is preserved for future generations of Americans. I believe Congress should focus its attention on preserving the First Amendment, which has always been the basis for active citizen participation in our political process.

The First Amendment ensures that, among other things, average Americans can participate in the democratic process through publicly disclosed contributions to campaigns of their choice. It also allows Americans to freely draft letters to the editor, distribute campaign literature, and participate in rallies and get-out-the-vote drives. Minnesota has a long history of its citizens becoming engaged in many of these activities during each election cycle.

Mr. President, we had a lengthy and spirited debate last fall over the McCain-Feingold legislation, in which many of our colleagues on both sides of the issue participated. The Senate wisely voted to reject this attempt to direct attention away from the reports of alleged illegal or improper campaign contributions during the 1996 campaign cycle. In taking this action, the Senate sent a message to the electorate that it will work to preserve the rights of Americans to participate in the democratic process and restore the public's trust in their government.

Despite this clear message sent by the Senate, and although many Americans continue to express opposition to ''reform'' efforts such as the McCain-Feingold bill, the President and some of my colleagues forced Congress, through various delaying tactics, to spend valuable legislative time revisiting this issue again this year.

Mr. President, as I noted last year, proponents of the modified McCain-Feingold bill should be commended for excluding provisions intended to limit candidates spending, requirements for reduced broadcasting time, and the ban on political action committees. However, this measure continues to suppress the rights of Americans to communicate their ideas and express their views. Ultimately, it will control, rather than encourage, greater participation in the democratic process.

And as a couple from Hastings, Minnesota recently wrote to me about the pending McCain-Feingold bill, ''It would be used as a tool to silence all criticism and disagreement by opponents of whatever government regime is in power in Washington at a particular time.''

First, the McCain-Feingold proposal continues to be premised upon the belief that there is too much money spent on American elections. If we accept this assumption, then Congress has decided to assert questionable authority to suppress the rights of Americans to become involved in the political process and make their voices heard. In fact, the belief that there is government justification for regulating the costs of political campaigns was rejected by the Supreme Court in the landmark case of Buckley versus Valeo.

Second, the McCain-Feingold proposal again includes a new and expanded statutory definition for ''express advocacy'' that would place additional restrictions on advocacy groups' political communications.

As my colleagues know, the Supreme Court established in Buckley a ''bright line'' test for protected speech which stated that a political communication must expressly advocate the election or defeat of a clearly identified candidate using such key words as ''vote for'' ''elect'' or ''vote against'' before it would be subject to federal regulation.

Third, the McCain-Feingold amendment places new restrictions upon the ability of national parties to support state and local party activities. Rather than pursue a suspect expansion of government control of national parties, we should recognize that political parties enjoy the same rights as individuals to participate in the democratic process.

For nearly two decades, political parties have been allowed to raise money for party-building and similar activities without limits on the size of contributions.

Additionally, the Supreme Court decision in Colorado Republican Federal Campaign Committee v. FEC, in which the Court found that Congress may not limit independent expenditures by political parties, makes it questionable whether these restrictions would be constitutional.

Finally, the McCain-Feingold amendment does not adequately protect the right of Americans to participate in the democratic process without fear of coercion.

Despite the Supreme Court decision in Communications Workers of America v. Beck almost ten years ago, millions of Americans still have portions of their paychecks taken and used for political purposes for which they may disagree, without their knowledge or consent.

I believe forcing an individual to make compulsory campaign contributions is contrary to our constitutional form of government and the First Amendment freedoms we enjoy as citizens.

For these reasons, I support the Majority Leader's decision to offer S. 1663, the ''Paycheck Protection Act,'' as the underlying bill.

This will allow individuals to regain control of their paychecks, avoid coercion, and exercise their political freedoms.

And unlike the Beck provision contained within the McCain-Feingold legislation, it would apply to all dues-paying employees. It would also reduce unnecessary burdens placed upon employees by requiring an employer to receive an individual's written permission before using his or her dues for political purposes.

Mr. President, there has been some discussion that amendments may be offered to reach a compromise between those who support the McCain-Feingold legislation and others who support greater enforcement of our existing laws.

While I believe compromise is an important part of legislating, I do not believe the Constitution should be compromised simply to give the public the impression that we are reacting to their concerns over allegations of campaign finance irregularities and illegal fundraising.

I believe the American people deserve a full accounting and will receive a full accounting of allegations of campaign finance law violations in the 1996 campaign cycle. However, we should not forget that the public's mistrust of their elected officials has not grown from a lack of laws, but from the activities of those who may have broken our existing laws.

Congress must not use violations of existing law to restrict political speech and participation by those who abide by current law. It is our responsibility to help safeguard the free speech rights of Americans and their ability to participate in the democracy which they have helped to create.

Thank you very much.

Mr. President, I yield the floor.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I thank the distinguished Senator from Minnesota. I listened carefully to his comments, and they were right on the mark. I appreciate his support and contribution to this debate.

Mr. President, I see the distinguished Senator from Kansas on the floor.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 57 minutes and 47 seconds.

Mr. MCCONNELL. I will not yield a specific amount of time. I will just yield time to the distinguished Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I have spoken to this issue before. Before I made very clear my respect and admiration for the distinguished Senator from Kentucky as a stalwart defender of something we call free speech. I want to thank him again for his stalwart efforts. It seems to me that we have been focusing on this debate over and over and over again on perception as opposed to what really is at stake.

I can't imagine what I can add to this today under the circumstances, and go on and on and on ad nauseam, to a certain extent, and I don't mean to purger

anybody's intent or their feelings about this, or even intimate that this is not an important issue.

I would like to repeat a couple of things that I said before. At that time I quoted Thomas Paine in Common Sense. It wasn't Common Cause. It was Common Sense. Thomas Paine said, ''Tyranny, like Hell, is not easily conquered.'' And I was speaking to a resolution that would have defined free speech. We considered it certainly earlier in the session.

I then went on and gave quite a few quotes from American history and people that everybody respects about the value of free speech. I talked a little bit about the infamous Alien and Sedition acts. That was mentioned by Senator GORTON, the distinguished Senator from Washington. I think it has application in this legislation. I said at the time that those acts were passed by a young country that had adopted but didn't fully appreciate the first amendment rights of free speech. They were passed because the Government did not like what some of its citizens were saying about politics, politicians, and Government.

And, goodness knows, we have heard awful sorts of comments in regard to this debate on both sides about the fact that people really do not appreciate some of the criticism that we get in this business. The Government was worried, of course, about national security. But it is instructive to note that the Government's attempt to limit free speech is like walking in a swamp, and we are, in fact, walking toward a swamp in regard to the bill that we are considering. Your good intentions are tugged and pulled from all sides. Abigail Adams, for example, urged the passage of the acts to deal with Benjamin Franklin Bache, an editor who had referred to her husband as ''old, querulous, bald''—well, she had something there—''blind, crippled, toothless Adams.'' I don't think anybody would appreciate that. Bache was arrested, but died before he could be prosecuted, according to historians Jean Folkerts and Dwight Teeter.

