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REMARKS OF
REPRESENTATIVE TOM DELAY, MAJORITY WHIP
U.S. HOUSE OF REPRESENTATIVES

WITH COMMENTS BY
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P R O C E E D I N G S

REPRESENTATIVE TOM DELAY,
MAJORITY WHIP, U.S. HOUSE OF REPRESENTATIVES

REPRESENTATIVE DELAY: Thank you very much. I think it's very interesting, and I don't know if you did this on purpose, but he put a copy of the Constitution here. Is this yours or mine?

DR. SAMPLES: That's yours.

REPRESENTATIVE DELAY: I already have one. I carry it around with me, to make sure that every day when I get up, I'm reminded that there still is such a thing as the Constitution of the United States, even though some claim that it's a living document that can be changed at will or by judicial edict.

Driving over here, I saw the flags at half mast for Senator Paul Coverdell, who passed away this week and left a huge void in the Senate. I don't know if any of you knew Paul, but he was a very dear friend of mine. But, more importantly, he was one of those rare individuals that did things and didn't care who got the credit for it. And he did a lot of things.

The Senate affectionately called him Mikey, because if you needed a tough job done, they always let Mikey do it. The House called him the Little General, because he was so adept at

organizing efforts and getting them done. He was just a great individual. And I bring him up because I think he would have liked to have heard this speech. Because he feels the same way I do, and Mitch McConnell and others, who have been fighting this attempt to destroy the First Amendment to the Constitution, called campaign finance reform.

The editorial pages of the Nation's most powerful newspapers tell us that the American political system is rotting away. This rot, they instruct us, is the inevitable result of exposing our country's public debates to the corrosive effects of private capital. While I agree that the infrastructure of American democracy is today growing weaker, and I also agree that the current set of campaign rules is causing this steady deterioration, but here the consensus ends and dispute begins.

The innocuously labelled campaign finance reform movement is perhaps the most worrisome and disingenuous special interest of them all. It is worrisome because this so-called reform seeks to make political speech a function of government bureaucracies, not a right of individuals. And it is disingenuous because the dominant reform legislation, McCain-Feingold, would do much more to augment the authority of established opinion elites than to empower the politically dispossessed. More precisely described, what we know today as campaign finance reform is simply an effort to have the

government regulate and ration political discourse in America today.

Advocates of speech rationing don't object too strenuously to this characterization of their program. In fact, they are shockingly enthusiastic as they propose more government regulations on politics, even though it would result in less political speech.

Nonetheless, the reformers are certain that they have the right formula for delivering cleaner campaigns, less corruption and ultimately a system of elections that enjoys the confidence of voters. And new regulations will achieve all these goals, they argue, by restricting once and for all the First Amendment speech that is not successfully restricted under a previous set of regulations. Obviously, this argument assumes that the First Amendment itself can be considered some kind of pesky legal loophole. And it is a legal loophole, speech regulators now recognize, that must be closed if they are to succeed.

To paraphrase one observer, campaign reform of this variety is not the answer to political scandal; it is political scandal.

I believe our Nation should follow an entirely different direction. We must choose another path if we are to expand political participation, renew confidence in the

political process, and honor the political freedom that is secured by this Constitution. To preserve the liberty won by our Founders, we must embrace the First Amendment's clear and unambiguous protection of political speech. We must recognize, as have the courts, that there can be no free debate without the freedom to dedicate resources to the promulgation of ideas.

Rediscovering our precious political freedom requires campaign reform that welcomes the greatest number and diversity of voices; reform that exposes no citizen who holds unpopular convictions to the threat of retaliation; reform that relies on unrestrained and vibrant political expression as a potent defense against tyranny. This is the only proper course for a free, confident people, committed to preserving fundamental human rights.

I am here today to offer some thoughts about the movement to regulate speech and its supporters. I will explore what I believe are the philosophical foundations of this effort and make some observations concerning its potential consequences. Finally, I will present some broad initiatives, designed to improve the exchange of ideas in America without undermining basic civil liberties.

Although I will spare you from a technical review of the bill's provisions, I think it is very important to begin by describing what McCain-Feingold proposes to do. McCain-Feingold

would establish a government system for reporting, tracking and valuing political speech. It would do all this to prevent certain groups from, as supporters might put it, unfairly influencing public debate through excessive spending. Again, the Federal bureaucracy would determine what is and is not unfair and excessive in any given instance.

