Testimony of

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Regarding Soft Money and the Political Parties

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Mr. Chairman and members of the Committee:

Opening Remarks

Thank you for the opportunity to appear before the Senate Rules Committee and share with you the opinions on soft money of the organization I lead.

I am Scott Harshbarger, President of Common Cause, a nonprofit, nonpartisan citizen's lobbying organization that promotes open, honest and accountable government. We are supported by the dues and contributions of our more than 215,000 members who live in every
state across the nation.

I also come before you today as a former elected official and participant in the campaign finance system. I have run for public office on several occasions, and served as Attorney General of the Commonwealth of Massachusetts from 1991 through 1998, when I ran unsuccessfully for Governor. I believe my experience in the political arena – raising the money I needed over the years to run competitive campaigns – enables me to bring a realistic and balanced perspective to the issue of campaign finance reform. I understand the noble calling that inspired many of us in this room to pursue careers in public service, and I believe that restoring public confidence in and respect for public service is vitally important to our democracy. No issue is more important to that end than campaign finance reform.

In my case, I had the good fortune to run in a state where the campaign finance system, while not perfect, was in better shape that what I see here at the federal level. In my view, the federal campaign finance system is in a state of near total collapse.

As we witnessed in the 1996 elections, laws that have been on the books since the beginning of the 20th century to regulate the sources and size of federal campaign contributions have been eviscerated. The simple truth today is that any money, in any amount, from any source, can be raised by federal candidates and political parties, and spent to affect federal elections.

Soft money is the key cause of this disintegration of the law.

More than any other single factor, the explosive growth of soft money since 1978 has radically undermined the campaign finance laws enacted by Congress, laws which are intended to protect the integrity of the federal political process.

The growth of soft money over the last twenty years has, on a massive scale, reintroduced into federal elections exactly the kinds of money that federal law and policy are explicitly intended to exclude. And with it has come precisely the kinds of corruption that the law is intended to safeguard against.

For nearly a century, as a result of legislation signed into law by President Teddy Roosevelt, corporations have been prohibited from making contributions or expenditures in connection with federal elections. For over half a century, federal law has prohibited labor unions from making contributions or expenditures in connection with federal elections. And for almost a quarter century, federal law likewise has prohibited

individuals from contributing more than $1,000 per election to a federal candidate, more than $20,000 per year to a national political party, or more than an aggregate of $25,000 per year to all recipients for the purpose of affecting federal elections.

Soft money, simply put, is money which violates these laws. News reports and congressional investigations are replete with example after example of corporations, labor unions and wealthy individuals contributing huge sums of money to political parties. This soft money is solicited by candidates and incumbents running for the U.S. House, the U.S. Senate and even the Presidency. As we know from direct and undeniable evidence, many of these same candidates and incumbents blatantly offer donors enhanced access to themselves and their colleagues in exchange for these huge contributions. And this soft money is spent in ways that undeniably are intended to – and clearly have the effect of influencing federal elections.

Only the most staggeringly naïve could believe that this soft money is not given by the donors to curry favor with federal officials. Only the most gullible could believe that these contributions have no impact on the recipients and result in no favoritism to the donors. And only those in deepest denial could believe that this money is not spent to influence federal elections.

Of course, the American people are not that naïve. Polls overwhelmingly demonstrate a loss of confidence in the political process that results from the reintroduction of huge individual and corporate contributions into the American political process. A *New York Times* poll found that a stunning 75 percent of those polled said that they believed that many of their public officials make or change policy decisions as a result of the money they receive from major contributors.

These results starkly illustrate the growing concern of citizens with a government that too many believe is no longer in touch with the needs and concerns of average Americans. And fewer Americans are participating in government.

The 1996 voter turnout of 48.8 percent was the lowest since 1924. Turnout was down in every single state compared with 1992, and hit presidential-year lows in 15 states. In 1998, turnout for the mid-term election was 36%, the lowest for a nonpresidential election in 56 years.

The fact is that the American people recognize exactly what is going on in Washington these days – large contributions buying access and influence in all aspects of legislative decision-making. And that is exactly why they are becoming increasingly cynical about their democracy.

