

NLWJC - Kagan

Counsel - Box 035 - Folder 001

Campaign Finance Current [1]

THE WHITE HOUSE

WASHINGTON

Jack + Kathy -

Attached are new materials from
Common Cause: (1) coordination and
(2) express advocacy. I am sending
them over to OLC, so they will
probably come up in our meeting
tomorrow.

Elena

What is coord?
what is pol phy? broadcast def PORS
could new - could forever.

Any entity - not just
party.

Party and coordination language - December 17 Draft

Section 301(9)(A)(2 U.S.C. 431(9)(A)) is amended by adding new paragraph (iii) as follows:

(9)(A) The term "expenditure" includes -

(iii) any communication that is made by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers to a clearly identified candidate for federal office.

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Section 301(8)(A) (2 U.S.C. 431(8)(A)) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term "contribution" includes --

(iii) (aa) any [payment] made for a communication or anything of value that is made in coordination with a candidate. Payments made in coordination with a candidate include:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any [general or particular] understanding with a candidate, his authorized political committees, or their agents;

(2) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his authorized political committees, or their agents; or

(3) payments made based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate or the candidate's agents;

(4) payments made by any person if, in the same election cycle, the person making the payment is or has been --

PORS too
broad?

(I) authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

(II) servicing as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

(5) payments made by any person if the person making the payments has advised or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

(6) payments made by a person if the person making the payments retains the professional services of any individual or other person who has provided or is providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office. For purposes of this clause, the term 'professional services' shall include any services (other than legal and accounting services solely for purposes of ensuring compliance with any Federal law) in support of any candidate's or candidates' pursuit of nomination for election, or election, to Federal office.

(bb). For purposes of this subparagraph, the person making the payment shall include any officer, director, employee or agent of such person, or any other entity established, financed or maintained by such person.

(cc). For purposes of this subparagraph, any coordination between a person and a candidate during an election cycle shall constitute coordination for the entire election cycle.]]

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everything else to deemed
coord - even issue ads!
can't be right. (as ever as*

Section 315(a)(7) [2 U.S.C. 441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Section 301 [2 U.S.C. 431] is amended by striking paragraph (17) and inserting the following:

(17) (A) The term "independent expenditure" means an expenditure that --

(i) contains express advocacy; and

(ii) is made without the participation or cooperation of, or without consultation of, or without coordination with a candidate or a candidate's representative, as defined in section 301(8)(A)(iii).

(B) Any expenditure or payment made in coordination with a candidate as defined in section 301(8)(A)(iii) is not an independent expenditure under paragraph (17).

Section 441a(d) is amended by adding new paragraphs as follows:

FEC idea

(4) Before a party committee may make coordinated expenditures in connection with a general election campaign for federal office in excess of \$5,000 pursuant to this subsection, it shall file with the Federal Election Commission a certification, signed by the treasurer, that it has not and will not make any independent expenditures in connection with that campaign for federal office. A party committee that determines to make coordinated expenditures pursuant to this subsection shall not make any transfers of funds in the same election cycle to, or receive any transfers of funds in the same election cycle from, any other party committee that determines to make independent expenditures in connection with the same campaign for federal office.

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OK!

(5)(a) A political committee established and maintained by a national political party shall be considered to be in coordination with a candidate of that party if it has made any payment for a communication or anything of value in coordination with such candidate, as defined in section 301(8)(A)(iii), including but not limited to:

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(i) it has made any coordinated expenditure pursuant to section 441a(d) on behalf of such candidate; or

(ii) it has made a contribution to, or made any transfer of funds to, such candidate;
or

(iii) it has participated in joint fundraising with such candidate, or in any way has solicited or received contributions on behalf of such candidate; or

(iv) it has provided in-kind services, polling data or anything of value to such candidate, or has communicated with such candidate or his agents, including pollsters, media consultants, vendors or other advisors, about advertising, message, allocation of resources, fundraising or other campaign related matters including campaign operations, staffing, tactics or strategy.

value paid?

(b) For purposes of this subsection, all political committees established and maintained by a political party, including all national, state, district and local committees of that political party, and all congressional campaign committees, shall be considered to be a single political committee.

(c) For purposes of this subsection, any coordination during an election cycle between a political committee established and maintained by a political party and a candidate of that party shall constitute coordination during the entire election cycle.

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REFORMING CAMPAIGN FINANCE

The campaign finance system in America has been a problem for some time. But in 1996, it went from the political equivalent of a low-grade fever to Code Blue-- from a chronic problem needing attention sooner or later to a crisis, with a system clearly out of control. The system needs both an immediate fix in a few important areas, and some sustained attention to the broader problems. We need an approach that breaks us out of the unproductive framework-- Democrats insisting on a bottom line of tough spending limits and public financing, Republicans insisting on a bottom line of no spending limits and no public financing-- that has doomed any constructive change for decades. It must instead use constructive ideas to help reduce existing problems without creating large unanticipated new ones.

And any proposal must accommodate the Supreme Court's rulings, from Buckley v. Valeo to this year's Colorado decision, that give wide leeway to individuals and groups independently to raise and spend resources in public and political debate under the First Amendment. If a Constitutional Amendment to alter the impact of the Court's decisions were desirable (and it is not clear that amending the First Amendment is the appropriate course of action,) it is not practical in the near term. So other ways must be found to reform the system within the existing constitutional context-- ways that will achieve the objectives of placing huge donations to candidates or parties off limits; leveling the playing field for outside groups and candidates in political communications in campaigns; enhancing political discourse and dialogue in the campaign; strengthening enforcement and disclosure; and encouraging small individual contributions.

We propose changes in five key areas:

1. **"Soft" Money.** The idea of "soft" money, spending by parties outside federal regulation, emerged in the reforms of the 1970s, as a way to enhance the role and status of party organizations. Unlike the hard money that goes to campaigns, soft money can come directly from corporate coffers and unions, and in unlimited amounts from wealthy individuals. It is harder to trace, less systematically disclosed, and less accountable.

Over time, soft money contributions for "party-building and grass roots volunteer activities" (the language of the law) came to be used for broader purposes, and evolved into a complex system of parties setting up many separate accounts, sometimes funneling money from the national party to the states or vice versa, or back and forth in dizzying trails. But soft money was a comparatively minor problem in campaign funding until 1992. Parties sharply increased their soft money fundraising and spending for a wide range of political activities, including broadcast ads, both in and out of election season.

The escalation increased alarmingly in 1996. Both parties sought and received large sums of money, often in staggering amounts from individuals, companies and other entities, and poured unprecedented sums of soft money into the equivalent of party-financed campaign ads. There is now evidence that some of this money came illegally from foreign sources.

The original limited role of soft money, as a way to enable funds to be used to enhance the role and capability of the parties, especially the state parties, has been mangled beyond recognition. Still, any change in law must recognize that state parties are governed by state laws; that traditional party-building activities, from voter registration and get-out-the-vote drives to sample ballots, have an inevitable overlap between campaigns for state and local offices and campaigns for federal office, and that the goal of enhancing the role of parties is a laudable and necessary one.

What to do? We propose the following:

a. *Prohibit national party committee soft money by eliminating the distinction in law between non-federal and federal party money for funds raised by national party committees or their agents. In other words, create one pot of national party money that has similar fund-raising qualifications to the money raised for candidates, namely, no corporate and union funds and limits on sums from individuals. Money may only come from individuals and registered political committees, which are given specific limitations.*

b. *Give parties freedom to allocate the hard resources they are able to raise among their candidates for office as they choose and not subject to existing restrictions, in order to provide a robust role for political parties even as they lose the soft money resources; this in turn will move the parties away from the subterfuge, encouraged by the Colorado decision, that they can operate independently of their own candidates.*

c. *Expand the existing limits on individual contributions to parties. Currently, individuals can give a total of \$25,000 per year in hard money to federal candidates and/or parties, with a sub-limit of \$20,000 to a party (and with no limits on soft money donations.) Change the limits so that individuals can give the current limit of \$25,000 per year to candidates, but create a separate limit of \$25,000 per year to political parties. Index both figures to inflation.*

d. *Stiffen party disclosure requirements. Currently, parties can transfer unlimited sums to state parties or related entities for use as they wish, without any federal disclosure of the state party expenditure. We propose that any monies transferred from a federal party to a state party or state and local entity be covered by federal disclosure laws, including the source and the nature of any expenditure of the funds, and that any transfers from state parties to federal committees come only from federal accounts. We also encourage states to continue their own trend of strong state-based disclosure requirements.*



2. **Issue Advocacy.** 1996 saw an explosion of political ads both by outside groups, such as the AFL-CIO and business entities, and by both political parties, with unlimited (i.e., unregulated) contributions and outlays because they were classified not as campaign-related independent expenditures but as "issue advocacy" ads. The Court in Buckley v. Valeo defined political ads as those that explicitly advocate the election or defeat of a candidate. This very narrow definition has allowed groups to employ television and radio ads that were political ads in every sense except that they avoided any explicit candidate advocacy. Thus, huge numbers of campaign ads aired that were thinly disguised-- at best-- as issue ads. They praised or-- more frequently attacked-- specific candidates but ended with the tag line "Call Congressman _____ and tell him to.... (stop "raising taxes," stop "cutting Medicare", etc.)

