

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
Senator Mitch McConnell, <i>et al.</i> ,)	
	Plaintiffs,)	
v.)	Case No. 02-0582 (CKK, KLH, R JL)
)	All consolidated cases.
Federal Election Commission, <i>et al.</i> ,)	
	Defendants.)	
<hr/>)	

**DECLARATION OF
SENATOR JOHN MCCAIN**

The affiant, having been duly sworn, deposes and says:

1. My name is John McCain. I have spent most of my adult life in public service and many years holding elected office. From 1958 through 1982, I served in the U.S. Navy. In 1982, I was elected to the U.S. House of Representatives. I served two terms in the House before being elected to the Senate in 1986. During my four years as a Congressman, sixteen years as a U.S. Senator, and as a presidential candidate in the 2000 presidential election, I have had extensive opportunities to observe the electoral process and the way political campaigns are financed. During my 20 years as a Member of Congress, I have seen our campaign finance system change substantially and have seen the harmful effects that these changes have had on the American public's opinion of lawmakers. Today, as a result of this system, all of us are tainted by the appearance of corruption. The same was not the case 20 years ago.

2. Almost 100 years ago -- in 1907 -- the United States Congress, under the leadership of President Theodore Roosevelt, enacted a law banning corporations from contributing funds to political campaigns. In 1947, Congress also banned unions from making these donations. In 1974, Congress limited individual contributions to candidates and parties. The Supreme Court has upheld the constitutionality of each of these contribution restrictions. In spite of these laws, however, we have been operating under a campaign finance system where federal candidates and elected officials solicit unlimited soft money contributions from unions, corporations and individuals, and these funds are spent in ways that directly influence the outcome of federal elections. In addition to making such contributions to political parties, corporations and unions are spending their money on sham issue ads that pretend to address issues but in fact have the purpose and effect of influencing federal elections.

3. A large number of highly respected former elected officials agree that the current system of campaign finance is in need of repair and should be fixed now, starting with a ban on soft money. Former presidents George H.W. Bush, Jimmy Carter and Gerald Ford have each called for such a ban, and presidents Carter and Ford have argued that "the honor of public service is being tarnished by a system of campaign funding that has made many Americans lose faith in the concept of public service" See Attachment A. Senator Barry Goldwater, a man known for his independence and integrity, argued for more stringent reforms than the ones enacted by the Reform Act. Also in my own party, former Senate Majority Leader Howard Baker, former Senate Majority Whip Alan Simpson, former Senator and Republican National Committee Chairman Bill Brock, and former Minority House Leader Bob Michael all have advocated a soft money ban.

4. The growth of the soft money loophole has been staggering. In the 1992 election cycle, the two parties raised \$86 million in soft money. This amount roughly tripled in the 1996

election cycle and nearly doubled again in the 2000 election cycle, climbing to a staggering \$495 million. I have heard opponents of reform argue that this flood of soft money does not corrupt or even appear to corrupt politicians or the political process. They argue that soft money contributions are made to political parties, not to candidates, and thus any exchange of favors for contributions is unlikely. My experience in the Senate tells me that this view does not correspond to today's realities.

5. Opponents of reform frequently ask reform proponents to cite examples of "quid pro quo" corruption. I believe, based on my experience, that elected officials do act in particular ways in order to assist large soft money donors and that this skews and shapes the legislative process. As Representative Eric Fingerhut has noted: "The public will often look for the grand-slam example of the influence of these interests. But rarely will you find it. But you can find a million singles . . . regulatory change, banking committee legislation (to cite a committee that I served on) Think of the committee and you can think of the interest group or the company that will have an interest" Martin Schram, *Speaking Freely*, at 93. This statement accurately reflects my experience.

6. At a minimum, large soft money donations purchase an opportunity for the donors to make their case to elected officials, including the President and Congressional leaders, in a way average citizens cannot. Many legislators have been in situations where they would rather fit in an appointment with a soft money contributor than risk losing his or her donation to the party. Legislators of both parties often know who the large soft money contributors to their party are, particularly those legislators who have solicited soft money. Members of Congress interact with donors at frequent fundraising dinners, weekend retreats, cocktail parties, and briefing sessions that are held exclusively for large donors to the party. Donors or their lobbyists often inform a particular Senator that they have made a large donation. When, as a result of a Member's

solicitation, someone makes a significant soft money donation, and then the donor calls the Member a month later and wants to meet, it's very difficult to say no, and few of us do say no.

