IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH MCCONNELL, et al., Plaintiffs, v. FEDERAL ELECTION COMMISSION, et al., Defendants.	Case No. 02-0582 (CKK, KHL, RJL) **All Consolidated Cases**

MOTION OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Committee for Economic Development (CED) respectfully submits this motion for leave to file the accompanying brief amicus curiae in support of defendants. CED proposes to address only those provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA) that prohibit soft money solicitations and contributions in connection with federal elections. CED believes these provisions should be sustained.

CED, a nonprofit, nonpartisan, and nonpolitical research and policy organization of approximately 250 business leaders and educators, is well qualified to assist the Court in its consideration of the legal and public policy issues implicated by BCRA's restriction of soft money. CED has carefully studied the funding of federal elections and has long been an outspoken voice in favor of campaign finance reform, including BCRA's prohibition of soft money solicitations and contributions.

CED trustees can attest from personal experience to the detrimental impact of coercive soft money solicitations on businesses that feel compelled to contribute to protect their commercial interests. In the accompanying brief, CED provides its

perspective on the coercive soft money solicitation system. CED also discusses the commercially pragmatic, rather than ideological, nature of soft money contributions, and the actual and apparent corrupting effect of soft money on business, government, and on the integrity of the marketplace. As an organization that is primarily made up of business leaders who object to a fundraising system that they have come to believe is fundamentally corrupt, CED has a significant stake in the outcome of this litigation.

Counsel for CED notified counsel for all parties to this action of this motion by email on October 30, 2002, and requested an indication of whether they would oppose it by November 4. No objection has been received. CED therefore respectfully requests that the Court grant it permission to appear as an amicus and to file the accompanying brief.

Respectfully submitted,

By: _____

Peter D. Isakoff
(D.C. Bar No. 358419)
WEIL, GOTSHAL & MANGES LLP
1501 K Street, N.W., Suite 100
Washington, D.C. 20005
(202) 682-7000

and

Steven Alan Reiss
R. Bruce Rich
Josh A. Krevitt
Jonathan Bloom
Sascha N. Rand
Randi W. Singer
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Attorneys for Amicus Curiae
Committee for Economic Development

Dated: November 6, 2002

ORDER

NOW, THIS _____ day of _____, 2002,

IT IS ORDERED that the motion of the Committee for Economic Development (CED) for leave to file a brief amicus curiae is GRANTED, and that CED may file and serve a brief amicus curiae in support of defendants.

KAREN LECRAFT HENDERSON
UNITED STATES DISTRICT COURT JUDGE

COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT COURT JUDGE

RICHARD J. LEON
UNITED STATES DISTRICT COURT JUDGE

02-0582

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH MCCONNELL, et al.,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION, et al.,

Defendants.

BRIEF AMICUS CURIAE OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT IN SUPPORT OF DEFENDANTS

Peter D. Isakoff
WEIL, GOTSHAL & MANGES LLP
1501 K Street, N.W., Suite 100
Washington, D.C. 20005
(202) 682-7000

and

Steven Alan Reiss
R. Bruce Rich
Josh A. Krevitt
Jonathan Bloom
Sascha N. Rand
Randi W. Singer
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Attorneys for Amicus Curiae

TABLE OF CONTENTS

Page

INTRODUCTION AND INTEREST OF THE AMICUS 1

ARGUMENT 3

I. SOFT MONEY CONTRIBUTIONS ARE EXTRACTED FROM CORPORATIONS FEARFUL OF THE ADVERSE CONSEQUENCES OF NOT GIVING 3

A. Corporate Soft Money Contributions Are Made to Secure Preferred Access to and Influence with Government Officials 4

B. Soft Money Contributions Are Made to Avert Perceived Retribution 7

C. Actual and Perceived Corruption Engendered by Soft Money Contributions Has Eroded Confidence in Business and Government 10

II. BCRA'S PROHIBITION ON SOFT MONEY SOLICITATIONS AND CONTRIBUTIONS ADVANCES COMPELLING GOVERNMENT INTERESTS AND DOES NOT SIGNIFICANTLY ABRIDGE FIRST AMENDMENT RIGHTS 13

A. The Government Has a Compelling Interest in Protecting the Political Process from Actual and Apparent Corruption 13

B. Corporate Soft Money Does Not Reflect the Ideas of Its Contributors 15

C. Corporate Soft Money Contributions Distort the Marketplace of Ideas 18

D. A Ban on Soft Money Does Not Offend the First Amendment Right of Association 20

CONCLUSION 21

TABLE OF AUTHORITIES

FEDERAL CASES

Abood v. Detroit Board of Ed., 431 U.S. 209 (1977) 16-17

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) 14-15, 18

Buckley v. Valeo, 424 U.S. 1 (1976) ..... passim

Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431 (2001) 17

Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986) 14, 15, 18-19

Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197 (1982) 15, 19

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 14

Kusper v. Pontikes, 414 U.S. 51 (1973) 20

Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991) 17

NAACP v. Alabama, 357 U.S. 449 (1958) 20

Pipefitters Local Union No. 562 v. United States, 407 U.S. 385 (1972) 19

United States v. Congress of Indus. Orgs., 335 U.S. 106 (1948) 19

United States v. United Foods, Inc., 533 U.S. 405 (2001) 17

CONGRESSIONAL MATERIALS

147 Cong. Rec. H3966 12

147 Cong. Rec. S2434 10

147 Cong. Rec. S2446 12

147 Cong. Rec. S3248 6

Federal Corrupt Practices Act, 43 Stat. 1070 (1925) 14

Federal Election Campaign Act, Pub. L. No. 93-443, 88 Stat. 1263 (1974) 1, 14

Hatch Act, 54 Stat. 767 (1940) 14

Tillman Act, 34 Stat. 864 (1907) 14

OTHER AUTHORITIES

Warren E. Buffett, The Billionaire's Buyout Plan, N.Y. Times, Sept. 10, 2000, at A17 6

The Center for Responsive Politics, Soft Money to National Parties 9

Francis X. Cline, Most Doubt a Resolve to Change Campaign Financing, Poll Finds, N.Y. Times, Apr. 8, 1997, at A1 12

Committee for Economic Development, Investing in the People's Business: A Business Proposal for Campaign Finance Reform (1999) ..... passim

Edward A. Kangas, Soft Money and Hard Bargains, N.Y. Times, Oct. 22, 1999, at A27 8

Mark Mellman and Richard Wirthin, Research of Findings of a Telephone Study Among 1300 Adult Americans (Sept. 23, 2002) 11

Press Release, Campaign for America, Testimony of Cheryl Perrin, Executive Director, Campaign for America, House Administration Committee (July 22, 1999) 13

Press Release, CED, Senior Business Executives Back Campaign Finance Reform (Oct. 18, 2000) 7

Press Release, Public Campaign, New National Survey Shows Robust Support for "Clean Money" (Apr. 30, 2000) 11-12

Jonathan D. Salant, Businesses Tire of Soft Money Contributions, Associated Press, Nov. 23, 1999 16

Burt Solomon, Forever Unclean, The Nat'l J., Mar. 18, 2000, at 858 8

INTRODUCTION AND INTEREST OF THE AMICUS

This brief amicus curiae in support of defendants is submitted on behalf of the Committee for Economic Development (CED), a nonprofit, nonpartisan, and nonpolitical research and policy organization of approximately 250 business leaders and educators. CED is a trustee-directed organization. The trustees set CED's research agenda, develop policy recommendations, and speak out for their adoption. A list of trustees is annexed as Exhibit A hereto. CED has long been an outspoken voice in favor of campaign finance reform — particularly the need to prohibit unregulated soft money — and argued vigorously for passage of the reforms in the Bipartisan Campaign Reform Act of 2002 (BCRA).[1]

Herein, CED urges the Court to sustain BCRA's prohibition on soft money solicitations and contributions in connection with federal elections. By prohibiting national parties from raising, receiving, or spending funds that are not subject to the amount limitations imposed by the Federal Election Campaign Act (FECA), Pub. L. No. 93-443, 88 Stat. 1263 (1974), BCRA closes the soft money loophole through which corporations and other large donors have been goaded into evading FECA's hard money limits.