Soft money was at the heart of virtually all of the scandals of the 1996 presidential campaign. The sale of access to the Lincoln Bedroom was a story of soft money. The White House coffees were about soft money. The Roger Tamraz episode was a tale of soft money. And soft money was the vehicle to transmit the unprecedented influx of foreign money into the 1996 campaign.

In her book, "The Corruption of American Politics," Elizabeth Drew wrote of the 1996 campaign:

> There were now effectively no limits on how much money could be raised and spent in a campaign, and the limits on how it could be raised were

rendered meaningless. Powerful people had undermined the law in order to retain power, or to gain it.

Drew went on to say:

> Private interests have tried to influence legislative and administrative outcomes through the use of money for a long time. … But never before in the modern age has political money played the pervasive role that it does now. By comparison, the Watergate period seems almost quaint.

And, as former Senator Alan Simpson has said, the way campaigns are financed is "poisoning the system, it is prostituting ideas and ideals. It is demeaning democracy and debasing debate."

Earlier this Congress, with strong bipartisan support, the House passed the Shays-Meehan bill to end the soft money system with the support of one quarter of the Republican caucus. Its companion measure in the Senate, introduced by Senators John McCain (R-AZ) and Russ Feingold (D-WI), has been stalled here in the Senate, blocked by a filibuster. But continued delay only means that the corrupting soft money system continues.

Soft money is a problem that has grown on our democracy like a cancer. Let me explain why I say that.

In 1995, the last comparable presidential election period, national political party committees raised more than $59.2 million. During 1999, the party committees raised $107.2 million in soft money – an 81 percent increase. Much of the increase is attributable to an increase in giving to the congressional campaign committees of both parties whose total contributions grew to $62 million in 1999 compared to $19.4 million in 1995.

The leading donors of this soft money included the computer and electronics industries, gambling interests, pharmaceutical interests, unions, the National Rifle Association, the insurance and health industries and trial lawyers – each of whom had interests before Congress in 1999. The top soft money donor to the Republican national party committees was Philip Morris Companies, Inc. The top soft money donor to the Democrats was AFSME, a government employees union. More than 80 donors gave $50,000 or more to both sides of the aisle. These double givers included AT&T, Philip Morris, American Financial Group, Microsoft Corporation and Atlantic Richfield.

Corporations and special interests do not give money to both parties because they want to increase voter turnout or support American democracy. They give this money for one simple reason – they want something in return. Whether it is AT&T, or Carl Lindner and American Financial, or Microsoft, or the American Trial Lawyers Association, or the American Federation of Teachers, big soft money donors all want one thing: special treatment. They give these outrageous sums on the faith that their contributions will buy them special access to legislators and party officials – special access that they hope to turn into special influence and favorable policy outcomes.

The fact that the Democratic Senatorial Campaign Committee (DSCC) and the National Republican Senatorial Committee (NRSC) and their House counterparts are raising any nonfederal money exposes the fiction that soft money is not being spent to influence federal elections. The reason for being of these committees, after all, is that and only that – electing

their candidates to Congress.

And now the soft money is seeping more directly into Senate elections. Just yesterday, Common Cause announced that we are filing a complaint with the Federal Election Commission regarding so-called "victory funds." These joint fundraising operations are blurring the lines between hard and soft money like they have never been blurred before. Why should anyone think, for example, that the New York Senate Victory 2000 account is going to be used for anyone else beside Hilary Clinton? Or the Guiliani Victory Committee? After all, there is only one U.S. Senate election in the state of New York in the year 2000. Who's kidding whom? These committees have stripped the soft money emperor of his final scrap of clothing – the notion that this money is not earmarked for candidates or spent directly in support of their "victory."

If the current soft money system is not ended, we know this cancer will surely grow. The time for decisive action is now.

I believe the most significant news from Senator McCain's recent foray into presidential politics was how strongly his reform message resonated with voters. Senator McCain tapped the great love of the American people for our democracy, and their great fear that it is being threatened. Watching both the remaining major party presidential candidates, Governor George W. Bush and Vice President Al Gore, compete for the reform mantle also shows the power of the reform message, at least for an important and perhaps determinative group of voters.

Of course, there is more that Common Cause would like to see done in the area of campaign finance reform. We believe that ending the soft money system is not the end but the beginning – a necessary first step down the road to cleaning up a system that has allowed money to become more important than people.

