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Cato Institute Briefing Paper No. 31: Campaign Reform: Let's Not Give Politicians the Power to Decide What We Can Say about Them

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Executive Summary

Lawmakers of both parties have proposed "campaign reform" bills that would curtail the right of corporations (including issue-oriented advocacy organizations) and labor unions to communicate with the public about those who hold or seek public office. The really important question for congressional supporters of the various proposals is this: where in the world do you think you get the authority to regulate the political speech of American citizens?

Those proposals violate the First Amendment, which the Supreme Court has repeatedly held to provide the highest degree of protection for issue advocacy, including explicit commentary on the merits, positions, and actions of officeholders and office seekers. The right to attempt to persuade our fellow citizens of the issues they should weigh in casting their votes is as fundamental as the right to vote.

Unfortunately, the news media have generally been promoting speech-restrictive proposals rather than defending the First Amendment--the nation's paramount "election law."

Sen. Max Cleland (D-Ga.) is an offended politician, and he intends to do something about it. In the weeks leading up to a May 20, 1997, vote in the U.S. Senate on the Partial-Birth Abortion Ban Act, three different organizations ran radio and television ads in Georgia, urging his constituents to contact Cleland's office to encourage him to vote for the bill.

The Associated Press reported that that effort "produced hundreds of calls to Cleland's offices, but it failed to persuade him to back the ban. What it did, instead, was reinforce his commitment to changing the nation's campaign finance laws"[1]--such as the bill sponsored by Sens. John McCain (R-Ariz.) and Russ Feingold (D-Wis.), of which Cleland is a cosponsor.

One may well ask what connection exists between ads that merely attempt to drum up public support that might persuade Senator Cleland to vote for a certain bill--ads run 16 months before the next general election and *5Â½ years* before Sen. Cleland next faces an election--and "campaign finance reform."

Quite a lot, actually. Behind the cover of "campaign finance reform," many lawmakers of both parties wish to establish sweeping federal controls over the communications of incorporated issue-oriented groups.

The McCain-Feingold bill (S. 25) and its cousins, the Shays-Meehan and Farr-Gephardt bills (H.R. 493 and H.R. 600), bristle with provisions that would place severe and unprecedented restrictions on the right of corporations

(including issue-oriented advocacy organizations) and labor unions to communicate with the public regarding the positions of those who hold or seek public office.[2] Those provisions are regarded by a broad spectrum of incorporated issue-oriented citizen groups as gross infringements on a type of speech that enjoys the highest degree of protection under the First Amendment.

The dangers of that approach are well illustrated by Senator Cleland's annoyance at the anti-abortion ads run in Georgia, which he refers to as "independent expenditures," and which he apparently believes should be regulated by federal law.

Cleland also complained to the AP reporter that he believed the timing of the Senate vote was delayed for several days to allow groups supporting the ban to run more ads aimed at key senators--an example, he said, of "independent expenditures beginning to dictate not just the elections, but the agenda and the schedule of the Senate."[3]

Can Senator Cleland be unaware that the prime sponsors of the McCain-Feingold bill have decided against pushing for floor action on that bill in order to allow Common Cause, a tax-exempt corporation, to complete a multi-million-dollar national petition drive in favor of the bill? Or is it just that he sees nothing sinister in *that* type of political activity?

The really important question, for Senator Cleland and other supporters of the McCain-Feingold bill and similar legislation, is this: where in the world do you think you get the authority to regulate the political speech of American citizens and citizen groups?

That the McCain-Feingold bill would impose new controls on political speech is beyond dispute. Senator McCain has acknowledged that his bill will place new restrictions on communications from incorporated groups to the public about members of Congress. However, he emphasizes that he has included a provision to allow such groups to publish simple voting records of members of Congress--provided that those congressional "scorecards" do not contain any critical commentary on a lawmaker's votes.[4]

But there is a constitutional right to engage in constructive criticism of our elected representatives, and citizens do not need the permission of members of Congress to publish their voting records, or commentary on those voting records.

