

**SJR**

**4**



**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

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**MEMORANDUM**

Date: February 21, 1997

To: Senator Lyda Green  
Chair, Senate State Affairs Committee

From: Senator Dave Donley *DD*

Re: Request for Hearing SJR4 - Proposing A United States Constitutional Amendment Allowing Campaign Spending Limits

I request you schedule SJR4 for a committee hearing at your earliest convenience. SJR4 calls for a U.S. Constitutional Convention for the purpose of adopting a U.S. Constitutional Amendment. The amendment would allow campaign spending limits to be determined by state legislatures, and the U.S. Congress for control of their respective elections. Such state action could also help build a national support network for a U.S. Constitutional Amendment to allow campaign spending limits.

A 1976 U.S. Supreme Court decision (*Buckley v. Valeo*) precludes limits on campaign spending. Last year U.S. Senator Fritz Hollings (D-SC) introduced SJR 18, legislation identical to SJR 4, in the U.S. Senate and Senator Arlen Specter (R-PA) introduced a similar proposal, SJR 48 in the U.S. Senate.

Campaign spending has escalated dramatically in recent years. Excessive campaign spending can result in a bias in the selection of elected public officials.

If you have any questions, please contact myself, or Karen Brand of my staff at 3892. Previous requests for hearing: 1/15, 1/29 and 2/10/97.

DD/kb

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*MEMBER:* Senate Finance Committee • Legislative Budget & Audit Committee  
• Senate Community & Regional Affairs Committee

The Case for a United States Constitutional  
Amendment to Allow Campaign Spending Limits

by  
Senator Dave Donley  
12/18/96

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- I. Introduction to the campaign spending problem
  - A. Uncontrolled spending
  - B. Proposed solutions
  - C. Rationale in support of a U.S. Constitutional Amendment to limit campaign spending
- II. Legislative reform attempts prior to *Buckley v. Valeo*
  - A. Legislation before and including the 1971 Tillman Act
  - B. Creation of the Federal Election Campaign Act (FECA) in 1971 and its amendment in 1974
- III. The 1976 United States Supreme Court case of *Buckley v. Valeo*
  - A. History of the Buckley case and its implications
  - B. Court challenges made to *Buckley*
- IV. Alternative solutions to the campaign spending problem
  - A. Challenge and overrule *Buckley* via the court system
  - B. Public financing
- V. Changes in society warrant a U.S. Constitutional Amendment
  - A. Mass media
  - B. Personal wealth issues
- VI. Senate Resolutions on Campaign Spending Limits
- VII. Alaska's Senate Joint Resolution 4
- VIII. State Action for Campaign Spending Limits
- IX. Seventeenth Amendment
- X. The U.S. Constitutional Amendment Process
  - A. Article V of the U.S. Constitution
  - B. State support and public ratification
  - C. A Federal Constitutional Convention will not take place
  - D. Recision of petitions by State Legislatures
  - E. Congressional Safeguards
- XI. Conclusion
  - A. Changes in political campaign spending warrant reform
  - B. Rationale for United States Constitutional Amendment

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## The Case for a United States Constitutional Amendment to Allow Campaign Spending Limit

*A United States Constitutional Amendment to allow campaign spending limits provides the best solution to excessive campaign spending by local, state, and federal candidates.*

Spending on political campaigns has dramatically increased in recent years. The increase is attributable to growth in contributions from special interest groups and wealthy individuals. To compete for political office, candidates must be able to raise and spend a tremendous amount of money or, in the case of people like Steve Forbes and Ross Perot, be willing and able to spend millions of their personal wealth. The current campaign finance system has left us with a choice between candidates who are millionaires or those who are indebted to special interests. While citizen organizations and the public are calling for reasonable limits on campaign spending and contributions, past federal court decisions stand in the way. The way out is the adoption of an amendment to the U.S. Constitution giving Congress and the States authority to regulate political spending and contributions. [FN 1]

The 1992 candidates for federal office spent record dollars on elections. Expenditures for federal candidates totaled at least \$28,009,902 for the Democrats and \$33,784,129 for the Republicans. Congress has attempted to limit such expenditures, but the attempts have failed. The 1976 U.S. Supreme Court decision in *Buckley v. Valeo* [FN 2] upheld the constitutionality of limiting contributions to political candidates, but ruled statutory limits on campaign expenditures unconstitutional. The *Buckley* decision ensured that the trend of campaign spending increases would continue. A federal candidate can spend without restraint providing the money comes from an acceptable funding source. These "acceptable" funding sources include: political action committees (PACs), soft money expenditures, and candidates' personal finances. These sources allow some candidates to win elections at any cost. Wealthy candidates can, sometimes, virtually buy themselves a political office.

