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**Campaign Finance Current [4]**

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Honorable Trent Lott  
Majority Leader of the Senate  
United States Senate  
Washington D.C. 20510

Dear Senator Lott:

This letter sets forth the Justice Department's comments on the amendment to S. 1219, the Senate Campaign Finance Reform Act of 1996, reported at Congressional Record S6616, (June 20, 1996). Although we believe that the fundamental thrust of the bill is constitutionally sound, we suggest below how the bill might be strengthened against potential constitutional challenge.

#### **Expenditures by Advisors**

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

#### **Soft Money**

Under section 221 of the bill, "persons" (defined broadly) who were not political party committees would be required to file a report for disbursements aggregating to \$10,000 and an additional report for every additional aggregation of \$10,000. This requirement would cover disbursements that "might affect the outcome of a federal election" but does not cover "independent expenditures" (express advocacy regarding a specific candidate).

In Buckley, the Court applied strict scrutiny to a disclosure requirement because the Court recognized that requiring individuals and groups to identify themselves could chill protected speech and association. Although the Court upheld a requirement that individuals and groups file reports disclosing their independent expenditures, it indicated that the governmental interest in disclosure would not be sufficient where the expenditure was not made expressly to advocate a specific result in an election. Id. at 76-82. The expenditures covered

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

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

### Self-Identification

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

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

In addition to amending the law governing the form of the self-identification requirement, S. 1219 would establish additional requirements. Section 302 of the bill would require

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

that: (1) printed communications financed by independent expenditures include the permanent street address of the person or organization that paid for the communication; (2) broadcast or cablecast communications that are paid for or authorized by a candidate include an audio self-identification that is read by the candidate; and (3) any televised broadcast or cablecast that is paid for by a candidate include, next to the written self-identification, "a clearly identifiable photographic or similar image of the candidate."

Assuming that S. 1219's broadened scope of required self-identification can withstand legal attack under McIntyre (discussed previously), the additional requirements as to form raise other constitutional concerns. By requiring those making independent expenditures to publicize their permanent street address and forcing candidates literally to speak<sup>2</sup> or to make an appearance, each of these requirements places a burden on speech at the core of the First Amendment's protection.<sup>3</sup> If these requirements place a substantial burden on protected speech and do not materially advance a governmental interest, the provision would fail to pass constitutional scrutiny.<sup>4</sup> Congress should ensure that this standard is met, either by advancing a constitutionally legitimate and sufficiently strong governmental interest or alleviating the burden on protected speech.

#### Out-of-State Contributions

Section 101 of the bill sets a limit on out-of-state

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

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

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

contributions to candidates who elect to participate in the public funding system. The bill defines allowable contributions as not including "contributions from individuals residing outside the candidate's State to the extent such contributions exceed 40 percent of the aggregate allowable contributions" received during the approximately two years preceding the Senate election.

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

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

We believe that there are valid reasons unrelated to the communicative impact of out-of-state contributions that could sustain the provision. In particular, we believe that the

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

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

#### Jurisdiction over Legal Challenges

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

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

#### Adjustment to Contribution Limit

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

This provision might well be subject to constitutional challenge. In Buckley, the Court held that "[t]he First Amendment denies government the power to determine that spending to promote one's political views is . . . excessive." 424 U.S. at 57. Moreover, the Court stressed that "equalizing" resources is not a permissible basis for imposing restrictions or benefits in the context of Federal elections. Id. at 48-51. The bill arguably would run afoul of these principles and effectuate a speaker-based distinction that is based on the communicative impact of speech and that forces a candidate to choose between not speaking in excess of voluntary limits or triggering a higher contribution limit for his or her opponent.<sup>6</sup> If it does so, as discussed above, it would be subject to strict scrutiny and would need to be narrowly tailored to serve a compelling governmental interest.

Section 105 also might call into question the validity of the S. 1219's public financing system. In Buckley, the Court struck down mandatory spending limits, but held that such limits could be made a condition of participation in a voluntary public financing system. By imposing a stricter legal impediment on candidates who do not participate, a court may hold that participation in the public financing system is not voluntary, in which case it would be unconstitutional. See Buckley, 424 U.S. at 54-59. We would be happy to work with Congress in reviewing any proposed findings of purpose or substantive revisions that might address these issues.

Section 402 of the bill would permit direct appeal to the Supreme Court "from any interlocutory order or final judgment, decree or order from any court ruling on the constitutionality of any provision" of the bill. Section 402 would require the Supreme Court to accept jurisdiction and expedite the appeal if

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

it had not ruled on the issue previously. We oppose this provision.

The intermediate courts of appeal correct a large number of legal errors that do not involve fresh policy determinations or important legal issues and therefore, need not reach the Supreme Court. In resolving these issues, the several courts of appeal free the single Supreme Court to use its limited resources to review carefully and fully those cases having the greatest impact upon our society. Where the Supreme Court accepts a case for review, intermediate appellate courts serve the important function of clarifying the issues for ultimate resolution.

To require the Supreme Court to consider each of the diverse constitutional challenges a creative mind could lodge against the bill would render every dispute a dispute of constitutional dimension. It would put before the Supreme Court an unknown number of issues having little import and very obvious result. Consideration of these issues would delay or foreclose consideration of issues having much more significance for the Nation.

Thank you for the opportunity to express our views. The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

cc: Honorable Tom Daschle  
Minority Leader  
United States Senate

Honorable John McCain  
United States Senate

Honorable Russ Feingold  
United States Senate

Honorable Fred Thompson  
United States Senate

Draft "express advocacy" language -- December 10

(A) Express Advocacy. The term "express advocacy" means:

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as "vote for," "elect," "support," "vote against," "defeat," "reject," "vote pro-life" or "vote pro-choice" accompanied by a listing or picture of clearly identified candidates described as "pro-life" or "pro-choice," "reject the incumbent," or similar expressions, or

try to do in generic sense not pushing coming from

(2) any communication or series of communications that is made through any broadcasting station, newspaper, magazine, outdoor advertising facility or any other type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, that refers to a clearly identified candidate for federal office, and that can be reasonably understood as conveying a message which advocates the election or defeat of such candidate, provided such communication or series of communications:

would be

(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate's campaign or election, or

(3) any communication that is made in coordination with a candidate, as defined in section \_\_\_\_.

(B) Voting Records. The term "express advocacy" does not include the publication and distribution of a communication that is limited solely to providing information about votes by elected officials on legislative matters, that cannot be reasonably understood as conveying a message which advocates the election or defeat of a candidate, and that is not prepared or distributed in coordination with, or pursuant to any general or particular understanding with, a candidate as described in section 301(8)(A)(iii).

# Not Common Cause

## I. Add definition of "coordination" to definition of "contribution"

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) 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;

(iv) [see S.1219, sec. 241(b)]

## II. Conforming Amendments Needed for "coordination" language

a) 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 contribution to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

b) Section 316(b)[2 U.S.C. 441b(b) is amended by revising paragraph (2) as follows:

(2) For purposes of this section and section 79/(h) of title 15, the terms

"contribution" and "expenditure" shall include the definitions of those terms at section 301(8)(A) and 301(9)(A) and shall also include any direct or indirect payment...[continue with current statute]

III. Changes to S. 1219 Voting record language to incorporate "coordination"

Section 241(a) of S. 1219

(18)\*\*\*

(C) Voting Records. The term "express advocacy" does not include the publication and distribution of a communication that is limited to providing information about votes by elected officials on legislative matters, that does not expressly advocate the election or defeat of a clearly identified candidate, and that is not prepared or distributed in coordination with, or pursuant to any general or particular understanding with, a candidate as described in section 301(8)(A)(iii).

Section 315 is amended as follows:

(a)(1) No person shall make contributions--

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$5,000, except that if the national political committee certifies that it will not make independent expenditures in that calendar year pursuant to paragraph (d)(4) of this section, then contributions to that committee shall not exceed \$20,000 in that calendar year; or

(C) \*\*\*

(2) No multicandidate political committee shall make contributions--

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed \$5,000, except that if the national political committee certifies that it will not make independent expenditures in that calendar year pursuant to paragraph (d)(4) of this section, then contributions to that committee shall not exceed \$15,000 in that calendar year; or

(d) (1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a state committee of a political party, including any subordinate committee of a state committee, may make coordinated expenditures in connection with the general election campaign of candidates for federal office, subject to the limitations contained in paragraphs (2), (3) and (4) of this subsection.

(2) \*\*\*

(3) \*\*\*

(4) Before a party committee may make coordinated expenditures in connection with a general election campaign for federal office in excess of \$5000 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 [or: in that election cycle]. 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.

If pty agrees not to make IE's, contrib. to it can be higher.  
(same as cap in exchange for public financing)

what is it now?

Phy can't make coord expends unless agrees not to make indep expends.  
Here: chrs bhw IE's + CE's  
Can't make IEs w/out giving up vt to make CE's  
No pod.

**NB:** This language should be combined with legislative history noting that a party committee, like any other person, that wishes to make independent expenditures must have no coordination, consultation or cooperation with a candidate. If a party committee engages in coordinated expenditure activity under section 441a(d), it has had the kind of contact with a candidate that will negate the independence of future expenditures. If the alternative language is selected, the history should state that a party may only take advantage of the additional coordinated expenditure limits if it agrees not to make any independent expenditures in that election.

### **Timing and Express Advocacy**

**Add to S. 1219 definition of Express advocacy (see sec. 241(a))**

**(D) If a communication is made within 30 (?) days preceding a general election, and it discusses or comments on the character, qualifications, or accomplishments of a clearly identified candidate, a clearly identified group of candidates, or the candidates of a clearly identified political party, the communication will constitute an exhortation to support or oppose the clearly identified candidate(s) [or: express advocacy], unless it is solely devoted to urging action on a legislative issue pending before an open legislative session.**

TO: DOUG SOSNIK  
FROM: NORM ORNSTEIN

Ornstein

## 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:

1. *Eliminate national party committee soft money by eliminating the distinction in law between non-federal and federal party money. 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. (See appendix for specific language.)*

2. *Give parties freedom to allocate the hard resources they are able to raise among their candidates for office as they chose 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 are independent of their own candidates.*

3. *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.*

4. *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, that were essentially unlimited in funding 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 sixty 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 sixty days before a primary or general election. During the two sixty-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. 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 or 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:

1. *Move from the current practice of voluntary electronic filing to a mandatory one, with a de minimus threshold.*
2. *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.*
3. *Allow for the possibility of private legal action against campaigns for failure to disclose appropriate information, with the FEC as administrative agent. Streamline the process for allegations of criminal violations, by creating more shared jurisdiction between the FEC and the Justice Department, and fast-tracking the investigation from the FEC to Justice if any significant evidence of fraud exists.*
4. *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.*
5. *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.*

**4. Broadcast Bank.** No campaign finance reform will be effective unless it ensures adequate resources for candidates and parties to get their messages across. A positive and constructive campaign finance reform proposal will channel the 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:

1. *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.*
2. *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.*

The reforms above 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 big positive difference in American campaigns.

THE WHITE HOUSE

WASHINGTON

November 14, 1996

MEMORANDUM FOR JACK QUINN  
KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: ATTACHED CAMPAIGN FINANCE MEMO

Attached is the latest draft of memo to the President on campaign finance. Note that the memo indicates that White House staff will "research" and "consider" a constitutional amendment limiting campaign spending. This seems OK to me. Note also that the memo says that White House staff will work to include in any campaign finance legislation "constitutionally valid" proposals to limit independent expenditures. As we discussed yesterday, I doubt such proposals exist, and I am wary of touting this notion to the President.