We are associated with, respectively, the National Right to Life Committee (NRLC) and the Coalition to Stop Gun Violence (CSGV). Both organizations are incorporated, not-for-profit entities that exist to advance the public policy goals of their members: for NRLC, protecting the right to life (primarily by curbing abortion and euthanasia), for CSGV, reducing the supply of and the demand for handguns. The public policy agendas of those two organizations have little if anything in common, but we are in agreement that certain pending "campaign reform" proposals pose a threat to organizations that seek to communicate with the public about the actions of lawmakers, and would-be lawmakers, on *any* issue.

As we see it, the issue boils down to this: some incumbents propose to use their authority to prevent such groups' sometimes unflattering communications about their votes and positions from reaching their constituents. Through multiple mechanisms, these bills would give politicians and political appointees unprecedented power to regulate "political" speech.

Yet the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." Speech about "political" matters is, the Supreme Court says, "at the core of our electoral process and of the First Amendment freedoms."[5]

In its landmark 1976 free speech ruling in *Buckley v. Valeo*, the Supreme Court stressed that infringements on political speech are *not* made constitutional merely by casting them as restrictions on spending.[6] Obviously, it is impossible for any group to speak to any sizable audience about issues or policymakers without spending a substantial amount of money. If the government could evade the First Amendment's prohibition on "abridging the freedom of speech" merely by restricting the *expenditures* that are necessary for speech, then the government would have the power to regulate virtually all forms of political discourse--other than the soapbox in the park--including even the institutional press.

The speech-restriction provisions of these bills deserve much more intense public scrutiny and debate than they have

received to date--and, we believe, they warrant rejection as a pernicious departure from our nation's democratic traditions.

Gagging Political Adversaries

Incumbents' support for such speech-restriction mechanisms is often motivated by animus toward specific groups whose communications they find offensive. Rep. Sam Farr (D-Calif.) wrote in *Roll Call* regarding his desire to curb literature distributed by NRLC and by the Christian Coalition, the latter group having been so insolent as to engage in "distributing material condemning the voting records of elected officials who are pro-choice."[7] And Rep. Bill Thomas (R-Calif.) earlier this year cited "biased" TV ads by the AFL-CIO as justification for proposing a law to ban incorporated groups or unions from issuing any "mass communication" that even *mentions* a member of Congress or challenger within 90 days of an election, or that identifies a candidate through the use of his likeness.[8]

Some people argue that such restrictions are justified in order to diminish "special-interest" influences and enhance the influence of the "ordinary" citizen. But groups such as ours are made up of many ordinary citizens who pool their modest financial resources in order to advance the policy positions that they favor. The average donation to the organizations with which the authors are associated, for example, is under $35.

When citizens choose to advance their political opinions through incorporated organizations, they are exercising their constitutional right to associate to advance their views of the public interest. That makes them no more or less a "special interest" than the leading organizations that support the speech-restrictive "campaign reform" bills, Common Cause and the League of Women Voters, both of which lobby for long lists of specific governmental policies far beyond the spheres of election law and ethics in government.

One leading advocate of the "equalizing speech" rationale is former senator Bill Bradley (D-N.J.), who in 1996 wrote that unless limits on "campaign" spending are approved, "the powerful can continue to broadcast their

voices, while the less powerful are barely heard."[9] Months later, Bradley (a possible year 2000 presidential candidate) joined *CBS Evening News* as a commentator and reporter--thereby demonstrating that, indeed, "the powerful can continue to broadcast their voices." Of course, he continues to advocate governmental restrictions, including a constitutional amendment, to curb the right of incorporated citizen groups to communicate to broad public audiences.

As the Supreme Court correctly observed in *Buckley*, "The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure the widest possible dissemination of information from diverse and antagonistic sources."[10]

Influencing Voters

In *Buckley* and successor cases, the Supreme Court has been emphatic that the First Amendment provides an absolute constitutional shield for issue advocacy, including positive and negative commentary on the merits of those who hold or seek public office. That influencing voters' decisions is a motivating factor in any specific issue-advocacy communication to the public does not lessen the First Amendment protection of that speech. Ultimately, the right to attempt to persuade our fellow citizens of the issues they should weigh in casting their votes is as fundamental as the right to vote itself.

