NLWJC - Kagan

Counsel - Box 034 - Folder 004

Campaign Finance Materials [1]

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

10-Apr-1996 12:04pm

TO: Kathleen M. Wallman
TO: Bruce N. Reed
TO: Paul J. Weinstein, Jr
TO: Elena Kagan

FROM: Michael Waldman
Domestic Policy Council

SUBJECT: free tv??????????

As the sole member of the campaign finance reform kitchen cabinet, it seems to me that we are missing an opportunity to do more about the free tv issue.

It seems from the op-eds and other things I've seen that the blueblood community -- Walter Cronkite etc. -- is petitioning the FCC to do free tv.

Should the administration join their petition or take a position? I would say yes, though we need to carefuly vet it with the press and communications office, as well as political, since the industry can't be very happy . . . also, it may violate understandings we have with the industry re: tv violence (I hope not).

This is a chance to actually do something good.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Jul-1996 09:23pm

TO: (See Below)

FROM: Alice E. Shuffield
Office of Mgmt and Budget, LA

SUBJECT: POTUS Campaign Finance letter to Gingrich -- for clearance

Below is a revised POTUS letter to the Speaker regarding campaign finance, similar to the one circulated last week. The 2nd, 3rd, and 4th paragraphs, which now address the Rules Committee's actions, contain the only changes.

Please let me know if you have any comments by 11 am Wednesday morning. The letter will go to the President's desk for signature on Wednesday afternoon.

THANKS!

Distribution:

TO: Jacob J. Lew
TO: Robert G. Damus
TO: Joseph Minarik
TO: Martha Foley
TO: John C. Angell
TO: Lisa Kountoupes
TO: LAWRENCE J. HAAS
TO: Elena Kagan
TO: Paul J. Weinstein, Jr.

CC: M. Jill Gibbons
CC: James J. Jukes
CC: Charles S. Konigsberg
CC: Charles E. Kieffer
CC: Jill M. Blickstein

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Jul-1996 07:35pm

TO: Alice E. Shuffield

FROM: Peter Jacoby
Office of Legislative Affairs

SUBJECT: CFR Letter For Your Review

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Jul-1996 12:10pm

TO: Elisa M. Millsap
TO: M. Jill Gibbons

FROM: Peter Jacoby
Office of Legislative Affairs

SUBJECT: Revised CFR letter to Gingrich for Review

July 23, 1996

Dear Speaker Gingrich:

Just over a year ago, I shook hands with you and publicly affirmed my commitment to reforming the nation's campaign finance laws. As the House considers campaign finance reform legislation this week, I urge you to follow through on our commitment and send me legislation that will address the American public's desire for real change in our political process, and in so doing renew our democracy and strengthen our country.

Unhappily, I am not encouraged that either the leading Republican campaign finance reform bill, H.R. 3820 by Congressman Thomas, or the rule that will govern the House's debate on this critical issue, will lead to acceptable reform legislation.

The Thomas legislation, while admirable in its goal to strengthen the role of parties in federal elections, will allow special interests and wealthy individuals to pour unprecedented amounts of campaign contributions into federal campaigns. The measure's increased contribution limits combined with its failure to implement soft money reforms or address the rising costs of television and radio broadcast time and other campaign expenses will weaken, not strengthen, our political system.

I am also disappointed by the decision of the Republicans on the House Rules Committee to

restrict the House from debating any bipartisan campaign finance reform proposal. I have consistently urged Congress to send me bipartisan reform legislation and I would specifically endorse the comprehensive, bipartisan legislation crafted by Congresswoman Smith, Congressman Meehan and Congressman Shays. This measure places limits on spending, curbs PAC and lobbyist influence, discounts the cost of broadcast time, and reforms the soft money system. Regrettably, the House will be unable to consider this, or any other bipartisan measure, due to the House Rules Committee action.

As we work to reform campaign finance, we must do everything in our power to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to return them to the hands of those who deserve them -- ordinary Americans. Real reform is achievable and I urge you to lead the House in passing sensible, comprehensive bipartisan campaign finance reform legislation and give the American people something we can all be proud of.

Sincerely,

The Honorable Newt Gingrich
The Speaker
United States House of Representatives
Washington, D.C. 20515

E X E C U T I V E O F F I C E O F T H E P R E S I D E

16-Jul-1996 02:48pm

TO: Paul J. Weinstein, Jr
TO: Elena Kagan

FROM: M. Jill Gibbons
Office of Mgmt and Budget, LRD

SUBJECT: Revised SAP on Campaign Finance

The following is the SAP on HR 3760 as revised by WH/LA (Jacoby). PLe provide any comment or sign off as soon as possible but no later than Thanks
DRAFT - NOT FOR RELEASE

July 16, 1996
(House)

H.R. 3760 - Campaign Finance Reform Act of 1996
(Rep. Thomas (R) WY and 8 cosponsors)

The Administration strongly opposes H.R. 3760. This legisla drives campaign financing in the wrong direction by encourag dramatic increase in campaign spending and enhancing the rol wealthy individuals and special interests in federal electio Increased campaign contribution limits for individuals and political action committees when they give to State and nati parties will result in increased influence for a special few the expense of the vast majority of the American public.

Additionally, the bill does not address the real problems wi the Nation?s campaign finance system, such as the rising cos campaigns, the influence of special interests, the costs of television and radio broadcast time, or ending the ?soft mon system. To the contrary, H.R. 3760 would increase the cost elections, give special interests an even greater voice in t political process, discourage real competition in races acro the Nation, and tip the scales further in favor of incumbent

* * * * *

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

16-Jul-1996 02:53pm

TO: (See Below)

FROM: Alice E. Shuffield
Office of Mgmt and Budget, LA

SUBJECT: POTUS Campaign Finance letter - quick clearance

Below is a Presidential letter to Speaker Gingrich regarding Campaign Finance Reform, drafted by Peter Jacoby/John Hilley.

Please let me know as soon as possible if you have any concerns. White House Legislative Affairs aims to have the letter prepared for the President's signature this afternoon.

The bill (H.R. 3760) is going to the House Rules Committee tonight, and to the House floor tomorrow.

THANKS!
Alice (5-4790)

Distribution:

TO: Martha Foley
TO: John C. Angell
TO: Michael Waldman
TO: Paul J. Weinstein, Jr
TO: Elena Kagan

CC: Christopher F. Walker
CC: Peter Jacoby

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

16-Jul-1996 10:09am

TO: Elisa M. Millsap

FROM: Peter Jacoby
Office of Legislative Affairs

SUBJECT: Campaign Finance Reform Letter for John's Approval

July 16, 1996

Dear Speaker Gingrich:

Just over a year ago, I shook hands with you and publicly affirmed my commitment to reforming the nation's campaign finance laws. As the House begins to consider campaign finance reform legislation, I urge you to follow through on our commitment and send me legislation that will address the American public's desire for real change in our political process, and in so doing renew our democracy and strengthen our country.

Unfortuately, I believe the leading Republican campaign finance reform bill, H.R. 3760, by Congressman Thomas, falls far short of our commitment. This legislation would drive campaign financing in the wrong direction. For example, the increased campaign contribution limits in this measure will only work to enhance the role of wealthy individuals and special interests in federal elections. This will ultimately undermine the participation of the average citizen in elections and weaken, not strentghen, our political system.

Organized interests already have too much power in the halls of government and the Thomas legislation would only work to expand that power. As an alternative, I urge your support for the comprehensive, bipartisan legislation crafted by Congresswoman Smith, Congressman Meehan and Congressman Shays. In particular, I approve of

several reforms such as placing limits on spending, curbing PAC and lobbyist influence, discounting the cost of broadcast time, and reforming the soft money system.

As we work to reform campaign finance, we must do everything in our power to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to return them to the hands of those who deserve them -- ordinary Americans. Real reform is now achievable. I urge you to lead the House in passing sensible, comprehensive bipartisan campaign finance reform legislation and give the American people something we can all be proud of.

Sincerely,

The Honorable Newt Gingrich
The Speaker
United States House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

July 17, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN EK

SUBJECT: DOJ COMMENTS ON CAMPAIGN FINANCE BILLS

Later this week (probably Thursday), the House will consider the Republican and Democratic campaign finance bills; there is a bipartisan bill as well, but it probably will not come up for a vote. The Administration is sending statements and/or letters to Congress approving the Democratic and bipartisan bills and criticizing the Republican proposal.

OLC believes that each of these bills presents serious constitutional issues. (Of course, any campaign finance bill that actually tries to change anything will present such issues.)

After speaking with Peter Jacoby, I told Randy Moss of OLC that OMB might well disapprove such a letter. You'll recall that John Hilley asked OMB to stop the OLC letter on the Senate bipartisan bill because he believed the Republicans would use it to embarrass the President. John clearly would want to do the same thing again if Justice were to express serious concerns about the House bills the President is supporting.

This morning, Randy called me back to say that OLC did not have adequate time to prepare bill comments on the campaign finance legislation and, given the possibility that such comments might not go through, would not attempt to do so. I believe that Chris Schroeder is going to call you today, Jack, to deliver much the same message -- that OLC has constitutional concerns, but for the reasons Randy stated, would not write a views letter. I do not think this is a gripe; I believe it is just a way for OLC to go on record in some way as to what it thinks about this legislation.

Democratic bill – 2/3 of way through.
Fewer than M-F bill

1. Expends of pol cmte of party – presumes them to be coordinated –
last con – can't do.

2. highest corp tax rate on "excess pol expends."

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

15-Jul-1996 05:52pm

TO: Elena Kagan
TO: Paul J. Weinstein, Jr
TO: Michael Waldman
TO: James Weber
TO: M. Jill Gibbons

FROM: Peter Jacoby
Office of Legislative Affairs

SUBJECT: Smith-Meehan CFR Letter

July 18, 1996

Dear Speaker Gingrich:

Just over a year ago, I shook hands with you and publicly affirmed my commitment to reforming the nation's campaign finance laws. Now I call on the House of Representatives to send me legislation that will address the American public's desire for real change in our political process, and in so doing renew our democracy and strengthen our country. I support the comprehensive, bipartisan legislation crafted by Congresswoman Smith, Congressman Meehan and Congressman Shays and I strongly believe that the House should be able to consider this legislation when it addresses campaign finance reform later this week. In particular, I approve of several reforms such as placing limits on spending, curbing PAC and lobbyist influence, discounting the cost of broadcast time, and reforming the soft money system.

Organized interests have too much power in the halls of government. Oftentimes, representatives from such interest groups operate without

accountability and are granted special privileges that ordinary Americans don't even know exist. In addition, elections that represent an opportunity in which ordinary voters should have the loudest voice have become so expensive that these voices are sometimes drowned out by big money.

Let us capitalize on the progress made in the last three years. In 1993, we repealed the tax loophole that allowed lobbyists to deduct the cost of their activities. In 1994, I signed a law that applies to Congress the same laws it imposes on the general public. Last year, Congress answered my call to stop taking gifts, meals, and trips from lobbyists, and I signed the Lobbying Disclosure Act into law. We now have an opportunity to finish the job by addressing campaign finance reform.

As we work to reform campaign finance, we must do everything in our power to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to return them to the hands of those who deserve them -- ordinary Americans. Real reform is now achievable. I urge the House to pass sensible, comprehensive bipartisan campaign finance reform legislation and give the American people something we can all be proud of.

Sincerely,

The Honorable Newt Gingrich
The Speaker
United States House of Representatives
Washington, D.C. 20515

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-Jul-1996 01:02pm

TO: Kathleen M. Wallman

FROM: Elena Kagan
Office of the Counsel

SUBJECT: fyi on campaign finance

At the campaign finance meeting on Friday, we decided to:
1. Send up a SAP opposing the Republican campaign finance bill now scheduled to come up in the House on Thursday;
2. Send letters to the sponsors of the Democratic alternative (which also will get a vote on Thursday) and the bipartisan bill (which probably won't come up at all) indicating support for their efforts; and
3. Find out where Justice is on all these bills and (probably) try to head off DOJ views letters.
The last assignment is, of course, mine.

Release letters; send SAP agt Repub bill
to ? Fam (dem bill)
Meaham (M-F bipart)

Call Randy -
find out about
DOS plane/ltr

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

12-Jul-1996 02:43pm

TO: M. Jill Gibbons

FROM: Paul J. Weinstein, Jr
Domestic Policy Council

CC: James J. Jukes
CC: Peter Jacoby

SUBJECT: Some lines for the SAP

The administration strongly opposes H.R. 3760, the "Campaign Finance Reform Act of 1996". The bill does nothing to address the real problems with our campaign finance reform system, e.g. curbing the rising cost of campaigns, reducing the influence of special interests, and reducing the cost of television and radio broadcast time to promote real discussion and turn TV into an instrument or education, not a weapon of political assassination. Nor does the bill include voluntary spending caps and an end to the "soft money system".

Unlike the bipartisan McCain-Feingold campaign reform finance bill and its House counterpart (meehan,smith,shays), this bill is not real reform. In fact, it will increase the cost of elections, give special interests an even greater voice in the political process, discourage real competition in races across the country, and tip the scales further in favor of incumbents.

DRAFT

Dear Sam:

I want to commend you for the leadership you have demonstrated on a matter of major concern to the American people -- campaign finance reform. The legislation you introduced in the House of Representatives, HR 3505, embodies the core principles that I believe are key to real campaign finance reform -- effective spending limits, soft money reform, PAC reform, and less costly access to our nation's airwaves for political discourse.

Your bill would reduce the influence of the special interests and the wealthy few in the outcome of congressional elections. In addition, HR 3505 would put a check on the out of control spending that plagues the current system.

Although the Senate's recent failure to act on a bipartisan campaign reform bill was a terrible disappointment to the American people, the fight for reform did not end with the Senate's vote. The House of Representatives now has the opportunity to enactment real campaign finance reform.