Of course, we recognize that many of the efforts to legislate in the arena of campaigns and elections have strong First Amendment implications. We honor and celebrate this truth. We are strong and steadfast supporters of all citizens' First Amendment rights. And we do not believe that all money is bad.

But as the U.S. Supreme Court recently recognized again in the *Shrink Missouri* case, there is a compelling national interest in ensuring that our democratic system of elections is not distorted by large amounts of money. The Court again upheld contribution limits and poked a hole in the myth that money equals speech. The Supreme Court has given the green light for legislators to pass the kind of reform that Common Cause has been fighting for at the state level, as well as for this Congress to ban soft money – which brings exactly the same threat of corruption the Court addressed last month.

In conclusion, Mr. Chairman, I want to address the more general role that money is playing in the 2000 election. The first thing we have to do is acknowledge right up front that before one single vote had been cast in the primaries, money had already narrowed the pool of candidates from which voters would ultimately choose. Many qualified candidates dropped out for want of funds, and many never entered the campaign in the first place because they knew they could not become financially competitive.

Big money in politics has a tendency to make ordinary Americans think that their votes don't count and their voices don't matter. It can be a vicious circle, because as fewer citizens vote, special interests gain even greater influence. The greater the influence of special interests, the fewer citizens bother to vote.

That is why it is so important for this Committee and the Senate to break the deadlock and end the soft money system.

Again, I thank you for your time and appreciate your patience. I ask that my written testimony be submitted for the record.

The Soft Money Loophole

Introduction

In order to understand why soft money is so corrupting, it is important first to understand clearly what it is.

Simply put, soft money is precisely that money which by definition and by law is not supposed to be part of our federal campaign finance system. It is precisely the kind of money which federal law and policy have sought to exclude from national campaigns.

Since 1907, it has been illegal for corporations to spend money in connection with federal elections. Since 1947, it has been illegal for labor unions to spend money in connection with federal elections. And since 1974, it has been illegal for an individual to contribute more than $1,000 to a federal candidate, or more than $20,000 per year to a political party, for the purpose of influencing a federal election.

Soft money, simply stated, is money which violates these rules. It is the corporate donations, the union contributions and the large - $100,000, $250,000 or even $1 million – contributions given by wealthy individuals to the political parties.

The Senate Watergate hearings conducted almost 25 years ago revealed deep problems in the financing of our federal elections – problems caused by precisely the same kinds of money that now appear again in our system, but this time in the guise of soft money.

The Watergate investigation showed numerous instances of corporations buying government favors through the use of campaign contributions. The public linked the Milk Producer Association's pledge of $2 million to the Nixon campaign with the Nixon Administration's backing of an increase in the federal milk price supports. So too, ITT's donation of $400,000 to the Republican National Committee to fund its 1972 convention in San Diego was linked in the public mind to the Administration's settlement of an antitrust action against ITT.

The Watergate investigation also found that wealthy individuals were buying ambassadorships with huge campaign contributions. More than $1.8 million in contributions to the Nixon campaign came from individuals who were later appointed to ambassadors.

In the wake of Watergate, those who broke the law were prosecuted. Some of the best known companies in the country – American Airlines, Goodyear, Gulf Oil, Greyhound – pleaded guilty to violating the ban on corporate contributions.

But following the Watergate scandal, the Congress also reformed the laws to address what the Watergate investigation revealed to be gross improprieties in the campaign finance system. The comprehensive post-Watergate 1974 reform law was specifically intended to reinforce the long-standing ban on corporate and union treasury money in federal elections, and to strictly limit the money wealthy individuals could contribute to federal candidates and political parties. The post-Watergate law put into place the limits and reaffirmed the source prohibitions that exist today. That system worked well for a number of years.

But since Watergate, the creation of the soft money system in recent years has served to re-introduce into the American political process precisely the kinds of money that the Watergate reforms were specifically intended to eliminate. Unrestricted corporate contributions are back. Unregulated union contributions are back. And unlimited donations from wealthy individuals are back.

It is important to understand how this happened.