As CED's trustees are all too aware, businesses have been making ever larger soft money contributions with ever increasing frequency for one of two reasons: either to secure tangible benefits in the form of political access and influence or to maintain access and avoid retribution in the form of adverse governmental action on issues that directly affect solicited

---

[1] As set forth more fully in a 1999 report developed by a group of business, academic, and political leaders, CED, after careful study, concluded that the soft money system had become dysfunctional and corrupt in a manner that tarnished solicitor and donor alike, and, more broadly, impaired the health of our democracy. See Committee for Economic Development, Investing in the People's Business: A Business Proposal for Campaign Finance Reform (1999) (the "CED Report") (Exhibit 1 to the Declaration of Charles E.M. Kolb). By 2001, this report was endorsed by over 300 executives.

businesses. Put differently, these contributions, typically made in response to high-pressure solicitation by Members of Congress, party leaders, and others, are motivated by stark political pragmatism, not by ideological support for either party or their candidates. Because the stakes are potentially so high for solicited businesses, the reality is that soft money payments are volitional only in the narrowest sense of that term. In truth, they are commonly made out of fear of the consequences of refusing to give or refusing to give enough.

As longstanding leaders of business and industry, CED's trustees are deeply concerned over the distortion of the political process and of the free-market system itself that result from the acquiescence of business in the coercive soft money system. As it exists, the soft money system promotes the perception and reality of rampant influence peddling by both major parties and has given rise to the widespread belief that Congress routinely acts for the benefit of large corporate contributors, rather than on the merits of issues presented and in the best interest of its constituents. This taint harms public confidence in business as well as government, as the public perceives large corporations to have secured unfair advantages and to have purchased a disproportionate influence on the outcome of elections and operation of government. Moreover, businesses are harmed directly to the extent that politically motivated policy decisions introduce an element of arbitrariness into the functioning of the market, and to the extent obligatory soft money payments have become yet another, ever increasing cost of doing business.

This brief articulates CED's fervent belief that BCRA's soft money prohibition advances the compelling government interest in cleansing the political process of actual or perceived corruption and freeing businesses to compete fairly in the marketplace. It accomplishes these objectives without appreciably abridging expressive and associational interests protected by the First Amendment.

Section I discusses the reasons businesses feel forced to contribute soft money and the detrimental impact of the soft money system on public perception of the role of business in the political process and on the integrity of the political process itself.

Section II explains the compelling government interests in staunching the corrupting influence of soft money on the political system and on the marketplace — interests which have undergirded restrictions on corporate political contributions dating back to 1907. It then demonstrates that restricting soft money contributions does not meaningfully impair political speech, as corporate soft money is not political expression but, rather, a crass instrument with which to secure or maintain commercial advantage. As such, soft money has, at best, an attenuated relationship to the speech and associational interests protected by the First Amendment.

The compelling governmental interests advanced by BCRA's soft money prohibition, and the minimal weight to which any countervailing constitutional interests are entitled, should compel this Court to sustain the soft money prohibition.

ARGUMENT

I. SOFT MONEY CONTRIBUTIONS ARE EXTRACTED FROM CORPORATIONS FEARFUL OF THE ADVERSE CONSEQUENCES OF NOT GIVING

CED's trustees, who are past and present chairmen, presidents, senior executives of major American corporations and university presidents, have direct experience with being solicited by party leaders and elected officials for ever increasing corporate soft money contributions. As such, they have "developed a particularized understanding of how the soft money fundraising system works and how it impacts the integrity of our elected officials, the

integrity of American business, and more generally the health of our democracy." Declaration of Gerald Greenwald at ¶ 5 ("Greenwald Decl.").[2]

As set forth in the Greenwald Declaration, businesses generally make soft money contributions for one of two reasons: (1) to secure preferred access to and influence with legislators and other government officials, and/or (2) to maintain this relationship and avoid being disadvantaged as against competitors that donate. See Greenwald Decl. at ¶¶ 9-10; see also Declaration of Senator Warren Rudman at ¶ 5 (same). It is, in fact, precisely because large soft money contributors understand that soft money contributions secure or at least maintain preferred access that many companies give substantial contributions to both the Democratic and Republican parties — a telling fact that exposes the cynically pragmatic, rather than ideological, nature of soft money contributions.

A. Corporate Soft Money Contributions Are Made to Secure Preferred Access to and Influence with Government Officials

CED believes that proper understanding of the importance of removing soft money contributions from the political process requires an understanding of the opportunistic nature of both the soliciting and donating of soft money — a fundamentally commercial process in which businesses feel compelled to participate.[3] The success of the two major parties in soliciting soft money is directly attributable to the magnitude of the commercial interests

---

[2] Gerald Greenwald, Chairman Emeritus of United Airlines, serves on the Board of Trustees of CED. See Greenwald Decl. at 1. From 1994 through his retirement in 2000, Mr. Greenwald served as Chairman and CEO of United Airlines. Prior to that, he was Vice-Chairman of the Chrysler Corporation and worked at Ford Motor Company.

[3] Over the past several election cycles, as the range of activities funded with soft money has increased, party organizations have engaged in more aggressive efforts to raise soft money, seeking larger amounts from donors and pursuing new contributors, especially among members of the business community. See CED Report at 27.

corporations perceive to be advanced by contributing in response to such solicitations. Although soft money checks are written to political parties, soft money contributors know that those checks "open the doors to the offices of individual and important Members of Congress and the Administration" and give contributors a chance to argue for their position and against alternative positions on a particular government policy. Greenwald Decl. at ¶ 12. As Mr. Greenwald explains:

> . That access runs the gamut from attendance at events where they have opportunities to present points of view informally to lawmakers to direct, private meetings in an official's office to discuss pending legislation or a government regulation that affects the company or union.

Id. at ¶ 10. See also Declaration of Representative Christopher Shays ("Shays Decl.") at ¶ 9 ("Soft money donations, particularly corporate and union donations, buy access and thereby make it easier for large donors to get their points across to influential Members of Congress.").

The national parties rely on the access they can provide to federal officeholders and on the direct influence of federal officeholders and candidates on the interests of potential donors to solicit large sums of soft money. National party leaders often ask executive branch officials and congressional leaders to appear at soft money fundraisers, attend weekend retreats with large soft money donors, participate in party-sponsored policy briefings, and play a role in other events. See CED Report at 27.

Solicitations from party officials, as opposed to elected officials, have the same effect, because companies know that party officials "inform elected officials about who has given significant amounts; and party officials often promise access to elected officials" to those who give large soft money contributions. Greenwald Decl. at ¶ 11. As former United Airlines CEO and CED Trustee Greenwald bluntly states: "[B]usiness leaders believe — based on experience and with good reason — that such access gives them an opportunity to shape and

affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties." Id. at ¶ 12.[4]

Members of Congress also have acknowledged the crude "access for sale" character that the soft money system has acquired. For instance, Senator Carl Levin has stated:

> The parties advertise access. It's blatant. Both parties do it. Openly. Invitation after invitation sells access for large contributions. From 1996: For a $50,000 contribution or for raising $100,000 a contributors gets: Two events with the President. Two events with the Vice President . . . Monthly policy briefings with key administration officials and members of Congress. . . . One invitation in 1997 to a Senatorial Campaign Committee event promised that large contributors would be offered "plenty of opportunities to share [their] personal ideas and vision with" some of the top leaders and senators.

147 Cong. Rec. S3248 (Apr. 2, 2001).

It is not surprising that the largest soft money contributors tend to be companies in industries that are heavily regulated by the federal government or those whose profits can be dramatically affected by government policy. These donors are solicited by Members of Congress who sit on committees that consider matters directly affecting the financial health or operations of the companies being solicited. See Greenwald Decl. at ¶ 8; CED Report at 25. Representative Shays (R-Conn.) notes that "the large soft money contributions most [M]embers of Congress raise to meet their committee chairmanship or ranking member obligations come from the corporations and unions who are regulated by those very committees." Shays Decl. at ¶ 10. This is a manifestly unhealthy state of affairs.

This aspect of the soft money system was documented in a poll conducted by the Tarrance Group for CED. The poll found that seventy-five percent of business leaders believe

---

[4] In an op-ed in The New York Times, Warren Buffett recounted a fund-raising Senator once jokingly telling him, "Warren, contribute $10 million and you can get the colors of the American flag changed." Warren E. Buffett, The Billionaire's Buyout Plan, N.Y. Times, Sept. 10, 2000, at A17.

that political contributions give them an advantage in the shaping of legislation while another twenty-three percent consider soft money a currency to be used "to buy access to influence the legislative process." Press Release, CED, Senior Business Executives Back Campaign Finance Reform (Oct. 18, 2000).