The mess of regulations needed to administer such a system just numbs the mind. For example, here is one sentence -- one sentence -- from the original McCain-Feingold bill:

If a disbursement aggregating \$10,000 or more for any general public communication is made prior to 30 days before a primary election or prior to 60 days before a general election, it shall be considered express advocacy if a reasonable person would understand it as advocating the election or defeat of a clearly identified candidate, and if the communication is made with the purpose of advocating the election or defeat of a candidate is shown by one or more factors, including a statement or action by the person making the communication, the targeting or placement of the communication or the use by the person making the communication of polling or other similar data relating to the candidate's campaign or election.

Remember, this is supposed to eliminate loopholes. I have the feeling that is what the lawyers told McCain and Feingold. No offense, Alex.

Putting the lawyers aside, the people who most enthusiastically favor such speech regulation seem to fall, with very few exceptions, in three categories. One, big-government liberals. Two, journalists. Three, politicians trying to make friends with big-government liberals and journalists. Talk about distinctions without differences.

It is not hard to understand how a government regulation of speech conforms to the philosophical standards of big government liberals, who, unlike certain more traditional liberals, seem to have no fear of centralized authority. But the media's new-found enthusiasm for sharp restrictions on speech is baffling to me. It is nothing less than a total reversal, an absolute abandonment of what had until very recently been a core principle with the media. And I don't exaggerate when I suggest that support for speech restrictions among the media establishment is overwhelming. In fact, by my count, eight of the 10 largest daily newspapers in the United States back limits on purely political speech.

What is more confusing is this. The same people who have dramatically alerted their opinion on political speech have not seen fit to apply their new position to other free speech

questions. Just consider the following statement from the New York Times editorial page on the importance of free speech rights of nude dancers. And I quote:

Dancing in the nude, like other forms of dance, is an expressive activity that conveys a distinct artistic message, warranting free speech protection.

The New York Times, an unapologetic supporter of speech rationing, would have us believe that nude dancers are entitled to more First Amendment speech protection than those engaged in actual speech. After all, this would be the result of adopting the concurrent editorial positions of the Times on nude dancing and legislation limiting political discussion. Of course, the New York Times has it exactly backwards. Pure political speech deserves more zealous constitutional protection than the expensive art practiced by strippers. That journalists, of all people, would oppose this idea is simply remarkable to me.

Not surprisingly, though, the media's absurd position on regulating speech is exposed through other equally strange contradictions and inconsistencies. Take the topic of disclosure, a subject in which I have more than a passing interest. During the 1950's, the State of Alabama attempted to intimidate the NAACP by insisting that the organization turn over its membership list. The U.S. Supreme Court properly

rejected the unconstitutional infringement of the rights of the NAACP members. That landmark decision states, and I quote:

This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. Inviability of privacy in group association may, in many circumstances, be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

At the time, the New York Times said that the Court, through its ruling, has proved itself to be the towering citadel of American liberty.

The Washington Post, another passionate backer of McCain-Feingold, also applauded the Court's decision in NAACP v. Alabama, because, and I quote: It keeps open arteries of association and expression through which the lifeblood of the democratic process will flow.

Now, I believe the Washington Post and the New York Times were correct in endorsing the Court's finding. Government should not compel independent groups, including even the 527 organizations that now are so demonized by the press, to disclose their members. Unfortunately, America's powerful editorial writers have today stopped defending this right, even as the potential for government abuse remains.

So, in considering why the media has abandoned its traditional defense of speech, we must search for the point at which the attitudes and interests of big government liberals and the media intersect. To be certain, the agreement between these two groups on campaign finance reform is not a coincidence. It is, in my estimation, an alliance based first on a common view of free enterprise. It is a school of thought that judges private profit and the public interest as largely incompatible. And it is a perspective based on the notion that the only true defenders of the greater good are those individuals and institutions that are divorced from the dirty work of capitalism.

Of course, this set of opinion insults the American people as incapable of self-government, and it condemns private markets as hostile to democratic principles. Now, don't get me wrong. Big government liberals and publishers are eager to consume and accept the dollars earned through commerce, but they see themselves as above the business world. The liberal public sector advocate and the dedicated reporter both belong to what, in their eyes, is a higher calling. And it is, in their view, a higher calling because they can pursue the truth in a manner free of the prejudice attached to petty private sector concerns.

According to this perspective, the only worthwhile opinion is an objective opinion. And the only objective opinion

is an opinion removed in every way from the discipline of the marketplace.

Now, we all know that an opinion based on everything but real experience is generally worthless. That is why so many policies invented in the bowels of the Washington bureaucracy never work on Main Street. And maybe that is why all the news that's fit to print costs less than a large cup of coffee.

(Laughter.)

REPRESENTATIVE DELAY: Nevertheless, if you accept the Ralph Nader perspective, it makes sense that you would also think the way to improve political debate is to remove private resources from the marketplace of ideas. Oddly enough, the liberal public policy community and the press never seem to doubt their own ability to make objective, honest opinions, while accepting all kinds of private resources from all kinds of interests.