As the Supreme Court put it in *Buckley*, "As long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate [i.e., express advocacy], they are free to spend as much as they want to promote the candidate and his views."[11]

The Court also observed that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions."[12] In short, it would be impossible for the government to determine to what degree a given communication influences ballot-box decisions--and unconstitutional even to try. Moreover, such a law would entangle Congress, the Federal Election Commission, and the courts in an

endless quagmire of monitoring and regulating speech.

Redefining Express Advocacy

In *Buckley* the Supreme Court permitted certain restrictions on express advocacy, defined as communications that explicitly urge the election or defeat of a specific, identified candidate--but emphasized that such restrictions survive scrutiny under the First Amendment *only* if express advocacy is defined in an exceedingly precise and narrow manner.

The Court itself then adopted what it calls the "bright line" definition that it said is required by the First Amendment. "Express advocacy," the Court held, covers *only* communications "containing express words of advocacy of election or defeat, such as," in the Court's own words, "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"[13] All other types of commentary on issues, officeholders, and office seekers are considered issue advocacy.

Under current law, it is generally illegal for corporations or unions to spend money for express advocacy. (There are certain narrow exceptions to that ban, but they are of little pertinence to our discussion here.) Therefore, if Congress had the authority to expand the Supreme Court's definition of express advocacy to cover some or all types of issue advocacy, that would have the effect of automatically making it illegal for corporations and unions to spend money for those types of issue advocacy as well.

That prohibition would affect nonprofit, issue-oriented advocacy groups of every persuasion (as well as for-profit corporations). With limited exceptions, it would be impractical and legally imprudent for citizens to associate and conduct enterprises involving substantial amounts of money without incorporating. Organizations that are formed to promote various specific ideas and public policies typically form not-for-profit corporations and obtain 501(c)(4) status from the Internal Revenue Service.

Under that classification, donations received by the corporation are not tax-deductible to the donors, but neither are the donations subject to a corporate tax. (If the corporation also receives income from business enterprises, however, that income is taxed.) The limited tax-exempt status of such nonprofit corporations is not a "benefit" conferred by the government but merely a recognition that the corporation exists to promote a cause, not to make a profit. Such citizen groups have the same constitutional right to free speech as do individual citizens.

From the Supreme Court on down, the federal courts have repeatedly held that attempts by the FEC and state legislatures to change the "bright line" definition of express advocacy violate the First Amendment. The clarity of the First Amendment jurisprudence on that point is well illustrated by a ruling handed down by the U.S. Court of Appeals for the Fourth Circuit on April 7, 1997, in *Federal Election Commission v. Christian Action Network*.[14]

The Fourth Circuit harshly chastised the FEC for taking action against the Christian Action Network, an incorporated issue group, for producing a TV ad that severely criticized Bill Clinton's position on issues affecting homosexuals. That ad, which was broadcast shortly before the 1992 election, was very much of the type that many "reformers" and reporters would label a "disguised" campaign ad--but it did not contain any words expressly advocating the defeat of Bill Clinton.

The FEC argued that the ad, taken as a whole, should be regarded as a campaign ad. The Fourth Circuit emphatically rejected that claim and held that the First Amendment forbids any government regulation of such candidate-criticizing speech, unless it contains express advocacy as defined by the Supreme Court. Moreover, the court ordered the FEC to pay the attorneys' fees for the Christian Action Network, on grounds that the courts have instructed the FEC regarding the First Amendment for over 20 years, and the FEC has no "substantial justification" for its persistent attempts to regulate such speech.[15]

The First Amendment's protection of political speech also condemns the definition of express advocacy contained in the McCain-Feingold bill, where it covers, among other things, any "communication that is made through a broadcast medium, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising," that costs more than $10,000, that "refers to a clearly identified candidate," and that "a reasonable person would understand as advocating the election or defeat of a candidate," if that communication is disseminated 30 days

before a primary or 60 days before a general election.[16] The Shays-Meehan bill applies that standard to expenditures of even $1, and the Farr-Gephardt bill applies a similar elastic standard throughout the two-year election cycle.[17]