The memo does not address what seems to me the key issue in developing a strategy on campaign finance legislation: how to deal with Republican efforts to restrict labor union spending. I think the Republicans will insist on including in any campaign finance legislation a provision making it difficult for unions to use money from compulsory union dues in political campaigns. The unions will fight such a provision to the death. We should start thinking now about how we're going to deal with this Republican poison pill.

Campaign Finance Mtg-learn

11/14/26

Outreach - reform CPS

- our candidates - IL/Eme list/DNC  
ME want change bundling

~~10:00 ent call  
there~~

~~Ter P.  
62668~~

~~Jane S.  
65116~~

~~T. Miller~~

~~RS. Nordhaus  
586-5966~~

~~Jeremy~~

~~Bruce~~  
- c.f. memo - Jack's comm. <sup>comm.</sup>  
- one-shot US  
- e.o. < income ~~examined?~~ <sup>fundraising</sup>

~~Paul W.~~

~~Beth Nisan~~

THE WHITE HOUSE  
WASHINGTON

November 14, 1996

MEMORANDUM FOR JACK QUINN ✓  
KATHY WALLMAN

FROM: ELENA KAGAN *EK*

SUBJECT: ATTACHED CAMPAIGN FINANCE MEMO

*to EIC  
Rach  
JP*

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*Should mention this, too*

*right - end memo should be clear on this point -- otherwise, he'll think we can do it.*

**DRAFT 11/14/96**

November 14, 1996

**MEMORANDUM FOR THE PRESIDENT**

**FROM: JOHN HILLEY  
BRUCE REED**

**SUBJECT: CAMPAIGN FINANCE REFORM LEGISLATION**

On November 1, you called on Congress to take immediate action and enact real campaign finance reform legislation to make government more representative. You also stated that you are determined to "get this done, once and for all." Making this promise a reality will be a major challenge that will require significant political leadership and resources.

**Recommended Strategy**

We recommend that you immediately initiate a high profile public outreach, legislative and communications campaign designed both to regain the high ground on political reform and enact significant campaign finance reform legislation. We have listed below specific action steps that we feel are necessary to do this.

***Public Outreach:***

**Reform Groups**

On the issue of campaign finance reform, more than almost any other issue, it is crucial that all of our actions are validated by the outside reform groups. In large measure they will pass judgement on whether our efforts are sincere and constructive, forming the backdrop for press coverage.

- We recommend that you meet with the key leaders of the reform groups as early as possible to enlist their support for your efforts and to promise to coordinate your efforts with theirs.

**Core Constituencies**

Additionally, we must address the concerns of traditional Democratic constituencies impacted by campaign finance reform.

- The White House staff should meet with representatives of labor, Emily's List and

others who fear a diminution of their ability to participate in the democratic process to become informed of their concerns and address them in the legislative process.

- The White House staff should communicate with the Democratic National Committee and the House and Senate Democratic campaign committees to gain their insights on campaign finance reform.

**Legislative Strategy:** The window for passing campaign finance reform legislation is the first session of the 105th Congress. Therefore, we must seize the initiative now and push for passage of legislation from the first day of the new Congress.

### Senate

- You should meet with the Democratic leadership, leading Congressional reformers, and consider meeting with key Republican moderates with the goal of developing a coalition that can compel Senator Lott bring to McCain-Feingold to a vote early in the session. We believe a "Senate first" strategy may be the best way of forcing the issue to a floor vote in the House.
- White House staff will begin working immediately through Senator Feingold and his staff to ensure that the new session's version of the McCain-Feingold legislation is consistent with the bill you endorsed in the past. Additionally, the White House staff will substantively research and work to include in legislation: 1) acceptable restrictions on contributions by non-citizens; 2) constitutionally valid provisions to address the increase in express advocacy and independent expenditures; 3) possible revisions to McCain-Feingold's current "soft" money restrictions; and 4) an effective date that would apply the legislation to the 1998 election cycle. ??
- White House staff will conduct substantive research and consideration of certain "fall back" issues such as a bipartisan commission on campaign finance reform, a constitutional amendment limiting campaign spending and the viability of passing discrete portions of the McCain-Feingold legislation.

### House

- You should meet with the Democratic leadership, leading Congressional reformers and possibly Republican moderates to enlist their support for a House version of the McCain-Feingold legislation.
- White House staff will begin immediately to work with the Democratic leadership and the Democratic reformers to craft acceptable reform legislation based on the McCain-Feingold model.

***Communications Strategy:*** It is critical that you are seen as leading the fight for meaningful campaign finance reform.

- You should challenge Congress to enact significant campaign finance reform in both your inaugural address and the State of the Union address.
- The White House should stage a public event built around the introduction of the McCain-Feingold reform legislation.
- You should consider announcing that the DNC will voluntarily refuse to accept any new donations from individuals who are non-citizens.
- You should use the Saturday radio address, and other appropriate opportunities to call for meaningful campaign reform.
- In order to provide a factual background for our message effort, the White House staff should compile research on campaign spending statistics to counter an expected Republican barrage of factual mischaracterizations.

Next Week  
10:00

Public  
Revenue



Camp Fin pre-meets w/ Leon

Senate - of a priority. Go w/ MF for now

Need defense on each issue

Amendments?

2) Durable may intro  
one, though.  
Subst the same.  
Major diff? bundling?  
+ labor?

House

Order on ways must amend to deal w/ indep expend  
issue

3. soft \$ - treats like hard \$

to talk a Lent.

then ↑ int of →

4. In-state / in-district limits.

Dems need this chance.

5. Bundling.

Key issues

1. Indep expends -  
skeptical

may want to

stretch envelope

invite Cong to make

proper findings

re corruption???

2. PACs -

MF - new: ban w/ fallback.

Limit of \$1,000.

(now \$5,000)

HJ: ban total amt of PAC \$

you can take in a cycle.

Does this - 200,000

## Congressional Contacts on Campaign Finance Reform

### *House Contacts:*

#### 11/20 Meeting with Congressman Gejdenson (D-CT)

Congressman Gejdenson will be a key player for the House Democrats on campaign finance reform in the new Congress. He recognizes the need for the President and Democrats to take the early initiative on this issue.

#### 11/18 Meeting with Congressman Farr (D-CA)

Congressman Farr led the Democratic Leadership effort to produce a reform package during the last Congress. He would like to reprise that roll in the new Congress. Additionally, he is willing to approach moderate Republicans for help with a bipartisan reform package.

#### 11/18 Meeting with Kit Judge, Campaign Finance Advisor for Minority Leader Gephardt

Kit Judge reported that Minority Leader Gephardt recognizes the need to address this issue quickly. She noted, however, that Mr. Gephardt is considering whether to support a constitutional amendment in lieu of a package of statutory reforms.

#### 11/18 Meeting with Will Keyser, Chief of Staff for Congressman Meehan (D-MA)

Congressman Meehan, Congresswoman Linda Smith (R-WA) and Congressman Chris Shays (R-CT) led the bipartisan reform effort in the last Congress. Will Keyser indicated that his boss is eager to recreate that role in the new session and wants to work closely with the White House and the House Democratic Leadership to do so.

#### 11/18 Meeting with Tom Gedde, Legislative Counsel for Congressman Luther (D-MN)

Congressman Luther is a key Democratic moderate who, as a state legislator, was a key drafter of Minnesota's campaign finance laws which are the most progressive in the nation. Tom Gedde reports that his boss would like to take a leadership role in the Democratic caucus to enact reform in the new session.

### *Senate Contacts:*

#### 11/20 Meeting with Pete Rouse, Chief of Staff for Senate Minority Leader Daschle

Pete Rouse confirmed that Senator Daschle believes Senate Democrats and the White House should work together to make this a key issue during the first months of the next session. Particular emphasis was placed on a coordinated message strategy. Senator

Daschle will introduce his own reform bill, developed in consultation with Senator Feingold.

11/20 Meeting with Diana Huffman, Legislative Director for Senator Dodd (D-CT)

Diana Huffman confirmed that Senator Dodd believes Senate Democrats and the White House should work together to make this a key issue during the first several months of the next session.

11/20 Telephone Conference with Tom Zoeller, Legislative Counsel for Senate Minority Whip Wendell Ford (D-KY)

Tom Zoeller confirmed Senator Ford's agreement that campaign finance reform should be a major priority at the outset of the 105th Congress. Zoeller stated Senator Ford's willingness to act as a White House conduit to the Senate Democratic caucus.

11/21 Telephone Conference with Scott Bunton, Legislative Director for Senator John Kerry (D-MA)

Scott Bunton confirmed that Senator Kerry intends to play a leading role in the campaign finance debate in the Senate. The Senator believes a coordinated Democratic message strategy is essential to success, but also urges that plans be developed for a post-McCain/Feingold strategy since he is confident that Senators Lott and McConnell will hold their votes on cloture.

## Soft Money Totals

<b>Republican Soft Money Totals</b>			
CYCLE	AMOUNT RAISED	AMOUNT SPENT	CASH-ON-HAND
1992	\$45,502,752	\$37,059,461	\$8,296,493
1994	\$38,341,464	\$37,153,379	\$1,347,113
1996	<b>\$120,918,061</b>	<b>\$118,187,913</b>	\$6,648,856

<b>Democratic Soft Money Totals</b>			
CYCLE	AMOUNT RAISED	AMOUNT SPENT	CASH-ON-HAND
1992	\$30,836,643	26,069,697	\$5,374,950
1994	\$42,782,571	\$43,709,203	\$1,393,458
1996	<b>\$102,378,259</b>	<b>\$92,780,410</b>	\$10,699,127

Source: Federal Election Commission, 10/29/96

**Top Soft Money Contributors to the Republican Party**

CONTRIBUTOR	AMOUNT	INDUSTRY
1) Philip Morris	\$1,649,683	Tobacco
2) RJR Nabisco	\$973,450	Tobacco
3) Atlantic Richfield	\$695,275	Oil & Gas
4) Georgia Pacific	\$660,000	Forestry & Forest Products
5) American Financial Corp	\$530,000	Insurance
6) Joseph E. Seagram & Sons	\$471,600	Beer, Wine & Liquor
7) AT & T	449,590	Telephone & Utilities
8) US Tobacco	448,768	Tobacco
9) Chevron Corp	442,110	Oil & Gas
10) Signet Bank	\$431,621	Commercial Banks
11) Eli Lilly & Co.	\$427,000	Pharmaceuticals
12) Enron Corp	\$405,000	Oil & Gas
13) Brown & Williamson Tobacco	\$400,000	Tobacco
14) Tobacco Institute	\$384,795	Tobacco
15) Bristol-Myers Squib	\$376,900	Pharmaceuticals