B. Soft Money Contributions Are Made to Avert Perceived Retribution

Corporate executives increasingly have felt coerced into giving ever-escalating soft money contributions with ever increasing frequency by subtle threats of retribution that accompany soft money solicitations. As Mr. Greenwald has noted, for many businesses executives "experience has taught that the consequences of failing to contribute (or failing to contribute enough) may be very negative." Greenwald Decl. at ¶ 9.

Corporations believe that elected officials and party leaders may shun or disfavor them and that "competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company." Greenwald Decl. at ¶ 9. For example, the Tarrance Group poll of 300 senior executives of firms that had annual revenues of approximately $500 million or more, conducted for CED in the Fall of 2000, found that fifty-one percent of business executives feared adverse legislative consequences to their companies or their industries if they turned down requests for campaign contributions from high-ranking political leaders and/or political operatives, and seventy-four percent of the executives polled felt that pressure is placed on business leaders to make large political donations. See Press Release, CED, supra.

This perceived threat of retribution underpinning the political parties' soft money solicitations was, ironically, underscored by the reaction of the chairman of one of the political party committees to the issuance of the CED Report in 1999. As set forth in the Declaration of Charles E.M. Kolb, President of CED ("Kolb Decl."), when the CED Report was issued on

March 18, 1999, Senator Mitch McConnell, Chairman of the National Republican Senatorial Committee (NRSC) and a plaintiff in these consolidated actions, sent letters to various CED trustees declaring his "concern that a serious error has occurred [that CED prominently identifies you as a backer of its legislative plan], which may cause some embarrassment to you if it is not immediately corrected." Kolb Decl. at ¶ 6 and Exhibit 2 thereto. After CED replied to Senator McConnell, setting forth the basis for the report's conclusions, the NRSC chairman sent follow-up letters to various CED trustees expressing his astonishment and "great concern" that these well-known business leaders would concur with CED's position on campaign finance reform. Id. at ¶ 8. Senator McConnell added a personalized handwritten note urging the corporate executive CED trustees to publicly withdraw from CED. Id. and Exhibit 4 thereto. As Mr. Kolb states in his declaration, "Several of these executives, who worked for companies that had significant issues pending before Congress at the time, considered the letters a thinly-veiled attempt to intimidate them with the implied message: Resign and keep quiet, or don't count on doing business with Congress." Id.[5] This type of threat is a pervasive aspect of soft money solicitation. A well publicized article quotes a lobbyist for a Fortune 500 company as saying that the reason his company contributed soft money was "[b]asically, protection. . . . If you decline to give, you're taking a risk of legislative retribution. . . . Companies are scared that on some critical issue, they'll get hosed." Burt Solomon, Forever Unclean, The Nat'l J., Mar. 18, 2000, at 858.

The pervasive practice of giving soft money to both sides of the aisle exposes the fundamentally self-protective motives that drive corporate soft money contributions. According

[5] As Edward Kangas, the former chairman of the global board of directors of Deloitte Touche Tohmatsu and the campaign finance reform co-chairman of CED, noted in a newspaper editorial, "The threat may be veiled, but the message is clear: failing to donate could hurt your company." Edward A. Kangas, Soft Money and Hard Bargains, N.Y. Times, Oct. 22, 1999, at A27.

to data released by the FEC on September 9, 2002, ninety-two donors gave soft money contributions totaling $500,000 or more up to that point in the 2001-2002 election cycle. Nearly two-thirds of those donors contributed to both Democratic and Republican national party committees. During that same period, a total of 158 donors gave soft money contributions of $50,000 or more to both Democrats and Republicans. See The Center for Responsive Politics, Soft Money to National Parties, at http://www.opensecrets.org/softmoney/softtop.asp (visited Oct. 26, 2002). See also Declaration of Wade Randlett at ¶¶ 11, 12 ("Giving lots of soft money to both sides is the right way to go from the most pragmatic perspective. . . . If your interests are subject to anger from the other side of the aisle, you need to fear that you may suffer a penalty if you don't give."); Declaration of Charles M. Geschke at ¶ 10 (donors who give large amounts of soft money to both parties "may feel that influence with one party is not sufficient to achieve their financial or policy goals, especially now that power in Congress is pretty evenly balanced"). This practice of contributing to both parties simultaneously belies any claim that contributions are ideologically, as opposed to pragmatically, driven.

The fundamentally corrupt nature of this system led industry leaders like General Motors and AlliedSignal and dozens of corporate executives publicly to declare that they would no longer make soft money contributions. See CED Report at 33-34. But these voluntary efforts, however laudable and courageous, cannot solve the problem of soft money. For every large corporation that may be willing to draw the line, there exist dozens of others, perhaps more vulnerable, which will continue to "give large soft money contributions to political parties — sometimes to both political parties — because they are afraid to unilaterally disarm." Greenwald Decl. at ¶ 12. The access afforded by soft money contributions is a competitive, as well as a

political, reality. How many corporations will have the fortitude not to ante up at the soft money table knowing that their competitors are still in the game?

C. Actual and Perceived Corruption Engendered by Soft Money Contributions Has Eroded Confidence in Business and Government

The perversion of the soft money system into a widely acknowledged "pay to play" scheme by both major parties understandably has engendered a pervasive erosion of the public's confidence in the integrity of business and has greatly contributed to the cynicism and skepticism with which the public views businesses' involvement in the political process. As CED stated in its 1999 Report, "Given the size and source of most soft money contributions, the public cannot help but believe that these donors enjoy special influence and receive special favors." CED Report at 27.

It is clear that the public perception that policy decisions are not made solely on the merits but, rather, are warped by a sense of obligation to the donors of large, unregulated contributions has harmed the public trust in the integrity of their government. As Senator John McCain (R-Ariz.) has observed:

> In 1961, 76% of Americans said yes to the question, "Do you trust your government to do the right thing?" This year, only 19% of Americans still believed that. Many events have occurred in the last 30 years to fuel their distrust. Assassinations, Vietnam, Watergate, and many subsequent public scandals have squandered the public's faith in us, and have led more and more Americans from even taking responsibility for our election. But surely frequent campaign finance scandals and their real or assumed connection to misfeasance by public officials are a major part of the problem.

147 Cong. Rec. S2434 (Mar. 19, 2001). See also Declaration of Alan K. Simpson at ¶ 14 ("Both during and after my service in the Senate, I have seen that citizens of both parties are as cynical about government as they have ever been because of the corrupting effects of unlimited soft money donations.").

A plethora of polls and studies demonstrates the extent of the damage wrought by the incessant solicitation and giving of soft money to the public's perception of the integrity of the political process. As the CED Report stated in 1999 — before the business scandals of the last two years: "The vast majority of citizens feel that money threatens the basic fairness and integrity of our political system. . . . Fully two-thirds of the public think that their own representative in Congress would listen to the views of outsiders who made large political contributions before a constituent's views." Id. at 1 (internal quotations omitted).

The CED Report's summary of the dismaying downward spiral of public perception of the political process is consistent with a recent poll conducted by Democratic pollster Mark Mellman and Republican pollster Richard Wirthin for Democracy 21. The principal finding of the study was that the American public believes that the views of large contributors to parties "improperly influence policy and are given undue weight in determining policy outcomes." The poll found that eight in ten Americans believe that, at least sometimes, members of Congress vote based on the wishes of big contributors to their political parties. Nearly half of those polled said this happens often. In addition, the poll found that more than three in four Americans believe that big contributors to political parties have at least some impact on decisions made by the federal government, and more than half of those polled think that big contributors have a great deal of impact. See Mark Mellman and Richard Wirthin, Research of Findings of a Telephone Study Among 1300 Adult Americans (Sept. 23, 2002).[6]

---

[6] Similar results were found in a poll conducted by The New York Times and CBS News in April 1997. Seventy-five percent of Americans said "yes" to the question "In general, do many public officials make or change policy decisions as a result of money they receive from major contributors." Only 14 percent answered "no." See Francis X. Cline, Most Doubt a Resolve to Change Campaign Financing, Poll Finds, N.Y. Times, Apr. 8, 1997, at A1; see also Press Release, Public Campaign, New National Survey Shows Robust Support For "Clean Money" (Apr. 3, 2000).