Twenty-five persons were charged under the sedition laws. Included was one unlucky customer in a Newark tavern who staggered into the sunlight to make a negative comment about John Adams' anatomy as the President's carriage passed. My goodness, that might have some modern-day application.

Only after the rights of American citizens to speak freely were trampled by their Government did our young country come to appreciate the real meaning of the first amendment.

James Madison and Thomas Jefferson objected to the attack on free speech with their Virginia and Kentucky resolutions. Madison presented the importance of free speech to democratic government. His argument has great relevance to our discussion today, it seems to me, in regard to this discussion as he drew the connection between free speech and elections.

Listen to Madison:

> Let it be recollected, lastly, that the right of electing members of the government, constitutes more particularly the essence of a free and responsible government. The value and the efficacy of this right, depends on the knowledge of the comparative merits and the demerits of the candidates for public trust; and on the equal freedom, consequently of examining and discussing these merits and demerits of the candidates respectively.

That is the essence of free and also political speech. That is the essence of the philosophy advanced by great philosophers like John Milton, John Locke, and John Stuart Mill. If they were here to take part in this debate, they probably couldn't or wouldn't believe it. The concept of a marketplace of ideas is based on unfettered speech and thought.

One of America's greatest jurists, Louis Brandeis, warned us to be ''most on guard to protect liberty when government's purposes are beneficial . . . the greatest dangers to liberty lurk''—lurk, lurk—''in insidious encroachment by men of zeal, well-meaning but without understanding.''

Advocates of this resolution want us to believe the need for Congress to limit campaign spending is so great that first amendment rights are secondary. Further, they argue that limits on campaign spending are really not limits on speech at all. We have gone over and over and over again, back and forth, on the Buckley decision and the Supreme Court.

> A restriction on the amount of money a person or group can spend on a political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.
>
> This is because virtually every means of communicating ideas in our mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information have made these expensive modes of communication indispensable instruments of effective political speech.

In Kansas, I tell my esteemed colleague from Kentucky, a full-page advertisement in the Topeka Daily Capital cost $4,400. One 30-second TV ad to reach across the State costs more than $33,000. I know. I was in a Senate race, obviously. Even speech via the Internet, or the Postal Service, requires the expenditure of resources.

If we adopt this kind of legislation, and it is ratified—or, that was the earlier resolution. Obviously, this wouldn't have to be ratified by the States. What will you tell the business owner who wishes to petition his government for redress of grievances, to criticize a campaign of PAT ROBERTS, SAM BROWNBACK, or MITCH MCCONNELL, or to urge election of another candidate? Will we see that free political speech is only a half-page advertisement? Because I think the limit is $10,000. We wouldn't spend $10,050. Maybe $9,000 is OK. But we say free speech only applies to 15 seconds at the TV station. Who is going to administer all of this? The FEC? Really. We can't even get decisions on a timely basis.

The thought occurs to me, come to think of it, that the distinguished Secretary of Agriculture, Dan Glickman, a good friend and colleague of mine—was it 4 or 6 years ago? I think it was 6 years ago, or maybe 8 years ago. He had an opponent who was very ''brain noisy.'' That is probably not the right way to put it—very ''vigorous'' in his campaign. And a local cable distributor, a local cable TV company, didn't like the way Dan voted on an issue directly affecting his future. It was a telecom issue in the House. Every hour on the hour he just gave him unmitigated grief about it, including a lot of other things that had nothing to do with the legislation. I don't know whether Dan filed the inquiry, or the charge, or the complaint with the FEC after that election, or whatever, but, clearly, this was out of bounds. The FEC in its usual, expeditious manner, I think about 2 or 3 months ago, finally got around to a 6- or 8-year-old case, and made no decision.

So this leads me to question the distinguished Senator. Who is the first amendment for? To be more accurate, if Congress were to act on the principle of the first amendment uniformity, which the proponents of this legislation would do, it would not discriminate against the political speech of some speakers in favor of others. First amendment uniformity would mean that John Q. Public gets the same treatment as the highly paid, vastly influential Joe Anchorman, or the cable operator, or the TV anchorman or the editorialist, or the radio editorialist, or the publisher, or the editor of a newspaper? It might guide campaign ''reform'' legislation if the following resolution were adopted:

> Whereas the First Amendment to the Constitution of the United States says in pertinent part that ''Congress shall make no law abridging the freedom of speech, or of the press,'' and
>
> Whereas the First Amendment makes no distinction between the freedom of speech and the freedom of the press,
>
> Now Therefore Be It Resolved that no campaign reform proposal shall be enacted that treats Joe Anchorman's political speech more favorably than John Q. Public's.

This obviously is not a draft resolution that I think the supporters of the legislation would adopt. But, is the first amendment for everyone equally, or some persons or institutions entitled to special treatment for their political speech? Is John Q. Public entitled to the same first amendment treatment as Joe Anchorman, or is Mr. Anchorman entitled to special treatment because he delivers the news?

Here is the question I have for the distinguished Senator: What happens if John Q. Public wants to express issue advocacy and then says he is John Q. Anchorman? Say somebody solicits a

group of people from a list of migrant workers, the American Farm Bureau, Kansas Wheat Growers, the wheat growers of, say, North Dakota, or of Common Cause, or the tobacco growers of Kentucky. I know that is, I guess, politically incorrect. Obviously, they couldn't start a newspaper. It might go up in smoke. It might be regulated by the FDA.

But, having said that, say that they sell the stock at $100 a crack, $1,000, and they start a newspaper. My dad was an old newspaperman. I am an old newspaperman. I am a journalist. That is what it says in the bio when you read about ROBERTS; that he is an unemployed newspaperman. So, to start a newspaper, all you needed was a hat rack and a hat. A newspaper? No. Not a newspaper. You could print—and a typewriter. Those are the old days—and a subscription list. You don't even need, if you have the money, an advertisement. Well, you don't need a hat rack anymore. You don't need a hat. You don't need a typewriter. You do need a subscription list. If you know some nice ladies that work in an offset shop, you can have your own newspaper. Say you have a bunch of thousand-dollar contributors and you want to start your own newspaper. The Common Cause Daily News is published every week in Kansas. That is a newspaper. They are not affected by this legislation. I want to know, what is a newspaper anyway? What is the definition of a newspaper? Volume, 1, 2, 3, 4, and they started it for 6 months. What about an editorial announcer on a TV station? What about the situation with Dan Glickman who had no redress? I am not saying whether Dan was right or wrong. By the way, that race did not affect the current incumbent who didn't defeat Mr. Glickman. I think not everybody in the world gets the chance to be a Secretary as a consequence. But Dan is enjoying that and doing an outstanding job.

What is a newspaper? Where are the loopholes? Where does John Q. Public become John Q. Anchorman? How do we distinguish?