Unfortunately, the Republican leadership in the House appears determined to block any legitimate reform. The Republican leadership's bill, unlike your own legislation, would drive campaign financing in the wrong direction. Your bill would control campaign spending; the Republican bill would encourage dramatic increases in spending. Your bill reforms the soft money system; the Republican bill would place a premium on soft money contributions from the very wealthy.

I remain committed to making true campaign finance reform a reality and look forward to working with you and other members of the House in a renewed effort to attain meaningful campaign finance reform.

Sincerely,

The Honorable Sam Farr
House of Representatives
Washington, D.C. 20515

E X E C U T I V E O F F I C E O F T H E P R E S I D E

17-Jun-1996 08:21pm

TO: Paul J. Weinstein, Jr

FROM: James J. Jukes
Office of Mgmt and Budget, LRD

CC: James C. Murr
CC: Timothy D. Johnson

SUBJECT: SAP for S. 1219 - Campaign finance

The following draft is based on the draft Presidential statement you sent me. If it looks OK to you, I will circulate it. If the President does, in fact, issue a statement, I intend to convert the SAP into a single sentence referencing (and attaching) the President's statement.

S. 1219 - Senate Campaign Finance Reform Act
(McCain (R) AZ and __ cosponsors)

The Administration strongly supports Senate passage of S. 1219.

This bipartisan legislation includes many proposals that have been endorsed by President since 1992. It will limit campaign spending, provide free and discounted broadcast time to candidates for Federal office, curb the influence of political action committees and lobbyists, and put an end to the "soft money" system. S. 1219 will open the political process and shift power from special interests to ordinary citizens.

* * * * * * *

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Jun-1996 10:39am

TO: (See Below)

FROM: James J. Jukes
Office of Mgmt and Budget, LRD

SUBJECT: Statement of Administration Policy for Campaign Finance Bill

Paul Weinstein asked me to share the attached with you prior to circulating it to the agencies. Senate floor action on this bill is scheduled for Monday, June 24th. I hope to circulate this to the agencies late this afternoon; I will attempt to incorporate any comments that I receive before 3:00 today. (You will also be on the distribution list when the next version goes to the agencies.)

Distribution:

TO: Peter Jacoby
TO: James S. Rubin
TO: Kathleen M. Wallman
TO: Elena Kagan
TO: Michael Waldman
TO: Karen L. Hancox
TO: William Curry

CC: Paul J. Weinstein, Jr
CC: James C. Murr
CC: Timothy D. Johnson
CC: Charles S. Konigsberg
CC: Alice E. Shuffield
CC: Tracey E. Thornton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

14-Jun-1996 06:50pm

TO: (See Below)

FROM: James S. Rubin
Office of Legislative Affairs

SUBJECT: update

There were some significant developments this week, which everyone probably saw but which I'll memorialize anyway.

1. Dole introduced a campaign finance bill just before he resigned. It's basically a warmed-over version of a commission that he and Mitchell endorsed back in 1990. The eight members would send to Congress recommendations on which seven members agree. Congress would then vote on all the recommendations together on an up-or-down basis (like the base-closing commission).

2. House GOP efforts to work out the details of their package continued, with the PAC ban the object of contention. Armey endorsed a ban but many members disagree.

more later

Distribution:

TO: Kathleen M. Wallman
TO: Paul J. Weinstein, Jr
TO: Elena Kagan
TO: Michael Waldman
TO: William Curry
TO: James Weber
TO: Virginia M. Terzano
TO: Jennifer M. O'Connor
TO: Lisa Jordan Tamagni
TO: Peter Jacoby

THE WHITE HOUSE

WASHINGTON

COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 6/11/96

TOTAL PAGES (INCLUDING COVER PAGE): 3

TO: Counsel's Office

ATTN: Elena Kagan

FACSIMILE NUMBER: 6-1647

TELEPHONE NUMBER: 6-7901

FROM: Kathy Wallman at (202) 456-6611

COMMENTS:

PLEASE DELIVER AS SOON AS POSSIBLE

The document(s) accompanying this facsimile transmittal sheet is intended only for the use of the individual or entity to whom it is addressed. This message contains information which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this information in error, please immediately notify the sender at their telephone number stated above.

Fax to Paul Weinstein Elena Kagan

- Nice draft.
- Someone shd be sure to tell Ann Lewis that this is going out.

draft draft

STATEMENT OF THE PRESIDENT

This week we have an historic opportunity to renew our democracy and strengthen our country. For the first time in a generation, the Congress will consider ~~the~~ truly bipartisan campaign finance reform legislation that will make our democracy work better for all Americans.

The fact is, organized interests have too much power in the halls of government. These influence groups too often promote their own interest at the expense of the public interest. Too often they operate in secret. Too often they have special privileges ordinary Americans don't even know exist. And elections, where ordinary voters should have the loudest voice, have become so expensive that big money can sometimes drown those voices out.

Yet we have made progress in the last three years. In 1993, we repealed the tax loophole that lets lobbyists deduct the cost of their activities. In early 1994, Congress passed a law that applies to Congress the laws they impose on the private sector. And last year, Congress answered my call to stop taking gifts, meals, and trips from lobbyists, and sent to my desk the bipartisan Lobbying Disclosure Act which is bringing lobbyists out from the darkrooms and into the bright light of public scrutiny.

I don't think the 1993 law did this. I think that enactment made fees ~~paid~~ and expenses paid for lobbying non-deductible. I think it's not the same. Are you saying a lobbying firm can't deduct the cost of its employees' salaries? I'm not sure that's right, but maybe I'm wrong. Someone shd check.

Now we have the chance to finish the job, to make the way we finance campaigns work better, too.

This week, the Senate is scheduled to consider campaign finance reform legislation. I want to take this opportunity to reiterate my strong support for the bipartisan McCain-Feingold Senate Campaign Finance Reform Act. This legislation is our best hope to curb the influence of special interests and restore the faith of the American people in their democracy.

The McCain-Feingold bill includes limits on campaign spending, curbs the influence of PACs and lobbyists, and puts an end to the soft money system. The bill will discourage the attack ads that have become all too common by requiring candidates to take responsibility for putting them on the air. Perhaps most important of all, this bill provides free and discounted broadcast time for candidates so that they can talk directly to citizens about real issues and real ideas.

→ does we want to highlight this in view of our recent adv reaction to it?

As we work to reform campaign finance, we must do everything we can to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to put them back into the hands of ordinary Americans where they belong. Our bottom line test should be: Will our efforts make our government more representative, not less representative? Will reform make our elected representatives more likely to promote the public interest, even when it conflicts with powerful special interests? On all these counts, the McCain-Feingold bill meets the test.

9 call-per Congressto

~~Let's~~ pass the McCain-Feingold bipartisan campaign finance reform bill now and give the American people something all of us can be proud of.

draft draft

STATEMENT OF THE PRESIDENT

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Yet we have made progress in the last three years. In 1993, we repealed the tax loophole that lets lobbyists deduct the cost of their activities. In early 1994, Congress passed a law that applies to Congress the laws they impose on the private sector. And last year, Congress answered my call to stop taking gifts, meals, and trips from lobbyists, and sent to my desk the bipartisan Lobbying Disclosure Act which is bringing lobbyists out from the darkrooms and into the bright light of public scrutiny.

Now we have the chance to finish the job, to make the way we finance campaigns work better, too.

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The McCain-Feingold bill includes limits on spending, curbs the influence of PACs and lobbyists, and puts an end to the soft money system. The bill will discourage the attack ads that have become all too common by requiring candidates to take responsibility for putting them on the air. Perhaps most important of all, this bill provides free and discounted broadcast time for candidates so that they can talk directly to citizens about real issues and real ideas.

As we work to reform campaign finance, we must do everything we can to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to put them back into the hands of ordinary Americans where they belong. Our bottom line test should be: Will our efforts make our government more representative, not less representative? Will reform make our elected representatives more likely to promote the public interest, even when it conflicts

with powerful special interests. On all these counts, the McCain-Feingold bill meets the test.

Let's pass the McCain-Feingold bipartisan campaign finance reform bill now and give the American people something all of us can be proud of.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Jun-1996 12:38pm

TO: (See Below)

FROM: Paul J. Weinstein, Jr
Domestic Policy Council

SUBJECT: Campaign Finance Reform Statement

Attached is a draft of a campaign finance reform statement to be released when the Senate takes up McCain-Feingold. Please be generous with your comments. James, please feel free to add sections of your statement to this and send me back the edits.

This draft statement is essentially a reiteration of the President's February radio address with edits. Sense there has been some issue of how we address our support of McCain Feingold, I thought it would be best if the statement paralleled the radio address as closely as possible.

Please give me back your comments by COB today.

Thanks.

Distribution:

TO: James S. Rubin
TO: James Weber
TO: Elena Kagan
TO: Kathleen M. Wallman
TO: William Curry
TO: Peter Jacoby

CC: Bruce N. Reed
CC: Michael Waldman
CC: Karen L. Hancox
CC: Jennifer M. O'Connor

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Jun-1996 10:32am

TO: (See Below)

FROM: James S. Rubin
Office of Legislative Affairs

SUBJECT: Dole bill

Sen. Dole announced yesterday in an interview and this morning on the floor of the Senate that he will introduce a bill before he resigns which will recycle a commission he and George Mitchell tried to establish in 1990. I think it's basically an up-or-down idea, like base closings, but we're tracking it down and will keep everyone posted.

Also, there's a Public Citizen press conference on the Hill today to tout McCain/Feingold. Jim Weber is drafting a statement for the President to issue in support.

Distribution:

TO: Kathleen M. Wallman
TO: Paul J. Weinstein, Jr
TO: Elena Kagan
TO: Michael Waldman
TO: William Curry
TO: James Weber
TO: Virginia M. Terzano
TO: Jennifer M. O'Connor
TO: Lisa Jordan Tamagni
TO: Peter Jacoby

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Jun-1996 10:39am

TO: (See Below)

FROM: Paul J. Weinstein, Jr
Domestic Policy Council

SUBJECT: RE: Dole bill

I am already in the process of drafting a statement for the President. No need for Jim Weber to do so.

Distribution:

TO: James S. Rubin

CC: Kathleen M. Wallman
CC: Elena Kagan
CC: Michael Waldman
CC: William Curry
CC: James Weber
CC: Virginia M. Terzano
CC: Jennifer M. O'Connor
CC: Lisa Jordan Tamagni
CC: Peter Jacoby

June 6, 1996

MEMORANDUM FOR LEON PANETTA

From: **John Hilley**

Subject: **Campaign Finance Reform**

I expect both the House and Senate to consider campaign finance reform proposals sometime during the next several weeks. While none of the proposed bills represents thorough reform of the campaign finance rules, the President should be prepared to use this opportunity to express once again his support for reform.

Majority Leader Dick Armey has indicated that the House will take up campaign finance legislation during the week of July 8. Three proposals are likely to be presented at that time: a Democratic leadership bill, a Republican leadership bill, and a bipartisan bill. In the Senate, sponsors of the bill already endorsed by the President (known as the McCain/Feingold legislation) have filed it as a possible amendment to the Department of Defense authorization bill which is on the Senate calendar for this week. Senator McCain has asked Senator Dole to set a date certain for consideration of the bill independently. If Senator Dole or his successor as Majority Leader grants Senator McCain's request, the amendment to DOD Authorization will not be offered.

Summaries of the various proposals are attached.

Recommendation:

The President has exercised strong leadership in this area and he should be ready to speak in support of reform as soon as a proposal comes to the floor of either chamber. This may happen in the Senate as soon as the end of this week.

Attachments

cc: Harold Ickes
Evelyn Lieberman
George Stephanopoulos
Don Baer
Distribution list: Campaign Finance Reform

SUMMARY OF MAJOR PROPOSALS

	Bipartisan Senate Bill--McCain/Feingold	Democratic Leadership Bill	Bipartisan House Bill--Smith/Meehan
PACs	Banned, with a backup limit if ban is overruled	Per cycle limit of $8,000, aggregate PAC limit of 200K per cycle.	Banned, with a backup limit if ban is overruled
Voluntary Spending Limits	Limit based on state's voting-age population. Compliance brings broadcast and other discounts.	600K limit in House races, with higher caps for close races and run-offs; compliance brings discounts..	600K limit in House races, which brings discounts.
Personal Funds	If a complying candidate is faced with an opponent who will spend more than 250K, individual contributions limits are raised from 1K to 2K.	50K limit on personal funds.	Candidates who agree to system must also limit personal donations.
Home State Contributions	60% within home state.	No provision	60% within home state.
Individual Contributions	No provision	Cap on aggregate of individual contributions over $200.	Cap on aggregate of individual contributions over $250.
Lobbyist Contributions	No provision	No provision	$100/election.
Soft Money	New limits and full disclosure.	Eliminated.	Eliminated.

	Bipartisan Senate Bill -- McCain/Feingold	Democratic Leadership Bill	Bipartisan House Bill -- Smith/Meehan
Bundling	Ban on bundling.	Eliminated, except for non-affiliated, non-connected PACs.	Ban on bundling.
Independent Expenditures	Clarifies definitions.	Increased disclosures.	Tightens reporting requirements.

May 30, 1996

MEMORANDUM FOR JOHN HILLEY

From: **Peter Jacoby**
Jamie Rubin

Subject: **Campaign Finance Reform**

It appears that campaign finance reform legislation will soon receive serious consideration on the floors of both the Senate and the House. In the House, Majority Leader Armey has announced that it will be part of a package of "reform" bills to be considered on the floor of the House during the week of July 8. In the Senate, Senators McCain and Feingold have filed their bipartisan campaign finance reform bill as an amendment to the Department of Defense authorization bill scheduled for floor consideration next week. The Senators hope that this manuever will force the Republican leadership to grant floor time for their measure later this summer.

During the House debate on campaign finance reform, it is likely that three alternative packages will be considered: 1) a Republican leadership proposal; 2) a Democratic leadership proposal; and 3) a bipartisan package offered by Congresswoman Linda Smith and Congressman Meehan. A summary of the Democratic leadership plan and the bipartisan plan is attached.