The Supreme Court has appropriately stated that issue advocacy is protected under the First Amendment, as are independent expenditure campaigns. However, funding for independent expenditure campaigns can be regulated as are candidate and party funding for elections. We believe that there is room for Congress to define with more clarity what is meant by issue advocacy and political campaigning without running afoul of the Court's real intent. Thus we propose:

Any paid communication with the general public that uses a federal candidate's name or likeness within ninety days of a primary or of a general election-- the same times used by Congress to limit lawmakers' postal patron mass mailing communications-- be considered a campaign ad, not an issue advocacy message, and be covered by the same rules that govern independent expenditure campaigns, meaning among other things that they cannot be financed by corporate or union funds, but can use publicly disclosed voluntary contributions in a fashion similar to funds raised by political action committees. (An exemption would apply, as it does in current law, for candidate debates and press coverage.)

This change would not limit in any way groups' ability to communicate in a direct targeted fashion with their own members or constituents. Nor would it limit advertising campaigns or the freedom of parties or independent groups to get their issue-oriented messages out. What it would do is change the funding basis of campaigns that include actual federal candidates to conform to other comparable election-related efforts. The AFL-CIO or the Chamber of Commerce, the Christian Coalition or the Sierra Club, for example, could run whatever ads it wanted, funded as it wished, whenever it wanted that mentioned or referred to no specific candidate for office. It could run ads that mentioned candidates or lawmakers in a similar fashion except during the ninety days before a primary or general election. During the two ninety-day periods, ads could run that mentioned a candidate or used the candidate's likeness-- but *those* ads would have to be funded in the same fashion as other independent expenditure campaigns-- in other words, by publicly disclosed money raised on a voluntary basis by a political committee.

3. Broadcast Bank. No campaign finance reform will be effective unless it ensures adequate means for candidates and parties to get their messages across. A positive and constructive campaign finance reform proposal will channel resources in the most beneficial ways, empowering parties and candidates (including challengers) and encouraging small individual contributions, while removing as much as possible the unfair advantages and subsidies available to independently wealthy, self-financed candidates. At the same time, a constructive reform will try to encourage better debate and deliberation in campaigns by encouraging more candidate-on-screen discourse. In that spirit we propose:

a. Creation of a "broadcast bank" consisting of minutes of television and radio time on all broadcast outlets. Some time will be given to political parties, allocated in the same proportion as the public funding available for presidential campaigns. Other time will be available to individual candidates, as described below. Each party will decide how to allocate the time among its candidates. Such time can be used for ads, provided that no message is less than sixty seconds, and the candidate must appear on screen on television messages, and the candidate's voice and identification used on radio communications.

b. Additional time will be available to candidates who raise above a threshold of \$25,000 in individual, in-state contributions of \$100 or less; for each subsequent such contribution, candidates will receive a voucher for an equivalent amount of broadcast time.

c. The broadcast bank can be financed in several ways. The first step is to make a tradeoff: the "lowest unit rate" provision, which requires that broadcasters give discounts that average thirty percent on the advertising time they sell political candidates, will be repealed. In return, each broadcaster will be assessed a fee, in dollars or minutes, on all advertising the broadcaster sells, with the revenues going to the broadcast bank. In 1991, the National Association of Broadcasters itself suggested a trade in which broadcasters, if freed from the burden of lowest unit rate, would provide one minute of free time for each two minutes of paid time. The second step is to provide additional revenues or broadcast minutes from one or more of a variety of options. One approach would be to auction off whatever space the FCC determines is available in the portion of the spectrum which includes public safety, channels 60 through 69, which is soon to be broadened or enhanced by technological advances. A second is to take advantage of a provision of the 1996 Telecommunications Act that requires broadcasters to pay a fee for employment of any ancillary or supplementary portions of the digital spectrum, with the fee set by the FCC and the funds to be placed in the U.S. Treasury; Congress could direct or the FCC could require that the fee be paid in whole or part in broadcast minutes for public purposes, or that the funds be set aside for the bank.

d. Candidates who want to purchase time outside of the broadcast bank system may do so, but must do so at market rates (lowest unit rates would no longer be mandated for such time.)

4. Small Individual Contributions. Over the past several years, campaigns for Congress have seen sharp changes in the nature of contributions. A shrinking share of campaign resources have come from small donations from individuals, while steadily increasing shares have come from both larger contributions (\$500 to \$1,000) and political action committees. Of all the sources of private monies that go into our political campaigns, the most desirable and least controversial is that contributed by in-state individuals in small amounts. The more citizens are involved in the campaign process, the more stake they have in the political system; a small contribution is a positive way, with no direct link to a legislative product, to enhance the political process.

One of the most significant goals of campaign finance reform, then, is to find ways to encourage small individual contributions, especially in-state, and to encourage candidates to raise more of their funds in this fashion. The key to doing so is:

a. Create a 100% tax credit for in-state contributions to federal candidates of \$100 or less. The credit would apply to the first \$100 an individual gave to candidates-- in other words, \$25 given to each of four candidates would result in a \$100 credit. It would not apply to large contributions; it would be phased out if an individual gave more than \$200 to the candidate.

b. As in #3b above, add a large incentive to candidates to raise more of their resources from small individual in-state contributions by creating a matching voucher system for broadcast time.

c. Consider funding the tax credit for small contributions by assessing campaigns a ten percent fee for large contributions (\$500 or \$1,000 or more.) Consider further the tradeoff of raising the individual contribution limit of \$1,000 to \$2,500 or \$3,000 to take into account inflation in the two decades since it was instituted while simultaneously assessing the fee for large contributions to pay for the tax credits.

5. Enforcement. The lack of strong enforcement of campaign laws has been a serious problem in the past, but escalated sharply in 1996. The Federal Election Commission is poorly and erratically funded, hampering its ability to gather information, disseminate it in a timely fashion, and use it to investigate and act on complaints of violations of the laws or regulations. The Commission's structure, with six commissioners, three of each major party, makes inevitable frequent deadlock along partisan lines. Little if any penalty results from blatant violations of the campaign laws. Elections are not overturned, and if there are subsequent financial penalties, they are rarely commensurate with the severity of the violations and in any case are of little importance if the violations made the difference between winning and losing. Candidates and parties knowingly take advantage-- and never more openly than in 1996.

It would be desirable to change the structure of the FEC, including changing the selection of its membership. Given the Buckley decision and the attitudes of lawmakers from both parties, major structural changes are probably not practical. But there are other ways to create a more viable disclosure and enforcement regimen. We recommend:

a. Move from the current practice of voluntary electronic filing to a mandatory one, with a de minimus threshold.

b. Move from annual appropriations for the FEC to two-year or even longer-term funding, with a bipartisan mechanism in Congress to maintain adequate funding for the commission. Congress should also consider an independent funding source for the FEC, such as a modest filing fee for campaigns and related committees.

c. Allow for the possibility of private legal action where the FEC is unable to act by virtue of a) deadlock or b) administrative time requirements where injunctive relief would be necessary (a high standard requiring a showing of immediate, irreparable harm.). Streamline the process for allegations of criminal violations, by creating more shared procedures between the FEC and the Justice Department, and fast-tracking the investigation from the FEC to Justice if any significant evidence of fraud exists.

d. Put into legislation a requirement that until a campaign has provided all the requisite contributor information to the FEC, it cannot put a contribution into any account other than an escrow account where the money cannot be spent. In turn, the current ten-day maximum holding period on checks would have to be waived

e. Adopt a single eight-year term for Commissioners, with no holding over upon expiration. Commissioners' terms should be staggered, so that no two terms expire in the same year. Congress should explore ways to strengthen the office of chairman, including considering creating a new position of non-voting chairman and presiding officer, as the Commission's Chief Administrator.

These reforms are not top-to-bottom comprehensive changes in the federal campaign financing system. Comprehensive proposals do exist-- although they include radically different approaches. But no comprehensive proposal is practical at the moment, or could in fact "cure" the problems in the system once and for all. Nor would any two of us agree on all or even most of the elements that might be included in a comprehensive package. The changes we propose are doable and sensible, and if enacted, would make a very positive difference in American campaigns.

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For A
Press Conference on Campaign Finance Reform
Held at the American Enterprise Institute
Washington, DC
December 17, 1996

We come before you today as a bipartisan group to offer a new approach to campaign finance reform.

The old strategy was based on two key assumptions.

- (1) The first was that high spending is the most important problem in elections today.
- (2) The second is that you can get rid of this spending by putting spending limits into the law.

Beginning from these assumptions, the old approach to campaign finance reform has said that no reform is a real reform unless it put limits on candidate spending.

I don't believe that. I am speaking for myself here, but I believe that the three main goals of campaign finance reform should be, first, to improve public accountability; second, to improve the level of public debate; and, third, to do this within a basic framework that preserves the freedoms that form the core of our liberal democracy.

I want to speak for a minute about the first of these goals -- improving accountability. What do I mean by this? Improving accountability means two things.

First, it means improving disclosure, and we do have recommendations for that.

Second -- and this really is the key point today -- it means that the system works better when spending and campaigning is done by people whom the voters can hold accountable on election day. That is, the system works better when spending is done by the candidates and parties.

What we have learned from the past twenty years of campaign finance law -- twenty years of presidential elections and gubernatorial elections -- is that when you try to put limits on spending, you don't really put an end to the spending at all. What you really do is to drive the spending away from the candidates. You drive the spending underground. And when the spending is underground, the voters don't find about about it. Even worse, when they do find out about it, the candidates throw up their hands and say, "Who me? Don't blame me. I didn't do it. It was that other committee."

This kind of evasion is not what we want out of a campaign finance system, but it's what you get when you put limits on spending by candidates.

Some people think you can fix the problem by changing the First Amendment.

You might be able to limit candidates by changing the First Amendment, but you cannot limit interest groups unless you are prepared to put what I would consider to be extreme and disastrous limits on speech.

We think we have a much better approach to cleaning up the system.