Mr. MCCONNELL. I say to my friend from Kansas that the example he cited, a cable owner expressing himself without limit about the relevant merits of former Congressman Glickman, would be entirely exempt from anything we are considering here today and entirely current law.

Let me read a short provision. This is from the Federal Election Campaign Act of 1974.

> The term ''expenditure'' does not include a news story, commentary, or editorial—which is what was happening on that cable station—or editorial distributed for the facilities of any broadcasting station, newspaper, magazine, or other periodical, or publication unless such facilities are owned or controlled by political party, or political committee, or candidate.

So, I say to my friend from Kansas, to the extent that proposals like Snowe-Jeffords put groups in a position where they would have to disclose significant numbers of their membership and/or donors as a precondition for criticizing or expressing themselves in proximity to an election, the perfect outlet would be to go into the newspaper business.

I am not suggesting that we put restrictions on newspapers. I don't want to put restrictions on citizens, which is what this debate is all about today. But the first amendment applies to everybody, not just to the press. We get the impression reading the editorials on this issue across the country that the first amendment is the sole province of the press. In fact, the courts have been quite clear about this; it applies to all of us.

So I would say my friend has put his finger right here on a good way around this growing regulatory environment that is being proposed. Just go into the newspaper business and you are free of it all. You can go out and trash whomever you want. You are not going to have to be regulated by the FEC or anyone else. Have at it.

And my guess is there would be a proliferation of so-called newspapers under this.

Mr. ROBERTS. We are going to have a lot of newspapers. We are going to have a lot of commentators. We are going to have a lot, under the Snowe-Jeffords amendment, of ''news stories, commentaries and stories distributed under the facilities of any broadcasting station [that] are exempt from its reporting requirements.''

What about the Internet? What about the Internet? Does the distinguished Senator have a view in that regard?

The reason I ask is, just today, like every Senator, you know, you check the Internet and you check your e-mail and all of that. On the Internet, on somebody's web page, there was sort of a semi-newspaper making commentary about one of our colleagues. It indicated down the road anybody but that individual should be supported in the next election. That is pretty express advocacy, it seems to me. They had some issue tied to it. It was interesting.

I am just wondering. As a matter of fact, a lot of people who started newspapers—I don't know if they call them newspapers but they call them, certainly, free and protected speech under the first amendment on the Internet. Who is going to—how are we going to police that? Would the distinguished Senator have a view on that?

Mr. MCCONNELL. I don't have a clue and I think the courts will be wrestling with that.

I say to my friend from Kansas, you know that GE owns NBC, Westinghouse owns CBS, and Disney owns ABC.

Mr. ROBERTS. Oh, my goodness.

Mr. MCCONNELL. Talk about corporate involvement in the political process. Those three corporations presumably have a good deal more speech than all the rest of us.

Mr. ROBERTS. That could conceivably cause some of the supporters of this legislation to change their minds. Because just yesterday the coauthor of the major spending bill indicated if you just took a look at the legislative agenda of those who are dealing with express advocacy or soft money, you would see that the people who vote for that agenda are bought and paid for in regards to that specific agenda.

Obviously, if a person has a different agenda from those who support this bill and it's a little different—whether it be big labor or labor or, say, many of the nonprofits as opposed to, say, the Chamber of Commerce or whatever—why, that is certainly different.

I am wondering if they now understand that since the major broadcast networks are owned by corporations, that this should not apply to them. I mean, that's dreadful, to really figure out that the major broadcasters are corporate entities. Why, we can't give them free speech. My goodness, it has to be pure as wind-driven snow, as described by these other groups you see, because the legislative agenda would be different.

That was amazing to me, absolutely amazing, that if you support the top five issues of Common Cause on one hand, why, that's fine and we want to certainly encourage that free flow of information. But if you supported the Chamber of Commerce, which may or may not agree with Common Cause, that's different and your vote was bought and paid for, even to the point that if you support this legislation, it will result in lower food costs, lower gas prices, better farm income—I don't know—better health care, protecting the environment.

What do we have here? I'll tell you what we have. We have censorship by agenda of the particular group that either favors or does not favor this legislation. I maintain there is not any Senator here who is bought or paid for by that kind of contribution. I don't know anybody here who would do that. That is a very specious commentary; self-serving, condescending, elitist.

I worry about free speech. I am an old newspaper man. My family started a newspaper, the second oldest in the State of Kansas, the Oskaloosa Independent, based on abolition. My great grandfather, John W. Roberts, came to Kansas to make it a free State. I firmly believe in the first amendment and free speech.

This legislation, well-intended, strikes at free speech. It doesn't define what is and is not a newspaper. We are dealing with the same issue that the Founding Fathers spoke to with the Alien and Sedition Act. Senator GORTON is right; it is not a stretch.

As you can see, I get a little worked up about this. But I think it is a point that every editorialist in every newspaper who thinks they are on cloud nine and protected should stop and consider.

I thank the distinguished Senator from Kentucky for being a protector of free speech.

I yield the floor.

Several Senators addressed the Chair.

Mr. MCCONNELL. I thank the distinguished Senator from Kansas for his important contribution. What he is talking about here is precisely this, that the first amendment applies to everybody, not just to the press, and any misguided effort to make it more difficult for citizens to band together and express themselves without limitation, even though it may be in the neighborhood or proximity of an election, is not going to be upheld by the courts of the United States. So I thank the Senator very much for his contribution.

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

The PRESIDING OFFICER. The Senator has 37 minutes and 10 seconds.

Mr. MCCONNELL. I reserve the remainder of my time.

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Maine.

Ms. SNOWE. I would now like to yield to my friend from North Dakota, Senator DORGAN, 10 minutes.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from North Dakota.

Mr. DORGAN. Mr. President, I gather that the previous discussion was about the Snowe-Jeffords amendment, but it was very difficult to connect. I gathered from the discussion that at least one Member came out in favor of free speech and the first amendment of the Constitution. Perhaps two Members did. I expect we could sign up the other 98. But that has as much relationship to the Snowe-Jeffords amendment as discussing how to make an apple pie. It doesn't have any relationship at all.

This is not about free speech. This is not about free speech at all. This is about disclosure, and the question propounded by the Senator from Maine with her amendment is, why are we afraid of disclosure? Why not ask people who want to interfere with and invest in Federal elections that they disclose who they are and how much money they are investing in Federal elections? That is what the question is.

So then I ask those of you who are opposed to this, what are you afraid of? Why not disclose it? What is wrong with disclosure? This amendment doesn't say you can't contribute, you can't raise soft money, you can't do issue advocacy. It doesn't say that at all. It says you must disclose who you are and what you are spending. What is wrong with that?

Yesterday I mentioned that Mark Twain was once asked to join in a debate. He said, ''Fine, as long as I can take the opposing side.'' They said, ''We didn't tell you what the subject was.'' He said, ''It doesn't matter. The negative side doesn't require any preparation.''