A variety of solutions to end excessive campaign expenditures have been proposed. These proposed solutions include: challenging and overturning *Buckley*, public financing, stricter limits on campaign contributions and adopting a United States Constitutional Amendment to allow campaign spending limits. Enacting public financing and stricter limits on campaign contributions offer only a partial restraint to excessive campaign expenditures. Neither of these two solutions actually limit campaign spending for all candidates; that can only be achieved by overturning *Buckley*.

Ever increasing spending on campaigns for public office is a serious nationwide problem. While the public recognizes that campaign spending is escalating, few understand the legal precedents that prevent a solution. Short of a dramatic change in the make-up of the U.S. Supreme Court, only an amendment to the United States Constitution, can allow the adoption of much needed statutory campaign spending limits.

## Legislative Election Reform Attempts Prior to *Buckley v. Valeo*

The first attempt to reform campaign financing was in 1907, when Congress, led by President Theodore Roosevelt, passed the Tillman Act. This Act forbid a corporation or national bank from contributing to a federal campaign. Eighteen years later, the 1925 Federal Corrupt Practices Act (FCPA) was passed. For many years, it served as the primary federal campaign finance law. The FCPA set limits on total candidate expenditures to \$2,500 for the United States House and \$10,000 for the Senate campaigns. However, several loopholes in the FCPA rendered it ineffectual. Finally in 1943, the Tillman Act was expanded to include labor unions. The Court found that such limits did not unduly infringe upon freedom of speech.

By the 1970's, Congress recognized the increasing congressional campaign spending problem and the feebleness that characterized each attempt to limit spending. State and federal legislatures began to seriously regulate the use of money in elections. The Federal Election Campaign Act of 1971 (FECA) was the first comprehensive effort by the U.S. Congress to regulate federal election financing. Following the scandals of the Watergate era, Congress worked to further strengthen the 1971 Act. Also adopted in 1971 was the Presidential Election Campaign Fund Act. This act placed a \$1000 limit on independent expenditures, sometimes called "soft money," by a political action committee to benefit a candidate receiving public financing. The U.S. House of Representatives Administration Committee recommended expanded campaign spending reform in 1974, with this statement:

The unchecked rise in campaign expenditures, coupled with the absence of limitations on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors. Under the present law the impression persists that a candidate can buy an election by simply spending large sums in a campaign . . ." [FN 3]

Thus, FECA became the vehicle for the recommended modifications. In 1974, FECA was amended with hopes that it would bring about necessary campaign spending reforms. The Federal Elections Committee (FEC) was created to oversee elections and the administration of new laws.

In addition, the FECA established four principles: 1) FECA provided for optional public financing in presidential general election campaigns; 2) FECA required full disclosure of all campaign contributions and expenditure; 3) FECA established rigid spending limits for presidential, Senate, and House elections; and 4) FECA explicitly legalized the use, by corporation, labor unions, and others, of a separate segregated fund for political purposes. Political action committees (PACs) became a prime means to legally shuttle money into a candidate's campaign. Prior to this time, PACs were rarely used in the financing of political campaigns. With the amended Federal Election Campaign Act, PACs gained significant legal and political importance.

## The Case of *Buckley v. Valeo*

Only two years passed until provisions of FECA faced U.S. Supreme Court scrutiny in *Buckley*. In 1976, a suit was filed by a range of plaintiffs including New York Conservative James Buckley and Democrat Eugene McCarthy in which the Court's decision rested upon the distinction between contributions and expenditures. Contributions were defined as money donated to and spent by a specific political candidate. Expenditures, however, referred to money given to and spent by "independent" organizations—primarily PACs. While the Court stated that the FECA restrictions operated "in an area of the most fundamental First Amendment activities", any regulations operating in this area of freedom of association and political speech were "subject to the closest scrutiny." The Court acknowledged that a sufficiently significant government interest may justify First Amendment infringement. Thus, limitations on contributions were upheld on the basis of preventing corruption or even the appearance of corruption. The Court stated: "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." Based on this same theory, public financing provisions and disclosure requirements remained intact.