We think all contributions to political parties ought to be limited. There has to be an end to the soft money cesspool that has become this generation's method for avoiding public accountability.

Then, once you have limited the money that goes into the parties and made the parties accountable, we think the parties ought to be freed up to help their own candidates as much as they want.

We know from all of the studies we have done that this will help competition. No part of the system puts as high a proportion of its money into challengers as do the parties.

At least as important, though, is what this will mean for accountability. Once you do this, you will dry up the incentives people now feel for making end runs around the system by setting up all of those unaccountable outside spending groups.

I'll end by reminding you of the basic goal. The basic goal is not just to pass a law that makes you feel good while you pass it. This should not be about feeling good or claiming credit.

The real goals ought to be to improve improve public deliberation, and to improve accountability.

This package will do both -- and it will do it better than any other approach now being discussed.



December 17, 1996

A Broadcast Time Bank for Political Candidates

As part of a package of campaign reforms, we propose the creation of a political broadcast time bank. Its principal objectives are to reduce the cost of campaigns; to distribute communication resources more equitably between challengers and incumbents; to give parties and candidates the flexibility to respond to heavy advertising campaigns by self-financed millionaires or outside groups; to strengthen political parties; and to enhance accountability and discourse by promoting more candidate-on-screen communication.

This reform imposes a cost on broadcasters. At a time when the broadcast television industry is poised to receive valuable new spectrum space on the public's airwaves, we believe it is appropriate to expand the industry's public interest obligations. The proposal outlined here sets forth the minimum burden that broadcasters should bear to meet that obligation. At the end of this paper, we will list some additional funding options that would enlarge the time bank and add to its value as an instrument of campaign reform.

The Creation of The Time Bank

Abolish the lowest unit rate provision, which since 1972 has required that broadcasters and cable operators give breaks on the advertising time they sell political candidates. Assess each broadcaster and cable station a surcharge of 50 percent on all political advertising they sell at prevailing commercial rates. Apply these revenues to the creation of a national political time bank. (The National Association of Broadcasters endorsed a similar proposal in testimony before Congress in 1991).

The Allocation of Time

Distribute vouchers for time from this bank in two ways – to all qualifying candidates for federal office, and to major (and qualifying minor) political parties, which can in turn distribute their vouchers to their candidates.

One half of the vouchers will be distributed during the general election to all candidates for the House and the Senate who attain a threshold of contributions from small donors in their districts or states. Candidates can exchange some or all of their broadcast vouchers for an equivalent value of franking vouchers. Senate candidates will be allotted more vouchers than House candidates, on a formula pegged to their state's population.

The other half of the vouchers will be allocated on an equal basis to the two major parties, which will in turn be free to distribute the vouchers in any denomination to any candidate for local, state or federal office. Congress will direct the FEC to promulgate regulations concerning the award of broadcast vouchers on a proportional basis to qualifying minor parties.

The Market-Oriented Voucher System

Candidates will use the vouchers to "purchase" broadcast time at prevailing rates in each media market. Broadcasters will cash in these vouchers at the time bank. This fungible voucher system avoids the shortcomings of free time proposals that allocate time equally to all candidates, or that extract time equally from all broadcasters. The weakness of the first approach is that time is more valuable in some races than others. The inequity of the second approach is that time is more costly in some markets than others. The voucher system gives political parties the flexibility to distribute the broadcast time where it will have the greatest impact – generally, in hotly-contested races. Likewise, it extracts the time from broadcasters with marketplace equity -- those stations that profit more heavily from political advertising pay more heavily into the time bank. But small stations pay less into the fund than big stations do for each 30 second political spot they sell – because small stations charge less for each spot. Finally, the voucher system sorts out the problem of "urban glut" in political broadcast communication precisely the way the economic marketplace handles it. Spot time in New York City will cost ten times more vouchers than spot time Albuquerque.

The Format Requirement to Enhance Political Communication

Only the candidate may be on screen in all TV spots he or she makes in the time allocated from the broadcast bank; only he or she may speak in the radio and TV spots.

This format requirement is designed to promote accountability in political communication and civic engagement in electoral politics. It does not restrict the right of candidates to continue to advertise on television in whatever manner they please with the private funds they will continue to raise. Nor will it eliminate "negative attacks." These are a legitimate part of politics. Rather, it is designed to use the public's claim on ownership of the airwaves to foster a television discourse during campaigns that favors words over images, substance over sound-bites, fair comment over blind broadsides. As matters now stand, the incentives are the other way around. The politician who pays for the typical attack ad rarely appears in it. He prefers to hide behind the announcer's sneering voice and the screen's distorting image. These ads are designed not to persuade his supporters to vote for him, but do discourage his opponent's supporters from voting at all. And they work – political scientists estimate that campaigns heavy with attack ads shrink turnout by five percent. The hope is that as more of the television discourse is conducted by the candidates themselves, fewer citizens will be repulsed by campaigns and more will vote.

Background

This bank creates a communications "floor" for Senate and House candidates. A floor generally works to the advantage of challengers, who tend to be under-funded and thus have greater need for seed resources to get their message out. Meanwhile, eliminating the lowest unit rate provision hurts the better-financed incumbent more, because he or she spends more on paid political advertising. Thus, both ends of this exchange – creating a time bank and eliminating lowest unit rate – work to level the electoral playing field.

Challengers also stand to benefit from the allocation of broadcast vouchers to the parties, because parties are the political institutions with the greatest stake in advancing the prospects of challengers. Given their goal of maximizing the number of electoral offices they win, parties will tend to allocate these vouchers disproportionately to challengers who are under-funded but within competitive striking range. This further levels the playing field.

To be sure, there will be circumstances when parties will be inclined to allocate vouchers to incumbents – for example, to incumbents who are in tight races because they are targets of self-financed millionaire challengers or of negative ad campaigns by independent expenditure groups. This, too, levels the playing field and promotes equity.

This new bank of communication resources is intended to help parties remain robust institutions and sources of political cohesion at a time when atomizing forces in the political and media culture are inducing candidates to behave like independent contractors and interest groups to behave like surrogate parties. These party broadcast vouchers are also intended to replace party soft money. Unlike soft money, however, the vouchers will not come from interested givers. And unlike soft money, the vouchers can be transferred to the party's candidates without violating the letter or spirit of the law.

Broadcast vouchers also should be made available on a proportional basis to minor parties that achieve ballot position nationwide and reach other qualifying thresholds (for example, national polling numbers above five percent in a presidential campaign). The FEC should set appropriate thresholds, perhaps relying on recommendations from an advisory body that would include representatives of major parties, minor parties, non-partisan civic groups and the scholarly community.

Additional Public Interest Options

A 50 percent surcharge on political advertising will create a broadcast bank with an estimated market value of \$250 million per two-year election cycle. This savings to candidates will be partly offset by the elimination of lowest unit rate, whose value is variously estimated at \$50 to \$100 million per cycle. (The lowest unit rate provision has proven cumbersome for broadcasters to administer and difficult for candidates to claim, especially when candidates insist on purchasing expensive “non-preemptible” time in order to guarantee their spots will reach their intended demographic targets.)

If Congress wants to further reduce campaign costs and enhance campaign discourse, it can impose additional public interest obligations on broadcasters in a variety of ways.

1. Create the bank in the manner described above, but by imposing a surcharge of 75 or 100 percent on the political time that broadcasters sell.
2. In addition to a surcharge, impose a use fee for public interest purposes on broadcasters awarded new spectrum space. Apply fees to a trust fund whose interest would be dedicated, in part, to supporting a political time bank.
3. In addition to a surcharge, require that broadcasters who are awarded new spectrum space allocate weekly blocks of prime time on their main audience-gathering channels during the height of the campaign season for candidate discussions, debates, interviews and town hall style meetings in a variety of lengths and formats.



Background Briefing:

Digital Television and The Public Interest

The proposal to impose new public interest obligations on broadcasters to ease the cost of political communication comes at a time when the industry is poised to receive new spectrum space in order to facilitate its transition from analog to digital technology.

The brave new world of computer-driven televisions will enable broadcasters not only to deliver much sharper pictures, but to transmit programming, data and other services on up to six channels for every one license they now hold. Because of this multiplicity of potential uses, the value of the spectrum to be handed over to broadcasters has been estimated at \$30 to \$70 billion.

In 1993, Congress for the first time authorized the Federal Communications Commission to auction off portions of the spectrum for non-broadcast uses, such as cellular telephones and paging systems. These auctions have raised \$19 billion so far for the federal treasury.

In 1995 and 1996, some in Congress called for the new broadcast section of the spectrum also to be auctioned, rather than given away in what then Senate Majority Leader Bob Dole called a "giant corporate welfare program." The auction proposal drew support from an unlikely alliance of left-of-center populists (Consumer Federation of America, The Nation Magazine) and right-of-center free marketeers (The Heritage Foundation; the editorial pages of The Wall Street Journal and Business Week; New York Times Columnist William Safire).

The television industry easily beat back any move toward an auction, in part on the strength of television ads that Sen. John McCain (R-Ariz.) denounced as "an absolutely false scare campaign." Despite these and other heated charges, the auction issue received precious little news coverage, especially on television. The Columbia Journalism Review observed in July that broadcast journalists had "failed ignominiously" to report a story "in whose outcome TV networks and stations have a huge money interest."

Journalists were not the only tribe wary of spectrum auctions. Speaker of the House Newt Gingrich observed that "nobody" in Congress wants to "take on" the broadcasters. When Rep. Barney Frank (D-Mass.) attached a broadcast spectrum auction amendment to an appropriations bill in June, it was defeated on a 408-16 vote.