Members of Congress have voiced the concerns of the American public about the corrupting influence of large contributions on the political system. In 1999, Senator Russ Feingold (D-Wisc.) highlighted the extent to which soft money has perverted the legislative process:

> The appearance of corruption is rampant in our system, and it touches virtually every issue that comes before us. . . . But today, when we weigh the pros and cons of legislation, many people think we also weigh the size of the contributions we got from interests on both sides of the issues. And when those contributions can be a million dollars, or even more, it seems obvious to most people that we would reward our biggest donors.

147 Cong. Rec. S2446 (Mar. 19, 2001).[7]

This distrust and cynicism also threatens to have a deep and longstanding impact on the public's trust in the integrity of corporate management and on the economy. As the authors of the CED Report stated:

> As business leaders, we are also concerned about the effects of the campaign finance system on the economy and business. Americans identify "special interest" principally with corporations. A vibrant economy and well functioning business system will not remain viable in an environment of real or perceived corruption, which will corrode confidence in government and business. If public policy decisions are made — or appear to be made — on the basis of political contributions, not only will policy be suspect, but its uncertain and arbitrary character will make business planning less effective and the economy less productive. In addition, the pressures on business to contribute to campaigns because their competitors do so will increase. We wish to compete in the marketplace, not in the political arena.[8]

---

[7] Similarly, Representative Lloyd Doggett (D-Tex.) observed that "the corrupting influence of money on public policy is evident in [the] House every day. It is evident not only as a principal concern that arises here on vote after vote, significantly influenced by who, gave how much, to whom, when, but it is also particularly evident in the silence on critical issues of public policy, on what is never discussed." 147 Cong. Rec. H3966 (July 12, 2001).

[8] See also Press Release, Campaign for America, Testimony of Cheryl Perrin, Executive Director, Campaign for America, House Administration Committee (July 22, 1999) ("[W]hile it is naïve to think that the government won't play a role in shaping the market, the soft money

CED Report at 1. CED Trustee Greenwald amplified these concerns:

> It goes without saying that maintaining governmental integrity is critically important to our democracy and our citizens' faith in their government. It is also important for American[s] to have faith in the integrity of their business institutions and labor unions as well. The recent spate of deplorable corporate scandals has broadly demoralized America and this is having widespread and adverse political and economic consequences. It is not good for America when American citizens believe their business leaders are corrupt, and one element of that regrettably widespread perception is the appearance that business buys government decisions by making large political contributions.

Greenwald Declaration at ¶ 14.

At this time of widespread shaken confidence in American corporations, restricting soft money is necessary to help restore public confidence in the integrity of business and government and in the fairness of the marketplace.

II. BCRA'S PROHIBITION ON SOFT MONEY SOLICITATIONS AND CONTRIBUTIONS ADVANCES COMPELLING GOVERNMENT INTERESTS AND DOES NOT SIGNIFICANTLY ABRIDGE FIRST AMENDMENT RIGHTS

A. The Government Has a Compelling Interest in Protecting the Political Process from Actual and Apparent Corruption

The Supreme Court has long recognized that large political contributions lead to actual and perceived corruption of the political process.

> To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy 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.

Buckley v. Valeo, 424 U.S. 1, 26-27 (1976).

---

system encourages companies to allow the government to intervene in the market in an arbitrary and unfair way.").

Protecting the integrity of the political process and guarding against corruption in government are compelling government interests. "Preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance. Preservation of the individual citizen's confidence in government is equally important." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 788-89 (1978).

Moreover, the government has a compelling interest in safeguarding against the appearance of corruption that that is created by large contributions. As the Court stated in Buckley, "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." 424 U.S. at 30.

The same concerns have motivated the "long history of regulation of corporate political activity." Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 256 (1986). The Tillman Act, 34 Stat. 864 (1907), which banned the expenditure of corporate treasury funds in connection with federal elections, was followed by the Federal Corrupt Practices Act, 43 Stat. 1070 (1925), the Hatch Act, 54 Stat. 767 (1940), and FECA, 88 Stat. 1264 (1974), among others, each of which elaborated upon the restrictions on corporate political activity.

The Supreme Court has upheld restrictions on corporate election activity on the ground that such restrictions advance the compelling government interest in preventing actual or perceived corruption. In Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990), the Court upheld a state statute prohibiting corporations from making independent expenditures in elections on the ground that the government had a compelling interest in preventing corruption or

the appearance of corruption in politics by reducing the threat that huge corporate wealth, amassed through favorable state laws, would be used to influence elections unfairly. In Federal Election Commission v. National Right to Work Committee, 459 U.S. 197 (1982), the Court held that a federal statute restricting the solicitation of contributions to a corporation's segregated political fund did not unduly burden the corporation's associational rights on the ground that the government has a compelling interest in preventing corporations from incurring political debts, in protecting individuals who have paid money into a corporation from having the money spent to support causes they oppose, and in preventing erosion of public confidence in the political process through the appearance of corruption.[9]

When viewed against this backdrop, it is evident that BCRA's prohibition of soft money, aimed at remedying the disproportionate influence of large contributions — particularly those by corporations — on the operation of the federal government, rests on a solid foundation of judicial precedents which have repeatedly vindicated legislative efforts to prevent unregulated money from perverting the democratic process.

B. Corporate Soft Money Does Not Reflect the Ideas of Its Contributors

The Supreme Court has held that limitations on political contributions by individuals entail "only a marginal restriction upon the contributor's ability to engage in free communication" because "a contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." Buckley, 424 U.S. at 20-21. Because, as explained in section I above, corporate soft money,

---

[9] In Massachusetts Citizens for Life, 479 U.S. 238, the Court held that the federal ban on the use of corporate funds in connection with elections was unconstitutional as it applied to a nonprofit corporation formed exclusively to disseminate political ideas, and not to amass capital, because the concerns about the corrosive influence of concentrated corporate wealth and rights of shareholders with dissenting views did not apply.

unlike political contributions by individuals, is motivated principally by pragmatic commercial concerns, it has even less communicative value and, hence, less of a claim to constitutional protection.

As demonstrated in Section I, corporate soft money contributions typically do not represent an expression of the contributor's identification with a political party or its platform but, instead, are nothing more than an attempt to advance or protect commercial interests. The fact that corporate soft money contributions are made for commercial purposes – by entities that do not, after all, vote – weakens any argument that such donations implicate core First Amendment values. The lack of communicative content in soft money renders it susceptible to restriction in order to advance the compelling government interests identified in Section II.A above without the need for searching judicial scrutiny.

Moreover, to the extent that soft money is contributed to protect against unfavorable treatment, it does not constitute a voluntary expression of support, but, rather, is merely a coerced pay-off to avoid retribution. As Representative Christopher Shays (R-Conn.) explained, a soft money contribution is "really like protection money. . . . It guarantees you a place at the table. They know you are a friend and you don't hurt friends, but in order to be a friend, you've had to buy that protection."[10] This type of shakedown is a far cry from political speech.

Although soft money contributions are not compelled by law in a manner that would literally warrant application of the compelled speech doctrine, to the extent that soft money does have communicative value or subsidizes political speech, the coercive nature of soft money solicitation warrants analogizing soft money to constitutionally disfavored forms of

---

[10] Jonathan D. Salant, Businesses Tire of Soft Money Contributions, Associated Press, Nov. 23, 1999.

coerced expression, such as compelled dues payments. See, e.g., Abood v. Detroit Bd. of Ed., 431 U.S. 209, 235-36 (1977) (First Amendment requires that labor union expenditures to express political views not germane to its duties as collective-bargaining representative not be financed by employees "coerced into doing so against their will"); Lehnert v. Ferris Faculty Ass'n, 500 U.S. 507, 522 (1991) ("[T]he State constitutionally may not compel its employees to subsidize legislative lobbying or other political union activities outside the limited context of contract ratifications or implementation."). See also United States v. United Foods, Inc., 533 U.S. 405, 413 (2001) (mandated support for speech "is contrary to the First Amendment principles set forth in cases involving expression by groups which include persons who object to the speech, but who, nevertheless, must remain members of the group by law or necessity"). Though not strictly applicable here, the compelled-speech doctrine offers a useful analogy that underscores the low level of constitutional protection to which soft money contributions made in response to coercive solicitation ought to be accorded.