We are on the floor of the Senate, proposing to reform the campaign finance system in this country because it is broken and needs fixing. Those who think it is not broken, look at the record. Look at the statistics. Look at the data.

Let me show a chart that describes an interesting comparison, the number of voters versus the number of dollars in American politics. The number of dollars goes up and the voting participation goes down in this country. You think there is not something wrong with this system? I mentioned yesterday that soft money, a problem that is dealt with in the McCain-Feingold bill and also in the amendment that is before us today—soft money is the political equivalent of a Swiss bank. Soft money is the mechanism by which you create secrecy for contributions, unlimited quantity, that come into campaigns to interfere with Federal elections. It has become the legal form of cheating in American politics.

The amendment before us says let us require disclosure, let us require disclosure in certain circumstances. The underlying bill says let us ban soft money in other circumstances, but it has nothing to do with free speech. Nothing.

Let me read a couple of things, if I might. Here is a so-called issue ad from a group that was formed very close to an election. This ad ran 2 weeks before a general election. It was paid for from a $1.7 million pot of money, almost all of it raised 3 weeks before the election. It came from eight deposits. Eight deposits created a $1.7 million pot of money spent in the last couple of weeks before the election. Here is what they said: ''Can we trust candidate X?'' They used the name. Let me say Thompson, just hypothetically. ''Can we trust candidate Thompson? The ad says Thompson ''has been criticized as inefficient and disorganized by the county auditor,'' and that he was ''accused of Medicare fraud by a home health care worker from his family business. Call Thompson and tell him to support ethics in government.''

That is an issue ad? It's not an issue ad. This is an ad designed specifically to defeat candidate Thompson, paid for by a $1.7 million pot of money collected in eight deposits from secret donors. I ask those who stand up and say things are just fine on campaign finance reform, do you support this? Is this a legal form of cheating you think is fine in campaign finance reform? Does anybody here stand up and support this? Anybody? I guess not.

So, another one: $700,000 from a wealthy individual who calls up a 501(c)(4) organization and says, ''I want to spend $700,000.'' But he doesn't want any fingerprints on it, so he calls up the political equivalent of the Swiss bank and says, ''I want secrecy.'' And $700,000 magically disappears into in a political Swiss bank and then the ads go out. The ads run just weeks before an election, targeted to defeat candidates, called ''issue ads.'' Not issue ads, cheating; $700,000 from one person designed to try to defeat candidates and get around Federal election rules.

Mr. President, $1.8 million was formed by a group that was formed on paper in October 1996. One wealthy donor gave $100,000 to buy negative ads attacking one specific Congressman in the closing weeks of the campaign; 12 deposits put together $1.8 million to be used for these so-called issue ads that represent the form of political cheating that is going on in this country.

Again, it is the political equivalent of the Swiss bank: Put together soft money in large quantities, go out and target and try to defeat people, call them issue ads, and essentially get around the Federal election laws.

Do you think this is the way the system ought to work? Do you think this is just fine? If you think this is fine, then I guess you ought to try to defeat campaign finance reform. And some are trying to do that. I don't question their motives or honesty. They, I think, honestly believe the system is fine, that this is about money being speech. If you have more money, you have freer speech, apparently. And some people have more money than others, so, I guess they apparently are better able to speak in this country.

But that is not what the Constitution is about. At least in this system we have said that there ought to be reasonable restrictions and regulations on the financing of Federal elections. And if you believe that these examples are examples that just fit well within the frame of what we think a reasonable campaign finance system is, then you are about a century behind where we ought to be.

We have already made a decision in this country. We don't want people with $2 million to hide behind a veil of secrecy and say, ''By the way, with my $2 million I want to go out and find these two candidates and I want to undercut them with $2 million worth of advertisements and I don't want my fingerprints on it. I don't want anybody ever to know that I did it, but I want to defeat these two candidates.'' Until these smart campaign lawyers came up with these loopholes, Federal law said you can't do that. But the soft money loophole says there is a new way around these laws, and that is what is creating, I think, the disrespect for the current campaign finance system that requires us to take action here in the Congress. No, not to abridge free speech, but to require, as this amendment does, full disclosure.

Let one Member of the Senate stand up and tell me an answer to this question. Why are we afraid of full disclosure? Do we want to protect the person who took $700,000 and wrote a check and says, ''I want to defeat this person and that person and I don't want my fingerprints on it''? Is that why we oppose full disclosure?

What on Earth would be wrong with requiring full disclosure in the circumstances described by Senator SNOWE and Senator JEFFORDS? Who can stand up on the floor of the Senate and say that is a step in the wrong direction?

It seems to me it is a giant step in the right direction. For this Congress to do nothing, as some on this Senate floor want us to do, I think would be a travesty. Anyone who looks at this system understands the system is broken. Soft money is growing by leaps and bounds. The first 6 months of this year tripled the first 6 months of 2 cycles ago.

Soft money is growing by leaps and bounds, and everyone knows that it is the way around the current campaign finance system. Some say, incidentally, there is not enough money in politics. They have a right to say that. I understand that. They are so dead wrong. There is too much money in politics, and what this amendment and what the underlying bill does is to say, let us decide that there needs to be some rational approach to putting back together again a set of rules on financing Federal elections that give people some confidence that these are elections and not auctions.

Again, the political equivalent of the Swiss bank in American politics is exactly what Senator SNOWE and Senator JEFFORDS are attempting to deal with in this amendment.

Would I have written this amendment differently? Yes, I would have. I think they left out a couple of things, and I would have written it differently. I support this amendment, because I want this Congress to pass campaign finance reform, and this is a step to allow us to get to a vote to do that.

I come here today happy to support the effort that Senator SNOWE and Senator JEFFORDS have made on the floor of the Senate. I have listened to their debate. They have been forceful and persuasive.

Frankly, I am surprised to come and listen to a discussion about the first amendment, free speech. It has nothing to do with free speech. Come and trade recipes, come and ruminate about baseball. It has as much to do about this amendment as the discussion of free speech a moment ago. Nothing Senator SNOWE is proposing and nothing in the underlying bill, in my judgment, impinges free speech.

I think those who have proposed the McCain-Feingold bill and those who propose this amendment do this country a service by saying the current system is broken and we can do a better job in creating rules of campaign finance that will give people in this country more confidence in this system.

I thank very much the Senator from Maine for providing me this time. I hope very much the Senate will not only support her amendment, but we will go on from that point and pass the underlying bill. Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. ABRAHAM). Who yields time?

Mr. McCONNELL. I yield the Senator from Pennsylvania 10 minutes.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Thank you, Mr. President.

Mr. President, first, I commend the job that the Senator from Kentucky, Senator MCCONNELL, has done this year on this debate, today on this debate, and for his stalwart defense of the first amendment.

Let me make a couple of comments about the Snowe-Jeffords amendment and then move on to more general debate.

