Awash in Soft Money and Political Corruption: The Need for Campaign Finance Reform

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Then one of the twelve, called Judas Iscariot, went into the chief priests, and said unto them, what will ye give me, and I will deliver [Jesus Christ] unto you? And they bargained with him for thirty pieces of silver. And from that time he sought opportunity to betray him. — Matthew 26: 14-16

INTRODUCTION

This Biblical story of Judas Iscariot's betrayal of Jesus Christ for thirty pieces of silver, recorded nearly 2,000 years ago, illustrates the powerful and often corrupting influence of money. During his life, Jesus Christ, one of the most influential public figures of all times, led a revolution of sorts that began a radical transformation of the political landscape of Judea. The religious and political leaders perceived Jesus as a threat to the political establishment, and therefore, plotted to kill him. In furtherance of their nefarious plan, they solicited the support of one of Jesus' closest friends, Judas Iscariot. The price of betrayal: thirty pieces of silver.

Judas' reasoning for betraying his master and closest friend will never be fully understood. Judas was, however, undoubtedly motivated by greed, power, and a large sum of money. It is self-evident that Judas would not have betrayed Jesus for one, five, or even ten pieces of silver. Betrayal came at a much higher price.

In many respects, the story of Judas Iscariot parallels the story of this country's 1996 presidential election year. Each is a sordid tale of greed, money, betrayal, and the quest for power and influence. A number of disturbing issues surfaced in 1996 concerning the influence of large money contributions on federal elections, particularly the presidential race. Mounting evidence strongly suggests that large political contributions directly influenced decisions bearing upon American domestic and foreign policies. The potentially corrupting influence of large campaign donations on this nation's highest elected offices, particularly the presidency, threatens to unravel the very fabric of our democratic system.

Part I of this comment discusses reports of the corrupting influence of large money contributions on American presidential
elections, United States' domestic and foreign policy, presidential appointments, and the interdependence of national parties and their candidates. Part II discusses the background of current federal election law and the United States Supreme Court's decisions involving federal campaign laws. Part III discusses the inordinate demand for unlimited soft money contributions and the need for federal regulations to limit such contributions.

BACKGROUND

Driven by an impassioned desire to win the election and end the Republican Revolution of 1992, President Clinton aimed to raise $137 million before the 1996 general election. The propriety of various fund-raising tactics employed by the President, Vice President, and the Democratic National Committee ("DNC") to reach this aggressive goal has since dominated the media. Revelations regarding improper, and possibly illegal, fund-raising efforts spawned congressional and grand jury investigations, as well as prompted calls for the appointment of an independent counsel, to sort out alleged improprieties.

In recent years, the cost of presidential and congressional campaigns has skyrocketed, due in large measure to the increased reliance upon television advertising. The Democratic and Republican parties spent a combined total of $25 million on campaign advertising in 1972. In 1996, expenditures on such ads increased to nearly $400 million. The two parties were not alone, however, in soliciting funds for television advertising. Organized labor also entered the fray, spending nearly $200 million on issue ads.

The virtually insatiable demand for large amounts of campaign money, combined with federal laws that impose limits on direct

4. Id.
5. Id.
contributions to candidates, has compelled candidates and political parties to resort to desperate fund-raising tactics focusing on "soft money" contributions. "Soft money" describes contributions to political parties (as opposed to candidates) that solely support party-building activities, such as: voter registration, "get out the vote" drives, issue advocacy, and the purchase of campaign items such as slate cards, bumper stickers, and yard signs.7

Unlike direct contributions to candidates, known as "hard money," federal election laws do not regulate soft money contributions.8 There are no limitations on the amount of soft money that an individual, company, labor union, or political action committee ("PAC")9 may give to a party.10 The Republican National Committee ("RNC") and the DNC raised more than $800 million in soft money contributions in 1996, surpassing the $311 million raised in 1992.11 The use of soft money is not new, but reliance upon soft money contributions by donors and candidates seeking to circumvent federal election laws to finance expensive races has increased dramatically in recent years.


8. The Federal Election Campaign Act ("FECA") of 1971, as amended, is the body of law that regulates federal campaign activities and contributions to candidates. 2 U.S.C. § 431-442 (1996). FECA states that a "contribution" does not include the following:

[T]he payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: Provided, That —

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. . . .


9. A "PAC" is a club, association, or other group of persons, formed to receive campaign contributions used to support particular candidates. Such groups' activities, including contributions, are regulated by federal and state laws. Black's Law Dictionary 1108 (6th ed. 1990).


11. Myriam Marquez, Why Would Incumbents Mess With a System That Works for Them, The Orlando Sentinel, Apr. 11, 1997, at A29; Pat Griffith, Political Money Machine Rolls On; Insurance and Tobacco Give $3 Million to GOP to Influence Regulators, Pittsburgh Post-Gazette, Aug. 19, 1997, at A6. In addition to the DNC and RNC, other political havens for soft money contributions include: the parties' respective Senate and House campaign committees, congressional dinner committees, and state and local committees. Id. The vast majority of soft money, however, is donated directly to the DNC and RNC. Id.
I. THE CORRUPTING INFLUENCE OF LARGE MONEY CONTRIBUTIONS ON PRESIDENTIAL ELECTIONS

A. Domestic Special Interest and Quid Pro Quo

"Show me the money" is a title befitting the most recent electoral cycle, that played out much like a shameless midsummer night's tragedy. The not-so-glamorous underbelly of political fund-raising in our nation's capital was revealed publicly in February 1997 when Harold Ickes, former Deputy Chief of Staff to the President, turned over approximately 500 pages of fund-raising documents under the threat of a congressional subpoena. These documents offered startling revelations of abuses and excesses in fund-raising at the uppermost echelons of the federal government.

In one particular document, a 1995 memorandum to the White House, DNC staff suggested a list of fund-raising events that would enable the DNC to reach its targeted goal of $40 million. The DNC suggested that the White House host a number of events for contributors, including: (1) private coffees, (2) sleep-overs in the Lincoln Bedroom, (3) weekly radio addresses by the President, (4) White House mess privileges, (5) private dinners and events at the Kennedy Center with the President, allotting each contributor six to eight seats per event, and (6) rides on Air Force One and Two. Further, the memo also urged the White House to improve coordination with the DNC on selection of presidential appointees to various boards and commissions. These perks were expressly

15. Follow the Money, supra note 13. Between 1992 and 1996, a total of 938 individuals were invited to stay over in the Lincoln Bedroom of the White House, generating nearly $8 million in soft money contributions. Nightline: Wealthy Donors' Access to White House (ABC television broadcast, Feb. 25, 1997). The guest list included, among others: Hollywood film producer, Stephen Spielberg, who gave the DNC $336,000, and Steven Jobs, a computer tycoon, who contributed $100,000. Id. One-hundred private White House coffees generated
designed not only to solicit large donations for the Democratic National Party, but also to reward generous donors. The President, Vice President, and DNC officials routinely solicited soft money contributions of $25,000, $50,000, and $100,000, allegedly in exchange for presidential perks at taxpayer expense. Reportedly, some individuals “donated” more than $1 million with the expectation of getting something in return from the Clinton White House.