The disassociation of soft money from political expression is starkly illustrated by the fact, noted above, that many soft money contributors "express their narrow interests by contributing to both parties during the same electoral cycle, *and sometimes even directly to two competing candidates in the same election.*" Federal Election Comm'n v. Colorado Republican Fed. Campaign Comm., 533 U.S. 431, 451-52 (2001) (emphasis added) (citing FEC disclosure reports documenting that many large corporations give to both parties). Those who give soft money to both parties do so not to express support for political ideas but "because they want to make sure they have access regardless of who's in the White House, filling the Senate seat, or representing the Congressional District." Declaration of Arnold Hiatt at ¶ 12.

Finally, the nexus to political expression is further weakened in those instances where soft money contributors give to the political party committees without knowledge of how the contribution will be used, who it will be used for, or what message it will be used to promote. See Declaration of Robert Rozen at ¶ 12 ("From [the donor's] perspective, what account the money goes into or how it's used is not important."); see also Declaration of Alan G. Hassenfeld at ¶ 15 ("Donors know that if they give $100,000 in soft money to the Republicans or $100,000 to the Democrats, that will entitle them to some type of access. They are not concerned with how that money is used.").

C. Corporate Soft Money Contributions Distort the Marketplace of Ideas

Corporate soft money contributions do not contribute to the "marketplace of ideas" protected by the First Amendment. Instead, they reflect wealth amassed in the marketplace, not the ideas of investors and employees, who have no control over contributions made to political parties from the corporation's general treasury funds.

Courts have held that the "unique legal and economic characteristics of corporations" and "special advantages" granted by state law "not only allow corporations to play a dominant role in the Nation's economy, but also permit them to use 'resources amassed in the economic marketplace' to obtain 'an unfair advantage in the political marketplace.'" See Austin, 494 U.S. at 658-59 (quoting Massachusetts Citizens for Life, 479 U.S. at 257). "This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas." Massachusetts Citizens for Life, 479 U.S. at 257.

The size of the treasury amassed by a corporation does not reflect popular support for the corporation's political ideas. Rather, it reflects "the economically motivated decisions of

investors and customers." Massachusetts Citizens for Life, 479 U.S. at 258. These resources may be used to make a corporation a formidable political presence "even though the power of the corporation may be no reflection of the power of its ideas." Id.

Indeed, these resources may make the corporation a political presence that runs counter to the ideas of its investors and employees. Courts have voiced concern for individuals who have paid money into a corporation for purposes other than the support of candidates from having that money "used to support political candidates to whom they may be opposed." National Right to Work Comm., 459 U.S. at 207-08.

> [Stockholders and union members] contribute investment funds or union dues for economic gain, and do not necessarily authorize the use of their money for political ends. Furthermore, because such individuals depend on the organization for income or for a job, it is not enough to tell them that any unhappiness with the use of their money can be redressed simply by leaving the corporation or the union.

Massachusetts Citizens for Life, 479 U.S. at 260; see also Pipefitters Local Union No. 562 v. United States, 407 U.S. 285, 416 (1972)(citing concerns about the voluntariness of contributions and protecting the minority stockholder or union member as reasons underlying congressional regulations).

As far back as 1907, Congress, in regulating contributions by corporations, was motivated by "the feeling that corporate officials had no moral right to use corporate funds for contribution to political parties without the consent of the stockholder." United States v. Congress of Indus. Orgs., 335 U.S. 106, 113 (1948)). Accordingly, restricting the use of corporate funds in elections prevents corporations from, in effect, being pressured into allocating general treasury funds for purposes that not only were not intended to be so used but that may not have been given by investors in the first place had they known how they would be used.

D. A Ban on Soft Money Does Not Offend the First Amendment Right of Association

The First Amendment protects political association as well as political speech. Buckley, 424 U.S. at 15; see also NAACP v. Alabama, 357 U.S. 449, 460 (1958). "[F]reedom to associate with others for the common advancement of political beliefs and ideas" is protected by the First Amendment. Kusper v. Pontikes, 414 U.S. 51, 56 (1973). The right to associate with the political party of one's choice "is an integral part of this basic constitutional freedom." Id. at 57.

In Buckley, however, the Court held that even a significant interference with associational rights could be outweighed by a campaign finance restriction closely drawn to advance a sufficiently important government interest. 424 U.S. at 25. Because the associational rights implicated by BCRA's soft money ban are (like the free speech rights implicated) weak at best, they are easily outweighed by the important public interests advanced by BCRA's soft money prohibition.

First, as discussed above, soft money contributions often are not expressions of support for the ideological platform of a political party. See supra p. 9, 16-18. Second, even where that is not the case, because contributors have no way of knowing where and for what their soft money is being used — and, as noted, often do not care — the contributions are not linked in any meaningful way to any specific political ideas. Accordingly, even to the extent such contributions may express support for the platform (or elements of the platform) of the party to which they are given, they do not further the values secured by the right of association, namely the "pool[ing] of resources in furtherance of common political goals." Buckley, 424 U.S. at 22. Rather, they represent, at bottom, commercially motivated payments.

Third, despite no longer being able to contribute soft money, donors still will be able to associate with and demonstrate public support for a political party and a political party's ideological platform in traditional and far more meaningful ways. See, e.g., Buckley, 424 U.S. at 22 ("[FECA's] contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates"). Corporate executives still can — and certainly will — continue to contribute to political parties as individuals.

Given the limited degree, if any, to which soft money evinces a donor's genuine interest in associating with a political party for ideological reasons and the multitude of other avenues of more meaningful association with a political party and its platform, a prohibition of soft money will have only minimal, if any, impact upon the associational rights protected by the First Amendment.

CONCLUSION

The coercive soft money system that BCRA eliminates has corrupted solicitor and contributor alike and has engendered understandable public cynicism regarding both business and government, while also interfering arbitrarily in the functioning of the economy. Business leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties. The coerced and, at bottom, wholly commercial nature of corporate soft money contributions distinguishes them from political speech, as well as from the type of ideological association protected by the First Amendment. Accordingly, given the compelling government interest in eliminating both actual and perceived corruption from the political process, BCRA's prohibition of soft money in federal elections should be sustained.

Respectfully submitted,

By: _____

Peter D. Isakoff
(D.C. Bar No. 358419)
WEIL, GOTSHAL & MANGES LLP
1501 K Street, N.W., Suite 100
Washington, D.C. 20005
(202) 682-7000

and

Steven Alan Reiss
R. Bruce Rich
Josh A. Krevitt
Jonathan Bloom
Sascha N. Rand
Randi W. Singer
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Attorneys for Amicus Curiae
Committee for Economic Development

CERTIFICATE OF COMPLIANCE

Counsel for amicus CED hereby states that the foregoing brief has been prepared in Word® format using a Times New Roman 12-point font, and that said program's word count function counted 6,148 words, beginning at the Introduction and Interest of the Amicus and ending prior to any certificates of counsel. See Fed. R. App. P. 32(a)(5), 32(a)(7)(B) and (C), 32(a)(7)(B)(iii) and D.C. Cir. Rules 29 and 32.

Counsel for amicus CED further states that no counsel for any party has authored this brief in whole or in part, and no person or entity other than the amicus made a financial contribution to the preparation or submission of this brief.

Peter D. Isakoff

EXHIBIT A

CED BOARD OF TRUSTEES

Chairman

ROY J. BOSTOCK, Chairman, Executive Committee
Bcom^3 Group, Inc.

Vice Chairmen

GEORGE H. CONRADES, Chairman and Chief Executive Officer
Akamai Technologies, Inc.

JAMES A. JOHNSON, Chairman and Chief Executive Officer
Johnson Capital Partners

ARTHUR F. RYAN, Chairman and Chief Executive Officer
The Prudential Insurance Company of America

FREDERICK W. TELLING, Vice President Corporate Strategic Planning and Policy Division
Pfizer Inc.

REX D. ADAMS, Professor of Business Administration
The Fuqua School of Business
Duke University

F. GREGORY AHERN, Senior Vice President, External Affairs
State Street Corporation

PAUL A. ALLAIRE, Chairman
Xerox Corporation

IAN ARNOF, Retired Chairman
Bank One, Louisiana, N.A.

JAMES S. BEARD, President
Caterpillar Financial Services Corp.

HENRY P. BECTON, JR., President and General Manager
WGBH Educational Foundation

THOMAS D. BELL, JR., President and Chief Executive Officer
Cousins Properties

ALAN BELZER, Retired President and Chief Operating Officer
AlliedSignal Inc.

PETER A. BENOLIEL, Chairman, Executive Committee
Quaker Chemical Corporation

MELVYN E. BERGSTEIN, Chairman and Chief Executive Officer
Diamond Cluster International, Inc.