**Limitations concerning expenditures by independent organizations were held to be unconstitutional. Limits on a candidate's expenditures of personal funds and overall limits on campaign expenditures were also found unconstitutional.**

Surprisingly, the Court's majority opinion also decided that, "The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but alleviates the danger that expenditures will be given as quid pro quo for improper commitments from the candidate." Thus, the limitations in the act concerning expenditures by independent organizations were held to be unconstitutional. Limits on a candidate's expenditures of personal funds and overall limits on campaign expenditures were also found unconstitutional. Although the Buckley decision spelled out specifically the Court's distinction between contributions and expenditures, it neither solved the problem of campaign spending, nor did it set clear precedent. A series of challenges have reached the Supreme Court testing the *Buckley* decision. [FN 4]

Two recent cases, *Federal Election Commission v. Massachusetts*, [FN 5] and *Austin v. Michigan Chamber of Commerce*, [FN 6] offered a hint that the Justices might be wavering in their intransigence regarding independent expenditures. The Massachusetts case involved a corporation using treasury funds to make expenditures in candidate elections. Justice William Brennan, in his opinion, hinted that some expenditures might be acceptable to a majority of the Justices. However, the corruption

from the unfair deployment of wealth for political use to which the Court referred, was construed narrowly. The Supreme Court has concluded that virtually every means of communicating political viewpoints required the spending of money. The foundation of this analysis flows from the conclusion that money spent in the course of an election campaign is protected political expression. Justice Thurgood Marshall's majority opinion in *Austin* emphasized that the mere fact that corporations may accumulate large amounts of wealth, did not justify restricting corporate independent campaign expenditures.

**Four members of the court, said they would declare all party spending limits unconstitutional. Three others, agreed the limits on independent expenditures were unconstitutional.**

In *Massachusetts*, Justices O'Connor and Scalia concurred with Brennan, however, both then dissented in *Austin* as did Kennedy. Brennan has since retired, his seat on the Court has been filled by Justice David Souter. This term, in ruling 7-2 in *Colorado Republican Party v. Federal Election Commission*, [FN 7] four members of the court, Chief Justice Rehnquist and Justices Kennedy, Scalia and Thomas, said they would declare all party spending limits unconstitutional. Three others, Justices Breyer, Souter and O'Connor, agreed the limits on independent expenditures were unconstitutional, but they said they would defer a decision on "coordinated expenditures" until the issue is raised in a later case. Given this realization, one wonders where the Court's analysis is headed. These decisions continue to hold open the floodgates for more big spending in a system already awash in campaign cash.

#### **Alternative Solutions to the Campaign Spending Problem:**

##### **A. Challenge and Overrule *Buckley***

**Unfortunately, given the current make-up of the U.S. Supreme Court, the prospect of overturning the *Buckley* ruling is very slight.**

Groups in some states are proposing passage of new state laws limiting campaign spending as a means of challenging and overruling the *Buckley* decision via the court system. Unfortunately, given the current make-up of the U.S. Supreme Court, the prospect of overturning the *Buckley* ruling is very slight. Subsequent United States Supreme Court judgments have only worked to strengthen the precedents set in *Buckley*, not weaken them.

The proposition that unequal access to resources, causing a distortion of the political process and effectively limiting the ability to participate in politics, is the basis for a legal challenge to *Buckley*. Unfortunately, the court in *Buckley* already rejected the assertion that government has a compelling interest in the equalization of political campaign resources.

Potential challengers to *Buckley* depend on their view that money should not be treated as speech; thus, expenditures should not be protected by the First Amendment. However, in the U.S. Supreme Court's view, it is impossible to have unrestricted

political speech if the money that allows it to reach its audience is restricted. Specifically, the Court said that spending limits amount to "substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate."

In 1976, the Supreme Court in *Buckley* ruled that campaign contributions could be limited to reasonable levels, but campaign expenditures and expenditures by "independent" organizations supporting a candidate could not. The Court said that since both contributions and expenditures were expressions of speech, restrictions upon them must undergo strict scrutiny. [FN 8] Contribution limits could be justified in order to prevent undue influence on candidates by large contributors, but spending limits could not, because expenditures do not necessarily involve any kind of connection with the candidate. [FN 9] The concept that the government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. [FN 10] Justice White, dissenting, stated, "As with campaign expenditure limits, Congress was entitled to determine that personal wealth ought to play a less important role in political campaigns that it has in the past. Nothing in the First Amendment stands in the way of that determination." [FN 11]

## B. Public Finance

The Revenue Act of 1971 established the Presidential Election Campaign Fund. This fund, which began in 1976, provided federal subsidies to Presidential candidates on an optional basis. However, the *Buckley* decision struck down the portion of the 1971 Act that limited expenditures by political candidates. This decision created increased interest in public financing as an alternative means of controlling campaign spending particularly at the congressional level. In order to comply with First Amendment rights under the *Buckley* ruling, however, political candidates must freely choose to accept public financing and forgo additional contributions and expenditures. Aggressive candidates, able to raise more from private sources than the amount offered through government funding, typically do not choose to subject themselves to the spending limits.