Recently, there have been published reports that McCain and Feingold have agreed to revise their bill to adopt a different standard--perhaps to simply prohibit any incorporated group from issuing, for some set period before an election, communications to the public that even contain the name or likeness of a member of Congress or a candidate.[18] Advocates of that approach, such as pundits Norman Ornstein and Thomas Mann, say that it provides a simple "bright line" standard.[19] Sure it does. The problem is that the bright line cuts through the heart of the First Amendment. It would prohibit every issue-oriented group in America from commenting on the votes, statements, or positions of those who hold or seek public office, and the duration of the "speech blackout period" would be determined by politicians.

No More Scorecards

Both the current McCain-Feingold "reasonable person" standard and the Ornstein-Mann "name or likeness" standard would ban the types of congressional scorecards that issue-oriented groups such as ours publish from time to time. Such scorecards do not, of course, consist merely of charts of roll call votes with antiseptic explanations. Rather, they include material that explains what was at stake in each vote, with commentary--even sharply worded commentary at times--reflecting the organizations' judgments on the policy consequences that should be imputed to those who voted one way or another.

For example, NRLC might take note of those who "voted to allow the brutal practice of partial-birth abortion to continue without restriction," while a group on the opposing side might describe pro-life lawmakers as having "voted to strip women of their reproductive rights." CSGV might characterize a lawmaker as having "voted to increase the supply of cheap handguns," while an opposing group might say that lawmaker "voted to protect Second Amendment rights." Under these bills, distribution to the general public of such value-laden commentary on the votes or positions of politicians would be regarded as illegal corporate (or union) campaign expenditures.

McCain likes to point to an "exception" in the bill to permit "the publication or distribution of a communication *that is limited solely* to providing information about the voting record of elected officials on legislative matters *and* that a *reasonable person* would not understand as advocating the election or defeat of a particular candidate."[20]

That "exception" merely highlights the underlying unconstitutional attempt to govern the content of citizens' speech. The "exception" would spell out lawmakers' standards for what they find tolerable on a congressional scorecard. Under that "permission clause," even simple information on matters other than votes--for example, a notation that Senator Doe had cosponsored a certain noxious bill--would be outside the congressionally approved speech zone.

Value-laden commentary would run afoul of both the "solely" test and the "reasonable person" test.

Policing Speech

The speech-restrictive character of the McCain-Feingold bill was highlighted in an exchange between McCain and *Washington Post* political writer David Broder on the February 23 edition of *Meet the Press*. Broder made reference to NRLC's objection to the bill's definition of express advocacy and then asked McCain, "Should you have a right to say, 'Dave Broder is running for office, but he has voted against the interests of the young people and the senior citizens in this country,' period? Should you have that right?"

McCain responded, "I think informing the public is perfectly legitimate. But to launch an attack on me or, in this case, Senator Feingold, in my view, is their participation in a political campaign, and therefore, they might be subject to some kinds of limitations."[21]

"Some kinds of limitations" was a masterful understatement. Under the McCain-Feingold bill and its cousins, if a communication contains express advocacy, then it is *flatly illegal* for a corporation (issue oriented or otherwise) or union to issue it during the defined speech-restriction time period, because it is defined as an illegal corporate or union campaign expenditure (or "contribution"). Violations would subject the speaking organization to stringent civil

penalties (and in some circumstances, even to criminal prosecution).

It is understandable that, in sheer self-interest, some incumbents would like to prevent or impede the dissemination of their voting records to constituents who are likely to disapprove of their votes on given issues. It is understandable, but it is also constitutionally impermissible.

Advocates of these bills say they intend to diminish the advantages of incumbency. That argument is ironic as applied to the speech-restriction provisions, which would operate most often as "incumbent protection" devices. After all, it is generally advantageous to challengers that incumbents have been forced to take positions on hundreds or thousands of very specific public policy issues by casting recorded votes. However, the vulnerability of incumbents would be diminished if issue-oriented groups were prevented from disseminating meaningful, interpretive scorecards to citizens with an interest in specific issues (abortion, labor issues, environment, whatever).