Source: Center for Responsive Politics, 10/17/96

<b>Top Soft Money Contributors to the Democratic Party</b>		
CONTRIBUTOR	AMOUNT	INDUSTRY
1) Joseph E Seagram & Sons	\$620,000	Beer, Wine & Liquor
2) Walt Disney Co	\$547,000	Media/Entertainment
3) DreamWorks SKG	\$525,000	Media/Entertainment
4) Goldman Sachs & Co	\$510,000	Securities & Investment
5) MCI Telecommunications Corp	\$486,136	Telephone Utilities
6) Revlon Group Inc	\$471,250	Cosmetics
7) Loral Corp	\$465,500	Defense Electronics
8) Laborers Union	\$455,000	Building Trade Unions
9) Connell Co	\$407,000	Crop Production & Basic Processing
10) Philip Morris	\$400,250	Tobacco
11) Atlantic Richfield	\$388,500	Oil & Gas
12) AT & T	\$381,884	Telephone Utilities
13) Ziff Communications	\$380,000	Printing & Publishing
14) Anheuser-Bush	\$375,500	Beer, Wine & Liquor
15) Association of Trial Lawyers	\$361,000	Lawyers/Law Firms

Source: Center for Responsive Politics, 10/17/96

## Soft Money Contributions to the Republican Party by Industry

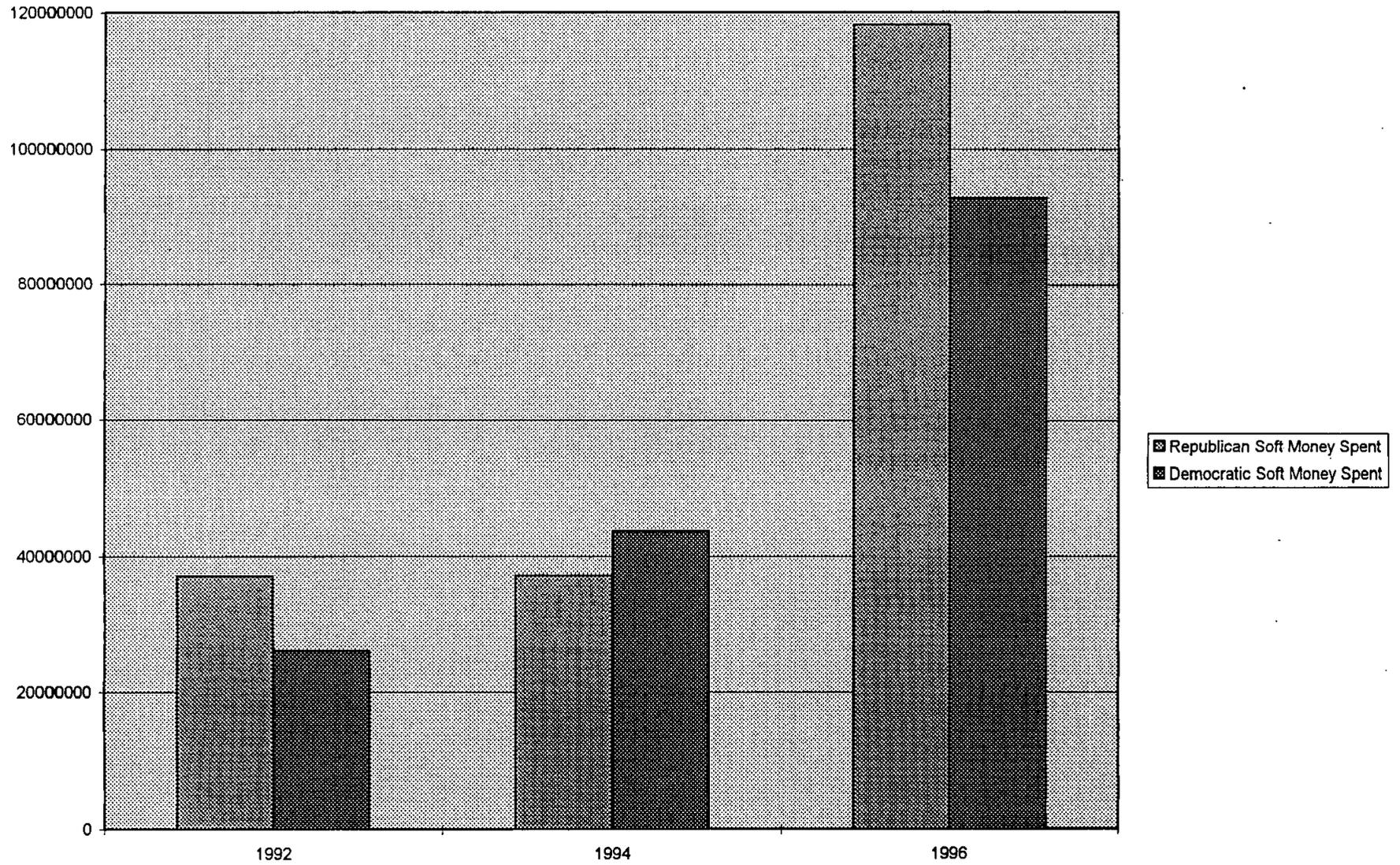
INDUSTRY	TOTAL CONTRIBUTIONS
Securities and Investments	\$7,022,997
Oil & Gas	\$4,950,914
Communications	\$4,860,080
Insurance	\$4,181,366
Tobacco	\$4,014,901
Real Estate	\$3,245,012
Pharmaceuticals	\$3,092,482
Transportation	\$2,092,660
Food	\$1,977,292
Agriculture	\$1,927,240
Aerospace & Defense	\$1,749,011
Health	\$1,672,742
Manufacturing	\$1,662,498
Banks and Lenders	\$1,630,969
Retail	\$1,546,660
Engineering and Construction	\$1,478,785
Chemical	\$1,457,150
Beer, Wine and Liquor	\$1,208,402
Lawyers and Lobbyists	\$1,199,211
Electric Utilities	\$1,165,875
Entertainment	\$1,121,050
Automobile	\$1,064,334
Service Industries	\$881,454
Computer and Electronics	\$717,975
Gambling	\$699,540
Restaurants	\$604,450
Environmental and Waste Services	\$584,246
Forest and Paper Products	\$538,875
Steel	\$391,700
Machinery	\$359,150
Professional / Accountants	\$341,555
Metals and Mining	\$328,745
Textile	\$322,000
International Trade	\$208,790
Labor Unions	\$103,000

## Soft Money Contributions to the Democratic Party by Industry

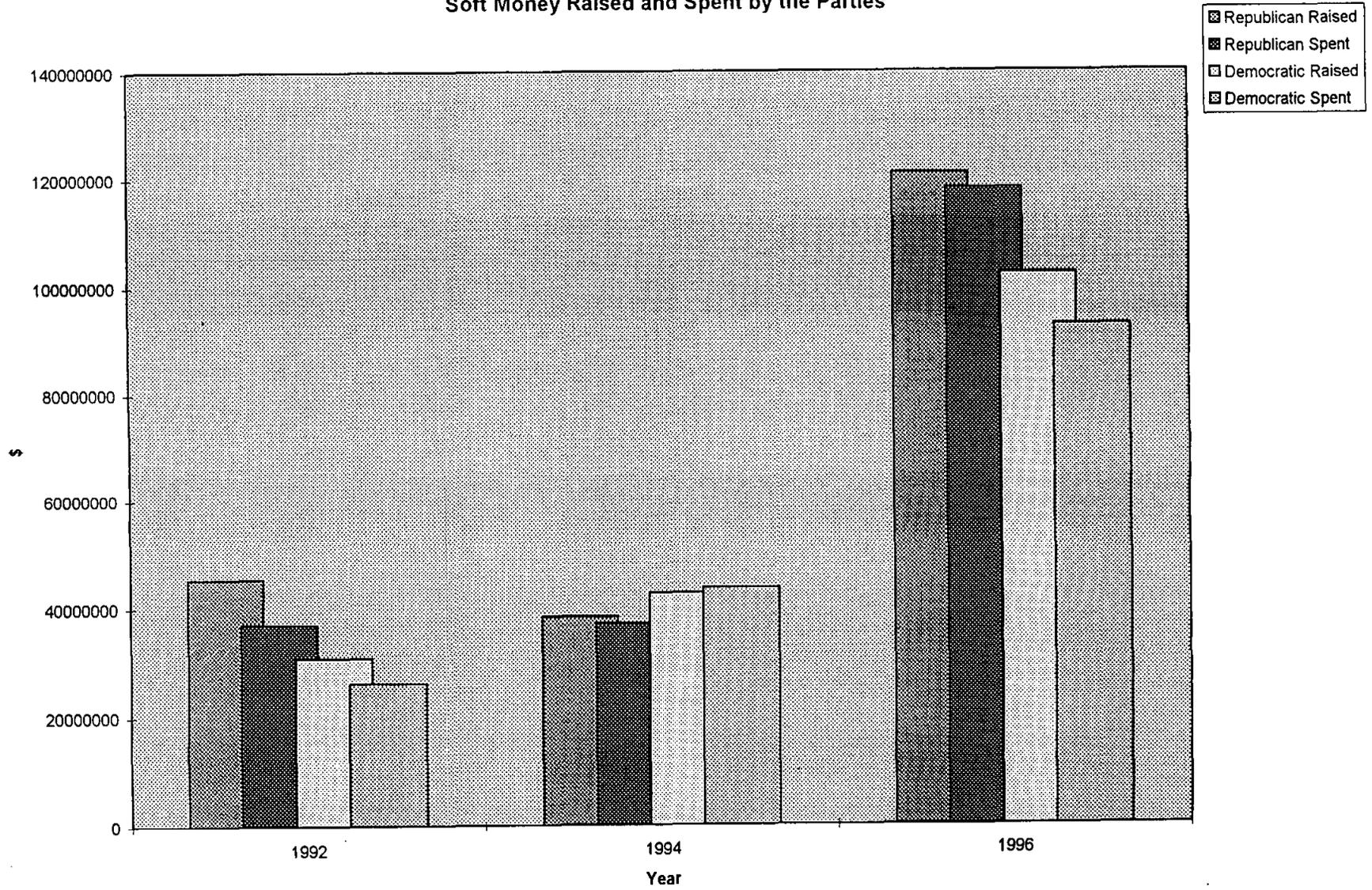
INDUSTRY	TOTAL CONTRIBUTIONS
Securities and Investments	\$5,913,511
Lawyers and Lobbyists	\$4,816,436
Labor Unions	\$4,607,350
Communications	\$4,028,759
Real Estate	\$3,868,400
Entertainment	\$2,913,918
Health	\$2,242,445
Insurance	\$1,874,037
Oil and Gas	\$1,909,400
Manufacturing	\$1,731,250
Aerospace and Defense	\$1,689,400
Transportation	\$1,348,008
Engineering and Construction	\$1,314,400
Computer and Electronics	\$1,313,400
Banks and Lenders	\$1,288,550
Pharmaceuticals	\$1,262,400
Beer, Wine and Liquor	\$1,184,108
Gambling	\$1,055,250
Retail	\$940,750
Electric Utilities	\$893,000
Agriculture	\$875,250
Professional / Accountants	\$837,499
Tobacco	\$746,062
Environmental and Waste Services	\$732,500
Chemical	\$728,050
Food	\$717,250
Textile	\$517,500
Service Industries	\$482,250
International Trade	\$428,000
Restaurants	\$257,500
Automobile	\$255,550
Steel	\$246,000
Forest and Paper Products	\$224,000
Metals and Mining	\$188,000