The broadcast industry argued it should not be subject to spectrum auctions because it faces unique obligations to serve the "public interest, convenience and necessity" - the language of the 1934 Communications Act.

However, over the years the broadcasters have fought to escape from the public interest standard, arguing it impinges on their property rights as station owners and their First Amendment rights as journalists. Even though the Supreme Court has repeatedly upheld its constitutionality, the public interest standard has lost teeth in recent decades. It has been more than 20 years since any broadcaster has been denied a license renewal for failing to serve the public interest, and core tenets such as the fairness doctrine were scrapped during the deregulatory 1980s.

The imminent digital television revolution offers the prospect of reversing this trend. The Clinton Administration has argued that it is more important to extract public interest obligation than dollars from broadcasters seeking access to new spectrum space. "The service is new," says FCC Chairman Reed Hundt. "No patterns or practices are set. This is the right time and digital broadcast could be the right place to stake out a claim for free and fair political debate."

In the 1996 Telecommunications Bill, Congress directed that the new spectrum space be awarded to incumbent broadcast license holders. The FCC is expected to do so by the middle of 1997. While the commission could act on its own to condition this new spectrum space on broadcaster contribution to a time bank, political realities dictate that it will not take such a step without Congressional approval. With key technological issues recently resolved, the broadcast industry is ready and anxious to move toward digitization. If ever the industry can be enjoined to take on new public interest responsibilities, the early months of 1997 appear to be ripest moment - for the industry will still be awaiting its windfall.



**THE LEAGUE
OF WOMEN VOTERS®**
OF THE UNITED STATES

**Remarks by Becky Cain, President, League of Women Voters of the U.S.
On A New Consensus Approach To Campaign Finance Reform**

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This is a critical moment for campaign finance reform. Because of the recent flagrant abuses of the campaign finance system, public sentiment in support of reform is stronger now than it has been in twenty years. We believe there can be no better time than now, on the dirty heels of the 1996 campaign, to push for a cleaner system.

While the Federal Election Commission reports show that the 1996 elections cost more money than ever before, the real cost far exceeds what shows up on the Federal Election Commission ledger -- because this campaign was special.

This year we saw an explosion in the use of loopholes to get around election laws. Millions of dollars of special interest money was used to influence the outcome of the elections through the soft money, issue advocacy and independent expenditure loopholes. Needless to say, none of this was lost on citizens. They see that they are being shut out of a political system where small contributions are rendered almost irrelevant.

The goals being talked about here today can help ensure that the situation does not worsen -- as it surely will -- in the next election.

We need to act now. We cannot afford another election like the one we just had -- an election drowning in soft money and poisoned by attack ads. We cannot afford to have the integrity of the system continually undermined by the disastrous combination of an impotent Federal Election Commission and laws that allow undisclosed millions to be funneled into campaigns.

For all these reasons, we cannot afford to delay reform.

The proposals put forward here will close the major loopholes in regulations on soft money and issue advocacy, while improving enforcement. They apply a tourniquet to the body politic in order to staunch the flow of private, special interest money into campaigns. At the same time, these proposals include a plan to provide free airtime in order to improve the discourse of campaigns.

The 1996 election illustrated the flaws in the system. This election showed where the hemorrhage is.

We saw how soft money has evolved into a tremendous loophole. The League supports the original purpose of soft money -- to strengthen the grassroots involvement through voter registration and get out the vote activities. But it's grown into a loophole the size of Indonesia.

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The 1996 election cycle saw Democrats raise one hundred and two million dollars in soft money -- an increase of two hundred and thirty-two percent. Not to be outdone, Republicans raised one hundred and twenty-one million dollars -- an increase of one hundred and sixty-six percent.

The 1996 campaign was drowning in soft dollars poured into national media campaigns that no doubt alienated much of the political base that soft money is supposed to reach. This money had no other purpose than to change the outcome of elections.

Issue advocacy has become, like soft money, another illicit funnel for private money into congressional and presidential campaigns. The poorly drawn distinction between issue advocacy and express advocacy has allowed unions, corporations and other groups to spend unlimited funds on thinly disguised electioneering.

In other words, corporations, labor unions and other groups are attempting to manipulate the outcome of elections and getting off on a technicality. Only space aliens could sit through the barrage of so-called issue ads last year and not see they were being told to vote for or against candidate X. This proposal tightens the definition of issue advocacy in a simple and effective manner.

Unless the mechanism for enforcing our election laws is strengthened, however, closing these loopholes will be ineffectual. As the past two federal elections made abundantly clear, we need common sense measures to improve enforcement. Another important goal addressed here is to improve the discourse of campaigns. By offering free airtime to candidates, we can free our political discourse from the thirty and fifteen second cells in which it is currently imprisoned.

The goals outlined here today are neither lofty nor Utopian. They are sensible, responsible and achievable. They are doubly achievable because they would not disproportionately harm or help either party.

We are again hearing proposals for a constitutional amendment. The advantage offered by this proposal is that it closes loopholes and tightens the definition of issue advocacy while protecting the First Amendment rights of groups and individuals to advocate for their beliefs and positions.

These goals are also consistent with the goals outlined by a group of citizens involved in a League of Women Voters Education Fund project called "Money Plus Politics, People Change the Equation. Citizens want a system where the politicians are responsive to voters not funders. They want a system where the money being spent in elections is accountable. They want improved discourse.

Admittedly, these reforms represent an incremental approach to reforming our campaign finance system. We believe that more will need to be done. But, we need significant changes now.

After six thousand seven hundred and forty-two pages of testimony at hearings, one thousand and sixty-three pages of committee reports, a hundred and thirteen votes and no progress over the last ten years, citizens are fed up. The principles guiding new approach can help break the deadlock in Congress.

On behalf of thousands of League members, we look forward to making that happen.

- Share language on
1. indep/cond lang
 2. soft \$ lang

in-state limits

PAC Ban - losing votes on something that would be needed in. Hoping to McC
Hard to know what will happen.

Ponding/Emily

As a practical mbr, w/out restrictions here there aren't any PAC limits.

Role of Wash lobbyist -
prohibition on fundraisers.

FEC appointments -
4 vacancies by April

Beck

cc: Doing sthng alt but they still see it as an alternative - that might cut this off

Billig priority in campaign finance

Dems - all say must deal w/ IEs

[One way to deal - drop all spending limits]

Gps - new approach to sp limits - try to disapp/repate -
"can only spend so much on X"

Furutich / Maine - with def of exp advocacy
leading to "disclosure reqs."

1) broaden def of exp. advoc
to ensure more will be disclosed.

Then these get counted toward
spending limits -
so other cand. gets more
goodies.

2) broaden def of what's coordinated

For example

Preemptive - w/in 60 days of elect. -
it's coordinated.

Campaign Finance - Possible
Modified McC/F // 8.10??

1. Foreign nationals - indiv / not Amer subsidiaries
all non-cits
↳ too difficult to draw distinctions?
anything we can take from another statutory scheme?
2. PACs - hard to stick w/ elimination.
(Repubs adamant abt banning)
Can't back up in this environment.
Fallback limit - stay at 1000?
Going up is tough
3. In-state
Stay silent on this.
4. Bundling -
going backwards - doing the Emily exclusion
5. ~~Independent expenditures~~ w/ II
Eliminating (Smith / Mans / Mehta version -
rehearsal prefer - more tightly crafted)
6. Independent Expenditures
Tighten the def - Power will produce language -
↳ of express advocacy. (Feyatch)
↳ of coord expend??
Not clear -
↳ he going all the way or
trying to do something that will survive
Hillel - what's the minimal thing
you can do to address the problem.

How abt outside gps?

Make ~~as~~ coordinated?? impossible

- ↳ " exp advoc broader
- a) under disclosure
 - b) hard to use hard \$
 - c) spigot turned on to other candidate

but not
under spending
limit

Const Amend (any -
seems to allow issue advertising too?

Campaign Finance - Labor 12/9

Book - 10 pp document laying out issues / TP etc.

Don't think WH will get vocal bill -
instead get: 1. Foreign contributions/
2. Book

Assessment of union dues funds

2 total about 25 m

Another 10 m from AFL treasury

Spending - 25 m on media

10 on phone banking etc.

PAC contribs are separate -

This is all voluntary \$

Affiliates also doing mlr comments -

all financed by dues \$

Highly partisan - explicit

8m in 95 ←

Doing movement

yr.

all ~~exp~~ issue advocacy
"voter guides" - comparing
candidates on issues

starting Sept

Even Aug 95 - issue stuff

7415 - prohib on active "in
course w/ electic" -

But after Mass like in GA -
shd for what w/corp has
narrowed

1st Cir v 9th Cir

only prohib it

exp advoc -

magic words

Fergalch -

broaden the

that - near

person test

Everything AFL did -

in accordance w/ even Fergalch
test

(would CSR accept Fergalch?)

strong arg - Buch by forward -

1st wts disallow.

wouldn't act in this def ←

to even grassroots lobbying /

legislative speech -

shouldn't be caught in / treated

as part of campaign process

c.f. min wage campaign came

out of this part.

Mr - Don't both Hd?

AFL NO

UAW - Maybe. That can't limit our ability to comment w/ our
members.

Prefer not to have PAC ban

Fall back - bond.

Feingold - Think he has up to take ban out -
replace w/ limit on funds of 20% from PACs

Loss distance b/w PACs? -

of contributions / or our contrib to PACs

Soft - hasn't gotten involved / may be doing away with

AFSCME - want to protect, GOTV efforts -

non-partisan

but NO - This is really exempt from Act's regulations

Mr - we're bond.

But if there are tech. points that could
affect you, let us know.