To further illustrate how McCain-Feingold's ban on "attacks" would work in practice: NRLC buys a newspaper ad that says that Senator Doe has "voted three times to allow the brutal partial-birth abortion procedure to remain legal." Meanwhile, the CSGV puts out a press release announcing its "Dangerous Dozen," the 12 members of Congress selected as most strongly opposed to handgun controls. Senator Doe, who no doubt considers himself the "reasonable person" spoken of in the bill, reviews those two communications and concludes that they are intended, in part, to motivate some of his constituents to vote against him--that they constitute an "attack" or are, in the bill's language, implicitly "advocating the . . . defeat of a candidate." Senator Doe acts on that conclusion by filing a complaint with the FEC. Under the bill, the FEC would have greatly expanded powers to act as a federal political-speech police force and would investigate whether the disputed communication was "made for the purpose of advocating the election or defeat of the candidate, as shown by one or more factors such as a statement or action by the person making the communication."[22]

That would be an open-ended "hunting license" for government policing of speech--mandating not only government review of the *content* of speech but also the ferreting out and extraction by force of law of any "statement or action by the person making the communication," at any time or place, that might shed light on the degree to which the speaking organization hoped that its communication might influence voters. For example, the federal "speech cops" might rummage around in an organization's files until they uncovered a "smoking gun"--such as a statement by an organizational president in a membership newsletter, published a year earlier, asserting that those who voted for a disfavored bill "should be retired to private life."

The prospect of facing such intrusive and open-ended investigations by federal speech cops, coupled with the stringent fines and other sanctions that would be applied to those who flunked the nebulous "reasonable person" test, would be sufficient to deter many groups from engaging in any kind of critical commentary about a person who holds or seeks federal office--or even favorable commentary, since that would be subject to complaints by political opponents of the praised politician.

Chilling Effect

The "chilling effect" of these bills would be especially pronounced with respect to the activities of nonprofessional, volunteer, grassroots citizen activists, who make up the backbone of our movements and many others. Full-time professional issue-activists in Washington can master complex regulatory requirements and consult frequently with attorneys specializing in federal election law--but that is not a practical option for people who are putting out issue-advocacy newsletters and brochures from their basements and kitchens. Rather than risk violating federal law, they will simply refrain from commenting on the actions of federal officeholders--which is precisely the politicians' intent.

Some have responded to those objections by arguing that, although the bills restrict speech regarding candidates by incorporated entities or unions, political action committees (PACs) would still be allowed to engage in such speech. Even if that were the only restriction placed on such speech, it would still have a severe "rationing" effect, because PACs are already subject to a host of stringent restrictions on both their fundraising and their expenditures. Moreover, it is beyond the resources of many small, local citizen-activist groups to comply with the complex legal requirements that govern the establishment and operations of PACs.

But these bills do not stop there. They also contain an array of sweeping new restrictions on communications by PACs, including *independent expenditures*, even though the Supreme Court says that independent expenditures cannot be restricted under the First Amendment. For example, the McCain-Feingold bill would stifle independent expenditures by PACs through various advance-notice mechanisms to encourage preemptive blocking of independent ads by powerful politicians; confer special benefits on candidates who are criticized in independent political communications; punish "innocent bystander" candidates who arbitrarily are deemed to "benefit" by somebody's independent ads; and authorize the FEC to obtain injunctions to accomplish *prior restraint* of political communications that it believes would violate the bill's requirements, among other restrictions.[23]

Third Parties?