DEREK BOK, President Emeritus
Harvard University
National Chair, Common Cause

ROY J. BOSTOCK, Chairman, Executive Committee
Bcom^3 Group, Inc.

JOHN BRADEMAS, President Emeritus
New York University

WILLIAM E. BROCK, Chairman
Bridges LearningSystems, Inc.

THOMAS J. BUCKHOLTZ, Executive Vice President
Beyond Insight Corporation

MICHAEL BUNGEY, Chairman and Chief Executive Officer
Bates Worldwide Inc.

TONY BUZZELLI, Deputy Managing Partner
Deloitte & Touche LLP

* FLETCHER L. BYROM, President and Chief Executive Officer
MICASU Corporation

DONALD R. CALDWELL, Chairman and Chief Executive Officer
Cross Atlantic Capital Partners

DARALD W. CALLAHAN, Executive Vice President
ChevronTexaco Corporation

FRANK C. CARLUCCI
Washington, D.C.

JOHN B. CAVE, Principal
Avenir Group, Inc.

RAYMOND G. CHAMBERS, Chairman of the Board
Amelior Foundation

ROBERT CHESS, Chairman
Inhale Therapeutic Systems, Inc.

MICHAEL CHESSER, Chairman and Chief Executive Officer
United Water

CAROLYN CHIN, Chairman
Commtouch/C3 Partners

* JOHN L. CLENDENIN, Retired Chairman
BellSouth Corporation

KENNETH P. COHEN, Vice President Public Affairs
Exxon Mobil Corporation

FERDINAND COLLOREDO-MANSFELD, Chairman and Chief Executive Officer
Cabot Properties, Inc.

GEORGE H. CONRADES, Chairman and Chief Executive Officer
Akamai Technologies, Inc.

JAMES P. CORCORAN, Consultant

DAVID M. COTE, President and Chief Executive Officer
Honeywell International Inc.

STEPHEN A. CRANE, Chairman, President and Chief Executive Officer
Stirling Cooke Brown Holdings Limited

THOMAS M. CULLIGAN, Executive Vice President, Business Development
Raytheon Company
Chief Executive Officer
Raytheon International, Inc.

RONALD R. DAVENPORT, Chairman of the Board
Sheridan Broadcasting Corporation

JOHN T. DEE, Chairman and Chief Executive Officer
Volume Services America

ROBERT M. DEVLIN, Former Chairman and Chief Executive Officer
American General Corporation

JOHN DIEBOLD, Chairman
John Diebold Incorporated

LINDA M. DISTLERATH, Vice President, Global Health Policy
Merck & Co., Inc.

WILLIAM H. DONALDSON, Chairman
Donaldson Enterprise

**Life Trustee*

IRWIN DORROS, President
Dorros Associates

*FRANK P. DOYLE, Retired Executive Vice President
GE

E. LINN DRAPER, JR., Chairman, President and Chief Executive Officer
American Electric Power Company

PHILIP DUKE, Executive Vice President (retired)
Lockheed Martin Corporation

T. J. DERMOT DUNPHY, Chairman
Kildare Enterprises, LLC

CHRISTOPHER D. EARL, Managing Director
Perseus Capital, LLC

W. D. EBERLE, Chairman
Manchester Associates, Ltd.

WILLIAM T. ESREY, Chairman and Chief Executive Officer
Sprint

ROBERT A. ESSNER, President and Chief Executive Officer
Wyeth

KATHLEEN FELDSTEIN, President
Economics Studies, Inc.

RONALD E. FERGUSON, Chairman, President and Chief Executive Officer
General RE Corporation

E. JAMES FERLAND, Chairman, President and Chief Executive Officer
Public Service Enterprise Group Inc.

*EDMUND B. FITZGERALD, Managing Director
Woodmont Associates

HARRY L. FREEMAN, Chair
The Mark Twain Institute

MITCHELL S. FROMSTEIN, Chairman Emeritus
Manpower Inc.

JOSEPH GANTZ, Partner
GG Capital, LLC

E. GORDON GEE, Chancellor
Vanderbilt University

THOMAS P. GERRITY, Dean Emeritus
The Wharton School
University of Pennsylvania

RAYMOND V. GILMARTIN, Chairman, President and Chief Executive Officer
Merck & Co., Inc.

FREDERICK W. GLUCK, Of Counsel
McKinsey & Company, Inc.

CAROL R. GOLDBERG, President
The AvCar Group, Ltd.

ALFRED G. GOLDSTEIN, President and Chief Executive Officer
AG Associates

JOSEPH T. GORMAN, Retired Chairman
TRW Inc.

RICHARD A. GRASSO, Chairman and Chief Executive Officer
New York Stock Exchange, Inc.

EARL G. GRAVES, SR., Publisher and Chief Executive Officer
Black Enterprise Magazine

WILLIAM H. GRAY, III, President and Chief Executive Officer
The College Fund

GERALD GREENWALD, Chairman Emeritus
UAL Corporation

BARBARA B. GROGAN, President
Western Industrial Contractors

PATRICK W. GROSS, Founder and Chairman, Executive Committee
American Management Systems, Inc.

JEROME H. GROSSMAN, Chairman and Chief Executive Officer
Lion Gate Management Corporation

RONALD GRZYWINSKI, Chairman
Shorebank Corporation

JUDITH H. HAMILTON, President and Chief Executive Officer
Classroom Connect

WILLIAM A. HASELTINE, Chairman and Chief Executive Officer
Human Genome Sciences, Inc.

WILLIAM F. HECHT, Chairman, President and Chief Executive Officer
PPL Corporation

WILLIAM HENDERSON
Former Postmaster General

JOSEPH D. HICKS, Retired President and Chief Executive Officer
Siecor Corporation

HEATHER HIGGINS, President
Randolph Foundation

STEVEN R. HILL, Senior Vice President, Human Resources
Weyerhaeuser Company

RODERICK M. HILLS, Chairman
Hills Enterprises, Ltd.

GLEN J. HINER, Retired Chairman and Chief Executive Officer
Owens Corning

HAYNE HIPP, President and Chief Executive Officer
The Liberty Corporation

DEBORAH C. HOPKINS, Senior Advisor
Marakon Associates

PAUL M. HORN, Senior Vice President, Research
IBM Corporation

MATINA S. HORNER, Executive Vice President
TIAA-CREF

PHILIP K. HOWARD, Vice Chairman
Covington & Burling

ROBERT J. HURST, Vice Chairman
The Goldman Sachs Group, Inc.

SHIRLEY ANN JACKSON, President
Rensselaer Polytechnic Institute

WILLIAM C. JENNINGS, Chairman
US Interactive, Inc.

JEFFREY A. JOERRES, President and Chief Executive Officer
Manpower Inc.

JAMES A. JOHNSON, Chairman and Chief Executive Officer
Johnson Capital Partners

L. OAKLEY JOHNSON, Senior Vice President, Corporate Affairs
American International Group

ROBERT M. JOHNSON, Chairman and Chief Executive Officer
Bowne & Co., Inc.

*Life Trustee

LAWRENCE R. JOHNSTON, Chairman and Chief Executive Officer
Albertson's, Inc.

VAN E. JOLISSAINT, Corporate Economist
DaimlerChrysler Corporation

H.V. JONES, Managing Director
Korn/Ferry International

PRES KABACOFF, President and Co-Chairman
Historic Restoration, Inc.

EDWARD A. KANGAS, Chairman and Chief Executive Officer (retired)
Deloitte Touche Tohmatsu

JOSEPH E. KASPUTYS, Chairman, President and Chief Executive Officer
Global Insight, Inc.

THOMAS J. KLUTZNICK, President
Thomas J. Klutznick Company

CHARLES F. KNIGHT, Chairman
Emerson Electric Co.

CHARLES E.M. KOLB, President
Committee for Economic Development

ALLEN J. KROWE, Retired Vice Chairman
Texaco Inc.

C. JOSEPH LABONTE, Chairman
The Vantage Group

KURT M. LANDGRAF, President and Chief Executive Officer
Educational Testing Service

W. MARK LANIER, President
The Lanier Law Firm, P.C.

CHARLES R. LEE, Chairman
Verizon Communications

WILLIAM W. LEWIS, Director Emeritus
McKinsey Global Institute
McKinsey & Company, Inc.

IRA A. LIPMAN, Chairman of the Board and President
Guardsmark, Inc.