The Republican leadership bill, which is still taking shape, is likely to contain provisions to implement the U.S. Supreme Court's Beck decision. This decision allows union members to direct that their union dues may not be used for political purposes. The Republican plan will also require a majority of contributions to come from within the candidate's district. Finally, Republican reformers (and Speaker Gingrich and Majority Leader Armey) would like to include a PAC ban in their leadership bill, but this proposal has run into heavy rank and file opposition and its disposition is uncertain. If the PAC ban is not included in the bill, PAC contribution limits and individual contribution limits ($5,000 and $1,000 respectively) will be equalized. The Republican bill is scheduled for Committee markup in mid-June.

During several meetings of an informal campaign finance working group (comprised of Kathy Wallman and Elena Kagan, Paul Weinstein, Michael Waldman, and Bill Curry) several consensus positions emerged:

1) The House Republican Leadership bill is a poison pill and if presented to the President it would likely garner a veto.

2) The proposed Democratic leadership bill falls short of the President's past

positions and should not be endorsed.

3) The President has to reassert his strong desire for campaign finance reform legislation. Specifically, he should reiterate his support for meaningful, bipartisan reform legislation such as the McCain/Feingold bill and the Meehan/Smith bill. The President is already on record for supporting the McCain/Feingold bill.

Note:

Communications Workers of America v. Beck was a Supreme Court case decided in 1988. The plaintiff was an electrical worker for US West. Although he was not a member of the telecommunications workers union (and therefore paid no union dues), Beck was required to pay the union "agency fees" so he wouldn't receive free the benefit of the union's labor negotiations. Beck sought a refund of his agency fees on the grounds that the union used some of his money for objectionable political purposes (i.e. PAC contributions to candidates he opposed).

The Supreme Court ruled in favor of Beck and ordered the union to refund to him whatever portion of his agency fees it didn't use for labor-management negotiations. At issue now is the effectiveness of procedures for assuring that agency fee-payers understand and can exercise their rights under Beck. Republicans have for several years claimed that unions make the refund process far too difficult and that the amount refunded is too low. Republicans have also tried to extend the effect of Beck to all union members.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

06-Jun-1996 12:32pm

TO: (See Below)

FROM: James S. Rubin
Office of Legislative Affairs

SUBJECT: new bill

A group of House Republicans led by Speaker Gingrich introduced a bill WEdnesday that would force unions to divulge how workers' dues are being spent for poitcial activities. A House GOP leadership source Wednesday morning described the legilsation as "a bill that will asssert a worker's constitutional right to be flly informed of how teir mandatory union dues are being spent to make the straightforward, common sense and reasonable request that before workers' coerced union dues are spent for political purposes that they a) be informed and b) give permission." This is the bill based on Supreme Court's Beck decision that we had anticipated.

Distribution:

TO: Kathleen M. Wallman
TO: Paul J. Weinstein, Jr
TO: Elena Kagan
TO: Michael Waldman
TO: William Curry
TO: James Weber
TO: Virginia M. Terzano
TO: Jennifer M. O'Connor
TO: Lisa Jordan Tamagni
TO: Peter Jacoby

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

31-May-1996 10:37am

TO: Elena Kagan

FROM: Kathleen M. Wallman
Office of the Counsel

SUBJECT: attached

Elena, can you please see if this presents an opportunity? What is the proposal, and is there an opportunity to take credit? thanks.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-May-1996 02:51pm

TO: (See Below)

FROM: Michael Waldman
Office of Communications

SUBJECT: RE: reminder

According to the White House Bulletin today, there was a committee vote on what looks like a codification of our executive order on revolving door.

Does anyone know anything about this?

Does it have a chance of passing?

Does it go beyond our executive order?

Maybe we should make noise about it . . . since it does codify our executive order.

Distribution:

TO: James S. Rubin

CC: Kathleen M. Wallman
CC: Paul J. Weinstein, Jr
CC: Elena Kagan
CC: William Curry
CC: James Weber
CC: Virginia M. Terzano
CC: Jennifer M. O'Connor
CC: Lisa Jordan Tamagni
CC: Peter Jacoby

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-May-1996 10:23am

TO: Kathleen M. Wallman

FROM: Elena Kagan
Office of the Counsel

SUBJECT: campaign finance

On the legislative front, the basic situation is laid out in Jamie Rubin's email of a few days ago. In the Senate, McCai-Feingold (MF) has been filed as a amendment to the DOD authorization bill, which is coming to the floor late next week. In the House, the Republicans will bring their bill up the week of July 8th; it is likely to contain provisions that will be difficult for us to swallow (most notably, a codification of Beck and a requirement of in-DISTRICT (not in-state) financing). The Democrats will have an opportunity to offer their bill. It is unclear whether the bipartisan bill will get a shot.

There was general agreement at the meeting that the way for the President to position himself is to stick to MF. He should take the view that this is the real reform bill -- indeed, the only real reform bill. Waldman was concerned that Hilley isn't entirely on board this approach; Waldman fears that Hilley wants the President to be for reform generally, rather than MF. Jacoby said he didn't think this was a problem. Jacoby noted that his nightmare scenario was that Congress would pass the House Republican version of reform and present it to the White House. Jacoby thinks it is important, given this possibility, for the President to be for a specific alternative bill, rather than just for campaign finance reform of whatever flavor.

Paul Weinstein is supposed to draft a letter to the Senate stating the President's position on MF. Jacoby is supposed to get Hilley involved in doing a scheduling proposal for an event to coincide with Senate consideration of the bill.

On the free TV show, a draft letter from Larry Irving to the FCC is being circulated. (I take it this is how Harold thought we should convey our comments, rather than in a letter from the President.) Let's talk when we've both read it.

Camp Finance Mtg 5-29-96

Repub - July 8 (Back / in-district) - may have hearing
Dems will have op.
Q - will bipartisan bill get shot

Senate -
filed amend to DOD auth
take next wk

Nightmare - we get House Repub bill -
(Senate goes along)

Pres - positioning
Stick to M-F
only bipartisan bill etc.
Hilley - just "reform"
MF too centrist.
Waldman - has to be
tough NO. "Only one
reform - MF

Keep that dynamic.
Not all bills reform.
Only one.

Scheduling proposals.

Event in next few wks?
Pres should make short
that day - let Bam/Liberman
know.

Pw draft ltr for
Senate

Free TV -
NTIA/commerce - req. to draft an article ltr.
We don't have yet.
Supposed to be today.

Free TV Conf - Taylor converses.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-May-1996 12:47pm

TO: (See Below)

FROM: James S. Rubin
Office of Legislative Affairs

SUBJECT: campaign finance reform

Both the House and Senate will see floor action soon on campaign finance reform. Leg. Affairs would therefore like to convene a meeting to discuss the issue, 11:30am tomorrow, in a room we'll reserve (and announce later today). Per Peter Jacoby and Jamie Rubin, the following is a brief review of the state of play:

Senate: The President has already endorsed the McCain-Feingold bill, which is now attached as an amendment to the Department of Defense Authorization bill that the Senate is scheduled to take up next week. The bill bases candidate spending limits on each state's population, entitles complying candidates to both free and discounted broadcast time, bans PAC contributions, requires full disclosure of soft money contributions, and bans bundling.

House: The GOP leadership has announced that the House will consider campaign finance reform during the week of July 8. Among the proposals on the table will be a Democratic leadership bill that limits spending per 2-year cycle, limits PAC and individual contributions, provides broadcast discounting as an incentive to participate in spending limits, eliminates soft money, and eliminates bundling (with an exception for non-affiliated, non-connected PACs like Emily's List). The GOP says it will have a bill, too. Details are unknown, but there will almost certainly be provisions targeting union political activity, in the form of a codification of the Supreme Court's 1988 Beck decision. In Beck, the court ruled that non-union workers who pay "agency fees" to unions are entitled to a refund of whatever portion of those fees the unions don't spend on collective bargaining activities, i.e. that the agency fees can't subsidize union political activities. Republicans can be expected to argue -- as they have in the past -- that nobody (union or non-union) should be forced against his or her will to contribute to a union-endorsed candidate and that unions refund far too little money, far too infrequently.

Independent Proposal: A group led by ex-journalist Paul Taylor has petitioned the networks to give each of the major Presidential candidates five minutes of free prime time each night during the last month of the campaign. Each network responded by offering some variant of this. Reed Hundt has stated the FCC's intention to hold a hearing on the proposal.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

28-May-1996 03:46pm

TO: (See Below)

FROM: James S. Rubin
Office of Legislative Affairs

SUBJECT: meeting tomorrow

We have reserved Room 474 OEOB at 11:30am for the meeting on campaign finance reform. Please let me know if you'll be there.

Distribution:

TO: Kathleen M. Wallman
TO: Paul J. Weinstein, Jr
TO: Elena Kagan
TO: Michael Waldman
TO: William Curry
TO: James Weber
TO: Virginia M. Terzano
TO: Jennifer M. O'Connor
TO: Lisa Jordan Tamagni
TO: Peter Jacoby

CLOSE HOLD

THE WHITE HOUSE

WASHINGTON

February 21, 1996

MEMORANDUM FOR HAROLD ICKES

CC: BRUCE REED

FROM: BILL CURRY
PAUL WEINSTEIN
ELENA KAGAN

SUBJECT: **McCain-Feingold (S. 1219)**

Per your request, the following memorandum outlines some modifications that Democrats in the Senate may offer to the McCain-Feingold "Senate Campaign Finance Reform Act of 1995." The two primary areas of concern are the bill's (1) prohibition against bundling of campaign funds and (2) limits on out-of-state contributions.

Senators McCain and Feingold are targeting the period between mid-March to the end of April for a vote on S. 1219. They would prefer to move a stand-alone bill but if the Majority Leader does not provide them with floor time they will offer their bill as a rider to another piece of legislation.

We strongly concur with our current strategy of not proposing any specific changes to the bill and maintaining the President's call for quick passage of S. 1219. Any proposals to change the legislation will be seen as an attempt to weaken the bill in order to aid Democrats and will cost the President the credit he received for supporting S. 1219.

1. Bundling

The McCain-Feingold bill would prohibit the bundling of campaign contributions by any organization, firm, corporation, or individual. Bundling occurs when an individual or organization solicits or receives contributions from a number of contributors and "bundles" them for delivery to a candidate.

Because there is no disclosure of bundling activities, we have no data on which party benefits more from bundling practices. We believe, however, that corporations (which tend to favor Republican candidates) and law firms provide considerably more bundled funds to candidates than so-called ideological PACs such as Emily's List and the Council for a Livable World.

Some Senate Democrats may propose an amendment to S. 1219's bundling provision that would exempt ideological PACs (such as Emily's List). A commission appointed by Senators Dole and Mitchell in 1990 recommended that ideological institutions be exempted

from a bundling ban that the commission was proposing as part of a larger campaign finance reform package. Democrats may try to include a similar exemption in S. 1219. An exemption of this kind, however, will draw considerable criticism from reformers, elite press, and Republicans, who will paint it as an attempt to weaken the bundling provisions for self-interested reasons.

2. Out-Of-State Contribution Limits

S. 1219 requires that all candidates who voluntarily comply with the bill's voluntary spending limits and receive associated benefits must raise 60 percent of their campaign funds from individuals residing in the candidate's home state. In the House bill, this provision applies to all candidates, regardless whether they comply with spending limits. This limitation is meant to strengthen ties between elected officials and constituents as well as to control the cost of elections.

The 60 percent requirement may hurt Democratic senatorial candidates. An October 1995 Congressional Research Service (CRS) report on Senate and House candidates from 1990 to 1994 concluded that:

- Out-of-state individual money constitutes a small share of total funding;
- Out-of-state money is more important to Senate than House campaigns, to incumbents than challengers, and to Democrats than Republicans;
- Out-of-state money has grown somewhat as a component, among all types of candidates, except Senate Republicans, who showed no clear trend.
- Democratic Senatorial candidates have, on average, raised only 52 percent of their funds from in-state over the last three election cycles.

It is important to note that since the data does not include contributions under $200, conclusions derived from this information could be misleading. (Individual contributions exceeding over $200 accounted for only 39 percent of Senate and 33 percent of House receipts in 1994.)

Some Senate Democrats may propose to lower the threshold from 60 to 50 percent for Senate races. Once again, however, any active support of such an amendment by the President will look like a politically driven effort to dilute the McCain-Feingold bill.

Neil Kinkopf - 3/3/96 See A

Limits to 40% of total contribs, the contribs that can be received from out-of-st contribs.
Only applies to House races.

Subj to strict scrutiny
NB speaker reg.

Treats diff speakers diff'ly - discrims among speakers
Rel. pt of view -
my speaking to a particular candidate / in a partic race

Speaker → content
Turner - local b'casting - centers
But is this really same?
Local interests v. non-local interests ←
That's what's driving the reg!

Other element - trying
intervene to amplify sp. of local at exp. of non-local speakers.
Buckley antirediistrib principle

H pro rata share -
no diff w/r/t speech int! $1000 - in-state contrib
$750 - out-of-state
both spkers able to speak.

But again 1 spker has to labor under a disadvantage - megaphones vs. no megaphones.

Perverse result

This is contributor's sp rts.
Cand can't give it away - conditioning on matching funds does NOT solve the prob.
(Even tho candidate agrees - and in some sense stands in the middle)
There is st action here.

Mtg. re Campaign Finance Legis. 2/20/96
Weinstein, Jacoby

① Fazio to introduce something like H.R. 3 from last year. Will include Barney's list exception and more leniency for soft money

② Fazio, Thomas talking about bipartisan bill. Very preliminary.

③ Likely to have vote in House on existing vehicle w/i 30-60 days.

→ has support of Armey, Gingrich to see what he can come up with. Fits w leadership plan to scale back + do a few key things that can be accomplished w bipartisan support.

not clear whether also working on GOP-only bill.