In speaking of "campaign reform," some politicians make it clear that they believe they have a right to address the public without having to contend with conflicting "messages" from other parties. For example, earlier this year Representative Farr, the author of one of the main speech-regulation bills, wrote, "It is unfair to voters and candidates *to allow third parties* to liberally participate in the political process then claim immunities from the rules of engagement."[24] Likewise, Rep. Dick Gephardt (D-Mo.) has spoken of the importance of restricting election-related activities by "third parties."[25]

A "campaign reform" bill (H.R. 1366), introduced in April by Rep. Scotty Baesler (D-Ky.), would make it illegal to spend more than $25,000 on independent express-advocacy communications in any federal election. The bill declares that such limits are justified because "the candidate risks losing control over the tone, clarity, and content of his or her own campaign."[26]

What a remarkable notion it is--so wholly alien to our constitutional democracy--that politicians can place legal gags on the speech of private citizens because they wish to control, by force of law, the "tone, clarity, and content" of the public debate that precedes an election. Elections are not the exclusive property of those who run for office--rather, they are the democratic mechanism by which all citizens may seek to influence the makeup and policies of their government. The right to seek to persuade fellow citizens of the importance of certain issues in an election, and to comment on the merits or demerits of those who seek public office, is as fundamental to democracy as the right to vote itself.

Some politicians apparently regard issue-advocacy organizations as intruders into their sacrosanct relationships with their constituents, whom they would prefer to address without being distracted by critical messages from such interlopers. But citizens who are active on a public policy issue are not "third parties" to democracy. The members of issue-oriented citizen groups care deeply about certain public policy issues, and they are exercising their constitutional rights to associate, to speak, and to seek to persuade their fellow citizens that their viewpoints represent good public policy. At times, that includes seeking to persuade them that their elected representatives are voting for bad public policies.

Gephardt has been candid, at least at times, in admitting that these approaches to "campaign reform" would diminish traditional free-speech rights. He explained his thinking as follows to *Time* magazine: "What we have is two important values in direct conflict: freedom of speech and our desire for healthy campaigns in a healthy democracy. You can't have both."[27]

Contrary to Farr's suggestion, citizen advocacy groups cannot be required to submit to censorship and rationing of their speech in order to retain the privilege of being "allowed" to "liberally participate" in the political process. American citizens are "allowed" to "liberally participate" in the political process, not by the gracious permission of Representative Farr or other elected officials, but by the Bill of Rights.

The Institutional Media

As certain politicians propose to use the force of law to protect themselves from many forms of critical commentary, where is democracy's "watchdog," the free press? Is it sounding the alarm about this threat to the First Amendment, this attempted power grab? For the most part, quite the contrary. To date, the predominant media voices have been cheerleading for speech-regulation proposals, which they generally characterize as closing "loopholes" that allow

"special-interest groups" to "evade campaign finance laws."

For example, last October 24, *NBC Nightly News* featured a visit by anchorman Tom Brokaw to Idaho's First Congressional District, where Republican Rep. Helen Chenoweth was in a tightly contested race with Democratic challenger Dan Williams. Although Brokaw was introduced as being "in Idaho, on the money trail," the report barely mentioned fundraising by the candidates. Instead, the entire focus of the piece was issue-advocacy television ads by the AFL-CIO and the League of Conservation Voters--ads that portrayed Chenoweth in a negative light.

Brokaw expressed his disapproval of such noncandidate speech in no uncertain terms, concluding his report: "Helen Chenoweth and Dan Williams have debated face to face their distinctly different views of what's good for America. But their campaigns are trapped in a cloud of money saturating the air, polluting the political process--and that's a loss for everyone."[28]

What was actually "saturating the air" was *speech*--communications to the public regarding specific issues on which the sponsoring organizations disapproved of Chenoweth's voting record. Apparently, those groups failed to persuade the majority of voters of their viewpoints, however, because Chenoweth was reelected.

It seems that in Brokaw's model of an election campaign, candidates would make their case to the voters, journalists would comment as they saw fit, and issue-oriented organizations would shut up and stop "polluting the political process." Under that model, of course, the news media's "gatekeeper" powers would be further enhanced, as they would face less "competition" both in defining what issues constituted the public policy agenda at any given time or place and in deciding what information on those issues reached the public.