JOHN W. LOOSE, President and Chief Executive Officer
Corning, Inc.

BRUCE K. MACLAURY, President Emeritus
The Brookings Institution

COLETTE MAHONEY, President Emeritus
Marymount Manhattan College

ELLEN R. MARRAM, Partner
North Castle Partners

ALONZO L. MCDONALD, Chairman and Chief Executive Officer
Avenir Group, Inc.

EUGENE R. MCGRATH, Chairman, President and Chief Executive Officer
Consolidated Edison Company of New York, Inc.

DAVID E. MCKINNEY, President
The Metropolitan Museum of Art

DEBORAH HICKS MIDANEK, Principal
Glass & Associates, Inc.

HARVEY R. MILLER, Senior Partner
Weil, Gotshal & Manges

ALFRED T. MOCKETT, Chairman and Chief Executive Officer
AMS Corporation

NICHOLAS G. MOORE, Chairman Emeritus
PricewaterhouseCoopers

DIANA S. NATALICIO, President
The University of Texas at El Paso

MARILYN CARLSON NELSON, Chairman, President and Chief Executive Officer
Carlson Companies, Inc.

MATTHEW NIMETZ, Partner
General Atlantic Partners

THOMAS H. O'BRIEN, Chairman of the Executive Committee
PNC Financial Services Group, Inc.

DEAN R. O'HARE, Chairman and Chief Executive Officer
Chubb Corporation

RONALD L. OLSON, Partner
Munger, Tolles & Olson

ROBERT J. O'TOOLE, Chairman and Chief Executive Officer
A.O. Smith Corporation

STEFFEN E. PALKO, Vice Chairman and President
XTO Energy Inc.

SANDRA PANEM, Partner
Cross Atlantic Partners, Inc.

JERRY PARROTT, Vice President, Corporate Communications
Human Genome Sciences, Inc.

CAROL J. PARRY, President
Corporate Social Responsibility Associates

VICTOR A. PELSON, Senior Advisor
UBS Warburg LLC

DONALD K. PETERSON, President and Chief Executive Officer
Avaya Inc.

PETER G. PETERSON, Chairman
The Blackstone Group

TODD E. PETZEL, President and Chief Investment Officer
The Commonfund Asset Management Co., Inc.

RAYMOND PLANK, Chairman and Chief Executive Officer
Apache Corporation

ARNOLD B. POLLARD, President and Chief Executive Officer
The Chief Executive Group

HUGH B. PRICE, President and Chief Executive Officer
National Urban League

NED REGAN, President
Baruch College

JAMES Q. RIORDAN, Chairman
Quentin Partners Co.

E. B. ROBINSON, JR., Chairman Emeritus
Deposit Guaranty Corporation

ROY ROMER
Former Governor of Colorado
Superintendent, Los Angeles Unified School District

DANIEL ROSE, Chairman
Rose Associates, Inc.

HOWARD M. ROSENKRANTZ, Chief Executive Officer
Grey Flannel Auctions

LANDON H. ROWLAND, Chairman, President and Chief Executive Officer
Stilwell Financial Inc.

NEIL L. RUDENSTINE, Chair, ArtStor Advisory Board
The Andrew Mellon Foundation

*Life Trustee

GEORGE RUPP, President
International Rescue Committee

GEORGE F. RUSSELL, JR.
Sunshine Management Services, LLC

EDWARD B. RUST, JR., Chairman and Chief Executive Officer
State Farm Insurance Companies

ARTHUR F. RYAN, Chairman and Chief Executive Officer
The Prudential Insurance Company of America

MARGUERITE W. SALLEE, Chairman and Chief Executive Officer
Brown Schools

STEPHEN W. SANGER, Chairman and Chief Executive Officer
General Mills, Inc.

BERTRAM L. SCOTT, President
TIAA-CREF Life Insurance Company

MICHAEL M. SEARS, Senior Vice President and Chief Financial Officer
The Boeing Company

DONNA SHALALA, President
University of Miami

WALTER H. SHORENSTEIN, Chairman of the Board
The Shorenstein Company

*GEORGE P. SHULTZ, Distinguished Fellow
The Hoover Institution
Stanford University

JOHN C. SICILIANO, Director, Global Institutional Services
Dimensional Fund Advisors

RUTH J. SIMMONS, President
Brown University

FREDERICK W. SMITH, Chairman, President and Chief Executive Officer
Federal Express Corporation

JOHN F. SMITH, JR., Chairman
General Motors Corporation

DAVID A. SPINA, Chairman and Chief Executive Officer
State Street Corporation

ALAN G. SPOON, Managing General Partner
Polaris Ventures

STEPHEN STAMAS, Chairman
The American Assembly

PAULA STERN, President
The Stern Group, Inc.

DONALD M. STEWART, President and Chief Executive Officer
The Chicago Community Trust

ROGER W. STONE, Chairman and Chief Executive Officer
Box USA Group, Inc.

MATTHEW J. STOVER, President
LKM Ventures

RICHARD J. SWIFT, Chairman, President and Chief Executive Officer
Foster Wheeler Corporation

RICHARD F. SYRON, President and Chief Executive Officer
Thermo Electron Corporation

HENRY TANG, Chairman
Committee of 100

FREDERICK W. TELLING, Vice President Corporate Strategic Planning and Policy Division
Pfizer Inc.

JAMES A. THOMSON, President and Chief Executive Officer
RAND

CHANG-LIN TIEN, NEC Distinguished Professor of Engineering Emeritus
University of California, Berkeley

THOMAS J. TIERNEY, Founder
The Bridgespan Group

STOKLEY P. TOWLES, Partner
Brown Brothers Harriman & Co.

STEPHEN JOEL TRACHTENBERG, President
George Washington University

JAMES L. VINCENT, Chairman
Biogen, Inc.

FRANK VOGL, President
Vogl Communications

DONALD C. WAITE, III, Director
McKinsey & Company, Inc.

HERMINE WARREN, President
Hermine Warren Associates, Inc.

ARNOLD R. WEBER, President Emeritus
Northwestern University

JOSH S. WESTON, Honorary Chairman
Automatic Data Processing, Inc.

CLIFTON R. WHARTON, JR., Former Chairman and Chief Executive Officer
TIAA-CREF

DOLORES D. WHARTON, Former Chairman and Chief Executive Officer
The Fund for Corporate Initiatives, Inc.

RICHARD WHEELER, Chief Executive Officer
InContext Data Systems, Inc.

MICHAEL W. WICKHAM, Chairman and Chief Executive Officer
Roadway Express, Inc.

HAROLD M. WILLIAMS, President Emeritus
The J. Paul Getty Trust

J. KELLEY WILLIAMS, Chairman and Chief Executive Officer
ChemFirst Inc.

L. R. WILSON, Chairman
Nortel Networks Corporation

LINDA SMITH WILSON, President Emerita
Radcliffe College

MARGARET S. WILSON, Chairman and Chief Executive Officer
Scarbroughs

JACOB J. WORENKLEIN, Global Head of Project & Sectorial Finance
Societe Generale

KURT E. YEAGER, President and Chief Executive Officer
Electric Power Research Institute

MARTIN B. ZIMMERMAN, Vice President, Governmental Affairs
Ford Motor Company

*Life Trustee

CED HONORARY TRUSTEES

RAY C. ADAM, Retired Chairman
NL Industries

ROBERT O. ANDERSON, Retired Chairman
Hondo Oil & Gas Company

ROY L. ASH
Los Angeles, California

SANFORD S. ATWOOD, President Emeritus
Emory University

ROBERT H. B. BALDWIN, Retired Chairman
Morgan Stanley Group Inc.

GEORGE F. BENNETT, Chairman Emeritus
State Street Investment Trust

HAROLD H. BENNETT
Salt Lake City, Utah

JACK F. BENNETT, Retired Senior Vice President
Exxon Corporation

HOWARD W. BLAUVELT
Keswick, Virginia

MARVIN BOWER
Delray Beach, Florida

ALAN S. BOYD
Lady Lake, Florida

ANDREW F. BRIMMER, President
Brimmer & Company, Inc.

PHILIP CALDWELL, Chairman (Retired)
Ford Motor Company

HUGH M. CHAPMAN, Retired Chairman
NationsBank South

E. H. CLARK, JR., Chairman and Chief Executive Officer
The Friendship Group

A.W. CLAUSEN, Retired Chairman and Chief Executive Officer
BankAmerica Corporation

DOUGLAS D. DANFORTH
Executive Associates

JOHN H. DANIELS, Retired Chairman and Chief Executive Officer
Archer-Daniels Midland Co.