If public financing is adopted by Congress, political action committees can be expected to change their tactics. Once PACs are unable to make contributions directly to candidates, PACs may redirect their money almost exclusively to independent expenditures on behalf of chosen candidates. Unlike contributions, independent expenditures for candidates are currently unrestricted. Thus, with PAC contribution funds redirected toward independent expenditures on behalf of a political candidate, total PAC spending may have even a more profound impact. It is pointless to limit the amount that can be contributed to a candidate or spent with his approval without also limiting the amounts that can be spent on his behalf. The redirection of PAC dollars to independent expenditures would further compound the current problem of excessive campaign spending.

**There is not widespread public or political support for public financing of political campaigns.**

Additional problems exist with public financing of political campaigns. Rules set to establish public financing compliance would be difficult and expensive to administer. Also, there is not widespread public or political support for public financing of political campaigns. Half the states have experimented with public financing but with limited success. States with or contemplating public financing are likely to try to find alternatives to the checkoff and add-on systems or additional resources, including state general funds. [FN 12] It carries the election process far from our nation's traditional spirit of personal, private and nongovernmental involvement in elections. In the past, Congress has been deadlocked on proposed public financing legislation. A comprehensive agreement by Congressional members on the terms of any public financing proposal is also necessary for its adoption, and such an agreement is highly unlikely.

### **Changes in Society Warrant a U.S. Constitutional Amendment**

**"I wish the Constitution which is offered, had been made more perfect...as a constitutional door is opened for amendment hereafter, the adoption of it, under the present circumstance of the Union is in my opinion desirable."**

George Washington [FN 13]

Since the U.S. Constitution was adopted, money has become much more dominating in politics. High priced communications and extravagant campaign techniques create endless demands for money. Money and advertising can eliminate the need for a candidate to possess the gift of leadership, vision, or any other necessary qualification for elected office. Modern electronic media is very expensive, but without television ads, few federal candidates have any hope of winning. Neither the cost demands nor the sources of money involved in today's campaigns were part of the elections of the eighteenth century.

Thomas Jefferson realized that the natural development of our society would necessitate corresponding revisions of our U.S. Constitution. In 1816, Jefferson said:

**"Some men look at constitutions with sanctimonious reverence and deem them like the ark or the covenant, too sacred to be touched. They ascribe to the men of the preceding age, a wisdom more than human, and suppose what they did to be beyond amendment... Laws and institutions must go hand in hand with the progress of the human mind... As new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times... Each generation has the right to choose for itself the form of government it believes the most**

promotive of its own happiness... A solemn opportunity of doing this every 19 or 20 years should be provided by the constitution." [FN 14]

**In the 1800's the power of personal wealth, while it was a factor in the election process, was nothing compared to what effect it can have on elections today.**

The times have indeed changed. In the 1800's the power of personal wealth, while it was a factor in the election process, was nothing compared to what effect it can have on elections today. Our current system of campaign finance is in dire need of reform. Years ago, the Court outlawed so-called "white primaries", in which the white voters, who controlled parties in the Southern states, met to decide who their candidate would be. Today we have a "wealth primary", where wealthy contributors determine who has the opportunity to run for office and who we have a chance to vote for. Restricting the spending of wealthy candidates from their personal resources could have a tremendously positive and egalitarian impact on elections.

Today a successful campaign for a U. S. Senate seat costs many millions of dollars - mostly for tv ads and mailings. Past campaign reforms have limited how much any group or individual can contribute to a candidate, but the courts in cases like *Buckley*, have thrown out any attempt to limit campaign spending by wealthy candidates on their own behalf. This provides a great advantage for those with personal wealth. Examples of self-funded candidates include: Herb Kohl, who spent \$6.1 million on his 1988 race for the Senate from Wisconsin; Frank Lautenberg of New Jersey, in 1982 spent \$5 million and Jay Rockefeller, who spent \$9 million of his own money winning his seat in 1984. Two of the best known millionaire politicians are Ross Perot and Steve Forbes. Mr. Perot spent \$63 million of his own money to run for president in 1992. In 1996, Mr. Forbes spent \$37 million trying to become the Republican Party's candidate for president.