Citizens Don't Need Permission

The First Amendment is the nation's paramount "election law." American citizens, individually or in association, do not need *permission* from their legislators to distribute interpretive voting records or other forms of commentary--including commentary that legislators may consider "attacks."

Once the speech-restriction provisions of these bills are more widely understood and debated, it is our hope and belief that the American people will agree with the Supreme Court's reasoning in *Buckley*:

> In the free society ordained by our Constitution it is not the government but the people--individually as citizens and candidates and collectively as associations and political committees--who must retain control over the quantity and range of debate on public issues in a political campaign.[29]

The respected members of Congress who have sponsored these proposals, and their colleagues, each of whom has taken an oath to uphold the Bill of Rights, should reflect deeply on the implications of replacing our democracy's time-tested "marketplace of ideas" with a system of government monitoring and regulation of political speech.

Notes

1. David Pace, "Cleland Looking to Strengthen Hand of FEC as Elections' Umpire," Associated Press, May 24, 1997.

3. Detailed analyses of the speech-restrictive provisions of those bills, including extensive quotations from each bill and pertinent court decisions, are found in National Right to Life Committee monographs "A Critique of the Speech-Restrictive Provisions of the McCain-Feingold Campaign Reform Bill (S. 25)," February 19, 1997, and "A Critique of the Speech-Restrictive Provisions of the Shays-Meehan (H.R. 493) and Farr (H.R. 600) Campaign Reform Bills," February 19, 1997, available at http:\\www.nrlc.org at "Campaign Reform and Free Speech."

3. Quoted in Pace.

4. Interview of Senator McCain by David Broder of the *Washington Post* on NBC News, *Meet the Press*, February 23, 1997. See also open letter dated February 24, 1997, from National Right to Life Committee to Senator McCain regarding that interview, available at http:\\www.nrlc.org at "Campaign Reform and Free Speech."

5. *Buckley v. Valeo*, 424 U.S. 1 (1976) at 39.

6. Ibid. at 19.

7. Sam Farr, "Reform Must Return Power to Individual Contributors," *Roll Call*, January 9, 1997, p. 34.

8. Bill Thomas, "Ads Could Be Regulated in the Last 90 Days of Election," *Roll Call*, January 9, 1997, p. 32.

9. Bill Bradley, "Congress Won't Act. Will You?" *New York Times*, November 11, 1996, p. A15.

10. *Buckley* at 48-49.

11. Ibid. at 45.

12. Ibid. at 42.

13. Ibid. at 44n. 52.

14. *Federal Election Commission v. Christian Action Network, Inc.*, no. 95-2600, slip op. (4th Cir. April 7, 1997).

15. Ibid.

16. S. 25, "Bipartisan Campaign Reform Act of 1997," sec. 406.

17. The specific provisions of each bill that attempt to evade the Supreme Court's definition of express advocacy are analyzed in detail in the NRLC memoranda on those bills that are available at http:\\ www.nrlc.org at "Campaign Reform and Free Speech."

18. Susan M. Collins, "Changes Made in Bipartisan Campaign Finance Reform Proposal at Request of Senator Susan Collins," Press release, May 22, 1997.

19. See, for example, Norman J. Ornstein. "Forget Sweeping Reform: Here Are 5 Realistic Changes," *Roll Call*, January 9, 1997, p. 34.

20. S. 25, sec. 406(b); emphasis added.

21. NBC News, *Meet the Press*, February 23, 1997.

22. S. 25, sec. 406

23. A section-by-section analysis of these provisions is found in NRLC, "A Critique of the Speech-Restrictive Provisions of the McCain-Feingold Campaign Reform Bill."

24. Farr, 34; emphasis added.

25. Richard Gephardt, Testimony before the Subcommittee on the Constitution of the House Committee on the Judiciary, February 27, 1997.

26. H.R. 1366, "Federal Election Reform Act of 1997," sec. 2(b), finding no. 12.

27. Quoted in Nancy Gibbs, "The Wake-Up Call," *Time*, February 3, 1997, p. 25.

28. *NBC Nightly News*, October 24, 1996.

29. *Buckley* at 57.