Harold Ickes also turned over a memorandum to the subcommittee he sent to the Clintons and Gores in February 1996, outlining a very aggressive fund-raising schedule to be conducted in close concert with the DNC. This campaign was allegedly implemented, in part, due to the dissatisfaction expressed by the DNC’s 1994 top donors, many of whom were unhappy with the perceived lack of “tender loving care” from the White House. This dissatisfaction was apparently reflected in a decrease in DNC donations made early in the 1996 election cycle. As a result, between January and October 1996, the DNC planned to involve the President in 117 fund-raisers; the Vice President in fifty-four; and the First Lady in twenty-nine. The DNC expected to raise $50 million, $10.8 million, and $5 million from the respective events.

$27 million in soft money donations. Id.

17. Id. In response to an internal White House memorandum suggesting the private coffees, overnight stays, and golf outings with the President, President Clinton responded, “Yes, pursue all three promptly and get other names at $100,000 or more, $50,000 or more, ready to start overnight right away.” Id. Further, new allegations against Vice President Gore suggest that he may have knowingly and unlawfully transferred $20,000 in soft money he raised for his own re-election campaign. Edward Walsh, DNC Memo Noted Use of Hard Money; Republicans Argue Gore Knew, Acted Improperly, THE WASH. POST, Sept. 11, 1997, at A1; Donald Lambro, Independent Counsel Next to be Named? THE WASH. TIMES, Sept. 18, 1997, at A18.

Johnny Chung, a large DNC donor and a central figure in the DNC campaign scandal, stated, “I see the White House like a subway. You have to put in coins to open the gates.” Id. See also Pork and Coffees, THE WASH. TIMES, July 20, 1997, at B2.
19. Enda & Rankin, supra note 1, at 1. The February memo from Ickes was preceded by a November 20, 1996 memo from DNC officials to Ickes that suggested the President and Vice President were needed to help raise $3.2 million for party television ads. Id.
20. Peter Baker & Susan Schmidt, President Had Big Role in Setting Donor Perks; Records Detail Close Involvement with Fund-Raising, THE WASH. POST, Feb. 26, 1997, at A1. In a 1994 letter from Carl Spielvogel, a prominent DNC fund-raiser, to Harold Ickes, Spielvogel wrote, “there are quite a few disaffected heavy givers who feel let down by a lack of tender loving care since the victory.” Id.
21. Id.
22. Id.
23. Id.
The DNC's top soft money contributors in 1996 were organized labor and various individuals and companies with business interests abroad. Unions made the largest contributions to the Democratic Party, reportedly totaling between $200 and $500 million in 1996. In return, the unions presumably hoped to increase the country's minimum wage, to institute cheaper government-run health care, to receive protection for pension funds, and to preserve a federal law requiring contractors on federal projects to pay inflated union wages.

Corporations also made substantial soft money contributions to the DNC. For example, the Lippo Group, an Indonesian conglomerate, and its owners have contributed a total of $875,300 to the DNC since 1991. In an alleged quid pro quo exchange, the Lippo Group received key appointments to government-sponsored foreign trade missions to China and Indonesia where Lippo invests

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28. The term “quid pro quo” is used in law to describe giving one thing of value for another. BLACK’S LAW DICTIONARY 1248 (6th ed. 1990). Some scholars have attempted to distinguish between quid pro quo and other forms of political corruption such as monetary influence and distortion based on the U.S. Supreme Court's holdings. See, e.g., Thomas Burke, The Concept of Corruption in Campaign Finance Law, 14 CONST. COMMENT 127, 131 (1997).

While quid pro quo is more akin to bribery (dollars for explicit political favors), “monetary influence corruption” is a broader concept in which a candidate's decision is influenced, either directly or indirectly, by contributions. Id.

“Distortion,” although very similar to monetary influence, is political influence by corporations as a result of the large aggregation of wealth that has no correlation between the public or corporations' political views. Id. at 134. Nonetheless, the Court has consistently held that political corruption, regardless of the form it takes, is grounds for legislative reform. Id. at 132-33.
billions of dollars in business ventures.\textsuperscript{29}

Allegations of quid pro quo have also surfaced in connection with West Publishing Company, an $800 million on-line legal research business.\textsuperscript{30} In 1994, Vance Opperman, who was then the President of West Publishing Company, learned that the Justice Department planned to move forward with on-line access to court decisions.\textsuperscript{31} If implemented, the Justice Department's new on-line program would have cost West Publishing millions of dollars in lost revenue.\textsuperscript{32} After enlisting the support of the President and Vice President, Opperman successfully dissuaded the Justice Department from implementing the proposed system.\textsuperscript{33} Shortly thereafter, in 1995, the Justice Department awarded West a $14.2 million contract to provide the government with on-line research.\textsuperscript{34} Ironically, the timing of Opperman's success in thwarting the government's on-line plans directly coincided with soft money contributions he made to the Democratic party.\textsuperscript{35} To make detection of his large contributions more difficult, Opperman cleverly sprinkled $329,000 across ten state party committees.\textsuperscript{36}

The Democrats, however, were not the only benefactors of large soft money donations in 1996. Republicans also received substantial soft money donations that flowed primarily from corporate donors seeking to gain greater access to the nation's lawmakers.\textsuperscript{37} In fact, the Republicans established a "Team 100" club to pay special tribute to individuals and corporate donors who donated at least

\textsuperscript{29} Viveca Novak & Michael Weisskopf, The Cheerful Giver: A Businessman with a Corner on Publishing Court Documents Was Also a Master of Political Donations, TIME MAGAZINE, Apr. 21, 1997, at 80.

\textsuperscript{30} Id.

\textsuperscript{31} Id.

\textsuperscript{32} Id.

\textsuperscript{33} Pork and Coffees, supra note 18, at B2.

\textsuperscript{34} Novak & Weisskopf, supra note 29, at 80.

\textsuperscript{35} Id.

\textsuperscript{36} Id. There are other apparent signs of quid pro quo in the Opperman case. Id. For example, the President appointed Opperman, a close personal friend of the Vice President, to an advisory panel in 1993 that was tasked with reviewing a government report encouraging copyright protection of West's information. Id. With the support of the administration, West, who at the time was involved in a $3.4 million merger, eventually received approval by the Justice Department. Id. This copyright decision by the Justice Department was exactly the leverage needed to close the merger deal. Id. Over the same period, Opperman sponsored a $250,000 fund-raiser for the Vice President, attended White House coffees, and dined privately with the Gores. Id.