Campaigns cost more than ever. A 1995 study estimated the 1992 campaign spending at \$3.2 billion. That is nearly triple the amount in 1980, \$1.2 billion. These figures cover all campaigns, but most spending involves national offices. In 1992, presidential candidates spent about \$550 million and congressional candidates another \$678 million. Political parties and organizations spent almost \$1 billion on national races, the rest went for state and local races. [FN 15]

"A multimillionaire has two advantages," says Michael Waldman of Congress Watch. "They can spend their money and they can gain instant credibility. The hardest thing for a candidate is to jump over the hurdle of not being taken seriously. That hurdle is primarily how much money they raise..." The amount of money that wealthy candidates are willing to spend can scare off opponents. Consider heiress Bernadette Castro, who has a personal fortune of at least \$10 million. When she was asked how much of her own money she was willing to spend on her Senate race, she replied, "As much as it takes."

**More than 60% of the members of Congress are now millionaires.**

Congress has become a citadel of multimillionaires. More than 60% of the members of Congress are now millionaires. More than ever, the rich have an enormous advantage in getting elected. As campaigns become more expensive, that advantage is growing. Federal law limits individual contributions to \$1,000, except if you are giving to your own campaign -- then the sky is the limit. The appearance of rich challengers willing to spend a lot of money may actually drive incumbent candidates into the arms of special interests represented by PACs and big donors. A legislative body populated by the rich does an inadequate job of representing and understanding the needs of ordinary Americans. Ideally, politicians should be a diverse group, people with varied life experiences. Our political system loses something valuable if personal wealth becomes the dominant criterion for winning public office.

**Today money is the key to victory - the top money getter wins nine times out of ten.**

The House and Senate have approved drastically different versions of campaign-finance reform, each containing a provision to limit the use of personal assets. Unless there is a new Supreme Court test with an outcome different from the *Buckley* ruling, that ceiling can work only as part of a voluntary scheme. Incumbents are hardly likely to write legislation that would so obviously help those who would unseat them. Today money is the key to victory - the top money getter wins nine times out of ten. [FN 16]

The evolution of American society since 1787 warrants a change to the U.S. Constitution to allow statutory spending limits. A U.S. Constitutional Amendment can make campaign spending reform possible. It could authorize the U.S. Congress, state, and local governments to both impose sensible spending and limit contributions for election campaigns. Jefferson's expectation that constitutions be rewritten as changing circumstances warranted, must be remembered when courts include unlimited campaign spending under the protection of freedom of speech. A proposal for such an amendment is currently before 1997's 104th Congress in U.S. Senate Joint Resolution 18.

#### **U.S. Senate Resolutions on Campaign Spending Limits During the 104 Congress (1995 - 1996)**

U.S. Senator Fritz Hollings (D-SC) introduced Senate Joint Resolution 18 (SJR18) in the United States Senate in 1995 during the 1st Session of the 104th Congress. SJR18 calls for an amendment to the U. S. Constitution that would allow federal, state, and local governments to reasonably limit campaign expenditures. Senator Hollings, in 1995, said: "... as a practical reality, what *Buckley* says is: Yes, if you have personal wealth, then you have access to television and you have freedom of speech. But if you do not have personal wealth, then you are denied access to television. Instead of freedom of speech, you have only the freedom to shut up." [FN 17]

SJR18 currently has 10 cosponsors, 8 Democrats and 2 Republicans, however, the resolution has been stalled in Congress. This is partially due to apprehension about

amending the U.S. Constitution but almost certainly due to the fact that some senators were dependent upon their personal wealth to get elected. With a demonstration of support for SJR18 on the state level, such legislation could gain momentum in Congress.

U.S. Senator Arlen Specter (R-PA) introduced Senate Joint Resolution 48 (SJR48) on January 26, 1996, during the 2nd Session of the 104th Congress to commemorate the 20th anniversary of the *Buckley* decision. SJR 48 calls for an amendment to the U. S. Constitution that would allow federal and state governments to reasonably limit campaign expenditures. The resolution was referred to the Senate Committee on the Judiciary but did not receive a committee hearing.

Senator Bill Bradley (D-NJ) in 1996 presented a legislative proposal consisting of two parts. The first, calls for amending the Constitution to give every state and the U.S. Congress explicit authority to limit spending in campaigns and contributions from any sources. The second, adds a new U.S. Senate General Election Campaign fund line to each tax return, which allows all filers to designate between \$1 and \$5,000 as an add on to taxes. Funds added-on by taxpayers in each state will be designated for Senate elections in that state only. Senator Bradley's proposal attempts to restore democracy to American elections by removing all the corrupting sources of money in campaigns and giving voters direct control over how much money is spent in a U.S. Senate election.