Basically the way of trying to shut down indep
expends for parties - treating more as coordinated

"because we haven't done much in the
IE area"



← meaning
direct
express
advocacy?

when visitors needed to wear name tags, this was it. ... Here's how some of the tags might have read: Mr. Jorge 'Gordito' Cabrera, drug dealer. Dr. Joseph Douze, fugitive. Dr. Claude Douze, loan deadbeat. Mr. Larry Hawkins, habitual sex harasser." The cast of "notorious characters did not end there." The host, atty Jerome "Jerry" Berlin, was indicted in '90 -- and later acquitted -- on a federal conspiracy charge of bribing public officials. One of the politicians "allegedly targeted" was then-TN Sen. Gore, "who, prosecutors stipulated, did not know of the alleged plot." The event "shows the almost comic possibilities that resulted from the Democratic National Committee pressing to raise a record \$120 million during this year's presidential election" (12/10).

MONEY TALKS: New FEC filings reveal how party money was "channeled to interest groups that pushed for voter registration or backed party positions in advertisements or direct mail campaigns." In the final weeks of the election, voters in 150 CDs "were flooded with millions of pieces of mail and phone calls from Americans for Tax Reform, an anti-tax group." Much of the group's "last-minute spending" was made possible by the RNC, which gave it \$4.6M. The RNC also gave \$650,000 to the Nat'l Right to Life Cmte and \$50,000 to a group backing a parental rights initiative in CO. The FEC reports also showed the RNC gave \$5,000 to a legal defense fund for Rep. Wes Cooley (R-OR), the embattled House member who has since decided to retire. The DNC reports showed several \$10,000 donations to Native American and African American voter-registration groups (Babcock, W. POST, 12/10).

SOFT MONEY: When Seagram & Sons decided this year to renounce a voluntary 60-year ban on broadcast liquor advertising, "it had done its best to ensure the backlash would be muted." The Canadian company "paved the way" by giving nearly \$1.6M to the two major political parties in "soft money." Seagram directed \$950,000 to Dem Party cmtes, "making it the party's largest single soft-money benefactor." It ranked fourth overall in giving to GOPers, with \$646,000. The top soft-money donor for the year was tobacco company Phillip Morris, which gave nearly \$2.2M, 81% to GOPers. RJR Nabisco, another tobacco interest, gave more than \$1.5M, "the bulk of it also to Republicans." The entertainment industry threw its money to the Dems. Walt Disney Co. gave 85% of its \$1M in soft money to Dems, and Dreamworks -- the Stephen Spielberg, David Geffen and Jeffery Katzenberg company -- gave all of its \$525,000 to Dems (AP/RICHMOND TIMES-DISPATCH, 12/10).

10/10 Campaign Finance - Common Cause

1. soft \$ lang - from Mary Hill -

We can live w/

Asked a couple of people abt it.

CC - wants it gamed

Ch newspaper today - funneling to priv "non-camp" P's
(W Post) " to/from st/nat p'tys

right now transfer of 2 not death with.

even hard \$ ayht

not be funneled this way.

Del of what st p'tys can/cannot use soft \$ fir - critical 2. This is where loophole will come in. Can't use for fed campaign purposes - but really make sure it can't!

1.1. Phy indep expends - REC Trans - not so good. CC reviewing.

2. Express / Issue Advoc.

1986 - last time SCT dealt w/-

It said there was EA.

" hasn't spent lots of time addressing the issue, the major wds has taken on like of its own.

Circuit split - 9th Cir - formula for going beyond MW.

Dev. record - showing this is band in reality

EA

Part 1 - codif. of MW test

" 2 - public common threshold amt

ch ID'd cand.

real understood as conveying advoc msg of

if - w/in 60 days OR

- purpose test - obj. ev.

Part 3 - or any common that's made in conn w/ a cand.

Voting Records

Doesn't include single vty records.

Reviewed by -
Edley
Heyman
Cox
Parker
Want to get
Tribe involved.
Proactive for
etc

NYU group -
looking much
further -
how and why
making Buckley.
But prob will
be fine w/
this -
prepared to
defend any-
thing.

Prohib for corp or union \$
otherwise - disclosure

Alternative - simple: If you do w/in 60 days -
you can't name a candidate
Prob in const. Even w/ a threshold \$ amt.

(cc/Harvard language)
As a practical mtr - is this ^ workable?
how can it be enforced?

See FEC language (last A) - basically this is
altern above -
if cand mentioned w/in 60 days -
no one can do it unless they are campaign #
Dunster also has 60-day prohib -
catching imagination of mtr because simple.
Use that + fallback?? FW doesn't like.
Neither do I - weakens the odds that the
fallback provision will go thru

Party indep expends -

1. If make IE's, limits on contribs lowered. Unconst.
2. Make person (pts) choose at outset b/w covd / indep
3. Proves def of what is "covd."
(Attempt to think of covd generally - rather than
as to each ad, etc.)

CA case - sentence - having open 2 - what this mt mean
in a syst w/ spending limits (pres electi -)
hook here??

Record built in this electi - room to play out
what's 1 + what's C in real terms.

Hille - how abt peer rule - pty is covd
w/ cand. - in any case w/ candidate
in place.

1, 2, 3 - not emb - pty don't need to do
this.

FW - were not behind this.

Notion of fragmented c/i - not reality - either
you covd a campaign or you don't.

Pross - This is hard to do politically. Lots of people
say - what's the matter w/ this?
Strengthening the pty!!

Foreign contribs -

subs of for-curred cos: dealt w/ in soft-~~side~~ side ~~side~~

Repuls will be drafting - since they're
assuming no soft-money ban.

Also, could arise w/ w/t PACs.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 12-14 ACTION/CONCURRENCE/COMMENT DUE BY: —

SUBJECT: CAMPAIGN FINANCE REFORM

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	QUINN	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LIEBERMAN	<input type="checkbox"/>	<input type="checkbox"/>	RASCO	<input type="checkbox"/>	<input type="checkbox"/>
RAINES	<input type="checkbox"/>	<input type="checkbox"/>	REED	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	STRETT	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	HAWLEY	<input type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HILLEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>BOWLES</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
KLAIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<u>RADD</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	<u>KAGAN</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: I have forwarded this to ADPLS.

RESPONSE: _____

197644

December 13, 1996

'96 DEC 13 PM5:51

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN HILLEY *JH*
BRUCE REED
PETER JACOBY
JIM WEBER

SUBJECT: CAMPAIGN FINANCE REFORM

As part of a strategy to make campaign finance reform a reality, we have met with key Democratic Members of Congress, labor representatives, party representatives and a core negotiating group from the outside reformers during the past several weeks.

From these meetings it has become clear that seven key issues must be addressed before a Congressional and reform group consensus can be reached on legislation that we could recommend for your support. These issues include: 1) limiting party independent expenditures; 2) curbing spending on issue advocacy; 3) banning "soft" money; 4) contribution limits for individual PACs; 5) in-state and in-district fundraising proposals; 6) proposals to codify the Supreme Court's decision in Communications Workers of America v. Beck, and; 7) restrictions on campaign contributions by non-citizens. In preparation for a meeting with you early next week, please find below the background information on these key issues and a brief summary of our progress toward the resolution of each.

Limiting Party Independent Expenditures

Two issues have emerged as key to successfully passing campaign finance reform. The first is limiting the ability of state and national parties to make independent expenditures on behalf of their candidates for federal office. The second, discussed below, is limiting the ability of parties and outside groups to impact federal races through issue advocacy activities. Both issues are central to a fundamental concern for all Members of Congress -- the inability to accurately predict, and effectively respond to campaign spending by forces other than the political opponent. Without a way to limit, or at least anticipate, the amount of spending by outside groups and the opponent's party, Members are reluctant to adopt a spending limits regime (such as would be imposed by McCain-Feingold) that curbs their ability to respond to such spending.

This past June in Colorado Republican Federal Campaign Committee v. Federal Election Commission, the Supreme Court held that political parties may make independent expenditures on behalf of their candidates as long as those expenditures are not made in coordination with the candidate. The decision overturned an FEC rule which had held that party activities by their nature were coordinated with candidates and therefore could be constitutionally limited under the Federal Election Campaign Act (FECA). The fallout from this ruling was felt almost

immediately during the November elections. In several key races the Republican Senatorial Campaign Committee made large independent expenditures which greatly exceeded the contribution limits that would have been applicable if the FEC's coordinated expenditures standard had remained in place. Additionally, because these were independent expenditures under FECA they could expressly advocate the election or defeat of a clearly identifiable candidate. Finally, because FECA requires that independent expenditures be made with "hard" money (i.e. money raised and disclosed under FECA's contribution limits for individuals, PACs and parties) Democratic party officials were unable to respond in kind given the party's relative "hard" money disadvantage.

Consequently one goal of reform legislation, shared by the FEC, reformers and Democrats alike, is to broaden the definition of party coordination to limit the ability of parties to undertake independent expenditures. Any effort to broaden the definition will be difficult, however, because it must necessarily address the constitutional hurdles in the Colorado decision, which require the FEC to establish actual coordination, rather than a presumption of coordination, when parties act to impact Congressional races. Legislative language to achieve this goal is currently being drafted.

Curbing Issues Advocacy Spending

As noted, Members of Congress, on both sides of the aisle, have become concerned about the impact of spending by third parties on their races. This concern is especially acute with respect to issue advocacy spending. In Buckley v. Valeo, the Supreme Court's 1976 landmark campaign finance decision, the Court held that the only independent expenditures that could be disclosed and regulated under FECA were those used for communications that "expressly advocate the election or defeat of a clearly identified candidate." (This definition has since been codified in FECA) In a footnote in Buckley the Court gave examples of words of express advocacy, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat" and "reject." The Court created this narrow definition to draw a clear distinction between "issue discussion" or issue advocacy which has strong First Amendment protections, and the candidate-oriented speech which is the focus of campaign finance laws.