$100,000 to the party.\textsuperscript{38} In 1996, congressional leaders invited members of “Team 100” to a private meeting at a Palm Beach resort.\textsuperscript{39}

Not surprisingly, tobacco companies accounted for four of the top ten soft money contributors in 1996.\textsuperscript{40} According to media sources, Phillip Morris and RJR-Nabisco combined, gave nearly $2.6 million in an effort to favorably influence ongoing negotiations with congressional leaders regarding proposed tobacco regulations.\textsuperscript{41} The Atlantic Richfield Company (“ARCO”), gave $615,000 to Republicans and $373,000 to Democrats, allegedly to influence policy decisions regarding Alaska’s Arctic National Wildlife Reserve, that would enable ARCO to conduct oil exploration.\textsuperscript{42}

\textbf{B. U.S. Foreign Policy for Sale}

Allegations that the President sold foreign policy and national security decisions in exchange for large political donations to the DNC are even more troubling, however, than the domestic quid pro quo.\textsuperscript{43} During 1996, individuals and corporations with special interests in Asia and Latin America made substantial soft money contributions to the DNC, presumably with the expectation of gaining access to the President and convincing him to make “favorable” foreign policy decisions.\textsuperscript{44}

One family in particular, the Riadys, reportedly played a prominent role in funneling soft money into DNC coffers.\textsuperscript{45} Mochtar Riady and his son, James, longtime friends of the President and First Lady, and owners of the multi-billion-dollar Lippo Group,

\begin{footnotesize}
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\item[38.] Id.
\item[39.] Id.
\item[40.] Martin Walker, \textit{Barring Foreign Campaign Money; a Loophole Waiting to be Exploited}, \textit{The Record} (Bergen County, N.J.), Dec. 30, 1996, at A17.
\item[41.] Id.
\item[42.] Id.
\item[45.] LaFraniere, supra note 44, at A1.
\end{itemize}
\end{footnotesize}
contributed nearly $1 million in soft money to the DNC. In exchange, the Riadys are said to have anticipated improvements in their business and governmental relations with China and Indonesia, countries in which they had substantial investments.

The Riadys allegedly used John Huang, a former Lippo executive, as their primary White House connection. Prior to the 1996 election, President Clinton pressured the DNC to hire Huang as Vice Chair of the DNC Finance Committee. After Huang successfully raised nearly $3.4 million in soft money for the DNC, the President is alleged to have rewarded Huang by appointing him Deputy Assistant Commerce Department Secretary. Huang, currently under investigation by the Federal Bureau of Investigation for economic espionage, held top-secret clearance during and after his employment with the Commerce Department. Huang, noted for his political acumen and fund-raising abilities, was thus strategically positioned to influence the President’s decisions on United States immigration and foreign policy affecting Asian-Americans.

Mounting evidence suggests Huang’s hand in the President’s decision to terminate the trade embargo against Vietnam. Reports indicate that Huang also affected the President’s decision on immigration policy affecting Asian-Americans. In fact, one day after Huang organized an Asian-American fund-raiser in March 1996, that generated $1.1 million in soft money, he wrote the President urging him to change his stance opposing the “sibling

46. Id.
47. Id.
preference" — an immigration policy giving special immigration treatment to foreign-born brothers and sisters of naturalized citizens. Within several weeks, the President publicly reversed his position and halted any effort to ban sibling preference.

Reports also suggest that Huang influenced the signing of a 1996 Presidential executive order preserving 1.7 million acres of land in southwest Utah, known as the Grand Staircase Escalante National Monument. This decision halted plans by United States mining companies to extract valuable clean-burning coal. Reportedly, the Executive Order boosted the Indonesian economy and indirectly helped the massive Indonesian Lippo conglomerate. Some sources suggest that the Executive Order, although touted as "environmental protection," was actually disguised payment to the Riadys for their donations to the DNC.

Other controversial political donors spotlighted by the media for contributing soft money to the DNC include: Johnny Chung, "Charlie" Yah Lin Trie, Pauline Kanchanalak, Roger Tamraz, and Mark Jimenez. Each made substantial donations apparently motivated by a desire for quid pro quo, but achieved varying degrees of success.

Chung, a Chinese-American, was a major contributor and DNC fund-raiser in 1996. He visited the White House more than fifty times during the 1996 election cycle and raised nearly $391,000 in soft money for the DNC. Chung played a key role in introducing Chinese executives of the China Ocean Shipping Company ("Cosco") to President Clinton. For several years, Cosco sought

55. Id.
56. Id.
58. Id.
59. Id.
60. Id. According to Sarah Foster, the journalist who first broke the story, "with a stroke of his pen [President Clinton] wiped out the only significant competition to Indonesian coal interests in the world market." Id.
63. The Great White House Firesale, supra note 1, at B2.
64. See Janice Church, Shuttered Long Beach Naval Station Opens Door to Controversial Client, CHRISTIAN SCIENCE MONITOR, Mar. 28, 1997, at 3; Rowan Scarborough, Cosco's Ship Deal in U.S. Gets Scrutiny, THE WASH TIMES, Apr. 1, 1997, at A1; Rowan
Awash in Soft Money

federal and local approval to construct a $200 million cargo terminal on the West Coast. In early 1995, the White House invited a top Cosco advisor, Hongye Zheng, who was among a delegation of Chinese businessmen, to watch the President make a weekly radio address. According to media reports, just two days prior to this meeting, Chung visited the White House to present the First Lady's Chief of Staff, Maggie Williams, with a check for $50,000 payable to the DNC. Several days prior to this donation, Chung received a $150,000 wire transfer from a Chinese bank. Following Chung's sizable contributions to the DNC, and the President's alleged intercession, Cosco received final approval from the Harbor Commission of Long Beach, California, as well as President Clinton, to lease the Long Beach Naval Station and construct a terminal.

Charlie Trie, a restauranteur from Little Rock, Arkansas, gave nearly $645,000 to the DNC in the 1996 election. Reportedly, Trie delivered an additional $640,000 to the President's legal defense fund. Trie was subsequently appointed by the President to the

Scarborough, Corps Lost Site in Cosco Deal; Reserve Unit in Long Beach was Evicted, THE WASH TIMES, Mar. 24, 1997, at A1; and Ken Hamblin, China's Foothold in California, THE DENVER POST, Mar. 16, 1997, at D3.

65. Scarborough, supra note 64, at D3.


68. Akers, supra note 67, at A1. It was also revealed that Yogesh Ghandhi, an Indian-American businessman from California, received a $500,000 wire transfer from a Japanese Bank after Ghandhi made a $325,000 donation to the DNC. Id.


71. The Great White House Firesale, supra note 1, at B2.
President's Commission on U.S.-Pacific Trade and Investment and frequently visited the White House, escorting various individuals with Chinese investments and business ties to private meetings with the President. In February of 1996, Trie brought Wang Jun, a reputed arms dealer and former officer in the Chinese People's Liberation Army, and Ernest Green, a businessman from Little Rock, Arkansas, to a private coffee with the President. The day after the meeting, Green, who sought to develop a business relationship with Jun's Chinese corporation, donated $50,000 to the DNC. During this same period, Trie vigorously lobbied the President to reconsider deploying American troops to monitor the dispute between China and Taiwan.

Pauline Kanchanalak, a Thai businesswoman, donated a total of $250,000 to the DNC in 1996, allegedly to urge the President to host the inaugural session of the U.S.-Thai Business Council at the White House. On one occasion, Kanchanalak donated $85,000 to the DNC on the same day that she attended a White House coffee.

