STATEMENT OF FLOYD ABRAMS
RE LEGAL CHALLENGE TO
CAMPAIGN FINANCE LEGISLATION

I am pleased to appear here today in rather unaccustomed company to announce my own participation as co-chief counsel with Judge Kenneth Starr on behalf of Senator McConnell and a distinguished group of other attorneys in mounting a legal challenge to the campaign legislation adopted by the Senate yesterday. It is the oldest of clichés that politics makes strange bedfellows. But it is not strange at all that people who disagree politically agree whole-heartedly about the First Amendment. There are no strange bedfellows where the First Amendment is concerned, only Americans seeking to defend their freedoms.

I wanted to start my comments with a brief recollection. The year before last we had a highly publicized senatorial race in my home state, New York, between Hillary Clinton and Rick Lazio. Lazio, you may recall, demanded that Mrs. Clinton agree to urge out of state issue-oriented groups that favored her -- the Sierra Club, pro-choice, pro gun control groups -- not to purchase ads in their race in return for which he would pressure pro-Lazio conservative-oriented groups -- pro-life, NRA, anti-Clinton groups -- to stay mute. To general acclaim, the candidates agreed to try to quiet these supporters and they succeeded in doing so.

I was deeply troubled by all this. It seemed to me then -- it seems to me now -- that the public was the loser since more speech rather than less from more people and groups would have been better not worse, that it would have been good, not bad, for all these groups to have had their say.

But they did not and one of the reasons they did not was what I view as a rather mad sort of logic at work of the same sort we saw come to fruition yesterday. It goes something like this: politics costs a lot of money; for reasons of fairness and to avoid either corruption or the perception of corruption, we should limit (by law -- or, as in the New York race, pressure) the amounts spent; to assure that the limits are kept inviolate, we must limit the amounts supporters of candidates spend even in expressing their views on pressing public issues; to assure that those rules are not circumvented, we should view with particular skepticism -- or even total disdain -- claims of issue oriented groups at times close to an election that they are speaking about issues at all or on their own at all; to assure that these rules have enough bite, we will impose though criminal penalties on violators. I could go on.

A visitor from a distant planet might look at all this and say "what are you doing?" "why are you limiting speech about elections?" Or, to put it a bit more toughly, "are you

seriously telling us that when speech matters most, we will allow it least?"

But that's what we are doing. In the New York senatorial campaign, the groups that wished to speak were hushed by pressure. Under the new law passed yesterday, the threat of criminal sanctions will deter -- and is meant to deter -- speech.

None of this serves First Amendment interests or, in the case of the new legislation, the First Amendment itself. The threat to "issue ads" imposed by the new law is, by way of example, a threat to the First Amendment itself; the new definitions of "coordinated" activities are at war with the First Amendment, not to say in direct and knowing conflict with the Supreme Court's still binding ruling in Buckley v. Valeo itself; the same provision threatens First Amendment associational rights (it's *good* for people to talk to their congressmen or those trying to unseat them) as well as First Amendment free speech rights.

This is only one section of the bill but it reflects the speech destructive, speech suppressive approach taken throughout it. Think of it: a statute that bars ads by the NRA or the Sierra Club within 60 days of a general election because they refer to a candidate by name. This is not just unconstitutional (something clear enough to the framers that they

offered in the statute itself a fallback position -- also, not coincidentally, unconstitutional).

This is not just some sort of error. It is at the heart of the problem with the statute. From start to finish, the new law seems rooted in the notion that speech about elections is so dangerous that it must be rationed or quarantined. That approach simply cannot be squared with the First Amendment.

I know that the people that supported this law -- people whose political and social views I tend to share, including some to whom I have, on occasion, contributed -- think they are serving the country by doing so. But so do we. No election law "reform" is worth violating the First Amendment.

And so, before celebrating too much and before trying to denigrate the seriousness of the First Amendment-rooted lawsuit that will be filed after the President signs the bill, supporters of this bill should ask themselves why a group like the ACLU believes key provisions of the law are unconstitutional; how a great constitutional scholar like Kathleen Sullivan of Stanford Law School could join this challenge if it were anything but serious; and, if I may, why I would choose to take on people for whom I have the highest regard if our claims were anything but of the most serious sort.

The legal challenges to this law are serious. The First Amendment claims are rooted in well established First Amendment principals and case law. The claims will be pursued vigorously. And if large parts of this statute are stricken, as I believe they will be, it will not be on the basis of any legal technicality but because, most fortunately, the Constitution is our great protector.

Floyd Abrams