Source: Common Cause, 8/8/96 and 8/23/96

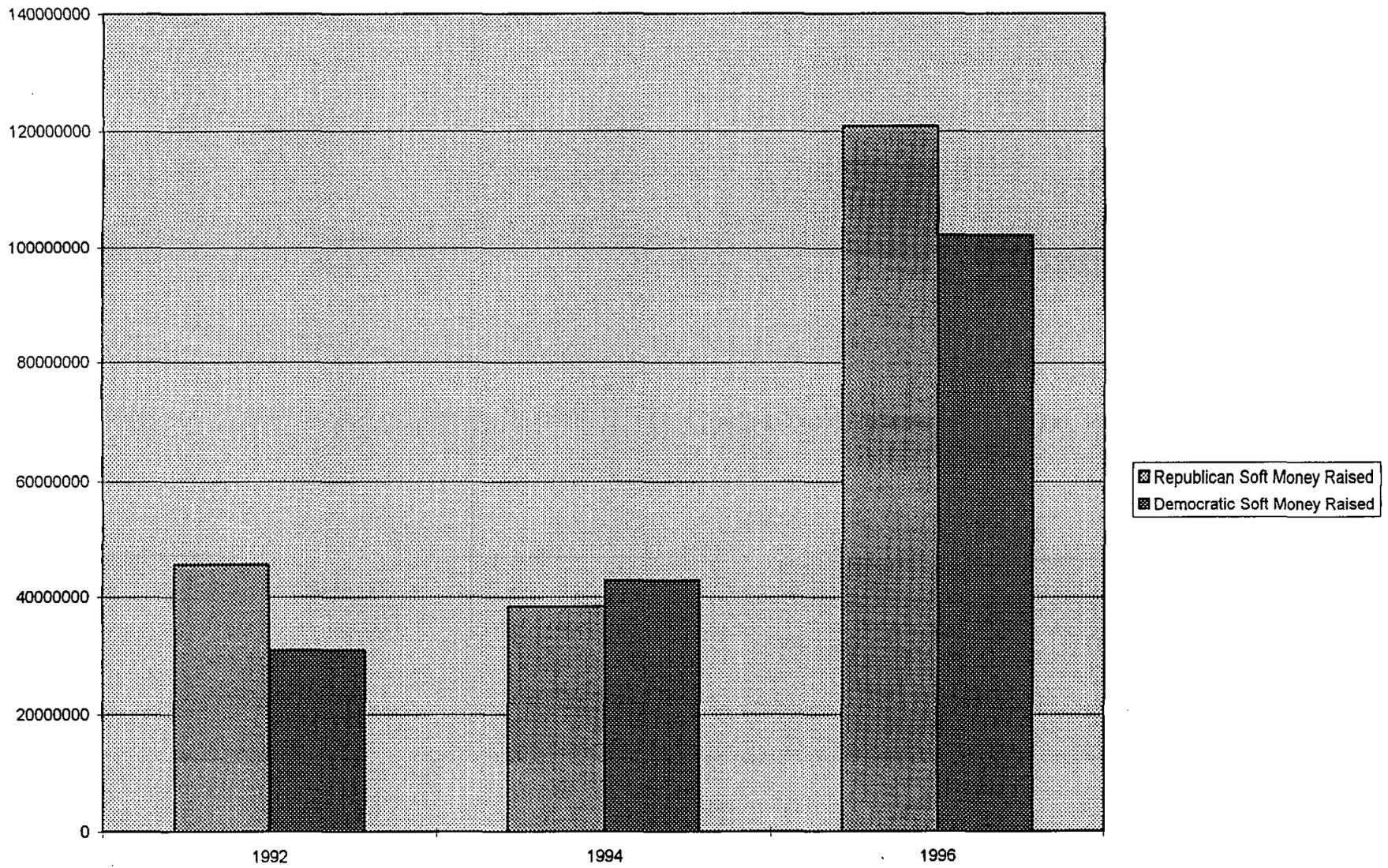
Soft Money Spent by the Political Parties



Soft Money Raised and Spent by the Parties



Soft Money Raised by the Parties



## **GOP: OVER \$2.4 MILLION FROM AMERICAN SUBSIDIARIES OF FOREIGN COMPANIES**

In 1995 and 1996, the Republican party took at least \$2.4 million from U.S subsidiaries of 16 foreign-owned companies. American subsidiaries of foreign-owned companies contributing to the Republican party include:

British Petroleum (United Kingdom)	\$161,579
Brown & Williamson (United Kingdom)	\$400,000
Connaught Laboratories (France)	\$52,500
Citgo Petroleum (Venezuela)	\$55,000
Daniel Doyle -- Danka Industries (United Kingdom)	\$100,000
Glaxo Wellcome Inc (United Kingdom)	\$232,500
Hoechst Celanese Corp (Germany)	\$50,950
Hoffman-LaRoche Inc (Switzerland)	\$52,000
ICI Americas (United Kingdom)	\$148,400
Joseph E Seagram & Sons Inc (Canada)	\$435,000
News Corp (Australia)	\$351,500
Northern Telecom (Canada)	\$65,900
Pratt Industries (Australia)	\$100,000
Sandoz Corp (Switzerland)	\$97,400
Sony Corp of America (Japan)	\$78,350
Toyota Motor Sales USA Inc (Japan)	\$72,775
	<hr/> <hr/>
	\$2,453,854

[Sources: "Common Cause Guide to Republican Party Soft Money Donor: January 1995 Through June 1996"; Directory of Corporate Affiliations, 1995; Business Times, 9/18/96; The Times, 10/9/96]

Note: Chart includes soft money contributions to the Republican National Committee (RNC), National Republican Senatorial Committee (NRSC), and National Republican Congressional Committee (NRCC).

THE WHITE HOUSE  
WASHINGTON

Tack -

As Kathy + I have discussed, I think it's pretty clear that The ban on non-citizen contributions is unconstitutional (though a ban on foreign contributions would not be). OLC agrees with this conclusion. If the decision is to go ahead with this proposal, I recommend including something like the attached in the materials being prepared to explain the proposal. (By the by, when I talked with Chris about this, he seemed fairly mellow about making this proposal.) Could you get me any edits ASAP?

Thanks -  
Elena

cc: Kathy

notwithstanding its apparent unconstitutionality.

QUESTION: Doesn't a ban on contributions from non-citizens raise constitutional difficulties?

RESPONSE: It is unfortunately true that almost any meaningful campaign finance reform proposal raises serious constitutional issues. This is a result of the Supreme Court's view -- which I believe to be mistaken in many cases -- that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment concerns. I think that even on this view, the Court could and should approve this measure because of the compelling governmental interest in preventing corruption. But I also think the Court should reexamine its basic premise that the freedom of speech guaranteed by the First Amendment entails a right to throw money into the political system.

**\*\*DRAFT\*\*NOT FOR DISTRIBUTION\*\*DRAFT\*\*NOT FOR DISTRIBUTION\*\*DRAFT\*\***

October 30, 1996

MEMORANDUM FOR LEON PANETTA

FROM: Bruce Reed  
Paul Weinstein  
Peter Jacoby

Michael Waldman  
Jim Weber  
Elena Kagan

SUBJECT: **Possible Q&A on President's Campaign Finance Reform Announcement**

QUESTION: *What exactly is the President proposing?*

RESPONSE: The President today is calling on Congress to pass the bipartisan campaign finance reform legislation introduced last session by Senators McCain and Feingold. The principles of McCain-Feingold are ones the President has advocated since he first ran for office in 1992 and are the key elements of real reform: spending limits; curbing PACs and lobbying influence; free and discounted broadcast time; and ending the "soft money" system.

The President is challenging Congress to enact this legislation in the first six months of the 105th Congress. He is committed to working closely with the leadership of both parties in achieving this goal. However, if the Congress cannot find the political will to pass this bipartisan bill, then as a last resort, the President will support legislation to establish a binding campaign finance reform commission that will send comprehensive reform legislation to his desk by the end of 1997.

The President also announced today that he agrees with Senators McCain and Feingold that non-citizens should not be able to influence our elections. From now on, the President will only support campaign finance reform that includes the following rule: if you are a non-citizen and can't vote, you can't contribute.

QUESTION: *Why are you announcing this now?*

RESPONSE: This announcement is consistent with the President's long-standing commitment to campaign finance reform and to changing business as usual in Washington. In the last three years, the President repealed the tax loophole for lobbyist deductions, enacted legislation to make the Congress and the White House live by the same laws Washington applies to rest of the nation, signed legislation to require lobbyists to disclose how much they spend and what they spend it on, enacted the line-Item Veto, and made it easier for millions of Americans to register to vote.

In 1992, the President made campaign finance reform a central piece of his agenda and throughout his first term he pressed the Congress to pass real, bipartisan legislation.

**QUESTION: *Both parties have been unable to resolve the campaign finance reform issue for years, why should the American people expect you and Congress to take action next term?***

**RESPONSE:** Last Congress we enacted Lobbying Disclosure, the Gift Ban, Congressional Accountability Act, the Line-Item Veto. We have a proven track record of getting the job done on political reform. Campaign finance reform is the last step, and most important step. The President believes that the Congress should and must make passage of McCain-Feingold a priority. He is challenging Congress to pass the bipartisan McCain-Feingold bill in the first six months of the 105th Congress, and not deny the American people any longer. If that fails, he will challenge Congress to create a bipartisan commission whose recommendations will become law on a fast-track basis.

**QUESTION: *There has been a lot of controversy about foreign contributions to the DNC. Do you think it is wrong to accept contributions from non-citizens?***

**RESPONSE:** The system is broken, and needs to be fixed. The voting public must have confidence that the process is fair and works for them. That is why we agree with Senators McCain and Feingold that real, bipartisan campaign finance reform must include effective limitations on non-citizen contributions. If you are a non-citizen and can't vote you should not be allowed to contribute.

**QUESTION: *Does your support for limitations on non-citizen contributions mean that you will direct the DNC to stop taking such contributions immediately and return those contributions received this elections cycle?***

**RESPONSE:** No. It is clear that the system is broken and that the rules need to be changed. We support banning these contributions by law. We need quick action by Congress on this issue as part of comprehensive, bipartisan campaign finance reform. We will discourage those contributions beginning immediately.

**QUESTION: *How will you enforce this ban, and how broad will it be? For example, would the ban include U.S. subsidiaries of foreign-owned corporations?***

**RESPONSE:** Many of the specific details of the ban would have to be worked out with Congress. However, the principle is clear, if you are a non-citizen and can't vote, you can't contribute -- individual contributors would have to certify citizenship.

With regards to corporate contributions, the McCain-Feingold bill would ban PACs and eliminate the current "soft money" system. Therefore, no corporate entity, foreign or domestic, could make a Federal campaign contribution.

**QUESTION: *If you believe it is wrong to accept foreign campaign contributions, is it wrong to accept non-citizen contributions to your legal defense fund?***

**RESPONSE:** The President's Legal Defense Fund does not accept contributions from registered lobbyists and PACs. In addition, contributions are limited to \$1,000. (Additional recommended

response is: "In the future, the President's legal defense fund will not accept contributions from foreign donors.)

**QUESTION: *Aren't you, by endorsing the bipartisan commission as a fallback position, undermining any real hope that McCain-Feingold will pass?***

**RESPONSE:** The President has been and remains a strong supporter of McCain-Feingold, and believe the principles of that legislation are the key elements of real reform: spending limits; curbing PAC and lobbying influence; free and discounted broadcast time; and ending the "soft money" system. He supports a bipartisan commission only as a last resort, if the Congress lacks the political will to pass McCain Feingold.