Reports indicate that Tamraz, a Lebanese-American and President of the New York-based Oil Capital, Ltd., sought support from the White House for his plan to construct a multibillion dollar oil pipeline in the Caspian Sea region. On numerous occasions, the National Security Council ("NSC") advised the White House that because Tamraz was an international fugitive, he should be refused access. Nevertheless, Tamraz reportedly met with, and received considerable support from, President Clinton.

According to sources, after meeting with Tamraz on March 27, 1996, the President asked Mac McLarty, former White House Chief of Staff, to look into the matter. McLarty subsequently contacted Jack Carter, a high-ranking Energy Department official and former fund-raiser for Clinton and Texas Democrats, to generate support

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72. Id.
73. Id.
74. Id.
75. Id.
76. The Great White House Firesale, supra note 1, at B2.
79. Clinton Met With Financier, supra note 78, at 10A. Tamraz was wanted by Lebanese authorities on a $160 million bank embezzlement charge. Id.
80. Id.
81. Id.
for Tamraz's project. Carter, in return, contacted Sheila Heslin at the NSC. According to Heslin, Carter told her that Tamraz had given $200,000 to the DNC and would give an additional $200,000 if the Administration supported Tamraz's pipeline project. Donald Fowler, then DNC Chairman, also allegedly pressured the NSC to sanction Tamraz's access to the White House. Fowler has refused comment on the matter.

On June 14, 1997, Tamraz was arrested in the Georgian capital, Tblisi, on an outstanding Interpol arrest warrant. Soon thereafter, however, he was released, returning voluntarily to the United States. Although the Lebanese government asked for cooperation in extraditing Tamraz, the United States refused to arrest Tamraz on the grounds that it had no extradition treaty with Lebanon. The grand jury continues its probe into links between Tamraz and the White House.

Mark Jimenez, an executive with a Florida-based computer company, has poured more than $800,000 in soft money into DNC coffers since 1993. Jimenez, who also has substantial investments in Paraguay, met with the President and NSC staff members several times in 1996 to discuss the effect of Paraguay's political instability on his business ventures. In March 1996, Jimenez escorted one of the Paraguayan President's top advisors to the White House for a private coffee. Ten days after their visit, Jimenez donated $50,000 to the DNC. One month later, President Clinton lifted economic sanctions.
sanctions against Paraguay imposed for cocaine smuggling. Additionally, in April 1996, Jimenez warned the White House of a possible Paraguayan coup. Coincidentally, on the same day as the coup, Jimenez donated $100,000 to the DNC.

Except for Charlie Trie, no charges have been brought against any of these individuals for violating campaign finance laws. Nonetheless, these examples present strong circumstantial evidence of quid pro quo and attempts by political donors to purchase and influence American foreign policy decisions. Mounting evidence strongly suggests that certain donors received the benefit of their bargains.

C. Presidential Appointments and DNC Contributions

Recent developments also raise suspicions of a link between large soft money contributions and recent presidential appointments to key governmental advisory committees. For example, the President recently appointed Stanley Shuman and Richard Bloch, two DNC contributors and fund-raisers, to serve on the President's Foreign Intelligence Advisory Board. Neither Shuman nor Bloch possesses any foreign-policy or intelligence experience; however, both have made large donations to the DNC. Shuman gave $42,000 in soft money during the 1993-1994 electoral cycle and $105,000 during the 1996 campaign. Bloch donated $115,000 to the DNC in 1996.

Jake Steinfeld, a health fitness business owner and television

95. Id.
96. The Great White House Firesale, supra note 1, at B2.
97. Id.
98. David Johnston, Charlie Trie, Clinton Fund-Raiser, Is Arrested in Capitol, N.Y. Times Service, February 5, 1998. Charlie Trie was arrested on February 5, 1998, after being indicted on fifteen counts of obstructing justice and funneling illegal contributions to the DNC. Id. He is the first defendant to be charged with FECA crimes stemming from the 1996 campaign finance scandal. Id.
99. Alan Miller, Leading Clinton Donors Got Lifts on Air Force One, L.A. Times, Apr. 15, 1997, at A1; Big Fund-Raisers Also Were Required to be Considered for Administration Posts, Documents Show, L.A. Times, Apr. 15, 1997, at A1. Examples of other key appointments of top DNC donors include: Arthur Levitt (Chairman of the SEC), Erskine Bowles (Administrator of the Small Business Administration and White House Chief of Staff), Alan Blinken (Ambassador to Belgium), Donald Blinken (Ambassador to Hungary), Clay Constantinou (Ambassador to Luxembourg), and Thomas Siebert (Ambassador to Sweden). Id.
personality, was appointed to the President's Council on Physical Fitness and Athletics.\textsuperscript{103} This appointment has also generated considerable controversy.\textsuperscript{104} Steinfeld wrote four checks of $25,000 each to the DNC in mid-1996.\textsuperscript{105} Steinfeld had never been a major contributor to the DNC in the past; records indicate his only prior donation was $500 to a congressional candidate in 1987.\textsuperscript{106} According to reports, to make room for Steinfeld on the twenty-member council, the President requested the resignation of Florence Griffith Joyner, who, although a very popular public figure, had never contributed to the DNC.\textsuperscript{107}

D. Coordination Between National Parties and Their Candidates

The 1996 election also revealed the degree to which candidates and their national parties are interdependent.\textsuperscript{108} Over the last several years, the Clintons have developed a $1.7 million computer database, affectionately referred to by Democratic insiders as "Big Brother."\textsuperscript{109} Big Brother contains the names of 350,000 donors and their respective donation histories.\textsuperscript{110} In addition, sources report that Big Brother contains a list of special perks that each donor desires.\textsuperscript{111} Truman Arnold, former DNC Finance Chairman, publicly admitted using the database to ensure that major party donors received special favors from the White House.\textsuperscript{112}

The White House maintains that the database is used solely for

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\item[103.] Charles Babcock, Bodybuilder, DNC Donor May Head Fitness Council; Cable TV Athlete Contributed $100,000, \textit{The Wash. Post}, Mar. 1, 1997, at A10.
\item[104.] Id.
\item[105.] Id.
\item[106.] Id.
\item[107.] Transcript of White House press briefing by Mike McCurry, \textit{U.S. Newswire} (June 27, 1997).
\item[108.] Peter Grier, \textit{Clinton Teeters on Legal Edge of Finance Law}, \textit{The Christian Science Monitor}, Feb. 27, 1997, at 1. According to Henry Graff, presidential historian and professor at Columbia University, "it is a curious notion that you can separate the actions of the president as president from the actions of the president as politician. . . . The line between national party committees and the White House has always been an invisible Chinese wall." \textit{Id.}
\item[110.] Id.
\item[111.] Id.
\item[112.] \textit{Pork and Coffees}, supra note 18, at B2; Susan Schmidt, \textit{Hubbell Vows No More Cooperation, Freed Ex-Justice Official Says He Has Offered Enough to Investigators}, \textit{The Wash. Post}, Feb. 13, 1997, at A14. Reportedly, Truman also gave "hush money" to the embattled Clinton friend and former top Justice Department Official, Webster Hubbell, who was recently indicted for embezzlement stemming from his prior activities at the Rose Law Firm where the First Lady was also a partner. \textit{Id.}
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official business, not campaign activities. Yet, records indicate that the DNC and the White House worked closely together to develop the database specifically to track fund-raising efforts. Media reports indicate that the First Lady and the DNC held weekly meetings to monitor the status of the system. Additionally, the DNC is reported to have actually paid individuals — whom the White House calls "volunteers" — to work with the President and his top aides to update and manage Big Brother.