The soft money system rests entirely on a fallacy created by the FEC. The theory of soft

money is that it is raised and spent to affect only non-federal elections. This, according to the theory, is why it does not need to comply with federal fundraising rules. Far from being grounded in reality, the this theory is – and always has been – a myth.

The soft money loophole was created not by Congress, but by the Federal Election Commission in an obscure administrative ruling in 1978 which allowed state parties to fund so-called "mixed activities" - which by their very nature affect both federal and non-federal campaigns – with an allocated mixture of federal and non-federal funds.

The theory of the allocation system, from its inception, was fatally flawed. It was based on the legal fiction that the non-federal impact of a mixed activity could be somehow segregated from its federal impact, and that non-federal money could be apportioned to pay only for the non-federal impact, without having any affect on the federal campaign. This assumption was wrong in principle and has proven disastrous in practice. What it has meant, simply, is that non-federal money could be used to fund a significant portion of the activities conducted by the parties to affect federal campaigns. By creating this legal fiction, the FEC provided federal candidates and their parties with a license to raise and spend money outside the FECA for the purpose of funding their federal campaign activities.

What began as a trickle of soft money has turned into a torrent, threatening to wash the FECA away. By 1988, the two parties were raising a total of $45 million in soft money. In 1992, the figure rose to $86 million. In 1996, soft money contributions ballooned to $262 million -- more than a quarter of a billion dollars. Already in the off-year, the parties have collected $107 million – every dollar of it outside the scope of the FECA.

Soft money is the most corrupt money in the political process

In Buckley v. Valeo, the Supreme Court held that limits on contributions serve a compelling governmental interest because large contributions can be given, or appear to be given, "to secure a political *quid pro quo* from current and potential officeholders," which undermines "the integrity of our system of representative democracy" Nowhere is this threat of more concern today than with soft money.

The more than a quarter of a billion dollars of soft money raised by the parties in the 1996 election cycle all came from sources, and in amounts, that would otherwise be unlawful under the FECA. Large soft money donors to the Democratic Party in the 1995-96 cycle, for instance, included Joseph E. Seagram & Sons Inc, which gave $1.18 million, the Communications Workers of America, which gave $1.12 million, and AFSCME, which gave $1.09 million.

In the same period, the Republican Party received $2.51 million from Philip Morris, Co., $1.18 million from RJR Nabisco Inc. and $794,000 from American Financial Group. Indeed, since the Republican Party gained control of Congress in 1994, Phillip Morris has contributed more than $1 million each year from its corporate treasury to the RNC.

Anyone who questions whether soft money contributions have a corrupting influence on the political process need only peruse the final report of the Thompson Senate Committee, which was charged with investigating campaign finance abuses during the 1996 election. Virtually every abuse reported by the Committee – from White House coffees to foreign donations, from the story of Roger Tamraz to the Indian casino controversy – was tied together by the single unifying theme of soft money.

In her book, Elizabeth Drew said of the hearings, "The stream of stories about soft money raised through questionable means, of money purchasing access, of access-peddling got through

[to the public]. The hearings showed graphically, as never before, that the campaign finance system had been destroyed."

The Tamraz story is particularly instructive. Tamraz was an international financier wanted in France and Lebanon for embezzlement and other financial crimes. He made a $300,000 soft money donation to the DNC – not out of ideology, or belief, or political conviction, but, as he candidly admitted to the Committee, simply to buy an audience with the President of the United States. And if the price for that access had been twice as high, he would have gladly paid that too.

That is the lesson of Pauline Kanchanalak, an Asian business consultant, who brought five clients to a small, private meeting with the President in 1996. Her clients were the heads of a Thai conglomerate considered to be the biggest foreign investor in China. The subject of discussion at the meeting was U.S. policy toward China. On the day of the meeting, Kanchanalak made an $85,000 soft money donation to the DNC and a member of her family contributed an additional $50,000.

The hearings uncovered numerous other examples of the sale of access to the White House. The Lincoln Bedroom was regularly rented out to large soft money donors. The program of White House coffees was clearly intended to serve as a perquisite to induce or reward soft money donations.

Majority Leader Trent Lott has endorsed this peddling of access to the highest elected officials in our government as "the American way."