One published report put the amount spent by General Motors in 1998 on advertising and related activity at \$3 billion. McDonald's spent more than \$1 billion on such expenses the same year. By the way, that is more money than we spend on all the races in a presidential year election.

I think we all know that this money is not being spent on fliers passed out at a church on Sunday. No, it is being paid to big papers and big television networks, the same papers

and television networks charged with reporting on General Motors and McDonald's. Yet, media corporations seem quite confident of their ability to serve their readers while accepting this very special interest money. How very intriguing.

This brings us to a very important point. I believe Americans should reject public financing and government control of political activity for many reasons, but here is the most important one. If we eliminate the ability of the private sector to engage in advocacy, we will only replace an appropriate concern for free markets with a permanent bias in favor of big government. And I believe that big government is the corrupting influence about which we should be most concerned.

The alliance between the left and the media on speech regulation is also driven by a second important factor: self-interest. Bigger government is always a good thing for those who make bureaucracy their business, a group that includes, quite obviously, the full range of liberal activists. At the same time, reducing the ability of private industry to speak out against high taxes or excessive regulations and maybe enormous spending would make the job of expanding government infinitely easier.

The media's calculation is just as basic as the one made by big government liberals: The fewer competing sources of

information, the better. It's a simple case of existing businesses pushing out rivals and imposing new barriers to entry into their because. I fully expect publishers and producers will say it's silly to argue that newspapers and networks will gain any meaningful advantage from speech restrictions. Well, I would only suggest that there is, at a minimum, the appearance of impropriety -- what you might call a conflict of interest.

So let the Fourth Estate, in the name of reform, accept the same restrictions on political speech that they would so happily impose on the rest of the country. This would include having the government, when necessary, identify, value and possibly restrict certain editorials as inappropriate political speech. And the government should, and would, make such a determination when -- and let me apply the language of the original McCain-Feingold -- a reasonable person would understand those editorials as advocating the election or defeat of a clearly identifiable candidate.

I am not going to hold my breath for a response from the media to my suggestion. And of course the press would fiercely oppose these kinds of unconstitutional attacks on the First Amendment, and so should the American people. There is a much better way to proceed with reform. And let's start by heeding the words of Senator Eugene McCarthy, someone I don't spend a lot of time quoting. But Senator McCarthy had it

exactly right when he said: The best campaign reform law ever written was the First Amendment. Unfettered political speech, along with the right to bear arms, is the most certain means we possess of protecting the rest of our freedoms.

And as I have argued here, our troubles stem from abundance, not absence, of government regulation. Our objective should always be to expand debate on public issues, so that it remains uninhibited, robust and wide open. Furthermore, good sense and affirmed constitutional law compels us to recognize two additional liberties, without which meaningful freedom of speech cannot exist. One, the previously mentioned confidentiality that citizens must be able to maintain as they support different organizations and causes. And, two, the ability to dedicate resources to speech according to the express advocacy test established by the Supreme Court in *Buckley v. Valeo*.

With these parameters for reform in mind, let me just offer a few recommendations. First, we should expand disclosure for entities engaged in express advocacy through the full instant disclosure of anyone contributing to a candidate for Federal office, to a political action committee, or to a political party.

Now, along with my friend, Representative John Doolittle, from California, I am the principal sponsor of such

legislation. It is known, quite unfortunately, as the Doolittle-DeLay bill, but I hope it will not stop any of you from supporting it.

(Laughter.)

REPRESENTATIVE DELAY: Second, we should strengthen enforcement of existing laws, protecting our Nation against the influence of foreign money on campaigns. And I think all of you know what this is all about. And, third, we should consider dramatically increasing the current campaign contribution limits, which have not been adjusted since 1974. In fact, I believe we should explore eliminating those limits entirely. Take it from me, an eight-term member of Congress, that these kinds of limits that we are under today only serve to protect incumbents, by preventing challengers from raising the funds that they need to oppose an incumbent.

In 1808, Thomas Jefferson made this very simple point: The liberty of speaking and writing guards our other liberties. Thomas Jefferson was right. And those who now so passionately embrace restrictions on political speech need to recall the profound truth of his words. We are the freest nation in the world. And that happy condition is directly related to our unequalled tolerance for political expression. Let us never forget that the two are absolutely inseparable.

Rather than reversing our longstanding commitment to full and unrestricted debate, we should look to solutions that will enhance America's political tradition by expanding political speech. I intend to keep fighting. I know it is not popular and a lot of people are confused about this issue, but I intend to keep fighting to make certain that we rediscover our political freedom by renewing our dedication to our constitutional liberties, that we never lose sight of the vital connection between freedom and free expression.