**QUESTION: *Will this be a number one priority for your administration?***

**RESPONSE:** This will be a key priority in the President's second term. He has long felt that this is one of the most important issues facing the American political system. We must restore the faith of the American people in their political leadership in order to build a bridge to the 21st century.

**QUESTION: *How does your plan compare with Bob Dole's?***

**RESPONSE:** The President supports the bipartisan McCain-Feingold bill. When he was in the Senate, Bob Dole opposed that legislation. While Senator Dole introduced a bill to create a campaign finance reform commission immediately, the President supported efforts to pass real, bipartisan campaign finance reform. The President continues to support McCain-Feingold, and calls on Congress to pass this legislation in the first six months of the next term. However, if Congress cannot find the political will to pass McCain-Feingold, then as a last resort he supports creating a binding, bipartisan commission that will send a real campaign finance reform bill to his desk by the end of next year. However, Senator Dole and the President do agree that non-citizens should not be able to contribute to campaigns for federal office and that we must end the current "soft money" system.

**QUESTION: *How would your plan to ban campaign contributions from foreigners impact unincorporated partnerships?***

**RESPONSE:** Contributions from unincorporated partnerships would be pro-rated and counted against the \$1,000 individual contribution limit of each partner. For example, if a partnership of ten individuals made a \$1,000 contribution to a campaign, \$100 would be counted against the contribution limit of each partner. If a non-citizen was a member of a partnership, a greater share of the contribution would count against the \$1,000 limit of the other partners. A partnership which is owned by a majority of non-citizens should be prohibited from making contributions.

**QUESTION: *How would the ban on non-citizen contributions affect entities, such as unions, that collect funds for independent political expenditures?***

RESPONSE: Independent political expenditures would not be covered by the ban on campaign contributions by non-citizens. Independent political expenditures would have to be addressed separately from the contributions issue.

QUESTION: *How would the McCain-Feingold bill be impacted by the Supreme Court's decision in Colorado Republican Campaign Committee vs. the FEC?*

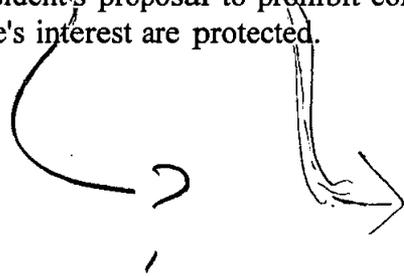
RESPONSE: [Counsel's Office drafting response]

QUESTION: *Doesn't a ban on Federal campaign contributions from non-citizens violate the First Amendment of the Constitution?*

RESPONSE: [Counsel's Office drafting response]

QUESTION: *How would your campaign finance reform plan have prevented the contributions that have caused the recent controversy?*

RESPONSE: I believe it is inappropriate to comment on some of those specific incidents because they are currently under the jurisdiction of the courts. With regards to future elections, passage of McCain-Feingold and the President's proposal to prohibit contributions from non-citizens will greatly insure that the people's interest are protected.



free it to matching money!

QUESTION: Doesn't a ban on contributions from non-citizens raise constitutional difficulties?

RESPONSE: It is unfortunately true that almost any meaningful campaign finance reform proposal raises ~~serious~~ constitutional issues. This is, ~~a result~~ of the Supreme Court's view -- which I believe to be mistaken in many cases -- that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment concerns. I think that even on this view, the Court could and should approve this measure because of the compelling governmental interest in preventing corruption. But I ~~also~~ think the Court should reexamine its basic premise that the freedom of speech guaranteed by the First Amendment entails a right to throw money into the political system.

inevitable in light.

???

always  
don't to the liberal opinion  
this year (on independent  
representatives) inconsistent  
with this?

~~I think the Court could reasonably conclude that it doesn't make sense to let people who can vote in other countries also~~

they disagree with this.

Think in way it will be  
upheld by a circuit clearly  
have lot of public rights  
and spending (contributing)  
is speech -

and will provide  
a challenge  
Court challenge.

**\*\*DRAFT\*\*NOT FOR DISTRIBUTION\*\*DRAFT\*\*NOT FOR DISTRIBUTION\*\*DRAFT\*\***

October 30, 1996

MEMORANDUM FOR LEON PANETTA

FROM: Bruce Reed  
Paul Weinstein  
Peter Jacoby

Michael Waldman  
Jim Weber  
Elena Kagan

SUBJECT: **Possible Q&A on President's Campaign Finance Reform Announcement**

QUESTION: *Why are you announcing this now?*

RESPONSE: This announcement is consistent with the President's long-standing commitment to campaign finance reform and to changing business as usual in Washington. In the last three years, the President repealed the tax loophole for lobbyist deductions, enacted legislation to make the Congress and the White House live by the same laws Washington applies to rest of the nation, signed legislation to require lobbyists to disclose how much they spend and what they spend it on, enacted the line-Item Veto, and made it easier for millions of Americans to register to vote.

In 1992, the President made campaign finance reform a central piece of his agenda and throughout his first term he pressed the Congress to pass real, bipartisan legislation.

QUESTION: *Both parties have been unable to resolve the campaign finance reform issue for years, why should the American people expect you and Congress to take action next term?*

RESPONSE: Last Congress we enacted Lobbying Disclosure, the Gift Ban, Congressional Accountability Act, the Line-Item Veto. We have a proven track record of getting the job done on political reform. Campaign finance reform is the last step, and most important step. I believe that the Congress should and must make passage of McCain-Feingold a priority. I challenge Congress to pass the bipartisan McCain-Feingold bill in the first six months of the 105th Congress, and not deny the American people any longer. If that fails, I will challenge Congress to create a bipartisan commission whose recommendations will become law on a fast-track basis.

QUESTION: *There has been a lot of controversy about foreign contributions to the DNC. Do you think it is wrong to accept contributions from foreigners?*

RESPONSE: I do believe the system is broken, and needs to be fixed. The voting public must have confidence that the process is fair and works for them. That is why I agree with Senators McCain and Feingold that real, bipartisan campaign finance reform must include effective limitations on foreign contributions. If you can't vote you should not contribute.

**QUESTION:** *Does your support for limitations on foreign contributions mean that you will direct the DNC to stop taking such contributions immediately and return those contributions received this elections cycle?*

**RESPONSE:** No. It is clear that the system is broken and that the rules need to be changed. (I support banning these contributions by law.) We need quick action by Congress on this issue as part of comprehensive, bipartisan campaign finance reform. We will discourage those contributions beginning immediately, but we will have no reliable way to verify whether contributions come from citizens or non-citizens until Congress and the FEC require contributors to provide that information.

**QUESTION:** *How will you enforce this ban, and how broad will it be? For example, would the ban include U.S. subsidiaries of foreign-owned corporations?*

**RESPONSE:** Many of the specific details of the ban would have to be worked out with Congress. However, the principle is clear, if you can't vote, you can't contribute -- individual contributors would have to certify citizenship.

what? no corp contribs at all then. And if you're talking only of indivs, this doesn't answer the question.

With regards to corporate contributions, the McCain-Feingold bill would ban PACs and eliminate the current "soft money" system. Therefore, no corporate entity, foreign or domestic, could make a Federal campaign contribution.

Say what??

**QUESTION:** *If you believe it is wrong to accept foreign campaign contributions, is it wrong to accept foreign contributions to your legal defense fund?*

**RESPONSE:** I do not allow the Legal Defense Fund to accept contributions from registered lobbyists and PACs. In addition, contributions are limited to \$1,000. (Additional recommended response is: "In the future, my legal defense fund will not accept contributions from foreign donors.")

**QUESTION:** *Aren't you, by endorsing the bipartisan commission as a fallback position, undermining any real hope that McCain-Feingold will pass?*

**RESPONSE:** I have been and remain a strong supporter of McCain-Feingold, and believe the principles of that legislation are the key elements of real reform: spending limits; curbing PAC and lobbying influence; free and discounted broadcast time; and ending the "soft money" system. I support a bipartisan commission only as a last resort, if the Congress lacks the political will to pass McCain Feingold.

**QUESTION:** *Mr. President, you are challenging Congress to pass McCain-Feingold in the first six months of the 105th Congress. Will this be a number one priority for your administration?*

**RESPONSE:** This will be a key priority in my second term. I have long felt that this is one of the most important issues facing the American political system. We must restore the faith of the American people in their political leadership in order to build a bridge to the 21st century.

QUESTION: *How does your plan compare with Bob Dole's?*

RESPONSE: I support the bipartisan McCain-Feingold bill. When he was in the Senate, Bob Dole opposed that legislation. While Senator Dole introduced a bill to create a campaign finance reform commission immediately, I supported efforts to pass real, bipartisan campaign finance reform. I continue to support McCain-Feingold, and call on Congress to pass this legislation in the first six months of the next term. However, if Congress cannot find the political will to pass McCain-Feingold, then as a last resort I support creating a binding, bipartisan commission that will send a real campaign finance reform bill to my desk by the end of next year. However, Senator Dole and I do agree that [non-citizens should not be able to contribute to campaigns for federal office.]

QUESTION: *How would your plan to ban campaign contributions from foreigners impact unincorporated partnerships?*

RESPONSE: Contributions from unincorporated partnerships would be pro-rated and counted against the \$1,000 individual contribution limit of each partner. For example, if a partnership of ten individuals made a \$1,000 contribution to a campaign, \$100 would be counted against the contribution limit of each partner. If a non-citizen was a member of a partnership, a greater share of the contribution would count against the \$1,000 limit of the other partners. [A partnership which is owned by a majority of non-citizens should be prohibited from making contributions.]

QUESTION: *How would the ban on non-citizen contributions affect entities, such as unions, that collect funds for independent political expenditures?*

RESPONSE: Independent political expenditures would not be covered by the ban on campaign contributions by non-citizens. Independent political expenditures would have to be addressed separately from the contributions issue.

[QUESTION: *How would the McCain-Feingold bill be impacted by the Supreme Court's decision in Colorado Republican Campaign Committee vs. the FEC?*

RESPONSE: In light of the Supreme Court's decision this summer, the restrictions proposed by the McCain-Feingold bill regarding independent expenditures made by political parties will have to be revisited. But it is clear that the issue of independent political expenditures is critical to the overhaul of our campaign finance reform laws.]