One of the President's closest political consultants, Dick Morris, recently claimed that the President not only solicited and channeled soft money to the DNC during the 1996 election, but also directly controlled DNC expenditures for issue advertising. According to Morris, the President was not merely a passive bystander; he edited, reviewed, and ordered changes to scripts, ultimately deciding whether certain ads would be aired.

E. Money-Laundering Schemes

The proliferation of soft money has also spawned accusations of pervasive and elaborate money-laundering schemes. One notable example involved Arief Wiriadinata, an Indonesian national, who lived and worked in Virginia as a gardener until late 1996. After the 1996 election, sources revealed that Wiriadinata, despite his modest means, had contributed $425,000 to the DNC in 1996. Further media and congressional investigations suggest that Wiriadinata fled the United States in late 1996 after his involvement in the scandal was disclosed.

113. Jamie Dettmer, Cautious Confessions of a Cynical Optimist, THE WASH. TIMES, Mar. 31, 1997, at 48. When asked by a journalist whether she had ordered the computer database, Hillary Clinton stated, "I would doubt that I was the person who ordered it." The official White House position has been that the database was created only to maintain the White House Christmas card list. Id.


115. Id.

116. Id.


118. Id.


120. White House Delivers 60 Coffee Tapes; Promises to Turn Over More Today, THE WASH. TIMES, Oct. 16, 1997, at A4; Mr. President . . . This is Your Campaign, THE WASH. POST, Oct. 8, 1997, at A21. Wiriadinata fled the United States in late 1996 after his involvement in the scandal was disclosed. Id.

121. White House Delivers, supra note 120, at A4.
Wiriadinata was used as a "straw donor" by Dr. Hashem Neem, a former Lippo Group executive.

Another money-laundering scandal implicated Vice President Al Gore. In early 1996, Gore attended a function at the Hsi Lai Temple, a Buddhist monastery in southern California, for what was characterized by the White House as a "community outreach" event. The event generated nearly $166,500 in soft money for the DNC. Congressional investigations later revealed that many of the Temple's nuns and priests had been pressured into making straw donations totaling $60,000, later reimbursed from Temple funds.

A congressional committee also inquired into allegations of an elaborate money-laundering scheme involving members of the DNC, the White House, and the Teamsters Union. According to Martin Davis, a close campaign adviser to Teamsters' President Ron Carey, top-ranking officials of the Clinton-Gore campaign proposed that the Teamsters contribute $1 million to various state Democratic parties. In exchange, the DNC reportedly planned to give

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122. A "straw donor" is a sham contributor who illegally donates money provided by another under his own name to a political campaign in order to mask the identity of the real contributor. Michael J. Sniffen, *Indictments Looming in Funds Probe*, ASSOCIATED PRESS, Nov. 19, 1997. Straw donors are used to circumvent statutory limits on the amount an individual or corporation can legally contribute to a candidate or conceal the fact that the real donor is a foreign national or corporation, prohibited by law from making a contribution to an American political campaign. Id.

123. *Mr. President*, supra note 120, at A21. The House Committee on Government Reform and Oversight also investigated other straw donors who gave thousands of dollars in illegal donations to the DNC. Id. Among those formally questioned by the committee include Manlin Foung, sister of Charlie Trie, Joseph Landon, a friend of Trie, and David Wang, an associate of John Huang. Id.


125. Greg Pierce, THE WASH. TIMES, Oct. 13, 1997, at A6; *Al Gore's Pathetic Way*, supra note 124, at A20. Until recently, the Vice President denied having any knowledge that the event had been used as a fund-raiser. Id. However, documents turned over to congressional investigators revealed that an aide provided Gore with an itinerary before the event that stated, "DNC Luncheon in LA/Hacienda Heights: 1000-5000 head." Id.


127. Id.


129. *The Travels of Martin Davis*, THE WASH. TIMES, Oct. 13, 1997, at A18. Reportedly, Ron Carey needed money to aid in his reelection bid against James P. Hoffa, a very popular and formidable opponent. Id. The Clinton Administration, seeking to repair strained relations with Carey and the Teamsters Union, threw its support to Carey, using the DNC as the conduit for the money-swap. Id.
$100,000 directly to Carey's beleaguered reelection campaign.\textsuperscript{130}

The illegal plan reportedly began in June 1996 when Davis approached Terence McAuliffe, chief fund-raiser for the Clinton-Gore campaign, with the money-swap idea.\textsuperscript{131} Several weeks after this meeting, Davis met with Richard Sullivan, then Finance Director for the DNC, and other Clinton-Gore officials to lay out the specifics of the deal.\textsuperscript{132} The parties reportedly agreed to use Judith Vazquez, a Philippine businesswoman, to funnel $100,000 to Carey during a fund-raising dinner.\textsuperscript{133} This plan was abandoned, however, when Sullivan learned that Vazquez was a foreign national.\textsuperscript{134} Sullivan, presumably wary that a foreign donor might attract suspicion regarding the transaction's legality, subsequently ordered the money redirected to Carey's front-group, Teamsters' Corruption-Free Union.\textsuperscript{135}

\section*{II. Background to Federal Election Law}

Corruption is no stranger to American politics. Large donations to Richard Nixon's presidential campaign and general concerns about political corruption prompted Congress to pass the Federal Election Campaign Act ("FECA") in 1971.\textsuperscript{136} Congress enacted FECA to regulate the flow of money into federal campaigns in an effort to

\textsuperscript{130} Id.

\textsuperscript{131} Id. Others believed to be involved in the scheme include Laura Hartigan, deputy fund-raiser for Clinton-Gore '96; Mark Thomann, a DNC fund-raiser; and Harold Ickes. Id. This story came to light through the sworn testimony of Mark Thomann during Senate hearings. Id. Reportedly, Thomann was used by the DNC as the primary middleman for the money-swap. Id.

\textsuperscript{132} Id.

\textsuperscript{133} Id.

\textsuperscript{134} The Travels, supra note 129, at A18.

\textsuperscript{135} Id. Reportedly, Carey became increasingly impatient with the DNC's inability to deliver the $100,000 and had his attorney repeatedly contact DNC officials. Id. Davis eventually terminated the deal when the DNC was unable to successfully divert the money to his campaign. Id. While Carey never received the promised money, the Democratic party received approximately $276,000 from the deal. Id. Davis and three other Teamster officials were subsequently indicted on unrelated fraud and money-laundering charges. Id.