First, let me say about my colleague Senator SNOWE, she is constantly here in the U.S. Senate trying to find areas to bring people together to try to solve problems and issues that she has concerns about. She has worked tirelessly, I know, on this and on a variety of other issues to try to find common ground and make things work. I commend her in her effort. I don't agree with the approach she has taken, but I think it is a sincere and honest attempt to meet what she perceives is a great problem in this country. We just happen to disagree on what the problem is, and, thereby, the solution she perceives doesn't meet up with what I see as the problem. We see a different problem.

The Senator from North Dakota, maybe unwittingly, said something which I think is exactly the way those who want to restrict the first amendment—to restrict speech—see speech, as other than speech of the candidate. He said, and I am fairly sure I wrote it down at the time, he said, ''Those who want to interfere with Federal elections.'' I just found that remarkable. ''Those who want to interfere with Federal elections,'' as if the election between me and the guy or lady I am running against is really just the two of us and anybody else who wants to speak is interfering with our election: How dare you interfere with my election. Really, that is what this is all about.

If I was just concerned about me and my election, I would vote for the Snowe-Jeffords amendment. It is a great thing for me, because what it says is the labor unions, who are going to be salivating to run nasty ads against me in my election, can't do so. That would be a wonderful break for me. And the other groups that want to get together and run nasty, horrible things about me—and I am sure they can find nasty, horrible things to say about everybody in this Chamber—can't do so. That is a wonderful thing for me.

I would like this to apply to the newspapers and everybody else so nobody can criticize me and I can get up and say what I want and the other guy can say what he or she wants. That is fine; it is just the two of us. But that is not the way democracy works, nor should it work that way.

I think the problem this amendment tries to address is a nonexistent problem. The problem is, as the Senator from North Dakota eloquently said, that they believe there are too many people interfering with our elections. I don't believe there are too many people. I think that is part of the public discourse. It is something I don't like. When my kids see a nasty thing about their daddy on television, I don't like them to see it. Their mom doesn't like to see it. My parents don't like to see it. But I am going to defend on the floor of the U.S. Senate to my dying day the right to say it, because that is how democracy works best.

When plenty of people interfere with the election, the more people we can get to interfere the better, because the public is then heard. It is not always pleasant, not always to my advantage, certainly, but it is important to be heard.

So I stand up today and say, yes, labor unions should be able to run ads, they should be able to run ads right up until the day of the election and voice for their members who voluntarily contribute to their PAC their concerns about issues and their concerns about the candidates for election. It is their right to do so. In fact, I believe it is their obligation to do so.

On the broader issue of the McCain-Feingold bill or the Snowe-Jeffords amendment and others, what they try to do is put up roadblocks. What this reminds me of is a tax bill. You say, ''How does this remind you of a tax bill?'' Do you know what it does when Congress passes a tax bill? What it does is employ a lot of lawyers and accountants to figure out ways to try to beat the bill, because this is what it is about. We put up little roadblocks here and there to catch money to fill in the cracks to fill our coffers. That is how the tax bills work, to try to plug these loopholes or get rid of this subsidy, or whatever, that was ''unintended.''

That is pretty much what they are saying. These were ''unintended things.'' We didn't want all this speech out there, so we just need to plug the loopholes. By plugging the loopholes, all you do is put a lot of smart people to work figuring out how to beat it. That is how soft money was created. Soft money was created because we have a limit on how much money you can give directly to a candidate.

In Pennsylvania, we have Governor races and attorneys general races, statewide races. There is no soft money in Pennsylvania. You don't need soft money in Pennsylvania. If you want to contribute to a candidate, you can give any amount you want. It is reported, everybody knows about it, but there is no need to give money to XYZ organization to indirectly spend the money on something to benefit the candidate. You can give it directly to the candidate.

The reason soft money has grown in importance is because we have a limit of $1,000 per person in each election cycle set 25 years ago. I can tell you some have suggested inflation has tripled during that timeframe. I can tell you campaigns have probably gone up tenfold or more in expense during that

timeframe, and we have kept the contribution limit the same, thus the need for some way around the system. The original campaign finance reform put barriers in place, and so smart people figured out how to get around the barriers.

We can stand up here and say, ''Oh, well, we need to plug this loophole and we need to stop here.'' All we are going to do is create some other legal fiction out there to walk their way around it, in so doing, hiding from the public people's participation in the process.

The greatest campaign finance reform we can do is dramatically increase the limits on contributions. Do you want to solve in great measure soft money? Do you want to solve independent expenditures and all those other things? Dramatically increase at least three or fourfold the amount an individual can give directly to the candidate, increase the disclosure of that amount so it has to be much more prompt than it is today, and I will tell you what you are going to do. Soft money will be a thing of the past. Oh, there will still be some around here and there, but it will not be the big factor that everybody thinks it is now, because the money will go directly to the candidate. I guarantee it. That is where they want it to go now, but it can't go there, so they find the loophole. I guarantee you, if you plug one loophole, another one will come along, if, in fact, the Court allows you to plug the loophole in the first place, which I don't believe it will.

So we have well-intentioned people here who see this as a problem of money, too much money. I hear this when I go back home: ''Don't Members of Congress spend all this time raising money?'' I might be wrong, maybe Senator MCCONNELL has a number on this, maybe we have taken a survey within the Senate, but I would bet that roughly half the Members of the U.S. Senate don't pick up the phone and raise money as a rule. Maybe Members won't pick up the phone and raise money. They hire people to do that.

I occasionally pick up the phone and raise money. I probably do so more than most. Usually, I am not raising it for me; I am trying to raise it for other folks back home who need help or other Senators running in other places, and I try to help them out. But I will tell you, if it takes at most a half hour out of the week—at most a half an hour out of the week—that is a busy week on average for me raising money. If you find that to be too much time on the phone raising money, I would beg to differ with you. I can think of lots of things I can do for a half hour a week that is a greater waste of time than raising money on a telephone, that I could use my time more productively.

Again, we sort of prop up these straw figures and say, ''Here is the problem, here is the problem; there is too much money.''

I think democracy is important, I think what we do here is important, and I think people should have a right to express their opinion. Yes, people can go out on the street corner and talk all they want, but if nobody hears them, that really isn't very effective speech.

I don't think we should put any limits on people being able to take out a newspaper ad or to sign onto an Internet provider and post something up on a bulletin board somewhere saying, ''RICK SANTORUM voted the wrong way on this, and you folks who are concerned about [whatever issue] should know this.'' I think that is fine. I don't like it, but I think it is fine.

It is essential—it is essential—for us to be accountable to the people. What we are trying to do with all these restrictions and all these limits is isolate the people. I hear this talk that this is not about speech; this is about power. I agree. There is no comment—I heard it yesterday—there is no comment I agree with more. You are right; this is about power. It is where the power is going to rest, in the citizens of the United States, or the power is going to rest right here or in the boardrooms of NBC, ABC and all the other affiliates and newspapers and media outlets around the country, because that is where the power is going to go if things like McCain-Feingold and other measures pass.