I hope you will join me in that fight. Thank you very much.

(Applause.)

DR. SAMPLES: Congressman DeLay will take questions. He has a vote coming up, so he will have to leave at some point. Please wait for the microphone to come to you, and also give your name and affiliation.

MR. WILLER: Congressman DeLay, my name is Derek Willer. I'm a reporter with Congressional Quarterly.

You talked about the confusion over this issue among the American public. Would there also be confusion in a system which, if I'm correctly describing your ideas, there would be sort of a parallel system of contributors that are disclosed, which are --

REPRESENTATIVE DELAY: Directly in the campaigns or political action committees.

MR. WILLER: And then a separate one, where contributions may not be disclosed, that are engaging only in issue advocacy and express advocacy.

REPRESENTATIVE DELAY: That's correct.

MR. WILLER: Is that confusing, or would that be confusing?

REPRESENTATIVE DELAY: I don't think it is confusing at all. Because I think most Americans know that they join a group, and at least Americans in my district, probably would look unfavorably if it were mandated to turn over the membership list of their group by the government. They can understand that. And issue advocacy is a freedom that we have to protect at all costs, because it is in the Constitution, not only the right to free speech, but the right to assemble and to petition your government.

Now, the opposite is also true. Those involved in direct campaigns, it will be less than confusing if it is all disclosed right before them on the Internet. And if they have questions about people that donate to me, they can go straight to the Internet and see who is giving me money and how I am spending it.

And, frankly, I would put trust in the American people, through the elections, to make that decision as to whether I am corrupt or not rather than some Washington bureaucrat up here deciding on who is winners and losers.

MS. NEWMAN-CARNEY: I am Eliza Newman-Carney, from National Journal.

Speaking of confusion, there seems to be some confusion over whether the recently passed 527 disclosure bill applies to non-Federal leadership PAC's. What have your lawyers told you about this and what is your opinion on it?

REPRESENTATIVE DELAY: My lawyers tell me that it does not apply to leadership PAC's, because leadership PAC's are not 527's. And, by the way, I think, sooner or later, the Supreme Court will knock down that statute, too. Because 527's are no different -- in fact, the Sierra Club is a 527, Peace USA is a 527 -- these are groups that came together in order to advocate issues. And what the 501(c)(4)'s are doing is almost no different than what the 527's were doing.

That is why I objected. This is just coverup politics. This bill meant nothing, because, if you were true to your principles, you would have opened up everything and everybody. And of course we know that there are a bunch of liberal organizations, particularly labor unions, that would

have frowned on that, by the authors of this campaign finance reform.

DR. PILAN: Roger Pilan, Cato Institute.

How do you explain the timidity of so many of your Republican colleagues on this issue, starting with Senator McCain but by no means stopping there?

REPRESENTATIVE DELAY: Well, I don't want to comment on personalities. Let me just say it always makes good news, and it usually makes national news, when a Republican joins a liberal's efforts. And in this case, I am proven right.

The timidity comes from not having to stand up and explain what the American people have been led to believe by the media: that we are all corrupt. And to stand up and say, "No, we are not corrupt." When people give me money, in my mind, they are giving me money because they support who I am and what I am trying to do.

I have had a lot of people give me money, and I have voted against them and worked against their issues. I have right now, in Houston, all the downtown Houston guys, who probably every one of them have contributed to my campaign, want to build this useless light rail system through the downtown area, and I am killing it. So, full disclosure exposes any corruption; when you have loopholes and regulations and

bureaucrats and panels and commissions, that creates corruption that can be hidden. That is the way I approach it.

I don't know right now of a corrupt member of the House or a corrupt member of the Senate. Barney Frank is a wonderful liberal, and I have the utmost respect for him. I don't agree with anything he has to say, but I have the utmost respect of who he is. And I think what McCain claims to be denigrating the process and the system is a bunch of politicians running out there, constantly throwing mud at the process and the system, and that mud sticks.

This is not a corrupt institution. These are not corrupt members. They are excellent Representatives and Senators. And the American people obviously know that, because they keep reelecting them.

One more question, and then I have got to go, because I cannot miss the vote on eliminating the marriage penalty.

MR. HEIDER: Chris Heider, from Citizens for a Sound Economy.

I was glad to see you mention the advantages of incumbents. I was wondering how you feel about term limits.

REPRESENTATIVE DELAY: You would ask that in Cato, wouldn't you?

(Laughter.)