Jacoby senses some approbative reaction regarding Saturday's radio address.

④ Gephardt - exploring state by state check off idea. (not ~~clear~~ clear ~~what~~ what federal/state interplay.)

Senate

① more hearings - 2 - Mar. Apr
likely to move to floor vote soon thereafter
could be threat of attachment to another bill.

② Senate-only bill? bill that affects Senate candidates only? possible. unlikely.

PW: Is instate/outstate distinction constitutional?

Mandatory income - 90% of "funds raised" - check

→ Elena, can we please ① see if this has already been done? KW

OCC

PAUL

② visits to Hill or they work on House bill? — part of process or stand back?

what are the ASTM/F enthusiasts

radio address

Prior program ← in explaining — we might say what we particularly like

③ Paul to draft list of what we like in McCain Feingold + Meehan.

â

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

16-Feb-1996 03:55pm

TO: Peter Jacoby
TO: Kathleen M. Wallman
TO: Elena Kagan

FROM: Paul J. Weinstein, Jr
Domestic Policy Council

SUBJECT: Meeting to discuss congressional strategy

Peter has suggested that we met on Tuesday at 11:00 to discuss congressional actions on McCain-Feingold and other campaign finance reform bills. He advises me that the House is planning to move a bill in March or April now (Armey is now listing this as one of his priorities).

Kathy, can we meet in your office since it is between OEOB and the East wing?

Please let me know if this time works for everyone.

TO: Harold Ickes
Erskine Bowles
Don Baer
Doug Sosnick

FROM: Bill Curry
RE: Campaign Finance Reform
DATE: November 27, 1995

The McCain Feingold bill on campaign finance reform (S.1219) and its companion bill in the House (H.R.2566, introduced by Representatives Smith, Shays and Meehan) present us with an opportunity to demonstrate leadership on an issue people care about.

The President should invite the bipartisan sponsors of these bills to meet with him at the White House. At the conclusion of the meeting he should publicly endorse a version of the bill (the House version is closest to our own position). In this way, the President can seize a central leadership role on what is bound to be the principle contested government reform issue of 1996.

The main provisions of the bills are as follows:

- Voluntary Spending Limits ($600,000 for a House Race, a population-based formula for the Senate);
- Campaign Contribution Limit (House version: $60,000);
- Outright Ban on PACS (in the event the courts strike this down, there is contingent language sharply limiting PAC activities);
- Large Contribution Limit (House bill limits aggregate of contributions over $250 to 25% of total contributions);

- Limit on Out-of-State Contributions (to maximum of 40% of total contributions);
- Limit on Lobbyists' Contributions (to $100 per candidate);
- Outright Bans on Soft Money, "bundling" of contributions and, in the House bill, all Leadership PACS. Franked mailings are banned in election years.
- For all candidates accepting voluntary spending limits, both bills provide half-price television and radio, and reduced rate mailings. If a candidate refuses to accept the limits or exceeds them after accepting them, his/her opponent's contribution and spending limits are doubled, and media and mailing discounts are retained.

Neither of the bills is perfect, but any bill addressing this topic must disappoint both sides to have any chance of passage. These bills have won early bipartisan support, in part because they apportion the pain so evenly between the parties. The bills ban PACs -- something Democrats have historically opposed -- but they also limit both overall spending and large donor contributions -- both opposed fiercely by Republicans.

But the principle reason these bills have attracted so much support and attention is that the public appetite for reform has grown so great. In the eyes of many, campaign contributions are little more than legalized bribery; an exchange of money for influence over public policy. From Perot to Tsongas to Jerry Brown to Pat Buchanan to the "Lamm group," every recent insurgent has sought to capitalize on this issue. Campaign finance reform is sure to be debated this year not only in Congress, but in the Republican primaries and in the general election as well.

Meanwhile, the good government crowd is also cranking up. Public Citizen supports both bills while the League of Women

Voters opposes the Senate bill version but seems likely to support the House version. A few oppose both bills. They insist that any reform include broad based public financing and severe limits on the size of contributions (typically, $100). A grass roots movement -- supported with foundation money -- will run ballot initiatives proposing various reforms in six states and lobby the issue on a national basis in 1996.

Clearly, we need a full internal discussion of these bills in advance of any meeting with members of Congress. Note though, that there has already been some serious vetting on our side of the aisle. Both Chris Dodd, General Chair of the Democratic Party, and Bob Kerrey, DSCC Chair, are co-sponsors of the Senate Bill. On the other side, Bob Dole is expected to oppose the Senate Bill. Newt Gingrich continues generally to embarass himself on the issue and will almost certainly oppose the House bill.

There are changes we might propose in each of these bills, but the important thing is to avoid nitpicking and to move the President out front early and decisively. This is the most serious attempt in twenty years to curb the excessive influence of private money on public policy. We should seize the moment.

Ickes mtg - Comp Fin 2/14/56

Committed already?

Baer - no one holding him to THAT.

Waldman -

1) his bill

2) said something in lobbying release signing

GS - This is bipart. c.f.

Come out for it - (may have amends)

Everyone has endorsed! We should too.

BC - Soft ☆ - Dems ah real disadvan

out/in state - almost no one gets 40%

Bunching - former com'n - (bipartisan)

made distinc btw connected + non-connected

Paul Weinstein / Bill Curry 2/6/94

Options on bundling —

(1) Exemp for EC — same as connected

" for type - non-lobbying

(2) non-corporate/profit

leaves loophole: loss can get thru

No exemption at all

No bundling provision at all

(3) connected vs. non-connected PAC (corporates are all connected) (really ideo vs. corporate) unions

can't we do this thru another mechanism? Bill to check

exemptions (1) look hypocritical
(2) they'll break the rules beat us at our game.

Soft $ —

What do provisions do?
Hard $ in some that contribs + direct exp apply
Ch that cut - ASK PAUL.
contribs for soft $ very lts.
But -

What does Michael Pisch the problem is here?

Explain all this
Maybe a good deal for us - they raise more soft $.

In-State requirements

What are the figures?

Campaign Finance Mtg 2/5/96 - Harold, Waldman etc.

McC-F: soft sp limits — limit on lobbyist contrib

free TV — no soft $ - how does this work

PAC limits (outright) unconst → 1000!

in-state (House/Senate)

candidate contrib limits

Basic elements - Clinton 92 proposal

New: bundling / in-state (Dems dislike)

Senate to vote in next 2 mos (Dodd/Kerry co-sponsors)

Everyone says: we'll negotiate details

AL: Emily's put out of business // defender of women/minorities

3 provisions:
- bundling provision — Any way to get around?
- also, in-state — serve as conduit.
- ban on PACs of course

Imp. bundling will continue. Only this will die.

Paul - Clinton already on record as supporting bundling provision / disfavoring exemptions (e.g. for Em's list)

Waldman - say we're for; Things we might change.

NH - gen'l stuff

Be more specific??

Alternatives to deal w/ Eliot problem.

Thrash it out / go to Pres.

In-state

Also - soft $

Drafted that rule

Campaign Finance Mtg - Hilley

In memo - 7 or 8 suggestions

1. Work w/ Feingold -
   will be conduit to McCain
   Do foreign contribs
   ?? Work on express advocacy provisions. -
   Amend provisions on soft $/PACs - make them less tough - otherwise you won't get House Dems

2. House - Gejdenson
   Shays (CT)

Campaign Finance 11/21 – McBride/Wattleman/Kovac

Hanna-Rhoades/Miller/Meehan
Everyone talking abt soft $
indep expend/issue ad questions
Need one vehicle
Revised version of MF that they can endorse
we
gps

what needs to be done –
1) Indep expend/issue ad q.
define issue to include what MT now
be considered candidate advocacy.

[Me: so what?? People are allowed → to do both]

2) go to PAC limit rather than ba

3) modify in-state limit

No chance of getting cont amend.

GG: Need hearings to lay factual predicate re corruption – so Ct will look at c.f. differently. testimony/findings

SG's office -

at end - 5 Pts

1. Section 402 permits direct appeal to SCt on const - expedite appeal. All must be taken.
oppose this provision.

2. Bundled contribs - problem largely addressed -
2 less serious -
~~subject to pmt~~ bundling isn't defined.
- no mech. for recipient to know what is bundled.

DOT should -

tomorrow -

any future contracts -

quietly w/ McCain/Feinfold

look on as constructively

the law quietly.

As you go ahead, here are some things to look at.

going to go down anyway

1. studies clueless — don't know we're not what purposes —

2. Appeal in Fed Circ?
Art III.

3.

Q & A

SISA

One-line order.

THE WHITE HOUSE

WASHINGTON

February 1, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: PAUL WEINSTEIN

SUBJECT: **Bipartisan Campaign Finance Reform Legislation -- McCain-Feingold**

Introduction

During your visit to New Hampshire, you may be asked whether or not you support S. 1219, the "Senate Campaign Finance Reform Act of 1995" (McCain-Feingold). There is large grassroots movement in New Hampshire behind this legislation, led by members of United We Stand and other independent voters.

Background On S. 1219

S. 1219 is the first bipartisan campaign finance reform proposal in nearly a decade. The legislation contains several key reform provisions, most importantly, voluntary spending limits on the overall amount of campaign spending.

We expect a vote on McCain-Feingold in the Senate in approximately one to two months. The House has not yet scheduled their vote. DNC Chairman Chris Dodd and DSCC Chairman Bob Kerrey, along with 12 other Senators, have cosponsored S. 1219 (10 Democrats and 4 Republicans). However, opposition to the proposal exists among some Democratic leaders in the House. In addition, organizations such as Emily's List oppose the bill's provision to ban the bundling of campaign contributions. Senator Dole has not indicated support for the bill.

While you did not mention McCain-Feingold by name in your State of the Union address, your call on Congress to pass the "first bipartisan campaign finance reform legislation in a generation" was interpreted as an endorsement of S. 1219. In addition, your comments on campaign finance reform over the past few months are routinely reported by the press as indicating your support for the bill and most of the organizations who support campaign finance reform assume you support McCain-Feingold.

McCain-Feingold is generally consistent with the campaign finance reform proposal you proposed in ***Putting People First*** (e.g. limiting PAC contributions to $1,000, reducing the cost of television airtime, voluntary spending limits). The key provisions of S. 1219 are:

Spending Limits And Benefits --

1. Free Broadcast Time -- Candidates would be entitled to 30 minutes of free time during prime time;
2. Broadcast Discounts -- Broadcasters would be required to sell advertising to candidates at 50% of the lowest available unit rate;
3. Reduced Postage Rates -- Candidates would be able to send up to two pieces of mail to each voting-age resident at the lowest 3rd-class nonprofit bulk rate;
4. New "Variable Contribution Limit" -- If a candidate's opponent does not agree to the spending limit and exceeds that limit, the complying candidates individual contribution limits are raised from $1,000 to $2,000 to ensure a level of fairness;

Personal Funds -- If a complying candidate is faced with an opponent who declares an intent to spend personal funds in excess of $250,000, the individual contribution limits are raised for the complying candidate from $1,000 to $2,000;

Home State Campaign Fund Requirement -- Requires candidates to raise 60% of campaign funds from individuals residing in the home state;

Ban On Political Action Committee Contributions -- In case a PAC ban is ruled unconstitutional by the Supreme Court, backup limits on PAC contributions will also be included. These limits will require candidates to raise less than 20% of their campaign funds from PACs and will lower the PAC contribution limits from $5,000 to $1,000;

Other Provisions --

1. Ban on Bundling of Campaign Contributions;
2. Ban on Incumbent Use of Franked Mass Mailings During Election Years;
3. New Limits and Full Disclosure on "Soft Money" Contributions;
4. Increased Disclosure and Accountability for Those Engage in Political Advertising.

Recommendation

Your support for McCain-Feingold means you are the only major candidate to support legislation that is strongly backed by Perot and his supporters, independents, and editorial boards across the country. We recommend that you state clearly your support for the legislation if asked for your position in New Hampshire.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

30-Jan-1996 03:08pm

TO: Susan Brophy
TO: Elena Kagan

FROM: Peter Jacoby
Office of Legislative Affairs

CC: Michael Waldman

SUBJECT: Campaign Finance Reform Meeting w/Cong. Marty Meehan

As you know, Congressman Marty Meehan has requested that a White House representative meet with him to discuss campaign finance reform legislation. That meeting is scheduled for Thursday 2/1 at 1 pm in 318 CHOB. I think the three of us should attend the meeting but we should meet prior to the meeting, perhaps at 12:15 pm in Susan's office, to discuss our message. Additionally, I have sent a packet of materials regarding the status of CFR legislation and the President's position to your attention.

Please let me know if this is good for both of you.

THE WHITE HOUSE
WASHINGTON

~~Read Duckian~~

Note Rosenkrantz effort
Think thru + write memo

cc for comment to
KW
Bruce
Elena
M. Waldman

THE SECRETARY OF AGRICULTURE
WASHINGTON
20250-0100

Memorandum To: **Leon Panetta, Chief of Staff**
Jack Quinn, Counsel to the President

From: **Dan Glickman, Secretary**

Re: **Campaign Finance**

Date: **November 8, 1996**

Given the significance of the myriad of issues surrounding the financing of federal campaigns this election cycle, and given my experience in working on these issues during my years in Congress, I wanted to share my thoughts on the substance and timing of proposals to change federal campaign laws. These issues must be dealt with decisively and quickly, and frankly must be thought through more carefully and substantively than previous congressional proposals.

To begin with, a sensible resolution of the excesses of our current campaign laws is a threshold issue upon which the President's legacy will rest. If done correctly, it can restore the President's leadership on the issue, and can profoundly change for the positive the nation's political climate. If done in a haphazard or noncommittal fashion, it will reinforce and intensify all the negative feelings people have about elected officials and Washington.