They are going to go out—this great sucking sound; that is a common thing we hear now—it is going to come out of your ability to speak and right into the corporate boardrooms that own media outlets.

Senator ROBERTS was absolutely right, the reason the media is foursquare behind this is because when they shut you up, their voice becomes more important. It is as simple as that. If you can't speak, what they write in their newspapers becomes much more important, because it is one of fewer things out there. It is not overstating the fact, the case, that this debate is central to democracy in this country, and that those who, well-intentioned as they are, want to solve the money problem, it is not by muzzling people in the process. Give people the right to speak and democracy will be just fine.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, I ask unanimous consent that 5 minutes be added to Senator SNOWE's time and 5 minutes to my time.

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

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I now am very pleased to be able to yield 4 minutes to the Senator from Arizona, who has been a leader on this issue, and because of his leadership and commitment to campaign finance reform, we are here today debating this issue and hopefully advancing it.

Mr. MCCAIN. Mr. President, let me begin by thanking the senior Senator from Maine for all her tireless work to craft and garner support for this amendment and one that deserves the Senate's support and one that improves the underlying language in the McCain-Feingold amendment. On that basis alone, the fact that this amendment improves the underlying language, I hope that all my colleagues will support it.

The amendment has been summarized many times. I will summarize it very simply. It expands current law that bans direct participation by corporations and unions in elections. Specifically, it prohibits corporate and union funds from being used in broadcast electioneering that mentions a candidate's name or uses his or her likeness within 60 days of an election.

And the second aspect of it, of course, as we know, is disclosure. The Snowe-Jeffords amendment places no—I repeat—no restrictions on independent groups spending money to advocate their cause. It does however mandate that they disclose their contributors.

Mr. President, it is beyond my ability to reason why anyone would oppose disclosure. As mandated by law, I, and each and every one of my colleagues, discloses to the FEC the names and amounts of our contributors. Why should others who engage in electioneering not engage in such similar actions?

I have no desire to hide who gives to my campaign. In fact, I am proud to make public such information. And I am equally proud to stand up and support, through my actions and in some cases contributions, the causes that I believe in.

For example, Mr. President, I have a hundred percent pro-life voting record. Some of my colleagues feel strongly on the other side of this subject. But I am willing to stand here and defend my position because I believe it is the right thing to do. And I am happy to have pro-life groups identify me as a supporter of this cause. There is no reason to hide and to not disclose such support. Therefore, I cannot fathom why some interest groups would fight the disclosure amendment. What are they afraid of?

Again, Mr. President, I strongly support the efforts of Senator SNOWE and Senator JEFFORDS. I hope that later today this amendment will not be tabled and we can move forward to adopt both this amendment and the majority leader's amendment on restricting the FCC from overstepping its authority by mandating free broadcast time and move forward on this bill. Both amendments are good and worthy of support.

Yesterday, I asked if it would be possible to move both amendments independently. I have been engaged in talks on this matter and hope we can soon resolve the problem. I will continue to fight to see this bill move forward. As daunting as that battle may be, we will continue to fight to pass needed necessary campaign finance reform.

Again, Mr. President, I want to thank Senator SNOWE, who has worked tirelessly to try to craft a proposal that will bridge some of the differences that we have. I am grateful for all of her efforts.

Mr. President, I yield back to Senator SNOWE the balance of my time.

The PRESIDING OFFICER. Who yields time?

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. I am now very pleased to yield to Senator LIEBERMAN, who has been very helpful in drafting the Snowe-Jeffords amendment as well. I yield him 3 minutes.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair and thank my friend from Maine, and thank her particularly along with Senator JEFFORDS for their extraordinary progressive action in trying to find common ground and for constituting what is now clearly a bipartisan majority of the Senate in favor of campaign finance reform.

It may be blocked by the filibuster rules, but there is a majority here that recognizes the gravity of the challenge to America's democracy posed by the current absence of any real regulation of campaign spending in our country and campaign contributions and wants to do something about it. I support the Snowe-Jeffords proposal. I want to approach it from this point of view.

Mr. President, we all know that beauty is in the eye of the beholder. I would say here, having listened to this debate, that the beauty of the first amendment is also clearly in the eye of the beholder because the first amendment has been used in this debate to oppose measures that are being designed to avoid evasion of laws that have been upheld as constitutional. Let me be very specific and brief.

The law says that an individual cannot give more than $2,000 to a campaign. Some might say that is an abridgement of free speech, but it has been upheld as constitutional by the Supreme Court in Buckley.

The law says that corporations and unions cannot contribute from their treasuries for political purposes to affect elections. Some might say that was an abridgement, a violation of their free speech, but that has been upheld as constitutional.

But what has happened? Soft money, issue ads, which are clearly ads for or against candidates have been used to evade those clearly constitutional restrictions on contributions to political campaigns. And so we have to do something about it. It will not be a violation of the first amendment. The current ability of parties and outside groups to disguise candidate-focused electioneering ads as issue ads undermines these longstanding and important Federal elections policies.

A study by the Annenberg Public Policy Center found that in 1996, 29 groups spent as much as $150 million on what the groups called issue ads, but which the Annenberg study leaves little doubt were mostly aimed at electing or defeating particular candidates. Mr. President, $150 million, that is approximately one-third of the total spent for all ads by all candidates. That study found that over 85 percent of those so-called issue ads mentioned a candidate by name, almost 60 percent used a candidate's picture and, worst of all, more than 40 percent of those were pure attack ads.

Let us pass Snowe-Jeffords which is clearly constitutional and will stop these evasions of laws limiting contributions to campaigns that have been upheld as constitutional.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. SNOWE addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I now yield 4 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I support the Snowe-Jeffords amendment.

Under the Snowe-Jeffords amendment, labor unions and corporations would be prohibited from spending soft money—what is soft money? That is the unregulated and unreported money that falls outside of current law—on advertising that mentions the name of a candidate in the 60-day period before an election.

Now, labor unions and corporations would be permitted—some say, ''Oh, you are muzzling the labor unions and corporations;'' well, that is just not so—they can use their PAC dollars, so-called hard money, on electioneering ads or express advocacy.

So there is no muzzling of any of these organizations. No restrictions are placed on the first amendment rights of organizations either. That is another point that has been raised here on the floor. Organizations still will be permitted to run ads that directly advocate for the election or defeat of a candidate. Electioneering ads discuss a candidate's record in relation to issues and they still will be able to run pure issue ads.

Under Snowe-Jeffords, the only change is these organizations will be required to file disclosure statements. I do not see how anybody around here can be against disclosure. Disclosure statements will let the electorate know who is paying for what ads. I think that is what the public ought to know. How can that be objectionable? It is disheartening for me to hear other Senators object to disclosure. In my view, disclosure is at the very heart of reform.

Last year, I filed an amendment that would have required even broader disclosure requirements. My amendment would have required all entities who mention the name of a candidate during the calendar year of the election to file a disclosure statement with the FEC.