7. The parties encourage Members of Congress to raise large amounts of soft money to benefit their own and others' re-election. At one recent caucus meeting, a Member of Congress was praised for raising \$1.3 million dollars for the party. James Greenwood, a Republican Congressman from Pennsylvania, recently told the *New York Times* that House leaders consider soft money fundraising prowess in assigning chairmanships and other sought-after jobs. He stated, "I cringe at the notion that the would-be chairs of these committees are engaging in a mad dash to gather as much soft money as possible, then thinking about the potential obligations incurred by asking for and receiving these six-plus-figure contributions from the very entities being regulated by these committees." See Attachment B. I share Mr. Greenwood's concerns. Congressional leaders also use soft money to enforce party discipline and loyalty to their views. At times, when Members seek to support legislation their congressional leaders oppose, they are threatened with the prospect that their leaders will withhold soft money being spent on their behalf.

8. In June 1998, it was widely reported that during the Senate's consideration of a bill entitled the National Tobacco Policy and Youth Smoking Reduction Act (S. 1415), U.S. Senator Mitch McConnell, then head of the National Republican Senatorial Committee, talked at a Republican Senators' policy lunch about political advertising by major tobacco manufacturers. In a complaint it filed on June 29, 1998 with the Federal Election Commission, the Campaign for Tobacco-Free Kids characterized Senator McConnell's communications as follows: "Based upon reports that have been widely published in the news media, only hours before Republican Senators were due to vote for or against cloture on S. 1415, Senator Mitch McConnell informed his colleagues in a closed door meeting that if they voted to kill the tobacco bill, the major

tobacco manufacturers were promising to mount a television ad campaign to support those who voted against the bill." (Tobacco-Free Kids complaint and accompanying press release are available at <http://www.commondreams.org/pressreleases/June98/062998c.htm>). I was present at the meeting and this is an accurate report of what Senator McConnell said. This episode graphically indicates that corporate soft money is widely used to influence legislative votes.

9. Several years ago, Congress passed legislation purportedly deregulating the telecommunications industry in order to encourage competition and lower costs to the consumers. The Senate Commerce Committee, on which I serve, held hearings on the issue. Every industry that would be affected was heard from, and while their interests varied, they had two things in common: first, they hoped to gain entry into their competitors' business while keeping competitors out of theirs; and second, they were generous donors to members of the committee and to the political parties, having given tens of millions of hard and soft money contributions during the time the bill was being developed. During consideration of the bill in the Committee, on the Senate floor, and in the Conference Committee, Members of Congress who were involved in crafting the legislation were inundated with requests for meetings by soft money contributors -- and many Members met with these contributors. While the halls and offices of Congress were overrun with representatives of telecommunications interests that had contributed soft money, the public interest had few lobbyists and no campaign contributions to protect it. The legislation that was finally adopted by Congress reflected the effects of soft money contributions on the political process. The process was essentially hijacked by large soft money contributors and their lobbyists. The legislation, which dealt with issues of interest to big money donors, was poorly conceived and filled with internal inconsistencies designed to appease these competing donors rather than to serve the public interest. Regardless of whether the

interested donors received a "quid pro quo" for their donation, the entire process was skewed by these large contributions and there was clearly an appearance of improper influence.

10. The recent debate over the expensing of stock options provides another example.

When the Senate recently considered the Sarbanes-Oxley corporate governance bill, I attempted to modify the bill to require companies to account for stock options by expensing them on their income statements -- a proposal that has considerable support among preeminent economists and businessmen including Alan Greenspan and Warren Buffett. High tech executives who have donated generously to both the Democratic and Republican parties in recent years opposed the expensing proposal and it was reported that it was they who succeeded in defeating it.

According to newspaper accounts, Silicon Valley venture capitalist John Doerr, who has given \$619,000 to the Democratic Party since 1999, spoke by phone to the Senate Democratic leadership and urged them to oppose my stock options proposal. The Senate Democratic leadership then used a parliamentary procedural device to block a vote on it. Again, the legislative process was, or at least appeared to be, adversely and unfairly influenced by large soft money contributions, demonstrating that large contributors often influence or are perceived to influence not only what goes into a bill, but also what stays out.

11. In yet another example from this year, a bill recently passed by the Senate to get generic drugs to market faster has stalled in the House, reportedly because of pressure exercised by the White House and the Republican House leadership. According to the Congressional Budget Office, the bill could save consumers about \$60 billion over the next ten years. Not surprisingly, the pharmaceutical industry -- which opposes the bill -- has reportedly vastly increased its campaign contributions in order to stall the legislation's passage. While the bill was pending, the NRSC and NRCC held a large gala fundraiser to raise almost \$30 million in largely soft money contributions, a substantial portion from pharmaceutical companies. According to

newspaper reports, among the largest contributors to the gala were GlaxoSmithKline PLC (\$250,000), PhRMA (\$250,000), Pfizer (\$100,000), Eli Lilly & Co. (\$50,000), Bayer AG (\$50,000) and Merck & Co. (\$50,000). While their large and timely contributions do not prove a "quid pro quo," once again the appearance that large soft money contributors have disproportionate influence is overwhelming.