Secondly, in my judgement, the issue of campaign finance reform cannot fully and intelligently be dealt with without a constitutional amendment. As opposed to other issues, this subject cries out for constitutional change because of Buckley v. Valeo and other Supreme Court rulings. Without an organic constitutional amendment giving Congress the generic authority to regulate election spending, we will be relegated to a "Rube Goldberg," patchwork solution which will never plug the two critical loopholes: unlimited spending by wealthy candidates and the proliferation of independent expenditures theoretically uncontrolled by the candidate for office or his or her political party. A constitutional amendment properly written, also sends the issue back to the State where the American people can be intimately involved in the process and can be stakeholders in the proceeding. Otherwise, a pure legislative solution will be written by Washington insiders with Washington ideas and will deteriorate into the lowest common denominator of support. Furthermore, with direct involvement by the American people (spurred on by President Clinton's motivation and encouragement), Congress can finally be encouraged to take dramatic action and the President can legitimately claim credit for a monumental change in our political system. Once a constitutional amendment is passed in a timely way, then Congress, either through the normal legislative process or in conjunction with an independent commission, can write meaningful legislation to deal with the specifics of campaign reform. So here is my specific recommendation and game plan:

Secretary Dan Glickman
November 8, 1996

1.) Immediately after the election, bring together constitutional experts from across the country under the guidance of the Counsel's office, with appropriate Justice Department input, and develop language for a proposed constitutional amendment and, if it can be done in time, for a specific recommendation on a commission for a through review of all campaign laws.

2.) Announce at the State of the Union address in January that a constitutional amendment is necessary to properly reform the system that we are sending the proposal for the constitutional amendment to the Congress, and that we expect that Congress will approve it and send it to the States by a time certain -- e.g., no later than April 1.

3.) Recognizing that the April 1 date means few State legislatures will have time to finish action in 1997, announce that we are asking for legislation to create a commission to study the specifics of campaign law changes in the context of a constitutional amendment and ask that the legislation to approve the commission be passed by February 15.

4.) Announce what Administrative action that can be taken prior to any legislative action, either unilaterally or in conjunction with a bipartisan group of leaders. To give credibility to the proposal, the President cannot be talking about fundamental change to a campaign finance system and then quietly start the current race for dollars all over again.

5.) The goal should be that the structural, statutory and constitutional changes should be in effect by the end of the 105th congress, if not sooner. That means the President must take this project on with a high and continuous sense of personal commitment and involvement for this two-year period.

I obviously have not thought through all the legal and political ramifications of my ideas, but my main point is to emphasize that we cannot reform the system using the failed methods of the past. They won't work. Congress will get bogged down in minutiae and self-protective devices. The Democrats and Republicans will work to skew the system in their favor. Nothing will happen, even with the best of intentions. The problem cries out for new level of Presidential and congressional commitment, with a realization that fundamental reform is impossible without constitutional change.

cc: Erskine Bowles

DEMOCRATIC NATIONAL COMMITTEE

Donald L. Fowler
National Chair

Christopher J. Dodd
General Chair

OFFICE OF THE GENERAL COUNSEL
FAX TRANSMITTAL SHEET

DATE: 7/22 FAXED: _____ VERIFIED BY: _____

TO: KATHY WALLMAN

OF PAGES: (including cover): 8 FAX #: 456-6279

FROM: JOE SANDLER

PHONE #: JOE SANDLER 202-863-7110, WANDA WHEELER 202-863-7108, NEIL REIFF 202-479-5111

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STACY CARLSON
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MINORITY STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT
1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 226-0291
Washington, DC 20515-6230

July 17, 1996

#1 IN A SERIES....

Dear Colleague:

HONEST OPINIONS VS. PARTISAN RHETORIC on Campaign Finance Reform

December 12, 1995
Don Fowler, Chairman, Democratic National Committee:
"I do believe that the contributions from individuals should be increased. If you ask me for a number, I would say $2,500..."
testimony before the Committee on House Oversight

July 16, 1996
Democratic Views in opposition to HR 3760:
"Apparently, they fear that the political influence of the wealthy has waned because $1,000 contributions are worth less than they used to be..."

WHAT DO THEY BELIEVE ???

Vote YES on the Campaign Finance Reform Act of 1996---

- **Restore local control of elections**
- **Increase individual contribution limits, just as Democratic National Committee Chairman Don Fowler requested.**

Sincerely,

Bill

Bill Thomas
Chairman

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
PAT ROBERTS, KANSAS
JOHN A. BOEHNER, OHIO
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Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

1309 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-8281

Washington, DC 20515-6250

July 17, 1996

#2 IN A SERIES....

Dear Colleague:

HONEST OPINIONS VS. PARTISAN RHETORIC on Campaign Finance Reform

December 12, 1995
Don Fowler, Chairman, Democratic National Committee:
"...the amounts an individual is permitted to contribute to candidates and party committees should be increased to new levels that reflect the impact of inflation since the current law was enacted, with those levels adjusted periodically for inflation..."
before the Committee on House Oversight

July 16, 1996
Democratic Views in opposition to HR 3760:
"The Republicans defend their proposed increase on the grounds that it compensates for inflation..."

WHICH ARGUMENT WILL THEY USE NEXT???

Vote YES on the Campaign Finance Reform Act of 1996---

- **Restore local control of elections**
- **Restore the value of an individual's contribution, just as Democratic National Committee Chairman Don Fowler requested.**

Sincerely,

Bill

Bill Thomas
Chairman

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
PAT ROBERTS, KANSAS
JOHN A. BOEHNER, OHIO
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Congress of the United States

House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

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Washington, DC 20515-6230

July 17, 1996

#3 IN A SERIES....

Dear Colleague:

HONEST OPINIONS VS. PARTISAN RHETORIC on Campaign Finance Reform

December 12, 1995
Don Fowler, Chairman, Democratic National Committee:
"I think the parties should not have any limits on what they can contribute to candidates of their parties..."
testimony before the Committee on House Oversight

July 16, 1996
Democratic Views in opposition to HR 3760:
"... The bill would expand dramatically the ways in which a party could use those funds to benefit candidates...."

ARE THEY FOR OR AGAINST PARTY CONTRIBUTIONS TO PARTY NOMINEES???

Vote YES on the Campaign Finance Reform Act of 1996---

- **Restore local control of elections**
- **Strengthen political parties, just as Democratic National Committee Chairman Don Fowler advocated.**

Sincerely,

Bill

Bill Thomas
Chairman

WILLIAM M. THOMAS, CALIFORNIA,
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
PAT ROBERTS, KANSAS
JOHN A. BOEHNER, OHIO
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House of Representatives

COMMITTEE ON HOUSE OVERSIGHT

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Washington, DC 20515-6250

July 17, 1996

#4 IN A SERIES....

Dear Colleague:

HONEST OPINIONS VS. PARTISAN RHETORIC on Campaign Finance Reform

December 12, 1995
Don Fowler, Chairman, Democratic National Committee:
"...the current provisions that allow state parties to undertake grassroots volunteer activities, which are at the heart of our coordinated campaigns, should be maintained and, if possible, even expanded..."
testimony before the Committee on House Oversight

July 16, 1996
Democratic Views in opposition to HR 3760:
"...The bill does not merely permit the continued flow of soft money; it actually expands the ways in which soft money can be used...."

WILL THE DNC ENDORSE THE REPUBLICAN BILL???

Vote YES on the Campaign Finance Reform Act of 1996---

- **Restore local control of elections**
- **Provide parties with the tools for grassroots activities, just as Democratic National Committee Chairman Don Fowler requested.**

Sincerely,

Bill

Bill Thomas
Chairman

WILLIAM M. THOMAS, CALIFORNIA
CHAIRMAN

VERNON J. EHLERS, MICHIGAN
PAT ROBERTS, KANSAS
JOHN A. BOEHNER, OHIO
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(202) 225-6281

Washington, DC 20515-6150

July 17, 1996

#5 IN A SERIES....

Dear Colleague:

HONEST OPINIONS VS. PARTISAN RHETORIC on Campaign Finance Reform

February 16, 1996
Amicus brief filed by Democratic National Committee, Democratic Senatorial Committee and Democratic Congressional Campaign Committee in support of the Colorado Republican Federal Campaign Committee:
"...Accordingly, to avoid the same problem of vagueness and overbreadth as the Court found to be presented by the individual and group expenditure limit in *Buckley*, section 441a(d) must be construed to apply only to those party communications that 'expressly advocate' the election or defeat of a clearly identified candidate...."

July 16, 1996
Democratic Views in opposition to HR 3760:
"...Under the guise of a 'bright-line' test, the bill (HR 3760) adopts the narrowest possible definition of an independent expenditure...."

THEY WANT TO HAVE THEIR CAKE AND EAT IT TOO...

Vote YES on the Campaign Finance Reform Act of 1996---

- **Restore local control of elections**
- **Support the arguments made by the Democratic National Parties in a brief filed with the U.S. Supreme Court**

Sincerely,

Bill Thomas
Chairman

DRAFT

Dear Congressman Fazio:

I am writing to protest in the strongest possible terms the misuse, by Congressman Bill Thomas, of excerpts from my testimony before your Committee last December. To suggest that I in any way endorse any element of the Gingrich/House Republicans' campaign finance reform bill, H.R. 3760 is a false, deliberate attempt to mislead and confuse the debate.

As I stated in my testimony before your Committee, and again before the Senate Rules Committee on April 17, 1996, there are some fundamental principles that I believe should guide the congress in formulating campaign finance reform legislation. As the President has articulated, real campaign finance reform must limit campaign spending; restrict the role of special interests; open up the airwaves to qualifying candidates; and ban the use of soft money in federal campaigns.

The Gingrich/Republican bill utterly fails to meet any of these requirements. To the contrary, it would clearly make the problem far worse. The Gingrich/Republican bill would--

o Do nothing whatsoever to cap or reduce total campaign spending.

o Increase the role of special interests, by allowing wealthy individuals to contribute more than ten times the current limit to federal campaigns and the federal accounts of political parties in a single cycle. Indeed, under the Gingrich bill, a single individual could contribute more than $3.1 million to all campaigns and parties, in a single election cycle.

o Does nothing whatever to increase access of candidates to the airwaves.

o Allows political party committees to continue to receive unlimited soft money.

In that connection, Congressman Thomas' #4 "Dear Colleage" represents a particularly twisted distortion. I certainly support some expansion of the grassroots volunteer activities, but that has absolutely nothing to do with continuing to allow soft money--which we oppose and have consistently opposed.

Under current law, to the extent these grassroots activities benefit federal candidates, they must be paid for with federally-

permissible funds (hard money). It has been our consistent position, as I stated in my testimony both before your Committee and the Senate Rules Committee, that real reform requires that both generic and mixed activity--in other words, any activity benefitting a federal candidate--be paid for entirely with federally-permissible funds ("hard money"). That would be the case both under the McCain-Feingold bill and the House Democratic bill.

By limiting the influence of special interest groups, the McCain Feingold and House Democratic bills would increase the relative importance of the political parties in our system. Further, with spending caps imposed on candidates, candidates would require less total contributions than they do now, and more federally permissible funds would be freed to be contributed to the parties. Party resources spent on candidates--both under the section 441a(d) limits and the volunteers grassroots activities--would represent a greater portion of the candidates' total resources. Thus parties would become more significant players in our system.

By contrast, under the Gingrich/Republican bill, total contributions by wealthy individuals to campaigns would increase by enormous amounts, while the amounts parties could contribute to or expend on behalf of candidates would not increase by nearly the same proportion. Thus parties would play a less significant role, under the Gingrich/Republican bill.

Finally, Congressman Thomas has completely distorted the position of the DNC in its amicus brief filed with the U.S. Supreme Court in the Colorado Republican case. Under current law, a membership organization's communication with the public is subject to the federal campaign finance law only when it "expressly advocates" the election or defeat of a candidate, and we believe that standard should apply in determining when expenditure limits apply to the communications of political parties. The question is the definition of "express advocacy." In our brief filed with the U.S. Court of Appeals for the Fourth Circuit in the Christian Action Network case, the DNC urged the Court to reject the definition adopted by the House Republicans and instead adopt the broader definition used by the Federal Election Commission.

In short, there should be no confusion about the fact that the Gingrich/Republican bill is a sham which would make the current system much worse. By no meaningful measure can this bill be called "reform." It goes without saying that nothing I have ever said can or should be construed as an endorsement of any part of this bill. We urge the Congress of the United States to reject the Gingrich/Republican bill.

Sincerely yours,

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
LEGISLATIVE AFFAIRS

PHONE: 395-4790 / FAX: 395-3729

TO: Martha Foley, John Angell
Michael Waldman, Elena Kagan

FROM:

____ CHUCK KIEFFER ____ CHUCK KONIGSBERG

____ LISA KOUNTOUPES ✓ ALICE SHUFFIELD

____ KATE DONOVAN ____ NANCY BRANDEL

comments: The SAP and Presidential letter on Campaign Finance follows, as reference in my e-mail.

I'll await your clearance Tuesday morning. Thanks!

FAX #: 6-2271, 6-1617, 6-7028 PAGES: 10
PHONE NUMBER: _____ (includes cover page)

THE WHITE HOUSE

WASHINGTON

June 24, 1996

Dear Mr. Leader:

Just over a year ago, I shook hands with Speaker Gingrich and publicly affirmed my commitment to reforming the nation's campaign finance laws. Now I call on Congress to send me legislation that will address the American public's desire for real change in our political process, and in so doing renew our democracy and strengthen our country. I support the legislation now being considered. In particular, I approve of several reforms such as placing limits on spending, curbing PAC and lobbyist influence, discounting the cost of broadcast time, and reforming the soft money system.

Organized interests have too much power in the halls of government. Oftentimes, representatives from such interest groups operate without accountability and are granted special privileges that ordinary Americans don't even know exist. In addition, elections that represent an opportunity in which ordinary voters should have the loudest voice have become so expensive that these voices are sometimes drowned out by big money.