#### **The 1995-96 Alaska Legislature's Senate Joint Resolution 4**

In 1995 a resolution paralleling Senator Holling's SJR18 was introduced in the Alaska State Senate. Alaska Senate Joint Resolution 4 (SJR4) calls for a U.S. Constitutional Convention for the purpose of adopting a U.S. Constitutional Amendment to allow campaign spending limits to be determined by local government legislative bodies, state legislatures, and the U.S. Congress for control of their respective elections. Alaska's SJR4 was intended to inspire similar resolutions in other states and show national support for SJR18. Such state action could also help build a national support network for a U.S. Constitutional Amendment to allow campaign spending limits. SJR 4 did not pass during the 19th Alaska Legislature.

#### **State Action For Campaign Spending Limits**

Advocates for state resolutions like Alaska's SJR4 are not in favor of a U.S. Constitutional Convention, but rather hope to pressure the U.S. Congress to act on this issue of campaign spending reform. If other states adopt similar resolutions to Alaska's SJR4, then the mere possibility of a Federal constitutional convention plays a crucial role in bringing about constitutional reform on limiting campaign spending - even if the convention never takes place. Once the number of states applying for the convention nears the required two-thirds majority, Congress itself probably would pass the desired amendment - rather than lose control of the process. On at least one occasion this century, the possibility of a convention prompted Congress to propose an amendment, which became the Seventeenth Amendment, establishing the direct popular election of our Senators.

Runaway campaign spending is a nationwide problem, however, Congress is loathe to make changes that would effect their ability to spend unlimited dollars on campaigns.

Beginning with the rise of the progressive movement in the 1890's, people wanted to elect their U.S. Senators by direct popular vote rather than the election of their Senators by the state legislatures. The House of Representatives passed several resolutions proposing constitutional amendments concerning direct election, however, the Senate refused to vote on the issue - many members felt they would lose their seats if directly elected by the public. The Senate refused to follow the will of the people, therefore, two-thirds of the states passed resolutions calling for a constitutional convention, as provided for in Article V. Rather than face a convention, the Senate approved a direct election amendment, sending it to the states for ratification, where upon approval of three-quarters of the states, it became the Seventeenth Amendment to the Constitution.

Even though a convention did not take place, the state resolutions served their purpose by forcing the U.S. Senate to act, thus removing the congressional roadblock. Supporters of the current campaign for a constitutional convention to propose limiting campaign expenditures argue that a similar roadblock exists today. Runaway campaign spending is a nationwide problem, however, Congress is loathe to make changes that would effect their ability to spend unlimited dollars on campaigns. Accordingly, we must look to an alternate way to initiate change.

#### The U.S. Constitutional Amendment Process

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of two-thirds of the several States, shall call a Convention for proposing Amendments..."  
— Article V, U.S. Constitution.

The Founding Fathers prescribed this process of amending the Constitution because they knew occasionally Congress would not propose an amendment that the people wanted and the country needed.

All 26 amendments to the U.S. Constitution have originated in Congress, and the state-convention approach has never been used. Petition drives by the states for a constitutional convention have had a prodding effect on Congress because of the fears that a constitutional convention may be unlimited and a runaway convention and that the convention may make proposals that may significantly alter the present form of government. Four constitutional amendments have occurred because of this prodding affect of the petition applications from the legislatures of various states, namely, the direct election of Senators (Seventeenth Amendment), the repeal of prohibition (Eighteenth Amendment), the limitation of presidential terms (Twenty-second Amendment), and the presidential succession provisions (Twenty-fifth Amendment). Moreover, the prodding affect on Congress of the petitions from thirty-two states requesting a constitutional convention to propose an amendment to balance the federal budget seems to have spurred recent Congresses to actively consider the balanced budget issue as well as propose constitutional amendments to balance the budget. [FN 18]

The time is ripe to use this same process to effectuate a U.S. Constitutional Amendment to allow limits on campaign spending. Congress has refused to approve a constitutional amendment to allow limiting campaign expenditures. Some may see a call for constitutional reform by a populist movement unsettling, however, fears of a runaway convention are exaggerated.

### **A Constitutional Convention Will Not Take Place**

Since 1787 there have been numerous state resolutions calling for a convention, however, all such efforts have failed or become unnecessary due to congressional action on a specific amendment. Such convention calls will continue to fail in the future because few Americans actually want a convention and are satisfied when Congress itself finally acts on needed constitutional reforms.

### **Rescission Of Petitions By State Legislatures**

Certain legislation in recent Congresses, providing for procedures for calling constitutional conventions, would allow states to rescind their ratifications of a proposed amendment of a constitutional convention by the same process by which they ratified the proposed amendment up and until the time when valid ratifications by three-fourths of the states would occur. In light of the fact that many states submit applications to Congress for a constitutional convention, states would not be bound to their applications before the requisite number is reached.