RALPH P. DAVIDSON
Washington, D.C.

ALFRED C. DECRANE, JR., Retired Chairman and Chief Executive Officer
Texaco, Inc.

ROBERT R. DOCKSON, Chairman Emeritus
CalFed, Inc.

LYLE EVERINGHAM, Retired Chairman
The Kroger Co.

THOMAS J. EYERMAN, Retired Partner
Skidmore, Owings & Merrill

DON C. FRISBEE, Chairman Emeritus
PacifiCorp

RICHARD L. GELB, Chairman Emeritus
Bristol-Myers Squibb Company

W. H. KROME GEORGE, Retired Chairman
ALCOA

WALTER B. GERKEN, Chairman and Chief Executive Officer (Retired)
Pacific Life Insurance Company

LINCOLN GORDON, Guest Scholar
The Brookings Institution

JOHN D. GRAY, Chairman Emeritus
Hartmarx Corporation

RICHARD W. HANSELMAN, Chairman
Health Net Inc.

ROBERT S. HATFIELD, Retired Chairman
The Continental Group, Inc.

ARTHUR HAUSPURG, Member, Board of Trustees
Consolidated Edison Company of New York, Inc.

PHILIP M. HAWLEY, Retired Chairman of the Board
Carter Hawley Hale Stores, Inc.

ROBERT C. HOLLAND, Senior Fellow
The Wharton School
University of Pennsylvania

LEON C. HOLT, JR., Retired Vice Chairman
Air Products and Chemicals, Inc.

SOL HURWITZ, Retired President
Committee for Economic Development

GEORGE F. JAMES
Ponte Vedra Beach, Florida

DAVID KEARNS, Chairman Emeritus
New American Schools

GEORGE M. KELLER, Chairman of the Board, Retired
Chevron Corporation

FRANKLIN A. LINDSAY, Retired Chairman
Itek Corporation

ROBERT W. LUNDEEN, Retired Chairman
The Dow Chemical Company

RICHARD B. MADDEN, Retired Chairman and Chief Executive Officer
Potlatch Corporation

AUGUSTINE R. MARUSI
Lake Wales, Florida

WILLIAM F. MAY, Chairman and Chief Executive Officer
Statue of Liberty-Ellis Island Foundation, Inc.

OSCAR G. MAYER, Retired Chairman
Oscar Mayer & Co.

GEORGE C. MCGHEE, Former U.S. Ambassador and Under Secretary of State

JOHN F. MCGILLICUDDY, Retired Chairman and Chief Executive Officer
Chemical Banking Corporation

JAMES W. MCKEE, JR., Retired Chairman
CPC International, Inc.

CHAMPNEY A. MCNAIR, Retired Vice Chairman
Trust Company of Georgia

J. W. MCSWINEY, Retired Chairman of the Board
The Mead Corporation

ROBERT E. MERCER, Retired Chairman
The Goodyear Tire & Rubber Co.

RUBEN F. METTLER, Retired Chairman and Chief Executive Officer
TRW Inc.

LEE L. MORGAN, Former Chairman of the Board
Caterpillar, Inc.

ROBERT R. NATHAN, Chairman
Nathan Associates, Inc.

J. WILSON NEWMAN, Retired Chairman
Dun & Bradstreet Corporation

JAMES J. O'CONNOR, Former Chairman and Chief Executive Officer
Unicom Corporation

LEIF H. OLSEN, President
LHO GROUP

NORMA PACE, President
Paper Analytics Associates

CHARLES W. PARRY, Retired Chairman
ALCOA

WILLIAM R. PEARCE, Director
American Express Mutual Funds

JOHN H. PERKINS, Former President
Continental Illinois National Bank and Trust Company

RUDOLPH A. PETERSON, President and Chief Executive Officer (Emeritus)
BankAmerica Corporation

DEAN P. PHYPERS
New Canaan, Connecticut

EDMUND T. PRATT, JR., Retired Chairman and Chief Executive Officer
Pfizer Inc.

ROBERT M. PRICE, Former Chairman and Chief Executive Officer
Control Data Corporation

JAMES J. RENIER
Renier & Associates

IAN M. ROLLAND, Former Chairman and Chief Executive Officer
Lincoln National Corporation

AXEL G. ROSIN, Retired Chairman
Book-of-the-Month Club, Inc.

WILLIAM M. ROTH
Princeton, New Jersey

WILLIAM RUDER
William Ruder Incorporated

RALPH S. SAUL, Former Chairman of the Board
CIGNA Companies

GEORGE A. SCHAEFER, Retired Chairman of the Board
Caterpillar, Inc.

ROBERT G. SCHWARTZ
New York, New York

MARK SHEPHERD, JR., Retired Chairman
Texas Instruments, Inc.

ROCCO C. SICILIANO
Beverly Hills, California

ELMER B. STAATS, Former Controller General of the United States

FRANK STANTON, Former President
CBS, Inc.

EDGAR B. STERN, JR., Chairman of the Board
Royal Street Corporation

ALEXANDER L. STOTT
Fairfield, Connecticut

WAYNE E. THOMPSON, Past Chairman
Merritt Peralta Medical Center

THOMAS A. VANDERSLICE
TAV Associates

SIDNEY J. WEINBERG, JR., Senior Director
The Goldman Sachs Group, Inc.

ROBERT C. WINTERS, Chairman Emeritus
Prudential Insurance Company of America

RICHARD D. WOOD, Director
Eli Lilly and Company

CHARLES J. ZWICK
Coral Gables, Florida

Certificate of Service

I hereby certify that on November 6, 2002, copies of the foregoing document was served (1) upon all counsel know to be designated by the parties for service by electronic mail, by electronic mail, (2) upon the following by facsimile:

David A. Wilson	202.942.8484	John Bonifaz	617.368.9101
Kenneth W. Starr	202.879.5200	Charles J. Cooper	202.220.9601
James M. Henderson, Sr.	202.337.3167	James Bopp, Jr.	812.235.3685
Donald J. Mulvihill	202.862.8958	Erik S. Jaffe	202.237-8166

(3) upon the following by first-class mail, postage prepaid:

Jan Witold Baran
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, D.C. 20006

William J. Olson
William J. Olson, P.C.
8180 Greensboro Dr., Ste. 1070
McLean, VA 22102-3823

James Bopp, Jr.
James Madison Center for Free Speech
Bopp, Coleson & Bostrom
1 South Sixth Street
Terre Haute, Indiana 47807

Bobby R. Burchfield
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Joseph E. Sandler
Sandler, Reiff & Young, P.C.
50 E St., S.E. #300
Washington, D.C. 20003

Floyd Adams
Cahill Gordon & Reindel
80 Pine St.
New York, NY 10005

Charles J. Cooper
Cooper & Kirk PLLC
1500 K Street, N.W. Ste. 200
Washington, D.C. 20005

Kenneth W. Starr
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Mark J. Lopez
American Civil Liberties Union
125 Broad Street 17th Fl.
New York, NY 10004

Laurence E. Gold
AFL-CIO
815 Sixteenth Street, N.W.
Washington, D.C. 20006

David A. Wilson
Hale and Dorr L.L.P.
1455 Pennsylvania Ave, N.W.
10th Floor
Washington, D.C. 20004

Richard Blair Bader
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

James Matthew Henderson, Sr.
American Center for Law and Justice
205 Third Street, S.E.
Washington, D.C. 20003

Sherri L. Wyatt
Sherri L. Wyatt, PLLC
International Square Bldg.
1825 I Street, N.W.
Suite 400
Washington, D.C. 20006

Roger M. Witten
Randolph D. Moss
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

Donald J. Mulvihill
Cahill Gordon & Reindel
1990 K Street, N.W.
Washington, D.C. 20006

G. Hunter Bates
1215 Cliffwood Drive
Goshen, Kentucky 40026

Frederick A. O.
Schwarz, Jr.
E. Joshua Rosenkranz
Brennan Center for
Justice
161 Avenue of the
Americas,
12th Floor
New York, NY 10013

John Bonifaz
National Voting Rights
Institute
One Bromfield St. 3rd Floor
Boston MA 02108

Erik S. Jaffe
5101 34th Street, N.W.
Washington, D.C. 2008

Herbert Riggs