Let us capitalize on the progress made in the last three years. In 1993, we repealed the tax loophole that allowed lobbyists to deduct the cost of their activities. In 1994, I signed a law that applies to Congress the same laws it imposes on the general public. Last year, Congress answered my call to stop taking gifts, meals, and trips from lobbyists, and I signed the Lobbying Disclosure Act into law. We now have an opportunity to finish the job by addressing campaign finance reform.

As we work to reform campaign finance, we must do everything in our power to ensure that we open, not limit, the political process. Our goal is to take the reins of our democracy away from big special interests, from big money, and to return

them to the hands of those who deserve them -- ordinary Americans. Real reform is now achievable. I urge the Senate to pass this legislation and give the American people something we can all be proud of.

Sincerely,

Bill Clinton

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

June 25, 1996
(Senate)

S. 1219 - Senate Campaign Finance Reform Act of 1996
(McCain (R) Arizona and 4 cosponsors)

The Administration strongly supports Senate passage of S. 1219, as amended by the Senate on June 20th, for the reasons explained in the attached letter from the President to the Majority Leader.

This bipartisan legislation includes many proposals that have been endorsed by the President since 1992. It will limit campaign spending, provide free and discounted broadcast time to candidates for Federal office, curb the influence of political action committees and lobbyists, and put an end to the "soft money" system. S. 1219 will open the political process and shift power from special interests to ordinary citizens.

[This sentence is contingent on receiving the DOJ letter by Tuesday at 10am: The Department of Justice will be suggesting how certain provisions of S. 1219 could be strengthened against potential constitutional challenge.]

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by the Legislative Reference Division (Johnson) in coordination with the Departments of Justice (Silas) and the Treasury (Dorsey), the Federal Election Commission (Surina), the Office of Government Ethics (Ley), White House Counsel (Kagan), Domestic Policy Council (Weinstein), White House Political Affairs (Hancox), White House Legislative Affairs (Weber), VAPD (Long, McCormick), HRD (VanWie), BRCD (Fairhall), and BASD (Stigile).

Commerce, FCC, HTF, and GC did not respond to our request for views on this SAP.

Elena Kagan of the White House Counsel's office has asked that she be checked with before this SAP is sent to the Senate, so that she can verify that Jack Quinn has personally approved it.

The United States Postal Service (USPS) objects to the SAP and to the bill because of the requirement (described below) for postal subsidies to qualified candidates. USPS has previously testified in opposition to S. 1219 and has characterized the subsidy requirement as an "unfunded mandate" on its customers that could cost "well over $50 million per election."

Status of Senate Floor Action on S. 1219

On June 20th, the Senate began consideration of S. 1219 and, by unanimous consent, adopted for consideration an amendment in the nature of a substitute (described below). A cloture vote on S. 1219 (as amended by the substitute) is scheduled for June 25th at 2:15 p.m.

Administration Position to Date

According to WH/LA (Weber), the President wrote to Senators McCain and Feingold on June 24th in support of S. 1219.

The President referred favorably to S. 1219 in his February 17th radio address to the Nation. He stated that, as a candidate in 1992, he supported spending limits, curbing the influence of PACs and lobbyists, and an end to the soft money system. He called on Congress to pass a bipartisan campaign finance reform bill.

Constitutional Issues

The Department of Justice expects to transmit to Congress a letter describing how S. 1219 could be strengthened against constitutional challenge. LRD has not yet received the letter for clearance.

Background

The Revenue Act of 1971 initiated public funding of presidential general elections. Funding was later extended to presidential primaries and nominating conventions by the Federal Election Campaign Act (FECA) of 1971. The FECA and subsequent amendments imposed limits on contributions, required uniform disclosure of campaign receipts and expenditures, and established the Federal Election Commission (FEC) as the central administrative and enforcement agency.

S. 1219 addresses congressional campaign finance. Its proponents are concerned about the increasing costs of congressional campaigns, the influence of special interest groups, and the fundraising advantages of incumbents. The principal focus of S. 1219 is on Senate campaigns. (In recent years, Senate campaign finance bills have addressed Senate campaigns, House bills have addressed House campaigns, and the two are joined in conference.)

Major Provisions of S. 1219 as Amended on June 20th

– Voluntary Spending Limits

S. 1219 would establish voluntary Senate election spending limits. Candidates who comply with the limits and meet other requirements would be eligible for the broadcast and postal benefits described below.

Election expenditures by a Senate candidate or the candidate's authorized committee could not exceed:

- for general elections, an amount based on State voting-age population, ranging from $950,000 to $5,500,000;
- for primary elections, the lesser of 67 percent of the general election expenditure limit or $2,750,000;
- for runoff elections, 20 percent of the general election expenditure limit; and
- for election expenditures from the candidate's personal funds (including certain loans), $250,000 or 10 percent of the general election expenditure limit.

A candidate who complies with the spending limits and runs against a candidate who does not comply is allowed to: (1) increase his or her spending limits according to a formula in the bill; and (2) receive contributions from individuals of up to $2,000 per individual (instead of the $1,000 allowed under current law).

The bill also provides for inflation adjustments to the spending limits.

– Benefits

Free Broadcast Time. Under S. 1219, a candidate who has qualified for the general election and adheres to the spending limits above is entitled to receive 30 minutes of free broadcast time from stations within or adjacent to his or her State. Where there are more than two candidates, the bill provides for a total of 60 minutes of free broadcast time to be allocated among the candidates according to a formula.

Unless the candidate chooses otherwise, the time made available for broadcasting must be between 6:00 p.m. and 10:00 p.m. on any weekday. The length of each individual broadcast must be between 30 seconds and 5 minutes. A candidate may not request more than 15 minutes of free time from any one broadcasting station.

Reduced Broadcast Rates. Under S. 1219, eligible candidates are entitled to receive reduced television broadcast rates during the 30-day period prior to the primary election and the 60-day

period prior to a general or special election. The maximum rate would be half of the station's lowest charge for an equal amount of time, for the same period on the same date.

Postal Subsidies. Eligible candidates are entitled to send two pieces of mail to each voting age resident at the lowest third class, non-profit bulk rate.

-- Political Action Committees (PACs)

The bill prohibits candidates from accepting contributions from PACs and limits contributors to individuals and political committees. Political committees are defined as: (1) the principal campaign committee of a candidate; (2) any national, state, or district committee of a political party; and (3) some local committees of a political party. The bill provides that if this provision is held unconstitutional, PAC contributions would be limited to the maximum individual contribution, $1,000. In addition, contributions from PACs to a candidate could not exceed 20 percent of the candidate's total election spending limit. (In 1976, the Supreme Court ruled in *Buckley vs. Valeo* that certain expenditure limits placed substantial restrictions on the First Amendment rights of candidates, citizens, and associations.)

-- "Soft Money"

The term "soft money" refers to money that may influence the outcome of Federal elections, but that is raised and spent outside the scope of Federal election laws. (Examples include corporate- or union-sponsored voter registration drives that identify a Federal candidate.)

Under S. 1219, each time individuals, unions, corporations, or partnerships raise "soft money" in excess of $10,000, they must file statements including the purpose of the disbursement to either the Secretary of the Senate or the Clerk of the House of Representatives, and the Secretary of State of the relevant State.

The bill generally prohibits national party committees from seeking, accepting, or spending soft money. In addition, during Federal election years, funds spent by State and local committees for any activity which could affect the outcome of a Federal election are subject to FECA limitations and reporting requirements. In general, both national and State committees of a political party must report all receipts and disbursements to the FEC.

-- "Bundling"

The term "bundling" refers to the collection by an intermediary of individual checks for a candidate. Under S. 1219, contributions to a candidate made by an intermediary would generally be treated as a direct contribution from both the original contributor and the intermediary for purposes of contribution limits. In addition, the intermediary must report to the FEC the original source and the intended recipient of the contribution.

– In-State Contributions

To comply with the spending limits of S. 1219, a candidate or a candidate's authorized committee must receive not less than 60 percent of the total dollar amount of contributions from individuals legally residing in the candidate's State. (For small States, the candidate could opt for a requirement that 60 percent of the contributors be residents of their home State.) In specified circumstances, candidates would have to report to the FEC their in-State contributions and the names and addresses of persons who contribute at least $50 in a year.

– Other Provisions

Other provisions of S. 1219 would:

- Require certain "independent expenditures" (i.e., funds spent on direct communication with voters to advocate the election or defeat of a candidate without the cooperation or participation of a candidate) to be reported to the FEC. The bill would also increase the spending limits of candidates who had more than $10,000 in independent expenditures spent against them (or for their opponents).

- Restrict the use of campaign contributions to legitimate and verifiable campaign expenses and prohibit the use of these contributions for personal purposes.

- Require paid campaign advertising in all types of media to include a verbal, written, and/or visual (photographic) identification of the candidate. In addition, broadcast or cablecast advertisements must include a verbal statement naming the person or group responsible for the advertisement.

- Establish contribution limits for "State party grassroots funds" that support party-building activities that are not candidate-specific.

- Authorize the FEC to: (1) prescribe regulations for computer and facsimile reporting; and (2) conduct random post-election audits to ensure voluntary compliance with the FECA.

- Limit congressional use of the franking privilege during the year in which an incumbent is up for re-election. The bill states the "intent of Congress" that any savings realized from this limitation be designated to pay for the postal subsidies required by the bill.

- Allow court decisions on the constitutionality of provisions of S. 1219 to be appealed directly to the Supreme Court.

Pay-As-You-Go Scoring

According to BASD (Stigile), S. 1219 is subject to the pay-as-you-go requirements of the Omnibus Budget and Reconciliation Act of 1990 because of provisions providing for fines for

FECA violations. An OMB pay-as-you-go estimate has not been completed but similar provisions are generally scored at zero or a negligible amount. VAPD (McCormick) advises that the postal subsidy provision would score at zero because USPS could recoup the subsidies by increasing postage rates. No CBO estimate is available.

Legislative Reference Division
6/24/96 - 5:00 p.m.

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

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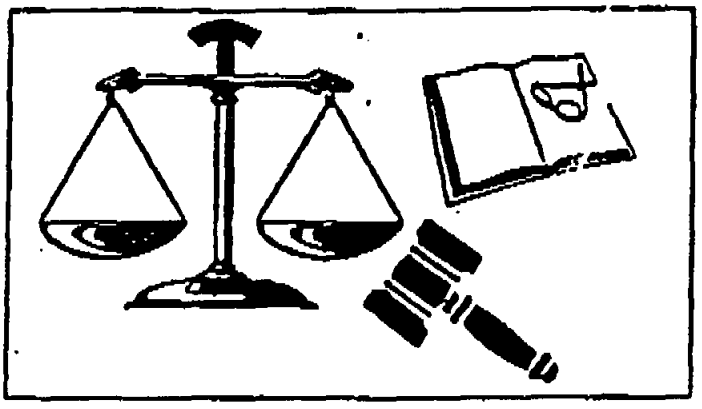

TO: ALENA KAGAN
WHITE HOUSE

FAX NO.: 456-1647

FROM: ADRIEN SILAS

PHONE: 202/514-7276

DATE: JUNE 25, 1996

NO. OF PAGES: _____ (EXCLUDING COVER)

COMMENTS: ROUGH DRAFT OF DOJ VIEWS LETTER ON CAMPAIGN FINANCE REFORM. NOT YET FORMALLY SUBMITTED TO OMB FOR CLEARANCE.

Constitutionally Sound; Waiting for word

The following are the ~~comments of the~~ Office of Legal Counsel on the amendments to S. 1219, the Senate Campaign Finance Reform Act of 1996, reported at Congressional Record S6616 (June 20, 1996). Although we believe that the fundamental thrust of the bill is ~~constitutional and that most of its provisions do not raise serious constitutional issues~~, we suggest below how the bill might be strengthened against potential constitutional challenge.

Contributions by advisers and employees: A prior version of the bill would have treated any expenditure for express advocacy made by a person who had advised a candidate or a candidate's agents on any aspect of the campaign, including whether or not to run, as a contribution and therefore subject to a $1,000 limit. Because this provision would have covered expenditures that are truly independent, it raised serious constitutional concerns. See Buckley, 424 U.S. at 39-59. The current, amended version represents a substantial improvement in that it only applies to expenditures by individuals who have provided "significant" advice. S. 1219, § 241. We believe that any remaining constitutional concerns can be avoided by further clarifying that the provision applies only where it is valid to presume that an expenditure is coordinated with a campaign.

Soft money other than from political parties: Persons (broadly defined) who are not political party committees would be required to file a report for disbursements aggregating to $10,000 and an additional report for every additional aggregation of $10,000. This requirement covers disbursements that "might affect the outcome of a federal election" but does not cover "independent expenditures" (express advocacy regarding a specific candidate). S. 1219, § 221. In Buckley, the Court applied strict scrutiny to a disclosure requirement because it recognized that requiring individuals and groups to identify themselves could chill protected speech and association. Although the Court upheld a requirement that individuals and groups file reports disclosing their independent expenditures, it indicated that the governmental interest in disclosure would not be sufficient where the expenditure was not made expressly to advocate a specific result in an election. Id. at 76-82. The expenditures covered by this provision of the bill, by definition, do not include express advocacy regarding the result of a specific election. We believe that the concern the Court expressed would be alleviated if the bill were amended to make clear that no portion of the report that identifies the person who made the disbursement may be made public.

In addition, the phrase "[disbursements that] might affect the outcome of a federal election" may be ~~too~~ vague attacked on vagueness grounds. ~~to survive constitutional challenge.~~ See Buckley, 424 U.S. at 39-44. We therefore suggest that this phrase be given a specific definition that provides clear notice to anyone who falls within its coverage.

Compelled advertisement identification: Existing law requires that every "general public political advertis[ement]" that includes either express advocacy of the election or defeat of a candidate or

solicitation of a contribution must also identify the candidate or other person or entity who paid for the advertisement and, if the advertisement is authorized by a candidate, must disclose the authorization. 2 U.S.C. § 441d(a). S. 1219 would further define the form of this self-identification. S. 1219, § 302.