Since 1976, Federal courts have generally held that unless the magic Buckley words are used in a political advertisement or activity, that activity is issue advocacy and therefore cannot be regulated under FECA. Consequently independent groups such as labor unions, the NRA, the Moral Majority, the Christian Coalition and others may use unlimited contributions from wealthy individuals, corporate treasuries or dues-paying members to fund issue advocacy campaigns during an election cycle. Perhaps the most publicized campaign of this nature was the \$35 million media campaign by the AFL-CIO earlier this year to highlight the anti-family positions taken by Congressional Republicans. None of the union ads expressly advocated the election or defeat of these Members and were therefore issue ads outside the scope of FECA. Additionally, national and state party organizations may also run issue advocacy campaigns paid for by "soft" money contributions which, as discussed in more detail below, are

by definition unlimited contributions from corporations, unions or individuals.

Reformers, Congressional Democrats, the FEC and reform-minded Republicans have all indicated a desire to expand the definition of express advocacy to include both the magic words test and a new test that would include campaign activities that, when taken as a whole, could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate. This would have the effect of bringing a broader range of issue advocacy activities under FECA, thereby limiting the impact of unlimited donations on elections. There is little question, however, that current constitutional jurisprudence favors a narrow definition of express advocacy and it will be a challenge to craft legislative language that expands the definition in a constitutionally defensible manner. We, along with the Office of Legal Counsel at the Department of Justice, are currently reviewing legislative language that purports to achieve this goal.

Banning "Soft" Money

Every credible campaign finance reform initiative during the past several Congresses has contained provisions to ban "soft" money. Soft money is a term used for funds that are raised by state and national parties for party building activities, GOTV efforts, state elections and voter registration drives. Because soft money cannot be spent to directly benefit a federal candidate, it is unregulated by FECA and therefore is not subject to the Act's contribution limits or disclosure requirements. This allows parties to raise soft money in unlimited amounts directly from unions, corporate treasuries and wealthy individuals. Past reform efforts have generally sought to ban national parties from raising and spending soft money while strictly limiting state soft money spending to activities that would not influence a federal campaign.

Events during the November elections have renewed the interest of reformers in banning soft money while causing Democratic party leaders to rethink their past support of ban initiatives. The reformers' renewed zeal stems from the unprecedented levels of soft money raised and spent during this past cycle. Party leaders, however, argue that soft money, which was used extensively by the party to fund issue advocacy campaigns in competitive races, helped Democrats win in many races. Consequently, a resolution of this issue will hinge on an acceptable compromise which provides parties with some sort of new benefit, such as free television time or reduced mailing costs, to offset the loss of soft money resources.

We are currently reviewing legislative language banning soft money and have asked the Democratic leadership for their input on potential offsetting benefits.

Contribution Limits for Individual PACs

Campaign finance reform efforts in the past, including last year's McCain-Feingold bipartisan campaign finance reform bill, have generally proposed to eliminate all PACs from

federal election campaigns. It appears, however, that Senators McCain and Feingold will concede that a PAC ban is unconstitutional and delete the ban from their reform proposal in the new Congress. Instead, the Senators' new proposal, which should be introduced on the first day of the new session, will likely lower the contribution limits for individual PACs giving to a federal candidate from the current \$5,000 per election (\$10,000 per cycle) to \$1,000 per election (\$2,000 per cycle).

Deletion of the PAC ban is favored by both Congressional Democrats and Republicans. However, in the House, where Members raise a high percentage of their contributions from PACs, House Democrats and Republicans will likely oppose the new \$1,000 contribution limit and insist on a significantly higher limit. The House Democratic leadership bill during the last Congress included a \$4,000 per election (\$8,000 per cycle) limit while the House Republican leadership bill lowered the current level to \$2,500 per year. Early indications from House Democrats are that they may accept a \$6,000 per cycle limit, if a contributing PAC is allowed to give up to \$5,000 in a primary election. In the Senate, individual PAC limits have been less controversial since many Senators raise the bulk of their contributions from individuals.

The outside reform groups may accept the deletion of the PAC ban from the McCain-Feingold legislation. It is unclear whether they will endorse a PAC limit higher than the \$1,000 per election level being contemplated by Senators McCain and Feingold. Because we believe that House passage of any campaign finance reform bill will hinge on preserving a substantial portion of the current individual PAC contribution level, we have urged the outside groups to support and ultimately persuade Senators McCain and Feingold to raise their proposed contribution limit.

In the past, you have endorsed legislation banning PACs. If the McCain-Feingold legislation does not contain a ban, it is our recommendation that you endorse a reduction in the current \$5,000 per election contribution level for individual PACs. We are researching the impact of each likely reduction to determine exactly what the new limit should be.

In-State and In-District Fundraising

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Codifying the Supreme Court's Beck Decision

In 1988 the Supreme Court decided a landmark labor law case involving the rights of individual employees to limit a union's use of membership fees and dues. In Communication Workers of America v. Beck the Court held that a union may not, over the objections of *dues-paying nonmember employees*, expend funds collected from them on activities unrelated to collective bargaining activities. As a result of this decision, dues-paying nonmembers may demand a pro-rated return of union dues and fees earmarked for political activity.

Since 1988, Congressional Republicans have pursued efforts to codify the Beck decision. In doing so, however, Republicans have proposed extremely broad interpretations of the Supreme Court's decision, effectively seeking to gut organized labor's participation in the national electoral debate and disable internal union to member communications. The AFL-CIO and its affiliates oppose "codification" of Beck. Congressional Democrats seem, ironically, less energized. Many Hill Democrats appear willing to consider enacting a narrow codification.

Republicans are certain to press Beck issues in the upcoming congressional debate on campaign reform. While Senate Democrats may well filibuster unreasonable Beck provisions, the possibility exists that Republicans may be able to force through unacceptable Beck provisions which they would trumpet as "reform." Such a scenario could result in the choice of either signing a distinctly anti-labor bill or risk being attacked as opposed to reform.

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During the closing weeks of the campaign you publicly stated your support for banning federal campaign contributions from those who cannot vote. Banning non-citizen individuals from federal campaign giving is relatively easy to implement and it has widespread support on both sides of the Hill and on both sides of the aisle. A more difficult question, both from a political perspective and as an implementation issue, is whether such a ban should apply to corporate PAC donations by the U.S. subsidiaries of foreign corporations.

Such a ban will be strongly opposed by companies with U.S. subsidiaries who will fear a diminution in their ability to petition the federal government. Additionally, determining which company is beneficially owned by a foreign interest could prove difficult as a matter of law and enforcement. We are currently reviewing legislative language which purports to ban federal campaign contributions from both individuals and all foreign-owned entities.

cc: Vice President Gore
Leon Panetta
Erskine Bowles
Harold Ickes
Jack Quinn

December 13, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN HILLEY
PETER JACOBY
JIM WEBER

SUBJECT: CAMPAIGN FINANCE REFORM

Law/EK
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As part of a strategy to make campaign finance reform a reality, we have met with key Democratic Members of Congress, labor representatives, party representatives and a core negotiating group from the outside reformers during the past several weeks.

From these meetings it has become clear that seven key issues must be addressed before a Congressional and reform group consensus can be reached on legislation that we could recommend for your support. These issues include: 1) limiting party independent expenditures; 2) curbing spending on issue advocacy; 3) banning "soft" money; 4) contribution limits for individual PACs; 5) in-state and in-district fundraising proposals; 6) proposals to codify the Supreme Court's decision in Communications Workers of America v. Beck, and; 7) restrictions on campaign contributions by non-citizens. In preparation for a meeting with you early next week, please find below the background information on these key issues and a brief summary of our progress toward the resolution of each.

Limiting Party Independent Expenditures

Two issues have emerged as key to successfully passing campaign finance reform. The first is limiting the ability of state and national parties to make independent expenditures on behalf of their candidates for federal office. The second, discussed below, is limiting the ability of parties and outside groups to impact federal races through issue advocacy activities. Both issues are central to a fundamental concern for all Members of Congress -- the inability to accurately predict, and effectively respond to campaign spending by forces other than the political opponent. Without a way to limit, or at least anticipate, the amount of spending by outside groups and the opponent's party, Members are reluctant to adopt a spending limits regime (such as would be imposed by McCain-Feingold) that curbs their ability to respond to such spending.

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Elena

This past June in Colorado Republican Federal Campaign Committee v. Federal Election Commission, the Supreme Court held that political parties may make independent expenditures on behalf of their candidates as long as those

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one of
Jack I agree, but you ~~must~~ must make that clear to
Hilley. As it was, John ~~announced that~~ ~~the memo~~ didn't even
tell us about this memo until the morning of the day he
said it had to go into the President. We didn't have it for
enough time - and I couldn't do enough editing - for me to want

expenditures are not made in coordination with the candidate. The decision overturned an FEC rule which had held that party activities by their nature were coordinated with candidates and therefore could be constitutionally limited under the Federal Election Campaign Act (FECA). The fallout from this ruling was felt almost immediately during the November elections. In several key races the Republican Senatorial Campaign Committee made large independent expenditures which greatly exceeded the contribution limits that would have been applicable if the FEC's coordinated expenditures standard had remained in place. Additionally, because these were independent expenditures under FECA they could expressly advocate the election or defeat of a clearly identifiable candidate. Finally, because FECA requires that independent expenditures be made with "hard" money (i.e. money raised and disclosed under FECA's contribution limits for individuals, PACs and parties) Democratic party officials were unable to respond in kind given the party's relative "hard" money disadvantage.