The Snowe-Jeffords amendment is a more modest approach. It simply requires entities to disclose their large donors and their spending during the 60 days before the election.

Again, let me say, Mr. President, I find it very difficult to understand why anybody would object to the disclosure. If these organizations engage in issue advocacy rather than electioneering, that is, the ad discusses an issue without mentioning a candidate, they now have to disclose either their members or their spending.

Now, the paramount goals of any true effort to reform the system of financing elections for Federal office must be to reduce the influence of special money on elected officials and to level the playing field between incumbents and challengers.

Although the proposals before us may not be the final resolution of these problems, they provide a better starting point than we have had in previous years.

As far as I am concerned, Mr. President, the most important problem to be addressed by campaign finance reform is one that barely existed a few years ago. Not too many years ago many of us were here debating election process and election reforms. What were we talking about? We were talking about PACs, about political action committees. How much should they be able to contribute? Was $5,000 right or wrong per election?

Those are things we debated. We worried that these PAC contributions might appear to give special interests too much influence. But the soft money explosion made those amounts seem like pocket change. I believe that if all else fails we must deal with the soft money problem.

As I said, Mr. President, once again the Senate is debating the question of how to reform the manner in which elections for federal office are financed. This year, progress has been made on the issue, and the Snowe-Jeffords amendment is an illustration of that progress.

Senators SNOWE and JEFFORDS have worked closely with experts in constitutional law to develop an amendment that would greatly improve the underlying McCain-Feingold bill. This amendment, which I am pleased to cosponsor, eliminates the vagueness and overstretching of the McCain-Feingold bill with regard to the treatment of bogus issue ads.

The Snowe-Jeffords amendment creates a new category under the Federal Election Campaign Act called ''electioneering.'' This is a carefully defined category that pertains to the abundance of soft money spending by unions, corporations, and non-profits that was so proliferous in the 1996 elections. The Snowe-Jeffords amendment would not prevent these groups from letting their voices be heard. It simply

would require them to adhere to the spirit of the law.

There certainly is little effort to adhere to the spirit of the law. That's what the hearings before the Senate Governmental Affairs Committee were all about. Week after week witnesses appeared and defended blatantly inappropriate behavior by pointing out that the law didn't quite cover their particular activity. The standard operating procedure in elections these days is circumventing the letter of the law. We are here to try to tighten up current law to make it harder for unions, corporations, and others to circumvent the law.

Under Snowe-Jeffords, labor unions and corporations would be prohibited from spending soft money—that is the unregulated and unreported money that falls outside of current law—on advertising that mentions the name of a candidate in the 60 day period before an election. Labor unions and corporations would be permitted to use their PAC dollars, or hard money, on electioneering ads or on express advocacy. There is no muzzling of those organizations.

No restrictions are placed on the First Amendment rights of organizations either. Organizations still will be permitted to run ads that directly advocate for the election or defeat of a candidate; electioneering ads that discuss a candidate's record in relation to issues; and they will still be able to run pure issue ads. Under Snowe-Jeffords the only change is that these organizations will be required to file disclosure statements. Disclosure statements will let the electorate know who is paying for what ads. How can that be objectionable? I have been quite disheartened to hear other Senators object to disclosure.

In my view, disclosure is at the very heart of reform. Last year, I filed an amendment that would have required even broader disclosure requirements. My amendment would have required all entities, who mention the name of a candidate during the calendar year of the election, to file disclosure statements with the Federal Election Commission. The Snowe-Jeffords amendment is a more modest approach to disclosure. It simply requires entities to disclose their large donors and their spending during the sixty days prior to the election.

If these organizations engage in issue advocacy, rather than electioneering—that is, the ad discusses an issue without mentioning a candidate—they need not disclose either their spending or their members.

The paramount goals of any true effort to reform the system of financing elections for federal office must be to reduce the influence of special interest money on elected officials and to level the playing field between incumbents and challengers. Although the proposals before us may not be the final resolution to the problems that afflict the current system of campaign fundraising, they provide a better starting point than we have had in previous years.

As far as I am concerned, the most important problem to be addressed by campaign finance reform is one that barely existed a few years ago, the explosion of soft money in the process. Not too many years ago, many of us were here debating whether PACs, political action committees, should be able to contribute $5,000 per candidate, per election. We worried that these PAC contributions might appear to give special interests too much influence. But the soft money explosion has made those amounts seem like pocket change. I believe that if all else fails, we must deal with the soft money problem. Just to make clear what soft money is: it is funds spent to influence an election that fall outside of current law. Spending on bogus issue ads—ads that are defined under Snowe-Jeffords as electioneering—is soft money. The Senate has the opportunity to make these important changes in the current fundraising system by approving the Snowe-Jeffords amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. How much time is remaining?

The PRESIDING OFFICER. The Senator from Kentucky has 29 minutes.

Mr. MCCONNELL. I yield to the distinguished Senator from New Mexico 6 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I wonder if you would remind me when I have used 3 minutes.

Mr. President, I do not recall the exact day but sometime in the not too distant past the Senate was asked to vote on an amendment by the distinguished Senator, FRITZ HOLLINGS. Now I am referring to an amendment that would have amended the Constitution of the United States and permitted Congress to control campaign expenditures. Obviously the Constitution of the United States does not give us the latitude to control expenditures in campaigns that we are involved in, or that House Members, the President and the Vice President are involved in.

I ask the distinguished manager of the bill, how many votes did the Hollings amendment get?

Mr. MCCONNELL. I say to my friend from New Mexico, he got 38 votes. It would have taken 67, but at least it was honest. It indicated that you had to amend the first amendment to do the job.

Mr. DOMENICI. So 38 Senators—excuse my voice. I have a bad cold of some type. And to those listening, it is PETE DOMENICI even though it does not sound like me. So 38 Senators had the guts to vote on the real issue, and the real issue is that the Constitution of the United States has a great big amendment that guarantees freedom of speech.

I did not use to understand how the right of freedom of speech was related to campaign expenditures until I read a few of the United States Supreme Court decisions. And I am very pleased that they got the message. The Court understood when it first ruled that you could not limit an individual who wanted to spend his own money on a campaign. You could not limit the amount of money he spent because that money was his freedom of speech. That is what he used it for.

And I equate it here on the floor, and ask the question, what do we apply, in the largest and greatest sense, freedom of speech to in America? We apply it to the media of America. We have freedom of speech, but really when you look at it, it is the freedom of the newspapers, the radios, the televisions, the editorial writers, the column writers, all of whom have this absolute freedom to get involved in our campaigns.

That is why the Supreme Court said that spending money on your own campaign is exercising your freedom of speech. If four newspapers in a candidate's State are writing editorials against him, he ought to be able to spend his money even if he bought a piece of the paper and said this is my editorial, and paid for it with his own money.