As applied to express advocacy, we recognize, as did the court in FEC v. Survival Education Fund, 65 F.3d 285, 295-98 (2d Cir. 1995), that substantial arguments might be made that the existing law does not survive McIntyre v. Ohio Elections Comm'n, 115 S. Ct. 1511 (1995).[1] The validity or invalidity of the amendments proposed in S. 1219 that further define the form of the identification follows a fortiori from the validity or invalidity of the existing statute.

mov to fn

In addition to S. 1219's amendments to the form of the self-identification requirement, S. 1219 would enact additional requirements. The bill would require that (1) printed communications financed by independent expenditures include the permanent street address of the person or organization that paid for the communication, (2) broadcast or cablecast communications that are paid for or authorized by a candidate include an audio self-identification that is read by the candidate, and (3) any televised broadcast or cablecast that is paid for by a candidate include, next to the written self-identification, "a clearly identifiable photographic or similar image of the candidate." S. 1219, § 302.

Assuming the validity of the existing statutory self-identification requirement and the amendments to their form proposed in S. 1219 discussed previously, the additional requirements raise constitutional concerns. By requiring those making independent expenditures to publicize their permanent street

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[1] In McIntyre, an individual distributed handbills expressing opposition to a local referendum to increase the school tax. The handbills did not disclose the identity of their author as required by Ohio law. The Supreme Court held that the Ohio law placed a substantial burden on speech that lies at the core of the First Amendment's protection and that the state's interest in avoiding fraud and libel was not sufficient to sustain the self-identification requirement. The Court, however, noted that the case involved only the distribution of handbills in a local issue-based election and expressly declined to reach the question of whether, and to what extent, its holding would apply in the context of advocacy expressed through mass media regarding a federal, candidate election. See id. at 1514-15 n.3; id. at 1524 (Ginsburg, J., concurring).

What remedy are we suggesting? Strongest finding? Should say so.

address and forcing candidates literally to speak[2] or to make an appearance, each of these requirements places a burden on speech at the core of the First Amendment's protection.[3] If these requirements place a substantial burden on protected speech and do not materially advance a governmental interest, the provision would fail to pass constitutional scrutiny.[4]

Out-of-state contributions: The bill applies a limit on out-of-state contributions to candidates who elect to participate in the public funding system. The bill defines allowable contributions as not including "contributions from individuals residing outside the candidate's State to the extent such contributions exceed 40 percent of the aggregate allowable contributions" received during the approximately two years preceding the Senate election. S. 1219, § 501.

The bill would ~~discriminate against~~ treat out-of-state contributors. While Buckley held that there is little speech content in the size of a contribution, the Court did hold that inherent in every contribution is a statement of support that is protected by the First Amendment. In discriminating against out-of-state contributions, the bill would place burdens on the speech of citizens who do not reside in the same state as the candidate. As such, the bill would trigger some level of scrutiny under the First Amendment, for "[i]n the realm of private speech or expression,

disadvantageously as compared ~~affiliated from~~ in-state donors.

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[2] We do not doubt that, if self-identification requirements are valid, a requirement that the self-identification on a televised ad be read as well as written on the screen is also permissible. Such a requirement would serve the purpose of conveying the identification to someone who does not happen to be looking at the television screen during the four seconds that the identification is required to appear. The distinct constitutional issue arises where a specific individual, here the candidate, is required personally to read the identification.

[3] See, e.g., Riley v. National Fed'n of the Blind, 487 U.S. 781 (1988); Wooley v. Maynard, 430 U.S. 705 (1977).

[4] See McIntyre, 115 S. Ct. at 1522-24; Buckley, 424 U.S. at 39-59. A court might, if Congress fails to advance a sufficient interest, be inclined to credit the inevitable argument that the bill is an attempt to prevent candidates from broadcasting "negative" ads. Congress may not enact regulations that are aimed at the suppression of speech the content of which Congress deems distasteful. See, e.g., Rosenberger v. Rector & Visitors of the University of Virginia, 115 S. Ct. 2510, 2519 (1995); Speiser v. Randall, 357 U.S. 513 (1958).

government regulation may not favor one speaker over another."[5]

Speaker-based restrictions demand strict scrutiny only where the speaker-based discrimination is based on "the communicative impact of the regulated speech," Turner Broadcasting Sys., Inc. v. FCC, 114 S. Ct. 2445, 2467 (1994); that is, where the regulation "'arises in some measure because the communication . . . is itself thought to be harmful.'" Buckley v. Valeo, 424 U.S. 1, 17 (1976) (quoting United States v. O'Brien, 391 U.S. 367, 382 (1968)). Thus, strict scrutiny is required where the prohibition or limitation on speech is based "on the identity of interests that spokesmen may represent in public debate over controversial issues." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978); accord Pacific Gas & Elec. Co. v. Public Utilities Comm'n, 475 U.S. 1, 15 (1986) (plurality opinion); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657 (1990). In contrast, strict scrutiny is not required where a discriminatory regulation is based on something other than the communicative impact of the disadvantaged speech, as where a speaker-based restriction is imposed because of a speaker's unique ability to communicate using particular physical means, see Turner Broadcasting, 114 S. Ct. at 2460-61, 2467, or because of things the speaker has done in the past unrelated to their speech, see Regan v. Taxation with Representation, 461 U.S. 540, 548-51 (1983).

We believe that there are valid reasons unrelated to the communicative impact of out-of-state contributions that could sustain the provision. In particular, we believe that the government has a legitimate interest in seeking to foster strong ties between a Senator and the constituency he or she is constitutionally committed to represent. In upholding the individual contribution limit in Buckley, the Court noted its effect was merely "to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression." 424 U.S. at 22. We believe that the out-of-state contribution limit would have essentially the same effect. It would merely require candidates to build stronger ties with the constituents whom they are elected to represent. We also note that because candidates may return to each out-of-state contributor a pro rata share of the excess of the 40% limitation, the law does not necessarily require that a candidate ever refuse to receive, which is to say associate with, a given out-of-state contributor.

Jurisdiction over Challenges to Broadcast Media Rates and Free

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[5] Rosenberger, 115 S. Ct. at 2516; see Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 763 (1986) ("A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship.").

Broadcast Time: S. 1219 would provide that "[t]he United States Court of Federal Claims shall have exclusive jurisdiction over any action challenging the constitutionality of the broadcast media rates and free broadcast time required to be offered to political candidates. . . ." S. 1219, § 102(b). Because the Court of Federal Claims is not an Article III court, this provision raises serious constitutional questions under Article III of the United States Constitution.

The bill would vest exclusive power to adjudicate any challenge to the bill's broadcast rates and free time provisions if the challenge is based on the Constitution, regardless of which component of the Constitution the amended bill is asserted to violate. The validity of any provision that purports entirely to withhold jurisdiction to review the constitutionality of a law from both an Article III court and from state courts is seriously in doubt. See, e.g., Webster v. Doe, 486 U.S. 592 (1988); Weinberger v. Salfi, 422 U.S. 749 (1975); Johnson v. Robison, 415 U.S. 361, 373-74 (1974). Moreover, even if § 102(b) can be read to preserve review in the Federal Circuit or any other Article III appellate court, the provision would establish that "the exclusive remedy in an action" brought under it is "[m]oney damages," raising the question whether any court would have authority to enjoin application of a provision that the court concludes, for example, violates the First Amendment. Accordingly, we suggest that the bill be revised to specify that Article III "review of constitutional error is preserved," see Thomas v. Union Carbide Agricultural Prods., 473 U.S. 568, 592 (1985), and that the Article III courts retain authority to grant all appropriate relief.

Effect of Ineligible Senate Candidate Overspending the Voluntary Limit: Existing law imposes a $1,000 limit on the amount an individual may contribute to a specific candidate. This is a general limit that applies to contributions to all candidates, whether they participate in the voluntary public financing scheme or not. 2 U.S.C. § 441a(a)(1)(A); see Buckley, 424 U.S. at 23-35. Under the amended bill, the limit would be increased to $2,000 for a candidate who participates in the voluntary public financing system if that candidate's opponent exceeds the spending limits of the voluntary system. S. 1219, § 105. The general $1,000 limit would continue to apply in races in which all candidates comply with the voluntary limits or in which no candidates comply.

This provision might well be subject to constitutional challenge. In Buckley, the Court held that "[t]he First Amendment denies government the power to determine that spending to promote one's political views is . . . excessive." 424 U.S. at 57. Moreover, the Court stressed that "equalizing" resources is not a permissible basis for imposing restrictions or benefits in the context of federal elections. Id. at 48-51. The bill ~~would~~ arguably run afoul of these principles and ~~would~~ effectuate a speaker-based distinction that is based on the communicative impact

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of speech. As discussed above, ~~this type of speaker-based discrimination is~~ subject to strict scrutiny and ~~thus must~~ would need to be narrowly tailored to serve a compelling governmental interest. ~~§ 105 would also have a chilling effect. Under the bill, a candidate who chooses not to participate in the public financing system would be forced to choose between continuing to speak in excess of the voluntary expenditure limit and thereby triggering a higher contribution limit for his or her opponent or ceasing to speak. Accordingly, the provision arguably would only survive scrutiny if supported by a compelling governmental interest.[6]~~ § 105 ~~would~~ call into question the validity of the S. 1219's public financing system. In Buckley, the Court struck down mandatory spending limits, but held that such limits could be made a condition of participation in a voluntary public financing system. By imposing a stricter legal impediment on candidates who do not participate, a court may hold that participation in the public financing system is not voluntary, in which case it would be unconstitutional. See Buckley, 424 U.S. at 54-59.

also might

Suggest stronger finding be articulated?

Congress should make a strong finding as to the interest it is advancing.

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The bill would vest exclusive power to adjudicate any challenge to the bill's broadcast rates and free time provisions if the challenge is based on the Constitution, regardless of which component of the Constitution the amended bill is asserted to violate. The validity of any provision that purports entirely to withhold jurisdiction to review the constitutionality of a law from both an Article III court and from state courts is seriously in doubt. See, e.g., Webster v. Doe, 486 U.S. 592 (1988); Weinberger v. Salfi, 422 U.S. 749 (1975); Johnson v. Robison, 415 U.S. 361, 373-74 (1974). Moreover, even if § 102(b) can be read to preserve review in the Federal Circuit or any other Article III appellate court, the provision would establish that "the exclusive remedy in an action" brought under it is "[m]oney damages," raising the question whether any court would have authority to enjoin application of a provision that the court concludes, for example, violates the First Amendment. Accordingly, we suggest that the bill be revised to specify that Article III "review of constitutional error is preserved," see Thomas v. Union Carbide Agricultural Prods., 473 U.S. 568, 592 (1985), and that the Article III courts retain authority to grant all appropriate relief.

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E X E C U T I V E O F F I C E O F T H E P R E S I D E

24-Jun-1996 10:03am

TO: (See Below)

FROM: James J. Jukes
Office of Mgmt and Budget, LRD

SUBJECT: Revised Draft SAP for S 1219 - Campaign Finance

The following revised draft SAP contains two changes, shown in bold: reference to the Lott substitute that was adopted by the Senate on Thu and (2) a statement that the Department of Justice has proposed amendm strengthen the bill against constitutional challenges. We expect to r from Justice today a letter to Senators proposing such amendments. We circulate it with a short deadline as soon as we get it. Please direc comments on this revised SAP to Tim Johnson or to me by 11:30 today. you. [Text follows.]

S. 1219 - Senate Campaign Finance Reform Act of 1996
(McCain (R) Arizona and 4 cosponsors)

The Administration strongly supports Senate passage of S. 1219, as amended by the Lott (for McCain, Feingold, and Thompson) substitute.

This bipartisan legislation includes many proposals that have been endorsed by the President since 1992. It will limit campaign spending, provide free and discounted broadcast time to candidates for Federal office, curb the influence of political action committees and lobbyists, and put an end to the "soft money" system. S. 1219 will open the political process and shift power from special interests to ordinary citizens.

The Department of Justice has ~~proposed amendments to S. 1219 to strengthen it~~ suggested how certain provisions in the bill could be strengthened against potential constitutional challenges.

* * * * *

Distribution:

TO: Charles S. Konigsberg
TO: Alice E. Shuffield
TO: James C. Murr
TO: Robert G. Damus
TO: Elena Kagan
TO: James S. Rubin

Mkey edits

CLINTON LIBRARY PHOTOCOPY

- Scene

SAP

THE WHITE HOUSE
WASHINGTON

surprised how certain provisions in the bill ~~mi~~ could be strengthened against potential const challenge.

Memorandum

and that almost all of its provisions will easily survive constitutional challenge,

Subject	Date
S.1219, the Senate Campaign Finance Reform Act of 1996	June 23, 1996

To	From
Andrew Fois Assistant Attorney General	Randolph D. Moss RDM Deputy Assistant Attorney General

The following are the comments of the Office of Legal Counsel on the amendments to certain provisions of the S. 1219, the Senate Campaign Finance Reform Act of 1996, reported at Congressional Record S6616 (June 20, 1996). Although we believe that the fundamental thrust of the bill is constitutional, we suggest below how ~~the~~ bill might be strengthened against ~~potential constitutional attack.~~ such challenge.

Contributions by advisers and employees: A prior version of the bill would have treated any expenditure for express advocacy made by a person who had advised a candidate or a candidate's agents on any aspect of the campaign, including whether or not to run, as a contribution and therefore subject to a $1,000 limit. Because this provision would have covered expenditures that are truly independent, it raised serious constitutional concerns. See Buckley, 424 U.S. at 39-59. The current, amended version represents a substantial improvement in that it only applies to expenditures by individuals who have provided "significant" advice. S. 1219, § 241. We believe that any remaining constitutional concerns can be avoided by further clarifying that the provision applies only where it is valid to presume that an expenditure is coordinated with a campaign.