But he is deeply wrong. It is nothing short of a perversion of our democracy for the political parties to auction off access to the leaders of our government. This practice erodes the sense of fairness and openness that has always been a fundamental aspiration of our government. And it replaces that sense of fairness with a crass price tag hung on the White House and the Congress.

That is the price tag that DNC fundraiser Johnny Chung saw. And he described it graphically. He said, "I see the White House is like a subway – you have to put in coins to open the gates."

Soft money has done this – it has given people a reason to compare the White House, the symbol of the greatest democracy in the history of the world, to a coin-operated machine for the purchase of political influence. How hard it is for the American people to retain their respect for the institutions of our government when the cynics and fundraisers in our politics can so easily cheapen our most precious symbols.

Such explicit sales of access to our highest elected officials, in exchange for huge soft money donations to the political parties, are now commonplace in the political process. But they are far from innocent. Access to government decision-makers <u>does</u> matter. The purchase of favored access leads to the purchase of favored influence. Everyone in this room knows that, and the American people know that.

The explosion of soft money fundraising by federal candidates and officeholders creates the appearance that access and influence are being traded for large contributions. Access is sold openly for soft money dollars. As the <u>New York Times</u> reported:

> By giving at least $175,000 over four years to the Republican National Committee, more than 200 corporations and individuals earned invitations to the Italian Renaissance-style Breakers Hotel. The chief draw: the chance to rub elbows with the nation's Republican leaders, including Senator Trent Lott, the majority leader; Speaker Newt Gingrich, and Representative Robert L. Livingston, the chairman of the House Appropriations

Committee.

And the donors know what they are buying. According to another story in The Times, one soft money donor, described as "a senior executive whose corporation gave $500,000 to the Republicans," said, "There is no question – if you give a lot of money, you will get a lot of access. All you have to do is send in the check."

And access is not all that is bought. As Time magazine reported, even though the parties and their donors deny it, there is evidence that contributions of soft money "produce big and nicely targeted concessions from the parties who take it in." For example, in 1995, regional and long-distance telephone communication companies won concessions in the telecommunication bill at the same time their soft money contributions reached an all-time high. In the same month that NYNEX, then a regional Baby Bell corporation, contributed $100,000 to the Republican Congressional Campaign Committee, House Republican leaders relaxed a requirement in the bill that Baby Bells must show that they have competition for local telephone business before being permitted to sell long-distance service. After President Clinton threatened to veto the bill, long distance companies contributed $160,000 to the Democrats. When the parties finally struck a compromise on the telecommunications bill, soft money contributions flowed to both parties.

It is little wonder that the New York Times reported, "[a]lthough the system limits individual contributions to specific candidates, the soft money loophole allows wealthy individuals and corporations to buy access with unlimited donations to the political parties. As the mainstream press has often observed, wealthy individuals and corporations contribute soft money to the candidates' campaigns for one reason: "They are seeking influence with the nation's top elected officials."

Soft money is raised and spent to influence federal elections

As noted above, the theory of the soft money system is that money can be raised by federal candidates and their political parties outside the regulatory reach of the FECA because it is spent by the parties for activities that do not affect federal elections. This premise was wrong when the FEC devised it in 1978. And even the FEC recognizes that it is unquestionably wrong today.

One need look no further than the multi-million dollar television advertising campaigns run in the 1996 election to see the use of funds from political party soft money accounts to influence federal elections. These ad campaigns showed more clearly than ever before how soft money is laundered through the political parties and then injected directly into federal elections.

Common Cause filed a complaint with the Department of Justice in October, 1996 alleging that both the Clinton and Dole presidential campaigns, using their respective parties as conduits, raised and spent millions of dollars laundered through the party soft money accounts during the 1996 election for TV advertising campaigns that were intended to, and had the effect of, influencing the presidential election.

As the evidence set forth in our complaint plainly demonstrates, the Clinton and Dole presidential campaigns prepared, directed and fully controlled the TV ad campaigns at issue. These ads were targeted to key presidential battleground states, and were conceived and implemented by the presidential campaigns as an integral part of their electoral strategy. The ads themselves referred to the presidential candidates by name and were indistinguishable in substance from other campaign ads run by the Clinton and Dole campaigns. Indeed, it is our view that these ad campaigns were blatantly illegal.