REPRESENTATIVE DELAY: I feel the same way. Our Founding Fathers debated term limits when they wrote the Constitution, and rejected them. The best term limit is the election. I feel that term limits is asking government to decide who serves, because you pass a law and institute a statute that says this guy, whether he is good or bad, cannot serve anymore. The government says that.

I think it is, frankly, with all due respect, inconsistent for Cato to be supporting term limits for that reason. I stand before my constituency every other year, and the power ought to be in the people, not in statutes and in government.

I do have to go. Thank you very much.

(Applause.)

DR. SAMPLES: Thank you.

Now we will go to the second part of our program. We will begin with a presentation by Alexander Vogel, of the Republican National Committee.

Alex Vogel attended the University of California at San Diego, and received his law degree from George Washington University. After two years with the Election Law and Government Ethics Practice at the law firm of Wiley, Rein and Fielding, here in Washington, Alex served as General Counsel to the Quail 2000 Campaign.

He is currently Deputy Counsel to the Republican National Committee, where he is responsible for Federal and State campaign finance and other political law issues.

Alex.

ALEXANDER VOGEL, DEPUTY COUNSEL,
REPUBLICAN NATIONAL COMMITTEE

MR. VOGEL: I should start by indicating two disclaimers. One, my comments are my own and not those of the Republican National Committee. And, two, and probably more importantly, if I ever want to go back to work today, I am not the lawyer who advised McCain or Feingold, contrary to the Congressman's remarks. If I had been, it would have been a remarkably different piece of legislation.

I am also in the unique situation of being a member of a regulated community, asking to give comments on an issue in front of some of the people who regulate the institution that I represent. So I also have to be very cautious in that regard. But I am still glad to see a number of the Commissioners here today.

It has been, I think, a remarkable year in the world of campaign finance. We have had a RICO suit filed in connection with someone's activities, which I don't think any of

us thought we would see any time soon. We have had the passage of the much-debated and I think must still misunderstood 527 legislation, which I know a lot of you have questions about, and I am sure that will come up later.

We have seen the Colorado decision make its way back through the courts again. And it is interesting to me. It is the first case I ever worked on, the day I got out of law school. And the way it's headed, it will be the last case I ever work on before I retire. I think it is in its 10th or 14th year, and I have a feeling it will be around for at least two more.

And we have seen an incredible amount of press and op ed space devoted to the issue of campaign finance reform, both in connection with the presidential elections and also, generally, with the effort that Senator McCain has made to push this issue to the fore. The ironic thing is that while there has been this push for legislation, culminating, so far, in the 527 piece that is now out there and a tremendous amount of media and op ed comment on this subject, in favor of an increasingly regulatory environment, you have both the courts and the Commission, to a large extent, taking what I believe to have been a, relatively speaking, de-regulatory approach.

In the Commission, I think it has shown up in what has been a hotbed for the last going on 12 months now, which is the

Internet. Obviously, while the Internet is not new to this world, it is incredibly new to this election cycle. And this is the first cycle that we have had it from basically start to finish. And from the day that the Bradley campaign submitted its advisory opinion on matching funds over the Internet, there has been a sprint. Everyone in Washington and around the country suddenly called their lawyers and their e-contributor companies, and everyone has been trying to figure this out.

And during that period, the Commission had a pending rulemaking. They have had numerous advisory opinions. And I think, to the Commission's credit, to a large degree, they have taken a laissez-faire attitude. There is no doubt that there are members of the regulated community, some of whom I see here today and won't point out, who would appreciate a completely hands-off approach to the Internet and politics.

In my opinion, I think that it is now too large an institution and too large a medium of communication to stay completely unregulated. But relative to some of the Commission's earlier steps into the Internet or e-mail or other precursors to the Internet, I think it is an incredibly positive development.

So you have that dichotomy. And as loud as the debate has been, and as public as it has been, reaching to the top of the presidential campaigns -- what got more press this year than

John McCain riding around in a bus, and this is what he was talking about -- and even with all of that public debate and all of the op ed debate, the only legislation to come out has been the 527 legislation. Which, depending on which lawyer you ask in town, means absolutely nothing or means that every single committee in existence will have to register with the IRS.

I have read it. And I don't know the answer to the question yet. I have spoken to some of the folks who claim to have drafted it. It is interesting. Before the thing was drafted, you had people, as it was coming out, saying: I've just made a career for myself for the next 30 years, because I'm the person who wrote this thing. And so every single PAC is going to have to come to me, for the next 30 years, to get the answers, because I'm the only one who knows how to decipher it.

Well, as soon as we started identifying unintended consequences, these people vanished. And you could not find the person who wrote this thing. You could not find a staffer who was within 100 yards of the room when this thing was drafted. And I think that debate will continue.