Soft money other than from political parties: Persons (broadly defined) who are not political party committees would be required to file a report for disbursements aggregating to $10,000 and an additional report for every additional aggregation of $10,000. This requirement covers disbursements that "might affect the outcome of a federal election" but does not cover "independent expenditures" (express advocacy regarding a specific candidate). S. 1219, § 221. In Buckley, the Court applied strict scrutiny to a disclosure requirement because it recognized that requiring individuals and groups to identify themselves could chill protected speech and association. Although, the Court upheld a requirement that individuals and groups file reports disclosing their independent expenditures, it indicated that the governmental interest in disclosure would not be sufficient where the expenditure was not made expressly to advocate a specific result in an election. Id. at 76-82. The expenditures covered by this

provision of the bill, by definition, do not include express advocacy regarding the result of a specific election. We believe that the concern the Court expressed would be alleviated if the bill were amended to make clear that no portion of the report that identifies the person who made the disbursement may be made public.

In addition, the phrase "[disbursements that] might affect the outcome of a federal election" may be too vague to survive constitutional challenge. See Buckley, 424 U.S. at 39-44. We therefore suggest that this phrase be given a specific definition that provides clear notice to anyone who falls within its coverage.

Compelled advertisement identification: Existing law requires that every "general public political advertis[ement]" that includes either express advocacy of the election or defeat of a candidate or solicitation of a contribution must also identify the candidate or other person or entity who paid for the advertisement and, if the advertisement is authorized by a candidate, must disclose the authorization. 2 U.S.C. § 441d(a). S. 1219 would further define the form of this self-identification. S. 1219, § 302.

As applied to express advocacy, we recognize, as did the court in FEC v. Survival Education Fund, 65 F.3d 285, 295-98 (2d Cir. 1995), that substantial arguments might be made that the existing law does not survive McIntyre v. Ohio Elections Comm'n, 115 S. Ct. 1511 (1995).[1] The validity ~~or invalidity~~ of the amendments proposed in S. 1219 that further define the form of the identification follows a fortiori from the validity ~~or invalidity~~ of the existing statute.

SFET

SFET

sunny

In addition to S. 1219's amendments to the form of the self-identification requirement, S. 1219 would enact additional ~~substantive~~ requirements. The bill would require that (1) printed communications financed by independent expenditures include the permanent street address of the person or organization that paid for the communication, (2) broadcast or cablecast communications

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[1] In McIntyre, an individual distributed handbills expressing opposition to a local referendum to increase the school tax. The handbills did not disclose the identity of their author as required by Ohio law. The Supreme Court held that the Ohio law placed a substantial burden on speech that lies at the core of the First Amendment's protection and that the state's interest in avoiding fraud and libel was not sufficient to sustain the self-identification requirement. The Court, however, noted that the case involved only the distribution of handbills in a local issue-based election and expressly declined to reach the question of whether, and to what extent, its holding would apply in the context of advocacy expressed through mass media regarding a federal, candidate election. See id. at 1514-15 n.3; id. at 1524 (Ginsburg, J., concurring).

questions.

that are paid for or authorized by a candidate include an audio self-identification that is read by the candidate, and (3) any televised broadcast or cablecast that is paid for by a candidate include, next to the written self-identification, "a clearly identifiable photographic or similar image of the candidate." S. 1219, § 302.

Assuming the validity of the existing statutory self-identification requirement and the amendments to their form proposed in S. 1219 discussed previously, the additional ~~substantive~~ requirements raise ~~serious~~ constitutional ~~concerns~~. By requiring those making independent expenditures to publicize their permanent street address and forcing candidates literally to speak[2] or to make an appearance, each of these requirements places a burden on speech at the core of the First Amendment's protection.[3] If these requirements place a substantial burden on protected speech and do not materially advance a governmental interest, the provisions would fail to pass constitutional scrutiny.[4]

Out-of-state contributions: The bill applies a limit on out-of-state contributions to candidates who elect to participate in the public funding system. The bill defines allowable contributions as not including "contributions from individuals residing outside the candidate's State to the extent such contributions exceed 40 percent of the aggregate allowable contributions" received during the approximately two years preceding the Senate election. S. 1219, § 501.

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[2] We do not doubt that, if self-identification requirements are valid, a requirement that the self-identification on a televised ad be read as well as written on the screen is also permissible. Such a requirement would serve the purpose of conveying the identification to someone who does not happen to be looking at the television screen during the four seconds that the identification is required to appear. The distinct constitutional issue arises where a specific individual, here the candidate, is required personally to read the identification.

[3] See, e.g., Riley v. National Fed'n of the Blind, 487 U.S. 781 (1988); Wooley v. Maynard, 430 U.S. 705 (1977).

[4] See McIntyre, 115 S. Ct. at 1522-24; Buckley, 424 U.S. at 39-59. ~~In addition,~~ a court might, ~~given this failure to advance~~ a sufficient interest, be inclined to credit the argument that ~~inevitably would be made by those who will challenge the amendment that~~ the bill is an attempt to prevent candidates from broadcasting "negative" ads. Congress may not enact regulations that are aimed at the suppression of ~~ideas that Congress deems dangerous~~. See, e.g., Rosenberger v. Rector & Visitors of the University of Virginia, 115 S. Ct. 2510, 2519 (1995); Speiser v. Randall, 357 U.S. 513 (1958).

inevitable

(not really suppressing ideas but)

if Congress fails to advance

speech whose content Congress finds distasteful.

Given what the Court has said about contributions, why would discriminating with respect to the amount of the contribution be a problem? See my suggested edit.

Therefore, if and to the extent that the effect of the provision is to prevent some out-of-state contributions, [altogether]

The bill would discriminate against out-of-state contributors. While Buckley held that there is little speech content in the size of a contribution, the Court did hold that inherent in every contribution is a statement of support that is protected by the First Amendment. ~~In discriminating against out-of-state contributions,~~ the bill would place burdens on the speech of citizens who do not reside in the same state as the candidate. As such, the bill would trigger some level of scrutiny under the First Amendment, for "~~[i]n the realm of private speech or expression,~~ government regulation may not favor one speaker over another."[5]

Speaker-based restrictions ~~do not inevitably~~ demand strict scrutiny; ~~they do so~~ only where the speaker-based discrimination is based on "the communicative impact of the regulated speech," Turner Broadcasting Sys., Inc. v. FCC, 114 S. Ct. 2445, 2467 (1994); that is, where the regulation "'arises in some measure because the communication . . . is itself thought to be harmful.'" Buckley v. Valeo, 424 U.S. 1, 17 (1976) (quoting United States v. O'Brien, 391 U.S. 367, 382 (1968)). Thus, strict scrutiny is required where the ~~prohibition or~~ limitation on speech is based "on the identity of interests that spokesmen may represent in public debate over controversial issues." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 784 (1978); accord Pacific Gas & Elec. Co. v. Public Utilities Comm'n, 475 U.S. 1, 15 (1986) (plurality opinion); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 657 (1990).

~~In contrast,~~ But strict scrutiny is not required where ~~a~~ the regulation ~~that discriminates among speakers does not do so because~~ is based on something other than ~~of the~~ communicative impact ~~of the disadvantaged speech. For example,~~ as when a speaker-based restriction ~~might be~~ imposed ~~based on a~~ because of a speaker's unique ability to communicate using particular physical means, see Turner Broadcasting, 114 S. Ct. at 2460-61, 2467, or ~~based on things~~ because of things the speaker has done in the past unrelated to their speech, see Regan v. Taxation with Representation, 461 U.S. 540, 548-51 (1983).

We are not aware of the purpose this provision is meant to serve. We believe, however, that there are valid reasons unrelated to the communicative impact of out-of-state contributions that could sustain the provision. In particular, we believe that the government has a legitimate interest in seeking to foster strong ties between a Senator and the constituency he or she is constitutionally committed to represent. In upholding the individual contribution limit in Buckley, the Court noted its effect was merely "to require candidates and political committees to raise funds from a greater number of persons and to compel

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5 Rosenberger, 115 S. Ct. at 2516; see Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 763 (1986) ("A law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship.").

people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression." 424 U.S. at 22. We believe that the out-of-state contribution limit would have essentially the same effect. It would merely require candidates to build stronger ties with the constituents whom they are elected to represent. We also note that because candidates may return to each out-of-state contributor a pro rata share of the excess of the 40% limitation, the law does not necessarily require that a candidate ever refuse to receive, which is to say associate with, a given out-of-state contributor.

Jurisdiction over Challenges to Broadcast Media Rates and Free Broadcast Time: S. 1219 would provide that "[t]he United States Court of Federal Claims shall have exclusive jurisdiction over any action challenging the constitutionality of the broadcast media rates and free broadcast time required to be offered to political candidates. . . ." S. 1219, § 102(b). Because the Court of Federal Claims is not an Article III court, this provision raises serious constitutional ~~concerns~~ questions under Article III of the United States Constitution.

The bill would vest exclusive power to adjudicate any challenge to the bill's broadcast rates and free time provisions if the challenge is based on the Constitution, regardless of which component of the Constitution the amended bill is asserted to violate. The validity of any provision that purports to withhold jurisdiction to review the constitutionality of a law from both an Article III court and from state courts is seriously in doubt. See, e.g., Webster v. Doe, 486 U.S. 592 (1988); Weinberger v. Salfi, 422 U.S. 749 (1975); Johnson v. Robison, 415 U.S. 361, 373-74 (1974). No constitutional impediment exists to a scheme that vests the Court of Federal Claims with jurisdiction to make an initial determination as to whether a public regulatory program of the federal government has taken private property for public use, within the meaning of the Fifth Amendment, and determining the amount of the compensation due, where the Court of Federal Claims' determinations of law are subject to review by the Article III judiciary. See Thomas, 473 U.S. at 592; Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984); cf. CFTC v. Schor, 478 U.S. 833, 847 (1986). We suggest that the bill be revised to so provide and to further specify that Article III "review of constitutional error is preserved." See Thomas, 473 U.S. at 592.

Effect of Ineligible Senate Candidate Overspending the Voluntary Limit: Existing law imposes a $1,000 limit on the amount an individual may contribute to a specific candidate. This is a general limit that applies to contributions to all candidates, whether they participate in the voluntary public financing scheme or not. 2 U.S.C. § 441a(a)(1)(A); see Buckley, 424 U.S. at 23-35. Under the amended bill, the limit would be increased to $2,000 for a candidate who participates in the voluntary public financing system if that candidate's opponent exceeds the spending limits of

This seems inapplicable to me - That's not what Congress is saying here. To the extent this violates Buckley, the problem is the anti-equalization principle

the voluntary system. S. 1219, § 105. The general $1,000 limit would continue to apply in races in which all candidates comply with the voluntary limits or in which no candidates comply.

This provision ~~would~~ might will be subject to constitutional challenge. ~~on three possible grounds. First, In Buckley, the Court held that "[t]he First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise."~~ 424 U.S. at 57. ~~By penalizing a candidate who -- in the view of Congress -- speaks excessively,~~ the bill would arguably ~~run afoul of this principle and would~~ effectuate a speaker-based distinction that is based on the communicative impact of speech . As discussed above, this type of speaker-based discrimination is subject to strict scrutiny and thus must be narrowly tailored to serve a compelling governmental interest. Alternatively, Congress must advance a legitimate interest for this provision not based on communicative impact.

A second, closely related ground is § 105's chilling effect. Under the bill, a candidate who chooses not to participate in the public financing system would be forced to choose between continuing to speak in excess of the voluntary expenditure limit and thereby triggering a higher contribution limit for his or her opponent or ceasing to speak. The Court has ruled that forcing such a decision on potential speakers is subject to strict scrutiny.[6] Accordingly, the provision would, again, only survive scrutiny of supported by a compelling governmental interest.

~~Finally~~, § 105 would call into question the validity of the S. 1219's public financing system. In Buckley, the Court struck down mandatory spending limits, but held that such limits could be made a condition of participation in a voluntary public financing system. By imposing a penalty on candidates who do not participate, a court may hold that participation in the public financing system is not voluntary, in which case it would be unconstitutional. See Buckley, 424 U.S. at 54-59.

? Seems like a reach to me. Why can't this simply be characterized as adding to the incentive structure already in place?

In large part, this seems as above the same point. To the extent it's not, I'm not sure it's valid. The cases cited ~~provided~~ said if you speak, you have to provide an opportunity for

6 See Pacific Gas & Electric v. Public Utils. Comm'n, 475 U.S. 1 (1986) (plurality); Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974).

others to speak. Here, the speaker itself does not have to provide that opportunity - does not have to give space in its pages or its envelope (to some extent, a forced speech problem). Also - the opponent only gets his contribution level raised; his aggregate expenditure level -- i.e. his ~~total~~ speech -- remains the same.

Randy and Neil -

The more I think about the last argument, the more it seems that even in the abbreviated form I recommend, the argument is wholly non-obvious - indeed, highly counterfactual.

The basic point here picks up on my remark re your last paragraph. That is: Why should we consider this to be a penalty on speakers who want to speak "too much"? Why not consider it one among many benefits we give to encourage speakers to abide by the voluntary limits. I.E. If you abide by these voluntary limits, you get (a) public funds, (b) a higher contribution limit - at least if you are running in the sort of race ~~where you a~~ (against the sort of candidate) where there's good reason to believe you will need the extra incentive). The key here: this is not a penalty on the speaker who wants to talk too much. It's a benefit ~~to p~~ -- like many we give -- to people to people who agree to comply with limits.

Let's discuss.

Elena

THE WHITE HOUSE
WASHINGTON

Fallback

1. No indep expends by anyone other than political cmte or indiv

OK

— no PAC, corp, unions

other assn

2. Contribs made by intermediaries

Provision — control agt intermed.

may be too broad.

Less clear.

Interfere w/ assoc rts.

saving construction?

3. ~~Contribs~~ Indep expends by advisors/ee's of cand — too broad again.

4. Compelled advert. identification.

Public funds?

McIntyre

distinguishes broadcasting?

call into q. statute on books

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5. Out-of-state contribs

unclear?