\textsuperscript{136} Proposed Amendments to Federal Campaign Laws: Hearings Before the House Oversight Committee, 103rd Cong. (1995) (statement of Michael Malbin, Professor, University at Albany ("SUNY"), and Director, Center for Legislative Studies, Rockefeller Institute of Government). In Nixon's 1972 reelection bid, more than 30 corporate donors contributed over $100,000 each after being reportedly subjected to strong-arm tactics by Nixon's fund-raisers. Id. Additionally, one notable contribution of $2.1 million from a Chicago businessman to Nixon's reelection committee generated considerable momentum toward campaign finance reform. Mike Eberts, The Truth About PACs is Their Help Outweighs Their Harm, THE SAN DIEGO UNION-TRIBUNE, June 3, 1984, at C4.
discourage corruption. FECA, however, provides limits only on direct candidate contributions, requiring candidates to disclose all contribution-related receipts. FECA limits monetary contributions from various sources including individuals, corporations, political action committees, and unions. FECA places an aggregate limit of $25,000 per calendar year per individual donor on total political contributions made directly to candidates. An individual is limited to a maximum direct donation of $1,000 to any one candidate. FECA does permit an individual to donate up to $20,000 each year to a national political committee for independent party expenditures that benefit a particular candidate. However, FECA outlaws direct corporate and union contributions to candidates, but permits soft money contributions or hard money donations via registered PACs.

140. Under FECA, the term "contribution" means:
   (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or
   (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.
145. FECA provides, in relevant part:
[It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.
Importantly, FECA regulates only direct contributions to candidates. FECA's limits do not apply to soft money contributions given to national, state, and local political committees for general party-building use, or to expenditures by political parties that only indirectly support candidates. Such loopholes allow, and actually encourage, political donors to circumvent federal law and funnel millions of dollars to a particular candidate via that candidate's political party. Campaign contributions travel the path of least resistance and as a result have gravitated toward unregulated soft money.

Given this loophole, in recent years candidates and political parties have developed creative fund-raising and campaigning techniques that avoid FECA's strictures. "Issue advertising," in particular, has gained tremendous popularity among candidates. Issue ads present candidates with a unique opportunity to express their political views on television, without directly declaring that they are seeking political office. As long as the advertisement does not expressly endorse the election or defeat of a particular candidate, the cost of the ad is not counted against FECA's expenditure or contribution limits. A substantial portion of soft money raised by both the DNC and RNC in 1996 was spent on issue advertising.

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146. Section 441a of FECA states, in relevant part:

"For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate."


149. Id.

150. Id. In 1996, The RNC ran several issue ads featuring then presidential candidate Bob Dole. Campaign Finance Reform, supra note 7. When asked whether the ads violated FECA, Mr. Dole responded, "[i]t never says that I'm running for President, though I hope that's fairly obvious, since I'm the only one in the pictures." Id.


152. Id. See also Marty Meehan, So Long, Soft Money, The New Democrat, May-June 1997, at 18; Matt Pottinger, Campaign Reform May Hurt Ad Spending: Cable TV Ads, Multichannel News, Mar. 17, 1997, No. 11, Vol. 18, at 108. Although reported figures vary, the DNC and RNC combined are estimated to have spent between $17 and $80 million on issue ads in 1996. See Meehan, supra; Pottinger, supra. This figure does not include undisclosed non-profit soft money expenditures. Id.
Awash in Soft Money

Supreme Court Decisions Involving Federal Campaign Laws

In 1976, the Supreme Court of the United States struck down numerous provisions of FECA in *Buckley v. Valeo*. In particular, the Court held that FECAs limit on expenditures by candidates for their own campaigns violated the First Amendment. The Court clearly distinguished political "contributions" from "expenditures," concluding that expenditures constituted a higher form of political speech, and therefore, deserved greater protection.

In striking down expenditure limits, the *Buckley* Court concluded that a direct correlation exists between the amount of a candidate's expenditures and the quantity and quality of political speech. Importantly, the Court recognized that television advertising, although quite expensive, provides the most effective mode of communication for political expression. The Court opined that spending limits severely curtail candidates' abilities to purchase television time to broadcast their message.

Contributions, on the other hand, are deemed to be merely symbolic expressions, whose size bears little relationship to free speech. The *Buckley* Court upheld FECA's limitations on contributions on two basic grounds: prevention of actual corruption and prevention of the appearance of corruption. The Court stressed the importance of maintaining the integrity of the electoral process, and the public's confidence therein, by minimizing the negative influence of special interest and hard

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155. Id. at 19.
156. Id.
157. Id. The Court stated, "although the Act's limitations on expenditures by campaign organizations and political parties provide substantially greater room for discussion and debate, they would have required restrictions in the scope of a number of past congressional and Presidential campaigns and would operate to constrain campaigning by candidates who raise sums in excess of the spending ceiling." *Id.*
158. *Id.* at 21. The Court offered the following reasoning:

[T]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

*Id.*
money donations. The Court clearly recognized that a candidate's objective decision-making abilities can easily be tainted by donors expecting quid pro quo for large contributions. The Court, cognizant of the social and legal complexities of this issue, further concluded that bribery laws are utterly ineffective against quid pro quo.

The Court held that FECA's restrictions on contributions are constitutional and do not materially undermine the protection afforded to political discourse. In fact, the Court recently suggested that FECA's contribution limits may actually enhance political discourse by forcing candidates and parties to pool resources from many small contributors. By capping contributions, candidates must attract more individual donors who, by virtue of their decision to donate, become active participants in the political process.

The Buckley Court also struck down FECA's provisions limiting "independent" campaign contributions or expenditures made without coordination between the donor and the candidate. The

160. Id.
161. Id. The Court stated:
To the extent that large contributions are given to secure political quid pro quo from current and potential office holders, the integrity of our system of representative government is undermined. Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.

Id.
162. Id. at 27-28. In rejecting the argument that bribery laws were sufficient to deter quid pro quo arrangements, the Court stated, "laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action." Id.
163. Id., 424 U.S. at 29.
165. Id. (quoting S. Rep. No. 93-689, at 7 (1974)). "[A] vigorous party system is vital to American politics . . . . Pooling resources from many small contributors is a legitimate function and an integral part of party politics." Id.
166. Buckley, 424 U.S. at 45. According to the Court, "independent advocacy . . . does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." Id. The Court added:
Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.

Id. at 47.
Court concluded that independent monetary support does not create the same corruption potential as coordinated contributions, even though quid pro quo can be more easily arranged within this setting. The Court concluded that limits can only be applied to independent expenditures or contributions that "in express terms advocate the election or defeat of a clearly identified candidate for federal office." The Court cited the following examples of express advocacy: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." Anything short of express advocacy, according to the Court, is protected free speech, and therefore, not subject to FECA's limits.

In a 1996 case, the Supreme Court reversed the decision of the Court of Appeals for the Tenth Circuit favoring FECA and limiting the independent expenditures of a state political committee. The Colorado Republican Committee ("CRC") purchased radio advertising in early 1986 attacking the Democrats' then-likely senatorial candidate, Timothy Wirth. The Federal Election Commission ("FEC") brought suit against the CRC, alleging that the advertising costs exceeded FECA limitations on expenditures "made in connection with" a campaign. The FEC argued that state committee expenditures were de facto coordinated, because a party and its candidate were one and the same.