Now, what is wrong with the bill before us today—not necessarily the amendment of the distinguished Senator from Maine, who has worked very hard on this, she called me, we talked about it. It is a good idea, but essentially the bill itself is so flawed in terms of the analogy I am using with reference to the right and freedom of speech and the right and freedom to spend money to get your message across, that it is at odds with the decisions of the Supreme Court.

I don't think there is a chance that the underlying bill comes even close to establishing some balance that would in some way change the Supreme Court's mind about the exercise of this freedom and this right. They have essentially said it is not vested in only a newspaper or a TV station or an anchorman or an editorial writer or letters to the editor. They have also said that right is vested in many, many entities who may want to spend money to get their message across—be it criticism or something that is positive about a candidate.

I want to thank the distinguished Senator from Kentucky for his stalwart presentations on the floor which have gone to the heart of the issue, the issue being before we jump into abridging freedom of speech we better very much know what we are doing and not speculate and guess about it. And, yes, the Supreme Court has done an excellent job of saying they will be the gatekeeper on this. I think without that we

would be trying to tell everybody how to run campaigns and the American people would end up saying, isn't that something? They are telling all of us they know how to run their campaigns and they are ordering us around in their own campaigns. So I think that is the flip side of this.

Ms. SNOWE. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Maine has 5 minutes remaining on her side; the Senator from Kentucky has 21 minutes and 16 seconds.

Ms. SNOWE. I reserve the balance of the time.

Mr. MCCONNELL. I yield 5 minutes to the distinguished Senator from Idaho.

Mr. CRAIG. Mr. President, I spoke yesterday on campaign finance reform and I stand today certainly in opposition to the Snowe-Jeffords amendment. It does not address the problem. I don't think the problem exists. The courts have said we don't have jurisdiction over it. We ought to leave it at that.

Mr. MCCONNELL. How much time remains on our side?

The PRESIDING OFFICER. The Senator from Kentucky has 19 minutes and 20 seconds.

Mr. KOHL. Mr. President, I rise in favor of the Snowe amendment. First, I wish to commend the Senator from Maine for her efforts to craft a compromise on this issue. If everyone entered this debate with her spirit of negotiation and patience, I think we would surely be able to come to a final resolution of this matter.

I favor the Snowe amendment at this time because I feel it is the best compromise available to possibly pass the McCain-Feingold campaign finance reform bill. As an original cosponsor of that legislation, I favor S.25 as presented yesterday by Senator MCCAIN. I believe the section related to independent expenditures is well-crafted, would go a long way in improving our electoral system, and meets the difficult constitutional standards for this issue.

However, it is clear that the McCain-Feingold bill does not have the necessary votes to end the filibuster. By altering the section of the bill dealing with independent expenditures, we would have a compromise which has the potential of passing the Senate. I would prefer the language as crafted by Senators MCCAIN and FEINGOLD, but it is clear we cannot pass the bill in that form. Therefore, adding the Snowe amendment at least offers hope that campaign finance reform can be passed in this session.

I also wish to add that my support for this amendment is conditional on its inclusion in a broader package of campaign finance reform. Any reform proposal must be designed to be fair and balanced. Taken separately, or added to other legislation that does not address other important campaign finance issues, the Snowe amendment would not have the desired impact on the electoral process.

If we pass the Snowe amendment, and the underlying McCain-Feingold bill, we will have made a great stride toward reforming our campaign finance laws, and offer the American public some hope that Congress is taking their concerns on this matter very seriously.

Mr. McCONNELL. I suggest the absence of a quorum and I will have the time charged to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative 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.

Mr. McCONNELL. Mr. President, I was graciously letting my time run during that quorum call. I think we may have inadvertently taken away the 10 minutes prior to the military construction bill. I would like to reconstruct that time. The chairman of the Appropriations Committee is here.

Mr. President, I ask unanimous consent that the chairman of the Appropriations Committee be recognized for 5 minutes prior to the military construction vote and that Senator BYRD, or his designee, be entitled to 5 minutes prior to the military construction vote as well.

The PRESIDING OFFICER. Does the Senator wish that the time for the vote on military construction veto override also be postponed by 10 minutes, accordingly?

Mr. STEVENS. Mr. President, the time is set at 6 p.m., is it not?

The PRESIDING OFFICER. That is correct. In the absence of a change in the time for the vote, the vote would take precedence over any additional amount of time.

Mr. STEVENS. We are talking about the 10 minutes before 6 p.m.

Mr. McCONNELL. Does the military construction vote come first, before the Snowe-Jeffords?

The PRESIDING OFFICER. Yes.

Mr. McCONNELL. Maybe this would solve the problem. I ask unanimous consent that there be 10 minutes prior to the Snowe-Jeffords vote, equally divided between Senator SNOWE and myself.

The PRESIDING OFFICER. Does the Senator intend to insert that time between the two votes?

Mr. McCONNELL. Yes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative 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.

Mr. McCONNELL. Mr. President, I understand that the Senator from Maine would rather speak now than between votes. Therefore, Mr. President, let me try one more time.

I ask unanimous consent that the distinguished chairman of the Appropriations Committee have——

Mr. STEVENS. Mr. President, we seek to preserve the time as it is currently allocated for the next 10 minutes before the vote on the MilCon bill.

Mr. McCONNELL. How much time does the chairman of the Appropriations Committee wish?

Mr. STEVENS. Ten minutes.

Mr. McCONNELL. Mr. President, I don't think there is a solution to the concern of the Senator from Maine. It appears that if the chairman of the Appropriations Committee would like the time remaining before the 6 o'clock vote—well, I'm open to any suggestion.

UNANIMOUS CONSENT AGREEMENT

Ms. SNOWE. Mr. President, I ask unanimous consent to move the vote on MilCon to 6:10 p.m. so that we can complete the debate before the votes begin.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

CANCELLATION DISAPPROVAL ACT—VETO

The Senate continued with the consideration of the veto message.

Mr. STEVENS. Mr. President, it is my understanding that Senator BYRD will not speak during the time that he had reserved, but Senator KEMPTHORNE would like to speak. How much time does the Senator from Idaho need?

Mr. KEMPTHORNE. About 4 minutes.

Mr. STEVENS. Mr. President, I yield 4 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. KEMPTHORNE. Mr. President, I thank the chairman of the Appropriations Committee. I rise with regard to the issue of the military construction veto override. I rise in support of overriding the President's veto of the military construction budget.

Mr. President, I am one of those who supported the concept of the line-item veto. I still do. But when I voted for that, I certainly did not abdicate my rights and authority, if I disagreed with a Presidential line-item veto, to come back and speak against that veto and cast my vote. If, in fact, two-thirds of the Members of this body, along with two-thirds of the Members of the House, vote to override, it would be successful.

Here is an example of two projects that were in the military construction budget which the President vetoed. Both projects were intended to support the combat requirements of the 366th Composite Wing based at Mountain Home Air Force Base.

A recent letter to me from Secretary of Defense Bill Cohen described the