This soft money funding of candidate-specific advertisements is by no means limited to Presidential campaigns; it has become an increasingly important part of congressional elections as well. For example, in the November 1997 special election for Staten Island Representative Molinari's vacant seat in the House, the RNC poured nearly $800,000 into candidate-specific, negative advertisements like this one:

> The tax bite. Today, New Yorkers pay the highest taxes in the country because politicians like Eric Vitaliano keep raising our taxes. Vitaliano raised taxes on families over $7 billion. More taxes for more welfare. Welfare spending went up 46 percent. Then Eric Vitaliano took a big bite for himself [biting sound], raising his own pay 74 percent. Call Eric Vitaliano. Tell him to cut taxes, not take another bite out of our futures.

Even though this was a special election with only one Republican federal candidate on the ballot, the RNC contended that these ads were "issue advertisements" intended to educate voters on the Republican Party's positions on various issues. Thus, argued the Republicans, these ads were not intended to influence this election; instead, the ads were intended to benefit all Republicans. As an editorial in Roll Call aptly noted, however: "The RNC, for its part, argues that although the New York ads are meant to help Fossella, they might benefit other GOP officeholders, too. To which the proper response is this: "You've got to be kidding."

If the recent history of soft money-funded, candidate-specific advertising left any doubt that the parties intend these advertisements to influence federal elections, the parties' leaders have conclusively dispelled it. Speaker Newt Gingrich and other Republican leaders were reported to "have devised a $37 million 'issues advocacy' campaign . . . to deliver poll-tested messages to dozens of targeted Congressional districts" in the 1998 campaign. According to Republican officials, the National Republican Congressional Committee concocted this advertising campaign, which was funded in large part with soft money, in hopes of winning twenty-five more congressional seats in the 1998 election.

The larger point here is that the parties are blatantly spending soft money on activities which they intend to influence federal elections, whether or not they call those advertisements "issue ads." The development in 1996 of multi-million dollar candidate-specific TV ad campaigns under the guise of "issue advocacy" has simply become the latest – and most potent way – of injecting into federal campaigns huge sums of soft money raised outside of the FECA. More importantly, it gives the lie to the claim that soft money raised by parties is not intended to, and does not have the effect of, influencing federal campaigns.

As Elizabeth Drew said in her book, "The distinction between hard money and soft money has become a fiction."
But even before the advent of soft money funding for federal candidate-specific TV ad campaigns in 1996, there was little doubt that the parties were raising and spending soft money in order to influence federal elections.

This conclusion is the only logical explanation for the fact that federal candidates and office holders – including the President, the Vice President and the entire congressional leadership of both parties – spend so much time raising so much soft money each election cycle.

The conclusion is the only logical explanation for the fact that the <u>congressional</u> campaign committees of both parties – committees that are composed <u>exclusively</u> of sitting Members of Congress and which have as their <u>sole</u> purpose to promote the party's congressional

candidates – are in their own name and for their own purposes raising and spending ever increasing amounts of soft money on federal candidate-specific ad campaigns.

And this conclusion is the only logical explanation for the fact that the planning and execution of the party "ground war" – the voter identification, registration and get-out-the-vote effort – is largely dominated in federal election years, particularly presidential election years, by considerations of federal politics, so that the parties deploy their soft money where it will have the most beneficial impact on federal campaigns.

For these reasons, even the FEC itself has concluded that soft money is used to influence federal elections. In a Notice of Proposed Rulemaking last year, the Commission, based on an analysis of evidence by its own general counsel, noted that the factual record regarding soft money:

> ...suggests that the use of soft money has expanded far beyond what the Commission anticipated when it promulgated the allocation rules. This appears to be particularly true for the national party committees. They are directly tied to federal officeholders in Congress and the White House. They also play a major role in raising funds to elect candidates for federal office, and in directing those funds to states in which key elections are being held....
>
> [I]t appears that by allowing national party committees to pay a portion of their mixed activities costs with soft dollars, the allocation rules appear to be allowing the national party committees <u>to use soft money contributions in ways that unavoidably influence federal elections,</u> even though they are ostensibly raised for nonfederal election activity. This is inconsistent with the policy goals of the FECA....