We have also had a situation in what is seemingly an unrelated case. The Supreme Court decided that California's blanket primary was unconstitutional. Which, on the surface, does not directly implicate other campaign finance issues, but the opinion was a very, very strong statement of the unique

status of political parties in this country. And as the Colorado decision winds its way back to the Supreme Court, which I applaud the Commission's decision to appeal that -- certainly, I agree with the Tenth Circuit decision, but I think it is something that should be decided by the highest court in the land.

There is, as you can imagine, a tremendous amount of confusion. We get calls both from the press and within the political community every day, asking where this is headed, what people can do -- does it matter what Circuit I'm in? We are certainly not in a comfortable position right now as far as giving those answers.

The Commission is in the awkward position of having the one and only Circuit to directly address this rule in one way, and the Commission obviously, as its policy statements have indicated, have a strong position the other way. So I think that is a positive development. And I think that the Supreme Court's decision in the blanket primary case and some of the statements made in that decision regarding the unique status of political parties might very well foretell which way the Court is headed.

I, as someone who both worked on that case as a lawyer and now benefits, or suffers, based on the decision, as a member

of the regulated community, hope it comes out one way. But, either way, I think it is a positive development.

In the end, I think all of this debate on campaign finance is positive. My personal belief is we don't need to overhaul a system that is not broken.

Are there problems? Yes.

Do I personally believe that the limits that have been in existence since 1974 should be indexed? Yes.

I personally think that that pressure on hard dollar fundraising -- that requirement that folks go out and raise money \$1,000 at a time, which to most Americans is a lot of money, but when you are trying to raise a half-a-million dollars to win a House seat, it is not a lot of money -- that pressure is, while keeping down how much hard money comes in, is pushing up the pressure to raise soft money.

And people who are concerned about soft money I think should look at that issue more carefully. It is not a situation where, many people I've heard, "campaign finance reformers," really believe that the idea is to push all the limits down, to keep the Federal limits where they are, to enact caps on soft money. And I really don't think that is the answer to the perceived problem.

I agree with the Congressman that instant and unlimited disclosure is a great idea. Even without legislation

in that regard, we have certainly gotten closer this cycle than we ever have before, through both election filing with the Commission and also some of the voluntary efforts of the campaigns. I know the Bush campaign, while it certainly wasn't instant, it was more instant than it has ever been before on a voluntary basis. And I think those are all positive steps.

Thank you.

(Applause.)

DR. SAMPLES: Thanks, Alex.

Our next speaker will be Jim DeLong. Jim is a Senior Fellow at the Competitive Enterprise Institute. Before joining CEI, Mr. Long was Vice President and General Counsel of the National Legal Center for the Public Interest, which is a nonprofit legal education foundation here in Washington.

Some of you may know Mr. DeLong's writings. He writes frequently for both scholarship and popular commentary. He is the author of a book I recommend to you, called "Property Matters: How property rights are under assault and why you should care," which came out from the Free Press. More recently, he was the author of an article on campaign finance reform in Reason Magazine, where he is Contributing Editor.

Mr. DeLong.

JAMES V. DELONG, ADJUNCT SCHOLAR,
COMPETITIVE ENTERPRISE INSTITUTE

MR. DELONG: Thank you, John.

I should say my function with CEI has nothing to do with campaign finance reform. I am a Senior Fellow who joined just a couple of weeks ago to work on a new project on technology and innovation. And this will expand and extend CEI's work on issues of antitrust and privacy and other high-tech topics. We are going to look increasingly at intellectual property, which follows logically from the "Property Matters" book, look more at antitrust in the high-tech context, look at some telecommunications, and especially, of course, at the exploding areas of e-commerce and cyberlaw, and the need to find market and Libertarian solutions to the problems there.

I also have to deliver a commercial here, that of course we have to get some money to finance all these activities. So, if Cato has any donors that you are not using at the moment, please send them down to Fred Smith and we will take care of them.

You notice that campaign finance was not on this agenda, and that is because it is a hobby left over from my last job, where I was Vice President and General Counsel of the

National Legal Center. We published a monograph on this topic, which I edited. And I felt like I was sinking deeper and deeper into a mire. I couldn't understand what was going on.

Campaign finance is almost folk wisdom, in that they will say or you will read somewhere that, as the FEC decided in an advisory committee opinion in 1983, something was true. And then you read the opinion and it does not really say that. It is just that somehow all you guys got together and decided that's what you would say the opinion meant, and you have to be very much part of the group to understand what's going on.

Now, if you think that I am here to provide some balance to the program, you are wrong. My only criticism of Congressman DeLay is that he seems a little squishy to me, in that he is not quite hardline enough on this issue. And a lot of what I have to say is in the Reason article, but just let me just emphasize some basic points about all this.