### **Congressional Safeguards**

In 1973, the American Bar Association, upon the recommendation of a Special Constitutional Convention Study Committee, approved a resolution stating that Congress has the power to establish procedures limiting a convention to the subject matter which is stated in the applications received from the state legislatures. In 1984 the Senate Judiciary Committee, citing the opinions of constitutional scholars, approved a bill that would impose such limits on constitutional conventions and require selection of delegates by popular election.

The process contains safeguards that would prevent delegates from expanding their mandate. An amendment proposed on ambiguous constitutional authority would be blocked by Congress or struck down by the Supreme Court. In addition, an amendment would have to be ratified by three-quarters of the states. State legislatures could refuse to ratify any amendments that had not stayed within the framework of the convention. This gives the States power to stop any amendments that exceed the convention's charge. As the amendment for the direct election of U.S. Senators demonstrated, the threat of a constitutional convention is sometimes necessary to force consideration of amendments that challenge the self-interests of Congress. If Congress passes an amendment on limiting campaign expenditures, as proposed in SJR 18 by the U. S. Senator Fritz Hollings, that proposal could combine with any identical resolution passed by state legislatures and if three-quarters of the states ratify it, this amendment would be added to the U.S. Constitution.

An amendment limiting campaign expenditures would protect the rights of our citizens by strengthening democracy. It would not limit the First Amendment, but would clarify that the right to buy an election is not a form of freedom of expression.

Senator Bill Bradley, in a speech to the John F. Kennedy School of Government stated, "An amendment limiting campaign expenditures would protect the rights of our citizens by strengthening democracy. It would not limit the First Amendment, but would clarify that the right to buy an election is not a form of freedom of expression." [FN 19]

## Conclusion

Without a legally binding means of regulating spending, America's political candidates struggle with the burden of acquiring enough money for successful campaigns. Great temptations exist for candidates desperate to compete with big media campaigns, to disregard where money comes from and what strings are attached to it. As Senator Hollings has said: "The hard fact of life for a candidate is that if you are not on TV, you are not truly in the race." [FN 20]

With the emergence of "war chest" campaign tactics, successful candidates must be well capitalized individuals, versatile money managers, and virtually full-time players of the fundraising game. The goals of representative democracy are not served when the cost of entering an election campaign is beyond the means of most citizens. In the past few decades, candidates have spent higher and higher proportions of their time involved in fundraising functions rather than in direct contact with the electorate. While candidates are raising and spending money on more sophisticated advertising, political candidates are drawn away from traditional, straightforward presentations of their qualifications for public office.

Limiting spending would bring campaigns back to the public by door-to-door campaigning, politicians listening rather than polling, and of campaigns led by candidates and their ideas rather than consultants and their focus-group-tested messages. In other words, the system would adjust in what could very well be a way that reinvigorates citizen participation. [FN 21]

Comprehensive spending limits as proposed in SJR 18, SJR 48 and SJR 4 would bring down the astronomical costs of running for public office. A U.S. Constitutional Amendment to allow for the limitation of campaign expenditures is the best solution to neutralize the exploding costs of political campaigns in America. We can return democracy to the people by giving them control over campaign spending, and thus, freeing politicians from the power of money.

According to Senator Robert C. Byrd, "The Congressional campaign system has become toxic with money. We chafe over the burden of having to take our time to go, tin cup in hand, begging to PACs for the money to run for public office. Yet -- we have it in our power to stop the madness."

Growing numbers of members of Congress, state legislators and citizen groups around the country are supporting the adoption of a constitutional amendment to limit spending and contribution levels.

I have supported a U.S. Constitution campaign spending limit amendment for several years and will again be sponsoring such legislation during the 1997 Alaska legislative session.

**NOW IS THE TIME TO BE BOLD AND LIMIT THE INFLUENCE  
OF MONEY ON POLITICS IN AMERICA**

FN 1. USPIRG, *The Need For A Constitutional Amendment To Limit Campaign Spending & Contributions* (1996)

FN 2. *Buckley v. Valco*, 424 US 1 (1976).

FN 3. The recommendations by the U.S. House of Representatives Administration Committee continued as follows:

"Such a system as not only unfair to candidates in general, but even more so to the electorate. The electorate is entitled to base its judgment on a straightforward presentation of a candidate's qualifications for public office and his programs for the Nation rather than on a sophisticated advertising program which is encouraged by the infusion of vast amounts of money.