The Court concluded that genuine uncoordinated independent expenditures constitute core First Amendment expressions that are not subject, under any circumstances, to federal regulation. Adhering to the corruption standard first pronounced in Buckley, the Court reasoned that the opportunity for corruption posed by unregulated soft money contributions is minimal or nonexistent.
The Court based its decision largely on the presumption that candidates and political parties function independently. Although the Court has consistently affirmed the constitutionality of regulating hard money campaign contributions, it has declined to extend this holding to soft money contributions. The Court's reluctance is due primarily to its naive reliance upon a presumption of independence between candidates and their parties, as well as the difficulty of obtaining tangible evidence of wrongdoing.

III. REGULATING SOFT MONEY CONTRIBUTIONS

Recent revelations regarding fund-raising irregularities in the 1996 presidential election highlight the need for stricter federal regulations on soft money contributions. Such regulations must be imposed to preserve the integrity of our nation's electoral process. Although it would be manifestly unfair and inaccurate to suggest that every large donor gives with the expectation of receiving perks, a great percentage of large donations, whether from corporations or individuals, are made with some expectation of personal gain.¹⁷⁸

Recent trends indicate that although the number of large contributions has dramatically increased, voter turnout has steadily declined. For example, in 1996, voter turnout reached a record low of 48.8% — the lowest turnout since 1924.¹⁷⁹ Although five million more voters were registered in 1996 than in 1992, ten million fewer persons voted in 1996.¹⁸⁰ This disturbing statistic reveals the public's growing apathy and alienation from the political process, as well as cynicism toward the nation's elected officials. Opinion polls indicate that the vast majority of Americans believe our nation's leaders are bought and paid for by special interest groups and are, therefore, no longer accountable to voters.¹⁸¹ This trend must be reversed — not, however, to create fairness or equal access to the political process, but rather to deter political

¹⁷⁸ Nightline, Leon Panetta on the Rules of Political Warfare (ABC television broadcast, Mar. 5, 1997). In an interview with David Gergen, a top advisor to Presidents Nixon, Reagan, Ford and Clinton, Gergen opined that "people who give money, give $100,000 apiece or $50,000 apiece, in order to see a member of Congress from either party or to see the president of the U.S. clearly believe that it's worth paying the price or they wouldn't do it." Id.

¹⁷⁹ Marquez, supra note 11, at A29.

¹⁸⁰ Id.

corruption, foster objective legislative deliberation, and encourage more widespread public participation.\textsuperscript{182}

Opponents to campaign finance reform argue, based on the \textit{Buckley} and \textit{Colorado Republican} cases, that any limits on soft money contributions would be struck down by the Court as unconstitutional.\textsuperscript{183} This argument, however, completely misconstrues Supreme Court holdings and the Court's unwavering commitment to preserving the integrity and underlying principles of the democratic political process. Campaign finance reform focuses on limiting \textit{contributions}, not \textit{expenditures}. Not only has the Court affirmed the legislature's imposition of contribution limits, but it has consistently encouraged such restrictions. Furthermore, the Court has invariably viewed such legislative action as responsible and necessary to combat actual or apparent political corruption. Even if no quid pro quo \textit{actually} occurred during the 1996 election, the \textit{appearance} of pervasive corruption simply cannot be denied. In light of the mounting evidence of corruption, Congress has a clear responsibility to impose further limits on soft money contributions. Any serious attempt at legislative reform must, however, be rooted in certain fundamental legal precepts, democratic traditions, and tenets of human nature.

In a deliberative democracy such as ours, political discourse is healthy and should be encouraged. Reform must both preserve and advance the unrestrained political debate that is integral to a well-informed electorate capable of self-governance. Moreover, as the \textit{Buckley} Court opined, public debate on the qualifications of candidates is essential to our form of government and rooted in the United State Constitution.\textsuperscript{184} The Supreme Court has consistently called for a national commitment to promote robust political debate that simultaneously engenders and signals a healthy

\textsuperscript{182} \textit{Buckley}, 424 U.S. at 48-49. Rejecting the notion that government intervention should promote equal access, the Court stated:

[T]he 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, and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.

\textit{Id.}

\textsuperscript{183} Mason, supra note 148, at A18; \textit{Campaign Finance Reform: Hearings on S. 1219 Before the Senate Comm. on Rules and Admin.}, 105th Cong. (1996) (statement of Joel Gora, Professor of Law, Brooklyn Law School, on behalf of the American Civil Liberties Union).

\textsuperscript{184} \textit{Buckley}, 424 U.S. at 14-15.
As pronounced by the Supreme Court, expenditures for political speech have absolute protection under the First Amendment to the United States Constitution. Therefore, apart from a constitutional amendment, legislative reform is limited solely to addressing contributions made to candidates or political parties. Capping soft money contributions would not offend this fundamental constitutional principle.

Soft money is vital to party-building activities as well as the dissemination of political expression. Without soft money, federal, state, and local political parties would be unable to distribute materials used to educate the electorate regarding the candidates and their qualifications. Despite the need to stamp out political corruption, legislators must carefully weigh the potential adverse effects that completely abolishing soft money would have on our political system and the dissemination of political expression.

By virtue of the symbiotic relationship between a candidate and his or her party, independence-in-fact is neither workable nor possible. The Supreme Court of the United States must recognize this incontrovertible fact, particularly in the wake of the fund-raising scandals of the 1996 presidential election. Without this vital recognition, legislative efforts to limit soft money contributions and to minimize political corruption will ultimately fail.

That large money contributions are much more likely to result in quid pro quo than smaller contributions was borne out during the 1996 presidential election cycle. The verity that large and

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185. Id. In Buckley, the Court renewed its call for a “profound national commitment to the principle that debate on public issues should uninhibited, robust, and wide-open.” Id. at 14 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)). See also Lemon v. Kurtzman, 403 U.S. 602 (1971).

186. Colorado Republican, 116 S. Ct. at 2313. “The independent expression of a political party's views is ‘core’ First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees.” Id.

187. Campaign Finance Reform, supra note 7. Bradley Smith, a law professor and historian of federal campaign law, noted that “when soft money was not allowed in the systems . . . Congress noted a marked drop off in grass roots party campaigning, as the presidential campaigns husbanded their limited ‘hard money’ resources for television ads . . . and state, local, and national parties could not spend money for the traditional bumper stickers, yard signs, slate cards, and other grass roots activities. . . .” Id.

188. Grier, supra note 108, at 1.

unlimited contributions encourage corruption is also evidenced by the very existence of FECA's contribution limits. Regardless of whether large political contributions are made to a party or a candidate, the potential distortion of our political system's deliberative process is substantial and debilitating.

Monetary contributions, as opposed to other direct and indirect forms of support such as contributions of time and energy, have a greater corrupting influence on candidates, due to the candidate's enhanced ability to control monetary donations. Inherent in FECA is the recognition that monetary, rather than non-monetary, contributions have the greatest corrupting influence. Limiting monetary contributions forces candidates to place greater reliance upon volunteers to win elections. This will have a positive influence on campaigns.

Quid pro quo is tacitly understood and need not involve direct coordination between a candidate and potential donor; indirect contributions through a party are sufficient. By pooling resources and working together, candidates and political parties have become increasingly sophisticated and effective in their fund-raising efforts. Sophisticated contributors understand this aspect of politics as well, and many attempt to exploit the candidates and political process through large contributions to the political parties.