One is the cost per voter in Federal elections in the 1995-96 cycle was about \$11 per voter. State and local, I think, was around the same number. Now, this is to elect the people who are going to run a government that allocates directly 38 percent of the gross national product, which is \$8,600 per voter for the Feds alone, out of their \$1.7 trillion. They are also, as you know, going to pass laws on numerous other things,

including intimate regulation, or the regulation of our intimate lives, all sorts of major social issues.

And the idea that \$11 a voter to elect the governors of this is great over-expenditure on elections or this horrible burden is just too ridiculous to be countenanced. If anything, there is massive under-investment in elections. We should be spending much more to select the people who are going to be running this machine.

Again, the reformers are constantly causing problems which they then complain about, and urge the basis for more reform, of course. One reason why elections have been so pulled back into television is because television is actually your most efficient core medium: you reach lots of people and you do it quickly.

When you get out into more retail mechanisms, endless volunteers, putting signs up, all the things you used to see before 1974, it costs more money and it also creates tremendous possibilities that you will run afoul of the election laws, because it is very hard to control all those people at the local level. So elections have become much more these television spots, and much less of what used to be the hoopla, and which was actually called citizen involvement, largely because of the reform effort.

Now, a second problem with the campaign finance reform, with the whole approach, like the Congressman, I am very puzzled with the media in a way. Because so much of what you read about this is almost utter drivel. And I can't understand why people who are presumptively intelligent just seem not interested in conveying it.

Now, I think there is merit in the idea that, in a way, the media see this as market share, and they can get it all. They are simple monopolists. I remember when I was in the Federal Trade Commission in the late 1970's, I was in the Bureau of Consumer Protection, and it was before I had associated with people like Roger and such, and so I was a regulator. And I remember the Washington Post -- [tape is flipped] -- crazy thing we proposed in the names of consumer protection. And then one day we proposed regulations on children's advertising.

Well, this of course affected television stations and it affected the media. The Washington Post, within three days, published an editorial on the national nanny. And it wrecked the FTC. That tag was hung on it nationwide. It was this stern editorial on how awful this was and what a ridiculous idea it was. Then we went back to upholding everything we wanted to do to everybody else except the media. And yes, I think the editorial side of these publications does indeed reflect the

business interests, if not through implicit instruction, through sort of the cultural milieu.

I think another problem that is coming up now is that increasingly government itself is indeed a special interest. Paul Gesia made this point in the Wall Street Journal the other day. When you look at the monumental size of government, that 38 percent of the GNP, you can see that you have the core of a huge electoral consistency right there.

When you begin looking at the people who work for the government -- State and local governments employ about 17 million people. When you add up all the people who work for the Feds, all the people who work for State and local governments, and all the people who are employed in private sector jobs that are actually paid for by the government, you wind up with about 22 percent of the civilian work force of 138 million people work for the government.

Also there is a huge congruence between unions and public employees. Only about 10 percent of the private work force is unionized. Somewhere near 60 percent of the direct Federal work force and 38 percent of State and local employees belong to unions. There are about 16 million union members in the U.S., of whom 40 percent are public employees.

So when you hear talk about the unions and their effect on elections, to a large extent you have these

overlapping categories of unions are public employees. And they obviously have a strong interest in expanding the government.

Now, another problem of course with campaign finance reform is that it is incumbents writing the rules under which they will be challenged. And for anyone with even a passing exposure to public choice theory, you can see that there might be a problem here. And I must say that my sort of general rule of thumb for judging any legislation in this area is: if they'll pass it, I must be against it. And I was sort of in favor of disclosure until they actually passed the bill on 527's. Then I thought there has got to be something wrong with this, because that went through much too quickly.

And you have other problems with it. The idea that spending limits are maintained at 1974 levels. Again, you keep reading the incumbents moaning about how much time it takes to raise money in \$1,000 chunks and all that sort of thing, how they hate the job because they have to raise money. Well, there is an easy answer. Pass a law raising the limits, which are now worth a third of what they were.

But you know why this does not happen: because this makes an incumbent's life unpleasant. It makes a challenger's life absolutely impossible. Business PAC's and business money is always chicken. Because does not do public goods. They invest in things that they think will have a payoff. And they

don't invest in challengers when the incumbents can punish them. Something like 90 percent of PAC money goes to incumbents.

As I say in the Reason article, there is only one good feature of the present system; and that is the loopholes. The reason is that the money on issue expenditures lets people get out and exercise their First Amendment right and try to influence campaigns, try to participate.