Consequently one goal of reform legislation, shared by the FEC, reformers and Democrats alike, is to broaden the definition of party coordination to limit the ability of parties to undertake independent expenditures. Legislative language to achieve this goal is currently being drafted.

Curbing Issues Advocacy Spending

As noted, Members of Congress, on both sides of the aisle, have become concerned about the impact of spending by third parties on their races. This concern is especially acute with respect to issue advocacy spending. In Buckley v. Valeo, the Supreme Court's 1976 landmark campaign finance decision, the Court held that the only independent expenditures that could be disclosed and regulated under FECA were those used for communications that "expressly advocate the election or defeat of a clearly identified candidate." (This definition has since been codified in FECA) In a footnote in Buckley the Court gave examples of words of express advocacy, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat" and "reject." The Court created this narrow definition to draw a clear distinction between "issue discussion" or issue advocacy which has strong First Amendment protections, and the candidate-oriented speech which is the focus of campaign finance laws.

Since 1976, Federal courts have generally held that unless the magic Buckley words are used in a political advertisement or activity, that activity is issue advocacy and therefore cannot be regulated under FECA. Consequently independent groups such as labor unions, the NRA, the Moral Majority, the Christian Coalition and others may use unlimited contributions from wealthy individuals, corporate treasuries or dues-paying members to fund issue advocacy campaigns during an election cycle. Perhaps the most publicized campaign of this nature was the \$35 million media campaign by the AFL-CIO earlier this year to

highlight the anti-family positions taken by Congressional Republicans. None of the union ads expressly advocated the election or defeat of these Members and were therefore issue ads outside the scope of FECA. Additionally, national and state party organizations may also run issue advocacy campaigns paid for by "soft" money contributions which, as discussed in more detail below, are by definition unlimited contributions from corporations, unions or individuals.

Reformers, Congressional Democrats, the FEC and reform-minded Republicans have all indicated a desire to expand the definition of express advocacy to include both the magic words test and a new test that would include campaign activities that, when taken as a whole, could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate. This would have the effect of bringing a broader range of issue advocacy activities under FECA, thereby limiting the impact of unlimited donations on elections. We are currently reviewing legislative language that purports to achieve this goal.

Banning "Soft" Money

Every credible campaign finance reform initiative during the past several Congresses has contained provisions to ban "soft" money. Soft money is a term used for funds that are raised by state and national parties for party building activities, GOTV efforts, state elections and voter registration drives. Because soft money cannot be spent to directly benefit a federal candidate, it is unregulated by FECA and therefore is not subject to the Act's contribution limits or disclosure requirements. This allows parties to raise soft money in unlimited amounts directly from unions, corporate treasuries and wealthy individuals. Past reform efforts have generally sought to ban national parties from raising and spending soft money while strictly limiting state soft money spending to activities that would not influence a federal campaign.

Events during the November elections have renewed the interest of reformers in banning soft money while causing Democratic party leaders to rethink their past support of ban initiatives. The reformers' renewed zeal stems from the unprecedented levels of soft money raised and spent during this past cycle. Party leaders, however, argue that soft money, which was used extensively by the party to fund issue advocacy campaigns in competitive races, helped Democrats win in many races. Consequently, a resolution of this issue will hinge on an acceptable compromise which provides parties with some sort of new benefit, such as free television time or reduced mailing costs, to offset the loss of soft money resources.

We are currently reviewing legislative language banning soft money and have asked the Democratic leadership for their input on potential offsetting benefits.

Contribution Limits for Individual PACs

Campaign finance reform efforts in the past, including last year's McCain-Feingold bipartisan campaign finance reform bill, have generally proposed to eliminate all PACs from federal election campaigns. It appears, however, that Senators McCain and Feingold will concede that a PAC ban is unconstitutional and delete the ban from their reform proposal in the new Congress. Instead, the Senators' new proposal, which should be introduced on the first day of the new session, will likely lower the contribution limits for individual PACs giving to a federal candidate from the current \$5,000 per election (\$10,000 per cycle) to \$1,000 per election (\$2,000 per cycle).

Deletion of the PAC ban is favored by both Congressional Democrats and Republicans. However, in the House, where Members raise a high percentage of their contributions from PACs, House Democrats and Republicans will likely oppose the new \$1,000 contribution limit and insist on a significantly higher limit. The House Democratic leadership bill during the last Congress included a \$4,000 per election (\$8,000 per cycle) limit while the House Republican leadership bill lowered the current level to \$2,500 per year. Early indications from House Democrats are that they may accept a \$6,000 per cycle limit, if a contributing PAC is allowed to give up to \$5,000 in a primary election. In the Senate, individual PAC limits have been less controversial since many Senators raise the bulk of their contributions from individuals.

The outside reform groups may accept the deletion of the PAC ban from the McCain-Feingold legislation. It is unclear whether they will endorse a PAC limit higher than the \$1,000 per election level being contemplated by Senators McCain and Feingold. Because we believe that House passage of any campaign finance reform bill will hinge on preserving a substantial portion of the current individual PAC contribution level, we have urged the outside groups to support and ultimately persuade Senators McCain and Feingold to raise their proposed contribution limit.

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TOTAL DEMOCRATIC FEDERAL		\$164,968,295	\$158,335,752
TOTAL		\$289,377,311	\$277,943,604

Source: Federal Election Commission [through 11/25/96]

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Status Update on Campaign Finance Reform

December 19, 1996

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- ◆ **End "bundling"**
- ◆ **Enhance FEC enforcement**

Administration Supported Additions and Changes

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- Ban contributions from non-citizens**
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- **"Issue" Advocacy within a campaign context**
 - **More robust concept of "express advocacy" expenditures. This would bring more campaign-related expenditures under FECA thereby requiring disclosure and prohibiting use of corporate or union treasury money.**

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- Return party spending to pre-Colorado status through a more robust definition of "coordinated expenditures" limiting ability of party committees to move money into individual races.

Congressional Democrats' Concerns

- **PAC Ban/Individual PAC Contribution Limits**
- **In-state and in-district limits on individual contributions**
- **Bundling/EMILY's List**
- **Elimination of "soft" money**

Reform Groups Approaches/Problems

■ Common Cause

● Possible move away from overall spending limits. To be replaced by spending limits on categories of spending:

▶ PAC's

▶ Personal Wealth

▶ Individual contributions limits

Reform Group

Approaches/Problems

■ Ornstein Group

- Complete Abandonment of Spending Limits
- Enhanced Role for Party Committees
 - ◆ Acceptance of Colorado -- Party Committees allowed to move unlimited (hard) dollars into races.
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Issues

- **Research underway on impact of various approaches**
- **Comprehensive Legislation Factors**
 - **Direction of the bipartisan/reform coalition**
 - **Critical role of spending limits**
 - **Likelihood of inclusion of meaningful incentives (broadcast time, tax credits for small individual contributions)**

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- Small bill -- foreign piece, express advocacy, soft money ban. Small bills can grow into big bills (e.g. addition of unwanted Beck provision).
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What Can Be Done Now

- ◆ Require disclosure of express advocacy expenditures
- ◆ Prohibit corporations and unions from expending general treasury funds for express advocacy
- ◆ Place limits on coordinated expenditures
- ◆ Place overall limit on individual campaign-related giving

What Cannot Be Done Now

- ◆ Limit "truly" independent expenditures
- ◆ Regulate issue advocacy

What We Want to Do

- ◆ Widen the boundaries of the "can do" categories to the maximum extent possible
- ◆ Challenge the assumptions that have produced the "cannot be done" categories

Tools

- ◆ Required analysis is compelling state interest/narrowly tailored means
- ◆ Buckley recognizes compelling interests in
 - preventing corruption and its appearance in the electoral process
 - providing voter information regarding support for a candidate
- ◆ Austin et. al. recognize compelling interest in
 - preventing the distorting and corrosive effect of accumulations of wealth in the state-created corporate form on the electoral process
- ◆ Possible additional compelling interests
 - understanding "access" to be an element of quid pro quo corruption
 - preventing corruption and its appearance in the legislative process (time spent fund raising, giving ear to monied interests, creating perception of process out of touch)

Camp Finance Meeting

What is covered?

Broadest def. of political party

length of time that covered covers

Also - staying abt express advocacy

Incentive system

1. Ability to purchase time at discounted rate

2. Free mailings (?)

Free time to political parties?

load on broadcasters -
prob of raising no \$

December 13, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN HILLEY
BRUCE REED
PETER JACOBY
JIM WEBER

SUBJECT: CAMPAIGN FINANCE REFORM

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This past June in Colorado Republican Federal Campaign Committee v. Federal Election Commission, the Supreme Court held that political parties may make independent expenditures on behalf of their candidates as long as those expenditures are not made in coordination with the candidate. The decision overturned an FEC rule which had held that party activities by their nature were coordinated with candidates and therefore could be constitutionally limited under the Federal Election Campaign Act (FECA). The fallout from this ruling was felt almost

immediately during the November elections. In several key races the Republican Senatorial Campaign Committee made large independent expenditures which greatly exceeded the contribution limits that would have been applicable if the FEC's coordinated expenditures standard had remained in place. Additionally, because these were independent expenditures under FECA they could expressly advocate the election or defeat of a clearly identifiable candidate. Finally, because FECA requires that independent expenditures be made with "hard" money (i.e. money raised and disclosed under FECA's contribution limits for individuals, PACs and parties) Democratic party officials were unable to respond in kind given the party's relative "hard" money disadvantage.