We agree. If – as the FEC itself has now formally stated – soft money is used in ways "that unavoidably influence federal elections," then the premise of the allocation rules – indeed the premise of the soft money system in its entirety - is simply and irredeemably wrong. The <u>only</u> proper conclusion is for Congress ban soft money.

The McCain-Feingold Bill Will Close the Soft Money Loophole

The solution to the soft money problem is simple. Bring the McCain-Feingold bill to the Senate floor and pass it, as the House did overwhelmingly last year.

The McCain-Feingold bill bans soft money. The bill requires that any money solicited or received by the national parties must comply with federal law. So too, *any* money spent by the state parties on any activities which might influence federal elections - including voter registration and get-out-the-vote drives – must comply with federal law. And *any* money raised by a federal candidate or federal officeholder for federal elections must comply with federal law. These three provisions, when taken together, will close the soft money loophole.

In contrast, the bill introduced by Senator Chuck Hagel (R-NE) purports to cap soft money to the national parties. But the cap is a fiction. Without dealing with the state parties and the spending on activities which influence federal elections, the money that would have gone into the national party accounts will simply revert to where it first was channeled, the state parties.

The McCain-Feingold Soft Money Ban Is Constitutional

1. General Constitutional Principles

Contrary to what critics allege, the Supreme Court has repeatedly recognized that Congress, consistent with the First Amendment, possesses a broad ability to protect the political process from corruption and the appearance of corruption.

The Court has upheld, as constitutional, limits on contributions by individuals and political committees to candidates, to political committees and to the political parties. These limits, the Court said in Buckley v. Valeo, 424 U.S. 1 (1976), "limit the actuality and appearance of corruption resulting from large individual financial contributions." 424 U.S. at 26. Further, the Court specifically noted that the contribution limits in the law "do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates and political parties." 424 U.S. at 29.

The Court has also broadly upheld the disclosure requirements in the campaign finance laws. In Buckley, the Court wrote that disclosure rules are constitutional because they serve "governmental interests sufficiently important to outweigh the possibility of infringement [of First Amendment rights]." 424 U.S. at 66. These interests include providing information to voters about where campaign money comes from and how it is spent, deterring corruption by exposing large contributions to the light of publicity, and gathering data to detect violations of the contribution limits. 424 U.S. at 66-69.

Finally, the Court has upheld a total ban on contributions and expenditures by labor unions and non-ideological corporations, even though such a ban plainly touches on First Amendment interests. This ban, the Court held, serves to combat "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form ..." Austin v. Michigan State Chamber of Commerce, 494 U.S. 652, 660 (1989).

These general principles – upheld by the Supreme Court – form the constitutional foundation on which the McCain-Feingold bill rests:

- that campaign financing may be regulated to serve the compelling interests in deterring corruption and the appearance of corruption,

- that contributions to candidates and political parties may be limited and in some cases banned entirely,

- that requiring disclosure of campaign finances is permissible, and

- that corporate and union contributions and expenditures in federal elections may be banned because of their distorting effect on the electoral process.

2. A ban on soft money is constitutional.

The McCain-Feingold bill prohibits the national parties from accepting or spending money that does not comply with the federal campaign finance laws. Thus, the national parties would be barred from accepting contributions from corporations and labor unions entirely, and from individuals in excess of $20,000 per year.

This provision of McCain-Feingold is completely consistent with the source prohibitions and contribution limitations previously upheld by the Supreme Court. The Court has already

found it constitutional for Congress to limit the amount of money that an individual can give to a political party, and the Court has already found it constitutional to ban corporate and union contributions to political parties. Thus, banning the receipt of soft money by the national political parties is well within existing constitutional doctrine. The soft money provisions of Shays-Meehan merely implement existing constitutional principles by closing a loophole that is being used to evade permissible rules.

Critics argue that the national parties are constitutionally entitled to raise soft money if the money is used for purposes other than influencing federal campaigns, such as for issue ads. But this reasoning puts the cart before the horse. It is analogous to arguing that because candidates are not limited in the amount of money they spend, they cannot be limited in the size of the contributions they receive.

But this is clearly not the analysis the Supreme Court has used. Spending by federal candidates is not limited under current law, but the size of contributions received by federal candidates is – precisely because the Court recognized that there is a potential for corruption in large contributions received by candidates, whatever the money is spent for.