12. Even my colleague Senator McConnell has recently complained about the influence that union contributions to Democratic candidates and officeholders have on policy outcomes. On October 1, 2002, Senator McConnell argued that "the homeland security bill is being held up because some labor unions want to put their special interests ahead of the collective interests of the Nation's security." He then asked:

"So why are our colleagues on the other side advancing the labor union's agenda? Well, let's take a look at this chart. Four of the five major public sector unions who are publicly pushing for the Lieberman bill have showered over 93 percent of their campaign contributions to Democrats. The fifth contributed 87 percent. Here are the top contributors supporting the Lieberman bill: American Federation of State, County, and Municipal Employees contributed 99 percent of their funds to Democrats; American Federation of Teachers, 99 percent; International Association of Fire Fighters, 87 percent; American Federation of Government Employees, 93 percent; and National Treasury Employees Union, 94 percent." See Attachment C.

Senator McConnell's statements imply that contributions do influence policy or lead to the appearance of improper influence. Even if Senator McConnell's statements pertain only to hard money contributions, if relatively smaller hard money donations actually or apparently influence policy, the immense soft money donations that the Reform Act bans are even more likely to actually or apparently influence legislative outcomes.

13. Soft money from corporations, unions, and wealthy individuals is also used to evade the law when political parties run sham issue ads using soft money. The Thompson Committee found rampant abuses by both campaigns in the 1996 elections. Both presidential candidates

raised soft money that was spent by their parties on sham issue ads to support their presidential campaigns. Both presidential campaigns openly assisted their party committees in creating ads that were designed to support their candidates. During the 1999-2000 election cycle, these abuses continued and included congressional races.

14. In 1996, I promoted Senator Bob Dole's bid for President. I communicated with Senator Dole about his campaign, including the political advertisements he was running and those the Republican Party was running on his behalf.

15. One example of an "issue advertisement" the RNC financed in 1996 with soft money is a Bob Dole commercial entitled "The Story," which movingly depicts Senator Dole's recovery from life-threatening wounds he sustained in World War II. On ABC News, Senator Dole described how the RNC was able to disguise the ad as issue advocacy that can be paid for with soft money: the ad "never mentions the word that I'm -- it never says that I'm running for president, though I hope it's fairly obvious, since I'm the only one in the picture!" See Attachment D. As a man of integrity, Senator Dole had a hard time not stating the obvious. His comments demonstrate how the parties circumvent federal contribution and spending limits by running candidate ads under the guise of "issue advocacy."

16. Likewise, in 1996, the AFL-CIO reportedly spent \$35 million on an "issue ad" campaign designed to restore a Democratic majority in the House. It ran ads in 44 Republican districts, spending an average of \$250,000 to \$300,000 on media in the districts of the 32 House Republicans it targeted. According to a *New York Times* article, Steve Rosenthal, political director of the AFL-CIO, provided a frank assessment of how ineffective campaign finance laws have become when he discussed these ads with the *New York Times* and said: "If somebody handed me a magic wand and said there is no election law, I would do exactly what I am doing now." See Attachment E. The National Republican Congressional Committee filed a complaint

with the Federal Election Commission about this AFL-CIO initiative, arguing that "the AFL-CIO is using a huge general treasury to unfairly influence the outcome of elections" by starting a "massive TV advertising campaign." The complaint explains that while the AFL-CIO ads did not specifically use the "magic words" such as "vote for" or "defeat," "any informed American clearly knows that the purpose of these ads is "expressly advocating" defeat of the Republican who is the subject of the ad." See Attachment F. I agree with what the NRCC then said. What the Republican party committee is now saying is completely inconsistent with that and regrettably very wrong and misguided. This too shows the corrupting effect of soft money -- once the NRCC (as well as the other Republican and Democratic national party committees) became more and more dependent on soft money, they appeared willing to say or do almost anything.

17. Additionally, according to a complaint filed by the Kentucky Republican Party, the Kentucky Democratic Party allegedly spent \$300,000 in a last-minute, soft-money television advertising campaign in late 1990 to assist Democratic Senate candidate Harvey Sloane, whose campaign had nearly exhausted its financial resources. The Kentucky Republican Party complaint states that a "tape of the ads themselves demonstrate conclusively that the purpose of this activity is to influence a federal election" in assisting Mr. Sloane against his opponent, Senator Mitch McConnell. Again, I agree with the position the Kentucky Republican Party then took. Senator McConnell knew of the complaint, telling a reporter that it was "going to be a landmark case," and expressing his "concern[] that soft money, which in the past has been more prevalent in presidential elections, is 'seeping into Congressional races.'" See Attachment G.