The Committee on House Administration is of the opinion that there is a definite need for effective and comprehensive legislation in this area to restore and strengthen public confidence in the integrity of the political process."

FN 4. The following lists a legal history regarding attempts to set federal campaign spending limits:

1978 In the case of *First National Bank of Boston v. Bellotti*, 98 SCT. 1407 (1978), the Supreme Court granted strong constitutional protection to independent expenditures. Finding a Massachusetts statute unconstitutional and rejecting the state's argument that corporate spending exerted an undue influence on the outcome of "the Massachusetts referendum "destroying the confidence of the people in the democratic process and the integrity of government", the Court found the statute abridged the corporation's freedom of political speech. Only when the corporate expenditures donated to influence a vote on referendum issues materially affect the "property, business, or assets of the corporation" would the Massachusetts statute limiting corporate expenditures be upheld.

1981 In the case of *California Medical Association v. Federal Election Commission*, 101 SCT 2712 (1981), the Court upheld a FECA provision limiting contributions from individual and unincorporated associations to multicandidate action committees. However, the Court noted that the CMA and its members were not limited in their expenditures independently in support of a candidate or issue. Also, the Court introduced the idea of "speech by proxy" - funds given to another entity which are then "transformed" into political speech by someone other than the contributor. The Court ruled that "speech by proxy" was not entitled to full first amendment protection. 1981 In the ruling on *Citizens Against Rent Control v. Berkeley*, 102 SCT 434 (1981), the Court struck down a municipal ordinance that limited individual and corporate campaign contributions in referendum elections. Chief Justice Burger stated, "Whatever may be the interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committees, there is no significant state or public interest in curtailing debate and discussion of a ballot measure." Thus, freedom of speech as well as freedom of association was stressed. With the CARC

decision, the distinction between contribution and expenditure was lost. Therefore, speech by proxy gained entitlement to full first amendment protection. Also, Chief Justice Burger strongly suggested that the Court would only accept one basis for restricting campaign contributions. Referring to the *Buckley* case, he stated the case identified a "single narrow exception to the rule that limits on political activity were contrary to the First Amendment." The exception referred to the perception of undue influence of large contributors to a candidate.

1982 In the case of *Federal Election Commission v. National Right to Work Committee*, 103 SCT 553 (1982), the Court recognized that regulation of campaign spending needed to be addressed by Congressional action. The Court appeared to expand the realm of possible government justifications beyond the "single narrow exception" of corruption. In 1995, the Court dealt a devastating, possibly fatal blow to congressional attempts to reform the campaign spending arena. *Federal Election Commission v. National Conservative Political Action Committee*, 470 US 480 (1995), concerned the Presidential Election Campaign Fund Act (PECFA), which stated that if a candidate accepted public financing for his general campaign, then both contributions to him and expenditures on his behalf would be limited. The Court declared PECFA unconstitutional. The Court reiterated the "*Buckley* principle" that political expenditures by PACs were fully protected first amendment speech and withdrew its own "speech by proxy" distinction. The Court based its decision on the absence of any compelling governmental interest stating that there was no "potential for corruption" related to PAC expenditures.

FN 5. *Federal Election Commission v. Massachusetts*, 479 US 238 (1986)

FN 6. *Austin v. Michigan Chamber of Commerce*, 110 SCT 1391 (1990)

FN 7. *Colorado Republican Party v. Federal Election Commission*, 116 SCT 2309 (1996)

FN 8. 424 US 15 - 19

FN 9. *Id.*, at 20 - 21

FN 10. *Id.*, at 48 - 49

FN 11. *Id.*, at 49

FN 12. State Trend Forecasts (April 1993)

FN 13. George Washington, Letter to Patrick Henry, September 24, 1787

FN 14. Letter to S. Kerchard, January 12, 1816

FN 15. Newsweek, Robert J. Samuelson (August 28, 1995)

FN 16. Time, Janice Castro (August 3, 1992)

FN 17. Congressional Record, January 17, 1995, S-1007

FN 18. In the 97th Congress, the Senate Judiciary Committee reported S.J. Res 58 on July 10, 1981, which would provide that Congress adopt a balanced budget before the start of each fiscal year. S. Rep. No. 97-151, 97th Cong., 1st Sess. (1981).

FN 19. Senator Bill Bradley, Speech to John F. Kennedy School of Government, January 16, 1996

FN 20. Congressional Record, January 17, 1995, S-1006

FN 21. Senator Bill Bradley, Speech to John F. Kennedy School of Government, January 16, 1996