Consequently one goal of reform legislation, shared by the FEC, reformers and Democrats alike, is to broaden the definition of party coordination to limit the ability of parties to undertake independent expenditures. Any effort to broaden the definition will be difficult, however, because it must necessarily address the constitutional hurdles in the Colorado decision, which require the FEC to establish actual coordination, rather than a presumption of coordination, when parties act to impact Congressional races. Legislative language to achieve this goal is currently being drafted.

Curbing Issues Advocacy Spending

As noted, Members of Congress, on both sides of the aisle, have become concerned about the impact of spending by third parties on their races. This concern is especially acute with respect to issue advocacy spending. In Buckley v. Valeo, the Supreme Court's 1976 landmark campaign finance decision, the Court held that the only independent expenditures that could be disclosed and regulated under FECA were those used for communications that "expressly advocate the election or defeat of a clearly identified candidate." (This definition has since been codified in FECA) In a footnote in Buckley the Court gave examples of words of express advocacy, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat" and "reject." The Court created this narrow definition to draw a clear distinction between "issue discussion" or issue advocacy which has strong First Amendment protections, and the candidate-oriented speech which is the focus of campaign finance laws.

Since 1976, Federal courts have generally held that unless the magic Buckley words are used in a political advertisement or activity, that activity is issue advocacy and therefore cannot be regulated under FECA. Consequently independent groups such as labor unions, the NRA, the Moral Majority, the Christian Coalition and others may use unlimited contributions from wealthy individuals, corporate treasuries or dues-paying members to fund issue advocacy campaigns during an election cycle. Perhaps the most publicized campaign of this nature was the \$35 million media campaign by the AFL-CIO earlier this year to highlight the anti-family positions taken by Congressional Republicans. None of the union ads expressly advocated the election or defeat of these Members and were therefore issue ads outside the scope of FECA. Additionally, national and state party organizations may also run issue advocacy campaigns paid for by "soft" money contributions which, as discussed in more detail below, are

by definition unlimited contributions from corporations, unions or individuals.

Reformers, Congressional Democrats, the FEC and reform-minded Republicans have all indicated a desire to expand the definition of express advocacy to include both the magic words test and a new test that would include campaign activities that, when taken as a whole, could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate. This would have the effect of bringing a broader range of issue advocacy activities under FECA, thereby limiting the impact of unlimited donations on elections. There is little question, however, that current constitutional jurisprudence favors a narrow definition of express advocacy and it will be a challenge to craft legislative language that expands the definition in a constitutionally defensible manner. We, along with the Office of Legal Counsel at the Department of Justice, are currently reviewing legislative language that purports to achieve this goal.

Banning "Soft" Money

Every credible campaign finance reform initiative during the past several Congresses has contained provisions to ban "soft" money. Soft money is a term used for funds that are raised by state and national parties for party building activities, GOTV efforts, state elections and voter registration drives. Because soft money cannot be spent to directly benefit a federal candidate, it is unregulated by FECA and therefore is not subject to the Act's contribution limits or disclosure requirements. This allows parties to raise soft money in unlimited amounts directly from unions, corporate treasuries and wealthy individuals. Past reform efforts have generally sought to ban national parties from raising and spending soft money while strictly limiting state soft money spending to activities that would not influence a federal campaign.

Events during the November elections have renewed the interest of reformers in banning soft money while causing Democratic party leaders to rethink their past support of ban initiatives. The reformers' renewed zeal stems from the unprecedented levels of soft money raised and spent during this past cycle. Party leaders, however, argue that soft money, which was used extensively by the party to fund issue advocacy campaigns in competitive races, helped Democrats win in many races. Consequently, a resolution of this issue will hinge on an acceptable compromise which provides parties with some sort of new benefit, such as free television time or reduced mailing costs, to offset the loss of soft money resources.

We are currently reviewing legislative language banning soft money and have asked the Democratic leadership for their input on potential offsetting benefits.

Contribution Limits for Individual PACs

Campaign finance reform efforts in the past, including last year's McCain-Feingold bipartisan campaign finance reform bill, have generally proposed to eliminate all PACs from

federal election campaigns. It appears, however, that Senators McCain and Feingold will concede that a PAC ban is unconstitutional and delete the ban from their reform proposal in the new Congress. Instead, the Senators' new proposal, which should be introduced on the first day of the new session, will likely lower the contribution limits for individual PACs giving to a federal candidate from the current \$5,000 per election (\$10,000 per cycle) to \$1,000 per election (\$2,000 per cycle).

Deletion of the PAC ban is favored by both Congressional Democrats and Republicans. However, in the House, where Members raise a high percentage of their contributions from PACs, House Democrats and Republicans will likely oppose the new \$1,000 contribution limit and insist on a significantly higher limit. The House Democratic leadership bill during the last Congress included a \$4,000 per election (\$8,000 per cycle) limit while the House Republican leadership bill lowered the current level to \$2,500 per year. Early indications from House Democrats are that they may accept a \$6,000 per cycle limit, if a contributing PAC is allowed to give up to \$5,000 in a primary election. In the Senate, individual PAC limits have been less controversial since many Senators raise the bulk of their contributions from individuals.

The outside reform groups may accept the deletion of the PAC ban from the McCain-Feingold legislation. It is unclear whether they will endorse a PAC limit higher than the \$1,000 per election level being contemplated by Senators McCain and Feingold. Because we believe that House passage of any campaign finance reform bill will hinge on preserving a substantial portion of the current individual PAC contribution level, we have urged the outside groups to support and ultimately persuade Senators McCain and Feingold to raise their proposed contribution limit.

In the past, you have endorsed legislation banning PACs. If the McCain-Feingold legislation does not contain a ban, it is our recommendation that you endorse a reduction in the current \$5,000 per election contribution level for individual PACs. We are researching the impact of each likely reduction to determine exactly what the new limit should be.

In-State and In-District Fundraising

The McCain-Feingold reform legislation from last Congress required a candidate to raise sixty percent of campaign funds in-state to qualify for the legislation's benefits, such as free television time. The measure also contained, however, a provision for small states which would allow the sixty percent threshold to be met by showing that sixty percent of a candidate's campaign *contributors* resided in-state. While McCain-Feingold applied the in-state provision exclusively to Senate races, House Democrats greatly fear any reform that would require them to raise a majority of their funds either in-state or in-district. For their part, the outside reform groups do not place either in-state or in-district requirements high on their agenda. Consequently, we have asked House Democrats to consider whether an in-state requirement that can be met by showing that either sixty percent of contributions were raised in-state or sixty percent of contributors resided in-state would be acceptable.

Codifying the Supreme Court's Beck Decision

In 1988 the Supreme Court decided a landmark labor law case involving the rights of individual employees to limit a union's use of membership fees and dues. In Communication Workers of America v. Beck the Court held that a union may not, over the objections of *dues-paying nonmember employees*, expend funds collected from them on activities unrelated to collective bargaining activities. As a result of this decision, dues-paying nonmembers may demand a pro-rated return of union dues and fees earmarked for political activity.

Since 1988, Congressional Republicans have pursued efforts to codify the Beck decision. In doing so, however, Republicans have proposed extremely broad interpretations of the Supreme Court's decision, effectively seeking to gut organized labor's participation in the national electoral debate and disable internal union to member communications. The AFL-CIO and its affiliates oppose "codification" of Beck. Congressional Democrats seem, ironically, less energized. Many Hill Democrats appear willing to consider enacting a narrow codification.

Republicans are certain to press Beck issues in the upcoming congressional debate on campaign reform. While Senate Democrats may well filibuster unreasonable Beck provisions, the possibility exists that Republicans may be able to force through unacceptable Beck provisions which they would trumpet as "reform." Such a scenario could result in the choice of either signing a distinctly anti-labor bill or risk being attacked as opposed to reform.

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Prohibiting Non-Citizens from Contributing to Federal Campaigns

During the closing weeks of the campaign you publicly stated your support for banning federal campaign contributions from those who cannot vote. Banning non-citizen individuals from federal campaign giving is relatively easy to implement and it has widespread support on both sides of the Hill and on both sides of the aisle. A more difficult question, both from a political perspective and as an implementation issue, is whether such a ban should apply to corporate PAC donations by the U.S. subsidiaries of foreign corporations.

Such a ban will be strongly opposed by companies with U.S. subsidiaries who will fear a diminution in their ability to petition the federal government. Additionally, determining which company is beneficially owned by a foreign interest could prove difficult as a matter of law and enforcement. We are currently reviewing legislative language which purports to ban federal campaign contributions from both individuals and all foreign-owned entities.

cc: Vice President Gore
Leon Panetta
Erskine Bowles
Harold Ickes
Jack Quinn

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December 13, 1996

MEMORANDUM FOR THE PRESIDENT

**FROM: JOHN HILLEY
PETER JACOBY
JIM WEBER**

SUBJECT: CAMPAIGN FINANCE REFORM

As part of a strategy to make campaign finance reform a reality, we have met with key Democratic Members of Congress, labor representatives, party representatives and a core negotiating group from the outside reformers during the past several weeks.

From these meetings it has become clear that seven key issues must be addressed before a Congressional and reform group consensus can be reached on legislation that we could recommend for your support. These issues include: 1) limiting party independent expenditures; 2) curbing spending on issue advocacy; 3) banning "soft" money; 4) contribution limits for individual PACs; 5) in-state and in-district fundraising proposals; 6) proposals to codify the Supreme Court's decision in Communications Workers of America v. Beck, and; 7) restrictions on campaign contributions by non-citizens. In preparation for a meeting with you early next week, please find below the background information on these key issues and a brief summary of our progress toward the resolution of each.

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