18. During my 1998 Senate reelection campaign, the tobacco industry ran supposed "issue ads." These ads purported to address comprehensive tobacco legislation, an issue of national significance. In fact, however, they appear to have been run to influence my 1998

reelection campaign in Arizona, and a rumored Presidential campaign by me in 2000, as they were shown only in Arizona, Iowa and New Hampshire; that is, my home state, and the first two states to be contested in the Republican presidential primary.

19. Federal election law bars unions and corporations from making direct contributions to candidates and from making expenditures for communications that influence federal elections. However, by sponsoring their own putative "issue ads," they circumvent this law. The electioneering communications provision would restore the original intent of the law: to keep a tidal wave of union and corporate money out of federal elections.

20. Opponents of reform argue that the parties are being treated unfairly and will be irreparably damaged by the Reform Act. I personally believe that the parties were stronger and more vibrant when I first ran for Congress in 1982, when they relied on barbeques and volunteers as a way to get ordinary citizens involved in the political process. Due to the 1990s' wave of soft money, the parties now rely in significant part on paid consultants and TV ads instead of volunteers and activists, all with little success in strengthening parties. In Arizona, each of the major parties lost over 2% of their registered voters in the last election alone. Only the number of voters registered independent has risen, from 11% ten years ago, to more than 20% today. See Attachment H. Additionally, it is difficult for me to understand why voter activities cannot be financed with the immense amounts of hard money the political parties raise. In the 2000 election cycle, the two major parties nationally raised almost \$750 million in hard money. To date, in the 2002 election cycle, the parties have already raised 12% more hard money than they had at the same point in 2000. In my view, the Reform Act will cause the parties to be more responsive to their grass roots than they have been in recent times.

21. Soft money is often raised directly by federal candidates and officeholders, and the largest amounts are often raised by the President, Vice President and Congressional party

leaders. National party officials also often raise these funds, in large part by promising and providing donors access to federal officeholders and candidates. Soft money contributions are also given directly by donors to state parties to be used to influence federal elections. See Attachment I. An appearance of impropriety arises when soft money donors seek, and party officials and federal officeholders and candidates provide, access to federal officeholders and candidates for these large donors. Given the control that federal officials exercise over national party committees, and the close ties between those committees and federal officials, the risk of corruption or its appearance from large contributions to those national party committees exists regardless of who raises the money or what it is used for. Similarly, given the close ties between state parties on the one hand and national parties and federal officials on the other hand, soft money contributions to state parties that are spent on federal election activities create a risk and appearance of corruption. By banning soft money for national parties, and also for national party officials acting on behalf of their parties, the new law provides a clean break approach for the national parties that have been a core part of the soft money problem. Under the law, national party officials are not covered by the ban if they are not acting on behalf of their national parties.

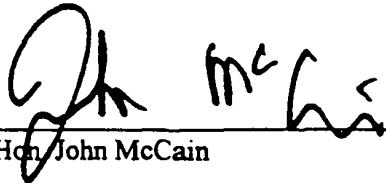
22. While opponents of this bill sometimes argue that soft money helps challengers, in my experience that is not the case. The parties generally focus their soft money spending first on taking care of the parties' current officeholders and on the candidates running for open seats and after that on the challengers running against incumbents.

23. The entire function and history of political parties in our system is to get their candidates elected, and that is particularly true after the primary campaign has ended and the party's candidate has been selected. At that point in time, political parties and their candidates generally communicate and coordinate on a regular basis on a variety of topics such as fundraising, strategy, opposition research, polling data, advertisements and message, and voter

mobilization. The idea that a party could make both “coordinated” and “independent” expenditures once the party has nominated a candidate, is not sensible.

24. While the relationship between candidates and political parties is uniquely intertwined, there have also been situations where federal candidates and political parties coordinate with outside groups. This coordination can occur in many ways -- sometimes directly, but often indirectly. For example, political consultants who produce sham issue ads on behalf of labor unions or business groups also can work for federal candidates for office in the same districts where the issue ads are run. These consultants can function as conduits of information between advocacy groups, the parties, and federal candidates -- sharing polling data, opposition research and message advice among all three. In addition, staff from advocacy groups may sometimes leave to join campaigns of candidates for federal office, providing yet another back channel of information between the advocacy groups and candidates. Finally, the political parties may also funnel information from candidates to advocacy groups as the Democratic Party did for labor unions and Democratic candidates in the 1996 and 2000 cycles, and the Republican Party did for business groups and Republican candidates in the 1996 and 2000 cycles. *See Attachment J.*

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.


Hon. John McCain

Executed this 4 day of October, 2002.