The soft money is really, it seems to me, the only possible way of challenging incumbents, in that because it is so hard for challengers to raise hard money, it is only possible if you have groups that will indeed get money together to challenge incumbents or to give money to the leadership and let them challenge incumbents of either their own party or of the other party. And that is one reason I think why a lot of times you can get a constituency in favor of reform from both parties, because it is indeed incumbent protection.

Now, for those who think that money is the real issue here, I would call your attention to the treatment of the Internet. And that is, if you are really concerned about the corruption of politics, then you would look at the Internet and say: Great, this is a medium that doesn't cost any money. Obviously, the more electoral politics that occur over the Internet, where the marginal cost of communicating is essentially zero, the less influence money has, go to it.

That was not the Federal Election Commission's first instinct. Its first instinct, like any regulator I might say -- and I don't want to single out you gentlemen or your predecessors -- the first instinct was to say: Hey, this must cost something; therefore that's our jurisdictional hook and therefore we will regulate it. And the first instinct was to suppress it. Since then, they have backed off some. But one of the more recent opinions was one where the FEC essentially contradicted itself, I think -- it is sort of hard to figure out what either opinion really was -- and upheld a Web site by a group called Grassroots.com, which is put together by the League of Human Voters -- League of Women Voters.

But in the opinion it noted that the reason it was doing this was because there were a number of factors. And it said: Although all of these factors are relevant, different facts with respect to a particular factor may or may not lead to a conclusion that a Web site's activities are permissible.

Now, if you as a lawyer would like to advise your client on exactly how to interpret that language and apply it to your desire to set up a Web site, I will be very interested to sit in. So the reaction to the Internet is to suppress it. And this is a very standard regulatory response. That is, to make the world predictable and to make it nice and orderly, and to do that by suppressing innovation.

I will add just two points. I agree with Congressman DeLay on the disclosure. In response to the Reason article, one writer to Reason wrote in: This article was going along pretty good until I got to the last few paragraphs. And then DeLong, who I had thought was smart, suddenly turned stupid and comes out in favor of disclosure. How can he do that?

I must admit that I dither a good bit about that issue. And there are two things on that. One, disclosure of who is supporting a candidate is in fact important information for voters. And I keep thinking of all of the billions of dollars going into the hands of the trial lawyers. And it seems to me that I want to know if the trial lawyers are putting hundreds of millions of dollars into somebody's campaign.

Second, I think just as a matter of political calculation, you will never get any, what I would call, real campaign finance reform, which would repeal almost everything, without allowing disclosure. And, third, if you have disclosure only for contribution to candidates and to the campaigns directly, then you do have a lot of scope for outside issue expenditures for people who in fact want to remain anonymous. And the reason I dither on this issue is because there are huge arguments for anonymity.

I think, in a lot of places, incumbents will punish you if you support their challengers. There are a lot of people

who don't want to be known as supporters of the Libertarian Party on the one hand or the Sierra Club on the other. And having a safety valve that does allow anonymity, as long as it is not part of the campaign, seems to me a reasonable compromise on that.

Finally, I have one area of disagreement with Congressman DeLay. I think there is a corruption problem here. Steve Moore, who is on leave of absence, or I guess he has resigned from Cato, has written quite a bit on corporate welfare. And you will find it on Cato's Web site, on some of the policy analyses. And he estimates that there is about \$75 billion a year going out in pure corporate pork.

I do not think that money is unrelated to campaign finance. I have never seen any real study of this, any correlation, but I think that in fact a lot of the reason for the corporate pork is that the money comes back in, in the forms of financial contributions. I don't think it's the major source. I think most money, as Brad Smith has shown in some of his policy analyses, is motivated by ideology, by belief, by thought. But I think this corporate welfare has really provided a lot of steam behind the campaign finance movement.

In fact, I once told a couple of freight association executives that if they really wanted to reform government and make their party triumphant in future elections, they would come

out against corporate welfare. They look startled. They did not follow that advice. But I think that a corporate welfare commission to get rid of it, on a base closing basis, would probably do far more for the cause of avoiding bad campaign finance reform laws and promoting good campaign finance laws than almost anything else you could do.

Now, I do not say that repealing most of the laws and having it all be freewheeling would be pretty. I think that there would be a great many abuses. And we would all, including me even, be appalled by a lot of what went on. But I always like to come back to Winston Churchill's famous comment about democracy, which was that it's really an awful form of government, and it's only advantage is that it's better than any of the alternatives.

And I think that is the same about this campaign finance reform. I think a freewheeling system, with no limits on contributions and minimal disclosure, would be pretty awful. But it's a lot better than anything else that's on the table. And I hope that is where we move. And I certainly hope that the people begin debating that as a serious alternative.

Thank you.

(Applause.)

(End of Transcript.)