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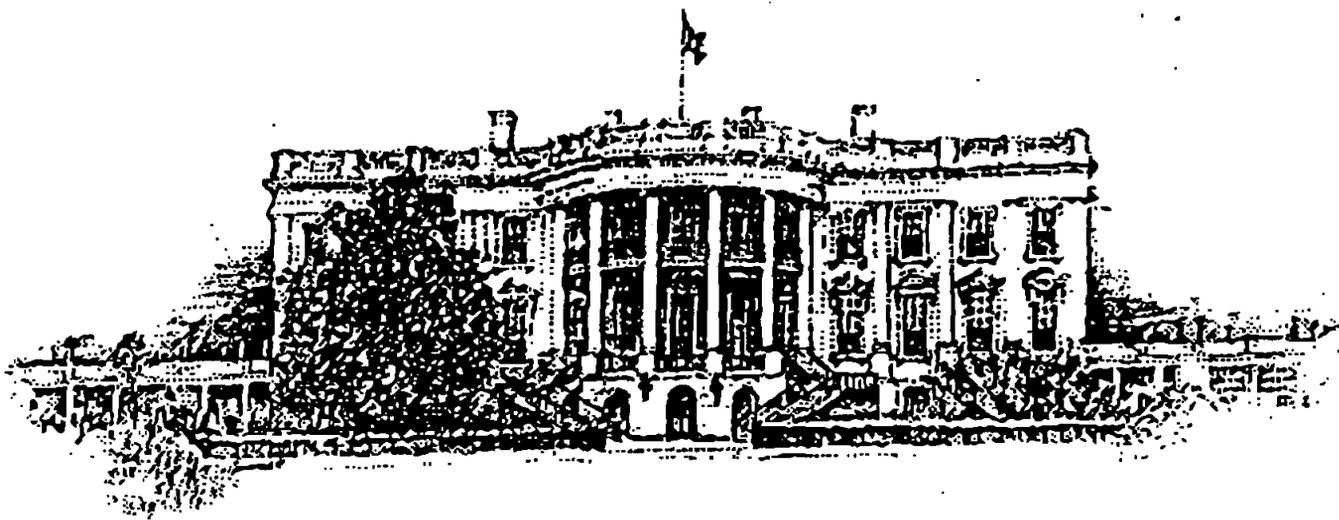
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WASHINGTON



COUNSEL'S OFFICE

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TO:

Elena Kagan

FACSIMILE NUMBER:

61647

TELEPHONE NUMBER:

FROM:

Jim Weber

TELEPHONE NUMBER:

62026

PAGES (WITH COVER):

COMMENTS:

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August 2, 1995

CONGRESSIONAL RECORD--SENATE

S9471

all of this time to learn the full issue, the ins and outs of it all. I do not look forward to reading it in its entirety, but I am taking this step, Mr. President, because it is very simple. This provision was put in totally unfairly, it is totally wrong, and in a procedure that is totally out of the question.

I might remind Senators that water is our lifeblood in Montana. It does not rain very much west of the 100th meridian. We very much want to stand up for what we think is right. I want Senators to know this issue may come up. I thank my colleagues.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak for 20 minutes as in morning business.

The PRESIDING OFFICER. Is there objection to the Senator speaking for 20 minutes? Without objection, it is so ordered.

THE COLORADO DECISION

Mr. FEINGOLD. Mr. President, just a month ago we had a discussion here on the Senate floor about the issue of campaign finance reform. I think a lot of us worked hard on the effort. We have taken a bit of a breather for the last month and assessed the situation, and we are ready to consider resuming the fight for this very important issue. Although the debate was abbreviated, it was a pretty good debate. We certainly did not suffer from any shortage of speakers offering their ideas on how we could best reform our campaign finance laws. In the end, I was pleased the bipartisan reform bill offered by myself and the senior Senator from Arizona was able to receive the support of the majority of this body, actually a bipartisan vote, obtaining 54 votes. So I feel very strongly, although we did not complete the task, we are well on our way.

And even though we fell 6 votes short necessary to ward off a well-staged filibuster, I think it is clear that there is a bipartisan majority in favor of acting on campaign reform, and many of us intend to press forward on this issue in the coming months and into the 105th Congress.

The vast, vast majority of the American people want the Congress to act on campaign finance reform and we cannot allow a small minority of Senators to thwart the will of the American people and wage a stealth attempt to sweep this issue under the rug.

Interestingly, less than 24 hours after the Senate voted against further debating the issue of campaign finance reform, the Supreme Court handed down a much anticipated decision that will undoubtedly affect the Federal election landscape.

The case was Colorado Republican Federal Campaign Committee versus Federal Election Committee. It arose

penditures on radio advertisements attacking the likely Democratic candidate for a Senate seat.

The FEC had charged that this expenditure had violated the Federal limits on so-called coordinated expenditures and the tenth Circuit Court of Appeals agreed with the FEC's assessment.

The Federal coordinated expenditure limit is the amount of money the national and State parties are permitted to spend on express advocacy expenditures for the purpose of influencing a Federal election. The coordinated expenditure limit is based on the size of each State.

It is important to understand what the litigants were arguing before the Court, because many people have tried to interpret this decision as something other than what it is.

The Colorado Republican Party, joined by the Republican National Committee, argued that the Federal limits on coordinated expenditures were unconstitutional on their face and an infringement on the First Amendment rights of the political parties to participate in the Federal election process.

In other words, these parties wanted the Federal spending limits on coordinated expenditures tossed out completely, not just the narrow ruling that was handed down.

The FEC, on the other hand, argued that the Federal spending limits helped prevent both actual corruption and the appearance of corruption.

In short, the FEC argued that these spending limits were necessary and valid for the same reasons that the Supreme Court found Federal contribution limits constitutional and necessary in the Buckley decision some 20 years ago.

Who won, Mr. President? Really, no one won. The Court, in a 7 to 2 decision, found that this particular case out in Colorado was a unique situation. At the time the expenditures in question were made, there was neither a Democratic nor Republican nominee for the open Senate seat. Moreover, the expenditures were made some 6 months before the date of the general election.

And finally, and perhaps most importantly in the Court's eyes, there was no demonstrable evidence that there was any coordination between the Colorado State party and any of the Republican candidates vying for that party's nomination.

That is the key.

That, Mr. President, is what these Federal limits on coordinated expenditures are supposed to be about. The word "coordinated" implies that there is some sort of cooperation between the party and the candidate in making the expenditure, and in this particular case the Court found that there had been virtually no coordination whatsoever.

The lack of any coordination led the Court to decide that this was an ex-

penditures we see so often made by organizations such as the National Rifle Association, the National Right to Life Committee, and the AFL-CIO.

In the landmark Buckley decision and subsequent decisions such as the 1986 decision in FEC versus Massachusetts Right to Life, the Supreme Court has ruled that the Government cannot limit independent expenditures which the Court found to be pure expressions of political speech protected by the first amendment.

These rulings are the basis for the absence of Federal limits on independent expenditures made by individuals, organizations, and political action committees.

The key determination in the Colorado decision was that the Court found that this particular expenditure was an independent expenditure, and an independent expenditure made by a political party is entitled to the same constitutional protections as an independent expenditure made by anyone else. In short, political parties may make unlimited independent expenditures in Federal elections in the same manner other organizations are free to make such expenditures.

In addition, the Supreme Court, unfortunately, did leave certain key questions unanswered. For example, the Court found the Colorado expenditure to be an independent expenditure largely because it was 6 months before the general election and there was no Democratic nominee and no Republican nominee, to make an express, coordinated attack on.

What would happen if the same expenditure was made 1 month before election day, when both the Democratic and Republican nominees had been chosen?

The Court did not address this question.

Instead, the Court elected to issue an extremely narrow ruling by focusing on the peculiar circumstances relevant in the Colorado decision.

The Court simply ruled that an expenditure made without coordination, made far in advance of an election and before there are any nominees of either party must be treated as an independent expenditure and is therefore not subject to limit.

Mr. President, for the 80 percent of the American people who want us to reduce the role of money in congressional elections, this is not the best news.

What it means is that the parties are free to independently pour millions and millions of dollars into each State months and months before the voters are to go the polls. It will open the door to more expensive campaigns, longer campaigns and if current trends continue, increasingly negative campaigns.

It can mean a proliferation in everything that repulses Americans about our campaign finance system.

That is bad news Mr. President. But

S9472

SEN FEINGOLD CONGRESSIONAL RECORD

am speaking today, so that this is clarified, this decision could have been far worse.

The Colorado Republican Party had advocated that the Court strike down the annual Federal limits on coordinated expenditures, and in fact, many of the so-called legal experts had predicted that this conservative court would do just that. But they did not.

But the Supreme Court specifically refused to strike down these limits. The Court ruled that this issue needed to be addressed further by the lower courts before the high court could adequately issue a determination of whether such limits are constitutional.

That, Mr. President, is why this was such a narrow ruling. It only affects a certain type of expenditure made by a political party. The Federal limits on coordinated expenditures were left in place and are still a part of the current election system.

Some have suggested that this decision will allow the parties to play a greater role in the election process. I agree. The question is, in the end, will this have a positive or negative effect on our political system.

I think it could go either way. For example, the parties may decide to use this decision to run negative television ads against a particular candidate 8 months before election day.

I do not think that is a positive contribution to the process, and in fact, I think it is exactly the type of activity that has tamed the American people against our current political system. I am hopeful, Mr. President, that the American people will reject those kinds of tactics, if they are, in fact, used by the parties.

On the other hand, on a brighter note, there is a possibility that this decision could have a positive impact on the system. If, for example, a challenger is severely underfunded and is facing an incumbent with a colossal war chest, expenditures made by the parties could aid the challenger in running a competitive race.

But I do not think this is the best approach to the very real problem of an uneven electoral playing field.

Why shouldn't we instead empower the challenger to make such reasonable expenditures in this situation in his or her own favor? Why not, in this particular situation, allow the candidate, rather than the party, to play a somewhat greater role in the election process?

That is precisely the approach advocated by the senior Senator from Arizona and myself and many others and was embodied in the bipartisan legislation we offered just a couple of weeks ago. Our proposal created a mechanism that offered candidates who agreed to a reasonable set of limits on their campaign spending the tools to run an effective, credible, and competitive campaign for the U.S. Senate.

I want to make something very clear, Mr. President. The effect of the Colorado decision on the McCain-Feingold

legislation, or any legislation like that legislation is, at best, nominal. I realize that many have tried to say just the opposite, somehow suggesting that the Colorado decision contradicts everything in the McCain-Feingold bill or other reform bills. Mr. President, that is not true. It is wishful thinking on the part of those very same people who have done everything they can to kill campaign finance reform.

The Colorado decision has nothing to do with any of the key components of our proposal, whether it is the voluntary spending limits, the broadcast and postage discounts, the PAC restrictions, bundling restrictions, tracking reforms or any other provision. None of those are affected by the Colorado decision.

Some have said that the spending limits in our bill will prevent a complying candidate from responding to an attack made by these new party-independent expenditures.

There is concern expressed that a candidate who has agreed to abide by the voluntary spending limits, who is then hit with \$200,000 worth of television ads bought by the national party will be unable to respond effectively. That is a fair concern to raise. But, Mr. President, the answer is the same as it was when we debated the proposal 2 weeks ago.

There is a provision in our bill that provides that if any complying candidate is the target of an independent expenditure, that candidate's spending limits are raised in proportion to the amount of independent expenditures made against them. So candidates would not be restrained from reasonably responding to an independent expenditure by the voluntary spending limits that they have agreed to. It is really that simple.

So, Mr. President, I am confident that this legislation will be debated again, if not this year, then early in the 105th Congress. It doesn't matter whether the Senate is under Republican or Democrat control next year, but the American people will surely reject what I like to call the two escape hatches of campaign finance reform, in addition to saying the Supreme Court has foreclosed the matter.

The first escape hatch, which will allow the Congress to walk the talk without walking the walk, is to create yet another commission to study this problem. I say "another" because it has already been done a few years ago. Commissions are meritorious when a relatively new issue needs to be studied, but that is not the situation when it comes to campaign finance reform. In fact, this issue has been the subject of more congressional hearings and testimony than the vast majority of the issues debated on the Senate floor.