Thus, the Court has focused on the corrupting effect that corporate and large contributions have on the recipient, no matter what purpose the money is used for. This corrupting effect is hardly a theoretical concern with soft money: overwhelming evidence from the 1996 campaign demonstrates that the raising of soft money by the political parties – typically raised for the parties by high-level federal officials from the President on down – had precisely the effect the Court feared – "the actuality and appearance of corruption." Thus, a ban on party soft money would restore integrity to the rules governing party hard money – and close the loopholes used to evade those rules – thereby serving the compelling interests that the Court relied on in deeming those hard money contribution limits and source restrictions to be constitutional.

The McCain-Feingold bill also requires the state parties to spend only hard money on activities which affect federal campaigns. This principle is also clearly constitutional; state parties have always been required to spend hard money on federal campaign activities, which is why state parties raise hard money. The only change made by the McCain-Feingold bill is to clarify that certain specified activities – get-out-the-vote and voter registration drives in federal election years, and ads which name federal candidates - are activities which predominantly affect federal campaigns and thus require hard money funding by state parties.

It is well within the prerogatives of Congress to define certain activities as affecting federal campaigns. As the Court said in Buckley, "The constitutional power of Congress to regulate federal elections is well established ..." 424 U.S. at 13. And numerous lower court decisions have upheld federal regulation of state election activities that impinge on federal elections. E.g., United States v. Mason, 673 F.2d 737, 739 (4th Cir. 1982); United States v. Bowman, 636 F.2d 1003, 1011 (5th Cir. 1981). Again, the factual record clearly supports a reasonable congressional judgment that the activities specified by the bill do affect federal campaigns and thus should be funded with federally permissible contributions.

Critics of this provision distort the legislation. The bill does not "federalize" state parties in violation of the Tenth Amendment, or in any way restrict the kind or amount of money that state parties can raise. Nor does it in any way limit or regulate the money spent by state parties solely on state election activities. Instead, the Shays-Meehan legislation regulates state party activity only to the extent it affects federal elections, a provision that builds on a longstanding principle of the federal campaign finance laws and that is well within congressional power to

regulate federal campaigns.

In sum, the soft money provisions of McCain-Feingold rest on a strong constitutional foundation. It is for this reason that 125 constitutional scholars signed a letter sponsored by the Brennan Center for Justice last fall expressing confidence that a ban on soft money would meet constitutional scrutiny. As that letter stated, "[C]losing the loophole for soft money contributions is in line with the longstanding and constitutional ban on corporate and union contributions in federal elections and with limits on the size of individuals' contributions to amounts that are not corrupting."

Soft Money is not good for the parties

Despite the refrain from party officials that soft money is their life's blood, soft money hurts the political parties.

William Brock, former Senator and chair of the Republican Party has disputed the notion that soft money helps parties. "Not so," Brock said:

> In truth, parties were stronger and closer to their roots before the advent of this loophole than they are today … Far from reinvigorating the parties themselves, soft money has simply strengthened certain specific candidates and the few donors who can make huge contributions, while distracting parties from traditional grassroots work.

Republican Party leaders, including former Presidents Gerald Ford, George Bush and former Senate Majority Leader Robert Dole support a soft money ban. Ford said, "Our system of financing federal election campaigns is in serious trouble."

Republican presidential candidates Elizabeth Dole, Gary Bauer and Pat Buchanan support a soft money ban: Buchanan said recently, "I was against soft money in '95, I still am;" Bauer said recently, "I would support legislation that would cut off completely soft money donations to the two political parties."

Soft money violates Republican Party tenets by nationalizing campaign funding. The raising and spending of soft money is typically controlled by party officials and elected leaders in Washington, DC. This is in direct contradiction to the Republican philosophy of devolving power to states and local communities.

Soft money also contradicts Democratic Party values. By relying more and more on huge soft money contributions from corporations and wealthy individuals, the Democratic party has become estranged from its traditional constituencies, the middle class, minorities and low-income Americans.

Conclusion

Common Cause strongly urges the Committee to report legislation that will put an end to the soft money loophole now eroding the integrity of the federal election laws.