Although actual or apparent quid pro quo will never totally be eliminated, efforts must be instituted to minimize it. Limiting large soft money contributions will not end political corruption, as any savvy donor seeking to elicit special favors from a president, vice president, or congressional leader will inexorably find a way to

190. FECA states that the term "contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 2 U.S.C. § 431(8)(B) (1996).
192. Buckley, 424 U.S. at 45. In rejecting limits on independent expenditures, the Buckley Court opined that such measures would:

naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat the campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office.

Id. This pronouncement illustrates the lack of societal interest in legislating against any and all behavior aimed at influencing candidates.
circumvent federal election laws. As a matter of sound policy and practicability, federal laws cannot effectively regulate these activities. Rather, campaign finance reform must focus on preventing and exposing the most egregious and blatant forms of corruption by making quid pro quo risky and difficult for both candidate and donor. This goal can be only be reached through enactment of new federal laws. By capping soft money contributions in the same manner as hard money contributions, the opportunity to coordinate quid pro quo is reduced and its effects mitigated.

A substantial soft money contribution, when solicited by a candidate and combined with that candidate's knowledge of the specifics of that donation, encourages political payback and creates an environment ripe for corruption. Although federal law can seek to limit solicitation and cap contributions, federal law cannot restrict communication between candidates and parties — nor should it. Computerization has facilitated candidate awareness of soft money donations immeasurably, as illustrated by the White House's reliance upon “Big Brother” to coordinate fund-raising activities and to track donations to the DNC. The flow of information regarding donations between candidates and their national, state, and local committees has vastly improved and is certain to continue.

Any attempt to draw a functional distinction between candidates and their parties is paradoxical and futile, particularly with respect to presidential and vice presidential candidates. As a matter of course and political design, the president, vice president, and their national party must communicate regularly and work in tandem to project a unified voice. Consequently, the flow of information between a candidate and his party is necessary to maintain this unified voice and vital to election success. No matter how carefully crafted, a Chinese wall cannot stop information flowing between candidates and political parties, as both focus on fund-raising to achieve the same objective — victory. Candidates and parties routinely share names of donors (including their past and expected

183. Id.

184. A "Chinese wall" is a legal fiction that is used to screen a lawyer involved in an earlier adverse role from other lawyers in the same firm, preventing the entire firm from being disqualified from subsequently representing adverse parties. BLACK'S LAW DICTIONARY 240 (6th ed. 1990). Although generally applied in the context of the legal profession, the relationship between political candidates and the parties has also been treated in this manner for purposes of FECA. Grier, supra note 108, at 1.
contributions) and new strategies and tactics for obtaining more and larger donations. Candidates and their parties are interdependent; this fact cannot be disputed. Consequently, the United States Supreme Court's presumption of independence-in-fact is clearly outmoded and must be reconsidered.

The corrupting forces of soft money particularly affect presidential candidates. The president has unrivaled control over the management of soft money raised by the national party. Further, the president has far greater opportunities to reward bountiful donors than any other nationally-elected official. Unlike congressional leaders, the president has unique authority to issue sweeping executive orders; make key diplomatic, agency, and committee appointments; establish or overturn burdensome regulations; and shape foreign policy. This authority makes the president a prime target for individuals and special interest groups willing to pay top dollar for political favors. Moreover, the unparalleled prestige of the presidency creates a great demand for access, enticing individuals to exploit the relationship by seeking quid pro quo. The mere appearance of a business or personal connection with a president or vice president invariably enhances a donor's own image and interests.195

Candidates and the national parties are mutually dependent, because a political party's success is directly measured by the amount of support it generates and the number of its candidates elected to office. The president plays an integral role in this process and, as the figurehead of the national party, is ultimately held accountable for the party's success or failure. The president is much more effective politically when his party holds a majority of congressional seats. Due to the great expense of conducting congressional races, a president must involve himself in extensive grassroots fund-raising, generating money not only for his own campaign, but for the benefit of his party's congressional candidates as well.

In 1996, President Clinton did not seek out or reward small contributors by inviting them to sleep in the Lincoln Bedroom, attend White House coffees, travel on Air Force One, or appointing them to important government positions. Instead, the President targeted donors willing to make large contributions, many of which exceeded $25,000. Many individuals who came and gave, expecting something in return, allegedly did not leave empty-handed.

The corrupting forces of soft money on congressional candidates are attenuated, due to the large number of legislators. Although there is but one president and one vice president, there are 475 representatives and 100 senators. If the executive and legislative branches are indeed coequal, then dollar-for-dollar, it is substantially more costly and difficult for a donor to meaningfully influence the legislative branch without detection. Moreover, on the whole, congressional candidates have far less control over soft money and possess fewer perks to reward would-be donors. Individual congressional candidates do not bear the same accountability as the president and vice president for the success or failure of the national committees efforts to raise cash for party-building activities. Congressional candidates concern themselves more with raising the hard money used directly in their own campaigns, rather than the party's soft money that only indirectly benefits them. As a proximate result, congressional candidates do not feel the same duty to reward donors to national political committees.

Political parties and their candidates use numerous benchmarks to evaluate their strength during election cycles, including popular support measured by both opinion polls and the number of enlisted campaign volunteers. By far the most important benchmarks, however, are the amount of money received by a party and the ability of the party to generate large donations quickly. Parties can generate funds faster by soliciting unlimited soft money donations than by soliciting limited hard money contributions. As such, soft money has become vastly more important in recent political races.

**CONCLUSION**

The number of individuals seeking to influence the political process has grown dramatically in recent years. There are many plausible explanations for this growth. The dramatic increase in federal regulations over the last several decades has imposed heavy financial burdens on some businesses, while increasing financial opportunities for others. Further, the globalization of the market economy has opened the American market, as well as American politics, to foreign interests. “Special interests” are no longer exclusively American. With the rise in economic globalization, foreign companies and governments now, more than ever before, have a vested interest in influencing the American political
process.\textsuperscript{196}

The corruption that subverted the 1996 federal elections must be controlled. Capping soft money contributions is the first major step in overhauling federal campaign laws and restoring the integrity of our national politics. Several bills have already been introduced in Congress to regulate soft money. Congressional investigations are ongoing and will perhaps uncover the sources of corruption that have adulterated our nation’s most venerated institution — representative democracy. Someday, the full truth may be exposed regarding the extent of one of the most blighted tales of money and guile ever perpetrated upon this country. Judas Iscariot’s atonement came with the price of suicide. How will those who have betrayed the trust of the American people atone?

\textit{Brent A. Fewell}

\textsuperscript{196} See John Daly, \textit{Global Connections, Political Giving in the 1996 Elections by Foreign Agents and U.S. Subsidiaries of Foreign Companies}, Center for Responsive Politics (1997). This report reveals that 128 American subsidiaries of 93 foreign-owned corporations contributed soft money in 1996. \textit{Id.} Of the $12.5 million contributed, over $8 million was soft money. \textit{Id.}