Clearly, at a time when so much is known about the issue and when so many creative ideas have been offered, establishing another commission to study the problem is unwarranted and nothing more than a dodge.

The other escape hatch, which has turned into the escape hatch for seemingly every other issue that the Senate has debated in the 104th Congress, is to call again for yet another constitutional amendment. This particular constitutional amendment would allow Congress to set mandatory spending limits on campaign expenditures.

Mr. President, I have no doubt that the people who are supporting this concept are sincere. At one brief moment, I supported such a constitutional amendment before I realized that the 103rd Congress will be followed by a 104th Congress that seems to be trying to turn the Constitution into a billboard for every imaginable campaign slogan.

Let's be honest here. A constitutional amendment requiring 67 votes is not going to pass before the turn of the century and, frankly, I don't think would pass by the turn of the next century. We could not even get 60 votes for a modest bipartisan and bicameral bill that had an unprecedented level of public support.

Moreover, even if such a proposal were to somehow miraculously receive 67 votes in the Senate and 291 votes in the House of Representatives, then it has to be ratified by three-fourths of the States.

So I think it is clear that anyone who suggests that a constitutional amendment is the solution to our campaign finance problems must also admit that sort of solution is years and years and years away from realistically coming into play.

We just cannot put off a decision any longer. Mr. President, no games, no sides shows. The American people are tired of campaigns in which issues and ideas have become secondary to dollars and cents. They view our electoral system not as part of the American dream, but just another chapter in the "lifestyles of the rich and famous."

The voters have become inherently mistrustful of any individual elected to public office because they know that individual is now part of the Washington money chase, where their principal goal as an elected official sometimes looks like not representing their communities but, instead, raising the requisite millions of dollars for their re-election efforts.

Those are the trademarks of a dysfunctional campaign finance system that is crying out for meaningful bipartisan reform. I remain optimistic that early next year, this Senate can come together on a bipartisan basis and pass the sort of comprehensive reforms that the American people have been demanding for so many years.

I thank the Chair, and I yield the floor.

Mr. PELL addressed the Chair. The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I ask unanimous consent that I may proceed as if morning business for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate is recognized for 15 minutes.

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unusually slow...  
landscape.

The case was Colorado Republican Federal Campaign Committee versus Federal Election Committee. It arose out of a 1988 incident in Colorado, in which the Colorado State Republican Party made some \$15,000 worth of ex-

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~~DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT~~

Honorable Trent Lott  
Majority Leader of the Senate  
United States Senate  
Washington D.C. 20510

Dear Senator Lott:

This letter sets forth the Justice Department's comments on the amendment to S. 1219, the Senate Campaign Finance Reform Act of 1996, reported at Congressional Record S6616 (June 20, 1996). Although we believe that the fundamental thrust of the bill is constitutionally sound, we suggest below how the bill might be strengthened against potential constitutional challenge.

#### **Expenditures by Advisors**

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

#### **Soft Money**

Under section 221 of the bill, "persons" (defined broadly) who were not political party committees would be required to file a report for disbursements aggregating to \$10,000 and an additional report for every additional aggregation of \$10,000. This requirement would cover disbursements that "might affect the outcome of a federal election" but does not cover "independent expenditures" (express advocacy regarding a specific candidate).

In Buckley, the Court applied strict scrutiny to a disclosure requirement because the Court recognized that requiring individuals and groups to identify themselves could chill protected speech and association. Although the Court upheld a requirement that individuals and groups file reports disclosing their independent expenditures, it indicated that the governmental interest in disclosure would not be sufficient where the expenditure was not made expressly to advocate a specific result in an election. Id. at 76-82. The expenditures covered

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

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

#### Self-Identification

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

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

In addition to amending the law governing the form of the self-identification requirement, S. 1219 would establish additional requirements. Section 302 of the bill would require

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

that: (1) printed communications financed by independent expenditures include the permanent street address of the person or organization that paid for the communication; (2) broadcast or cablecast communications that are paid for or authorized by a candidate include an audio self-identification that is read by the candidate; and (3) any televised broadcast or cablecast that is paid for by a candidate include, next to the written self-identification, "a clearly identifiable photographic or similar image of the candidate."

Assuming that S. 1219's broadened scope of required self-identification can withstand legal attack under McIntyre (discussed previously), the additional requirements as to form raise other constitutional concerns. By requiring those making independent expenditures to publicize their permanent street address and forcing candidates literally to speak<sup>2</sup> or to make an appearance, each of these requirements places a burden on speech at the core of the First Amendment's protection.<sup>3</sup> If these requirements place a substantial burden on protected speech and do not materially advance a governmental interest, the provision would fail to pass constitutional scrutiny.<sup>4</sup> Congress should ensure that this standard is met, either by advancing a constitutionally legitimate and sufficiently strong governmental interest or alleviating the burden on protected speech.

#### Out-of-State Contributions

Section 101 of the bill sets a limit on out-of-state

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

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

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

contributions to candidates who elect to participate in the public funding system. The bill defines allowable contributions as not including "contributions from individuals residing outside the candidate's State to the extent such contributions exceed 40 percent of the aggregate allowable contributions" received during the approximately two years preceding the Senate election.

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

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

We believe that there are valid reasons unrelated to the communicative impact of out-of-state contributions that could sustain the provision. In particular, we believe that the

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

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

### Jurisdiction over Legal Challenges

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

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

### Adjustment to Contribution Limit

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

This provision might well be subject to constitutional challenge. In Buckley, the Court held that "[t]he First Amendment denies government the power to determine that spending to promote one's political views is . . . excessive." 424 U.S. at 57. Moreover, the Court stressed that "equalizing" resources is not a permissible basis for imposing restrictions or benefits in the context of Federal elections. Id. at 48-51. The bill arguably would run afoul of these principles and effectuate a speaker-based distinction that is based on the communicative impact of speech and that forces a candidate to choose between not speaking in excess of voluntary limits or triggering a higher contribution limit for his or her opponent.<sup>6</sup> If it does so, as discussed above, it would be subject to strict scrutiny and would need to be narrowly tailored to serve a compelling governmental interest.

Section 105 also might call into question the validity of the S. 1219's public financing system. In Buckley, the Court struck down mandatory spending limits, but held that such limits could be made a condition of participation in a voluntary public financing system. By imposing a stricter legal impediment on candidates who do not participate, a court may hold that participation in the public financing system is not voluntary, in which case it would be unconstitutional. See Buckley, 424 U.S. at 54-59. We would be happy to work with Congress in reviewing any proposed findings of purpose or substantive revisions that might address these issues.

Section 402 of the bill would permit direct appeal to the Supreme Court "from any interlocutory order or final judgment, decree or order from any court ruling on the constitutionality of any provision" of the bill. Section 402 would require the Supreme Court to accept jurisdiction and expedite the appeal if

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

it had not ruled on the issue previously. We oppose this provision.

The intermediate courts of appeal correct a large number of legal errors that do not involve fresh policy determinations or important legal issues and therefore, need not reach the Supreme Court. In resolving these issues, the several courts of appeal free the single Supreme Court to use its limited resources to review carefully and fully those cases having the greatest impact upon our society. Where the Supreme Court accepts a case for review, intermediate appellate courts serve the important function of clarifying the issues for ultimate resolution.

To require the Supreme Court to consider each of the diverse constitutional challenges a creative mind could lodge against the bill would render every dispute a dispute of constitutional dimension. It would put before the Supreme Court an unknown number of issues having little import and very obvious result. Consideration of these issues would delay or foreclose consideration of issues having much more significance for the Nation.

Thank you for the opportunity to express our views. The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

cc: Honorable Tom Daschle  
Minority Leader  
United States Senate

Honorable John McCain  
United States Senate

Honorable Russ Feingold  
United States Senate

Honorable Fred Thompson  
United States Senate

QUESTION: Doesn't a ban on contributions from non-citizens raise constitutional difficulties?

RESPONSE: It is unfortunately true that almost any meaningful campaign finance reform proposal raises constitutional issues and will provoke legal challenge. This is inevitable in light of the Supreme Court's view -- which we believe to be mistaken in many cases -- that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems. We think that even on this view, the Court should approve this measure because of the compelling governmental interest at stake. But we also think the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment always entails a right to throw money at the political system.

October 31, 1996

MEMORANDUM FOR LEON PANETTA

FROM: Bruce Reed

SUBJECT: Campaign Finance Reform Announcement

Attached is a Q&A which outlines the President's campaign finance reform proposal. The consensus recommendation of the working group is that the President should:

Strongly restate his endorsement of McCain-Feingold and challenge Congress to pass the bill in the first six months of the next term;

Announce his support --if Congress cannot find the political will to pass McCain-Feingold -- for the creation of a binding, bipartisan commission on campaign finance reform that will send a reform bill to his desk by the end of next year;

Call on Congress to include in campaign finance reform legislation a ban on contributions from non-citizens.

With regards to the President's campaign finance reform initiative, there are a couple of issues that could be problematic. First, the working group recommends that the President ask his campaign and the Democratic National Committee (DNC) to stop taking contributions from non-citizens immediately. The DNC is concerned about taking unilateral action and prefers that we wait until Congress passes legislation. Second, the working group recommends that to avoid charges of inconsistency, we should apply the same rule to the President's legal defense fund. At present, the fund does not take money from foreigners but legal immigrants are allowed to contribute. Finally, the Justice Department believes that a ban on contributions from non-citizens may be ruled unconstitutional.

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October 31, 1996

MEMORANDUM FOR LEON PANETTA

FROM: Bruce Reed  
Paul Weinstein  
Peter Jacoby

Michael Waldman  
Jim Weber  
Elena Kagan

SUBJECT: **Possible Q&A on President's Campaign Finance Reform Announcement**

QUESTION: *What exactly is the President proposing?*

RESPONSE: The President today is calling on Congress to pass the bipartisan campaign finance reform legislation introduced last session by Senators McCain and Feingold. The principles of McCain-Feingold are ones the President has advocated since he first ran for office in 1992 and are the key elements of real reform: spending limits; curbing PACs and lobbying influence; free and discounted broadcast time; and ending the "soft money" system.

The President is challenging Congress to enact this legislation in the first six months of the 105th Congress. He is committed to working closely with the leadership of both parties in achieving this goal. However, if the Congress cannot find the political will to pass this bipartisan bill, then as a last resort, the President will support legislation to establish a binding campaign finance reform commission that will send comprehensive reform legislation to his desk by the end of 1997.

The President also announced today that he agrees with Senators McCain and Feingold that non-citizens should not be able to influence our elections. From now on, the President will only support campaign finance reform that includes the following rule: if you are a not a U.S. citizen, you can't contribute.

QUESTION: *Why are you announcing this now?*

RESPONSE: This announcement is consistent with the President's long-standing commitment to campaign finance reform and to changing business as usual in Washington. In the last three years, the President repealed the tax loophole for lobbyist deductions, enacted legislation to make the Congress and the White House live by the same laws Washington applies to rest of the nation, signed legislation to require lobbyists to disclose how much they spend and what they spend it on, enacted the line-Item Veto, and made it easier for millions of Americans to register to vote.

In 1992, the President made campaign finance reform a central piece of his agenda and throughout his first term he pressed the Congress to pass real, bipartisan legislation.

**QUESTION:** *Both parties have been unable to resolve the campaign finance reform issue for years, why should the American people expect you and Congress to take action next term?*

**RESPONSE:** Last Congress we enacted Lobbying Disclosure, the Gift Ban, Congressional Accountability Act, the Line-Item Veto. We have a proven track record of getting the job done on political reform. Campaign finance reform is the last step, and most important step. The President believes that the Congress should and must make passage of McCain-Feingold a priority. He is challenging Congress to pass the bipartisan McCain-Feingold bill in the first six months of the 105th Congress, and not deny the American people any longer. If that fails, he will challenge Congress to create a bipartisan commission whose recommendations will become law on a fast-track basis.

**QUESTION:** *There has been a lot of controversy about foreign contributions to the DNC. Do you think it is wrong to accept contributions from non-citizens?*

**RESPONSE:** Under the current system, both parties have accepted foreign and non-citizen contributions. The system is broken, and needs to be fixed. The voting public must have confidence that the process is fair and works for them. That is why we agree with Senators McCain and Feingold that real, bipartisan campaign finance reform must include effective limitations on non-citizen contributions. If you are not a U.S. citizen, you can't contribute.

**QUESTION:** *Does your support for limitations on non-citizen contributions mean that you will direct the DNC to stop taking such contributions immediately and return those contributions received this election cycle?*

**RESPONSE:** It is clear that the system is broken and that the rules need to be changed. We support banning these contributions by law. We need quick action by Congress on this issue as part of comprehensive, bipartisan campaign finance reform. While we will not ask the DNC to return contributions already received this election cycle, we will ask them to set up procedures to stop taking such contributions in the future.

**QUESTION:** *How will you enforce this ban, and how broad will it be? For example, would the ban include U.S. subsidiaries of foreign-owned corporations?*

**RESPONSE:** Many of the specific details of the ban would have to be worked out with Congress. However, the principle is clear, if you are not a U.S. citizen, you can't contribute -- individual contributors would have to certify citizenship.

With regards to corporate contributions, the McCain-Feingold bill would ban PACs and eliminate the current "soft money" system. Therefore, no corporate entity, foreign or domestic, could make a Federal campaign contribution.

**QUESTION: *If you believe it is wrong to accept foreign campaign contributions, is it wrong to accept non-citizen contributions to your legal defense fund?***

**RESPONSE:** The President's Legal Defense Fund does not accept contributions from registered lobbyists and PACs. In addition, contributions are limited to \$1,000. Currently, the Fund does not take contributions from foreigners, but does take contributions from legal immigrants. (Additional recommended response is: "In the future, the President's legal defense fund will not accept contributions from foreign donors.")

**QUESTION: *Aren't you, by endorsing the bipartisan commission as a fallback position, undermining any real hope that McCain-Feingold will pass?***

**RESPONSE:** The President has been and remains a strong supporter of McCain-Feingold, and believe the principles of that legislation are the key elements of real reform: spending limits; curbing PAC and lobbying influence; free and discounted broadcast time; and ending the "soft money" system. He supports a bipartisan commission only as a last resort, if the Congress lacks the political will to pass McCain Feingold.

**QUESTION: *Will this be a number one priority for your administration?***

**RESPONSE:** This will be a key priority in the President's second term. He has long felt that this is one of the most important issues facing the American political system. We must restore the faith of the American people in their political leadership in order to build a bridge to the 21st century.

**QUESTION: *How does your plan compare with Bob Dole's?***

**RESPONSE:** The President supports the bipartisan McCain-Feingold bill. When he was in the Senate, Bob Dole opposed that legislation. While Senator Dole introduced a bill to create a campaign finance reform commission immediately, the President supported efforts to pass real, bipartisan campaign finance reform. The President continues to support McCain-Feingold, and calls on Congress to pass this legislation in the first six months of the next term. However, if Congress cannot find the political will to pass McCain-Feingold, then as a last resort he supports creating a binding, bipartisan commission that will send a real campaign finance reform bill to his desk by the end of next year. However, Senator Dole and the President do agree that non-citizens should not be able to contribute to campaigns for federal office and that we must end the current "soft money" system.

**QUESTION: *How would your plan to ban campaign contributions from foreigners impact unincorporated partnerships?***

**RESPONSE:** Contributions from unincorporated partnerships would be pro-rated and counted against the \$1,000 individual contribution limit of each partner. For example, if a partnership of ten individuals made a \$1,000 contribution to a campaign, \$100 would be counted against the contribution limit of each partner. If a non-citizen was a member of a partnership, a greater share of the contribution would count against the \$1,000 limit of the other partners. A

partnership which is owned by a majority of non-citizens should be prohibited from making contributions.

**QUESTION:** *How would the ban on non-citizen contributions affect entities, such as unions, that collect funds for independent political expenditures?*

**RESPONSE:** Independent political expenditures would not be covered by the ban on campaign contributions by non-citizens. Independent political expenditures would have to be addressed separately from the contributions issue.

**QUESTION:** *How would your campaign finance reform plan have prevented the contributions that have caused the recent controversy?*

**RESPONSE:** It is inappropriate to comment on some of those specific incidents because they are currently under investigation. With regards to future elections, passage of McCain-Feingold and the President's proposal to prohibit contributions from non-citizens will greatly insure that the people's interest are protected.

**QUESTION:** *Doesn't a ban on contributions from non-citizens raise constitutional difficulties?*

**RESPONSE:** It is unfortunately true that almost any meaningful campaign finance reform proposal raises constitutional issues and will provoke legal challenge. This is inevitable in light of the Supreme Court's view -- which we believe to be mistaken in many cases -- that money is speech and that attempts to limit the influence of money on our political system therefore raise First Amendment problems. We think that even on this view, the Court should approve this measure because of the compelling governmental interest at stake. But we also think the Court should reexamine its premise that the freedom of speech guaranteed by the First Amendment always entails a right to throw money at the political system.

**QUESTION:** *How does the Supreme Court's decision in Colorado Republican Campaign Committee v. FEC affect the McCain-Feingold bill?*

**RESPONSE:** The Court's recent decision in Colorado Republican Campaign Committee v. FEC, which disapproved non-voluntary limits on uncoordinated expenditures by political parties, has little or nothing to do with key elements of the McCain-Feingold bill, including voluntary campaign spending limits, restrictions on PACs, and broadcast and postage discounts. It is possible that the decision will require amendment of certain less crucial provisions of the bill, but even this is a complicated legal question needing close scrutiny.

Received 11-1-96  
10:50 AM

**REVISED**

**CAMPAIGN FINANCE REFORM INSERT**

**boldfaced sections are the sections  
we would like to pre-release to the press**

**There is another issue on which your vote will decide -- whether we will reform our politics by passing campaign finance reform.**

**When I ran for President four years ago, I said I wanted to give the government back to the people. I wanted a government that represents the national interest, not narrow interests . . . a government that stands up for ordinary Americans. That is what I have worked hard to do.**

**We barred top officials from lobbying their own agencies for five years after leaving office.**

**And we barred them from ever representing foreign governments and foreign companies. The days of the revolving door, when top trade negotiators left to work for the very countries they were negotiating against, are over.**

**We passed the most sweeping lobbying disclosure bill in 50 years. From now on, professional lobbyists must disclose who they work for, what they are spending, and what bills they are trying to pass or kill.**

**I challenged Congress to ban gifts from lobbyists -- and they did.**

**We passed the line-item veto, so the Presidents can strip special interest pork from legislation . . . the motor voter law to register millions of voters . . . the congressional accountability act, to apply to Congress the same laws they pass for everyone else . . . the White House Accountability Act.**

**With all these actions, we have made Washington work better, brought politics closer to the people. But there is still more to do. Special interests still have too much say.**

**Now we have one more big job to do: curbing the power that big special interests have in our elections.**

**Everybody knows the problems with campaign money: there's too much of it; it takes too much time to raise; and it raises too many questions. The parties are engaged in an escalating arms race; in the past 2 years, the Democrats have raised \$241 million and the Republicans have raised \$399 million.**

**Raising that much money strains the political system. We have played by the rules. But I know, and you know, that it is time to change the rules.**

**As President, I have fought for campaign finance reform. I proposed a tough bill when I came into office -- but the Congress wouldn't pass it. The Republicans have been reluctant to**

give up their access to big money. And led by my opponent, they filibustered it to death. In fact, campaign finance reform has come before the Senate six congresses in a row. My opponent filibustered it six times. He blocked another one right before he left office.

In 1995, when I met with Speaker Gingrich at a town hall in New Hampshire, a citizen asked us if we would create a bipartisan commission -- and we agreed. I believed it offered a real chance for bipartisanship and for action. I even appointed two distinguished citizens to help get it started. But the Republicans walked away. My opponent now says he supports such a commission. But when we had a real chance to succeed, he refused to work with us to start the commission.

And we had a chance to take the partisan politics out of this issue this year as well. I supported strong bipartisan legislation that was introduced by Republican Senators John McCain -- my opponent's strong supporter -- and Sen. Fred Thompson, and Democratic Senator Russ Feingold.

They have a good approach. It is based on the principles I ran on in 1992.

We should curb the power of special interests by restricting Political Action Committees and dramatically reducing the amount they can give to candidates. We should ban contributions from lobbyists to those they lobby.

We should end the big money contributions to political parties, known as "soft money." We should ban corporations and labor unions from giving directly to parties to help federal candidates. And, for the first time ever, we should restrict the virtually unlimited amount that individuals can now give to the parties.

We should set voluntary spending limits for candidates.

And we should give free TV time so that all candidates can talk directly to voters, without the huge and growing expense of buying 30 second ads.

This is a good approach. It was endorsed by Common Cause and every other major reform group. It was bipartisan. It was tough. It was real reform.

But my opponent opposed it. He refused to bring it to the floor for a vote. After he left Congress to run for President, the Republican leaders finally allowed the legislation to come to a vote. And it was killed by members of my opponent's party.

There is one more issue that reform must deal with.

Today, it is legal for both parties to receive contributions from corporations that are owned by foreign corporations, and from individuals who live here legally but are not citizens. The Democrats have raised money this way; so have the Republicans.

**It is time to end this practice. McCain-Feingold would end all corporate contributions. And we should end contributions to either party from individuals who are not citizens. There are many immigrants who play an important role in our country. But the essence of our democracy is that the citizens decide. Only citizens can vote, and only citizens should be able to contribute.**

**There is no more excuse for waiting. Once again, I call on Congress to enact real reform. And delay will merely help those who don't want change. When McCain and Feingold introduce their bill next year, I will introduce it with them. Real reform will mean a government that is more representative — not less. The American people should know that I am determined to get this done, once and for all.**

**We should understand: because in a recent case the Supreme Court has made it impossible to enforce some of the strictest limits, this bill will not solve all our problems. Even as it establishes limits, it will still allow a millionaire to spend endless sums to win office. It may be that further measures are needed. But in the meantime, we have an obligation to act, and act now.**

**There are many challenges before us as we approach the 21st Century. The challenge of making our democracy work may be the most important of all.**

THE WHITE HOUSE

WASHINGTON

Both Nolan - campaign finance

11/1

IA protections apply to res. aliens - Lippe  
even than perm res. aliens.

(e.g. - student visas / work visas)

[prob. apply even to  
illegal. Much less certain.]

So IA vts clearly attach.

Q: Is there a compelling interest etc.?