



March 21, 2002

By Facsimile

Senator Mitch McConnell
United States Senate
Washington, D.C.

Dear Senator McConnell:

I am greatly honored to join the distinguished legal team you have assembled to prepare a constitutional challenge to the campaign finance restrictions approved yesterday by the Senate, and I thank you for inviting me to do so. The supporters of the new legislation are, of course, honorable and well-intentioned men and women, sincere in their wish to improve our democracy. None of us wishes to live in a plutocracy, where wealth alone determines political clout. But democracy is best promoted by adhering to the United States Constitution. And fundamental to that Constitution is the principle of robust, uninhibited, and wide-open political debate.

Those who claim that our political system is awash in money ignore a few basic realities. Political money today does not line any politician's pockets; rather it pays for political advertising, a quintessential form of political speech. Political candidates need a lot of money to compete in American elections. Our nation is large. Our large electoral districts force candidates to communicate directly with large groups of voters. This depends on the use of mass media, which in our system are privately owned and charge for their services. That means that getting the candidate's message out is expensive.

Earlier efforts at campaign finance reform have produced perverse results that turn democracy on its head. In 1974, Congress imposed ceilings on political contributions and expenditures. In 1976, in *Buckley v. Valeo*, the Supreme Court struck down the expenditure limits but not the contribution limits as contrary to freedom of speech. That decision left us in the worst of all possible constitutional worlds: government may limit the supply of political money but not the demand.

Naturally, political expression soon found other vehicles for making itself heard, through political parties, political action committees and independent issue advocacy groups. Political spending and speech thus was driven away from the candidates, who are accountable to the voters, to secondary and tertiary organizations that are harder for the voters to monitor and discipline.

The new legislation calls these alternative means of expression “loopholes” in the system, and tries to shut them down. But in a system of private ownership and free expression, the loopholes can never all be shut down. And when the cure has been worse than the disease, the solution is not more doses of the same medicine. Driving money away from the parties to less visible and accountable organizations will not make elections more democratic. And what could be less democratic than silencing political advocacy right at election time, when it is most important that it be heard?

Campaign finance reformers sometimes say they merely seek to limit money, not speech. But there can be no doubt that restrictions on political money are restrictions on political speech. A law barring newspapers from accepting paid political advertisements, or limiting the sale price of political books, would likewise limit only the exchange of money. Yet no one would question that such laws inhibit political speech -- as do restrictions on campaign funding.

There may well be constitutional routes to campaign finance regulation, such as mandatory disclosure rules and public subsidies, both of which the Supreme Court has already upheld. But leveling down political speech is inconsistent with our constitutional traditions and first principles. I look forward to working with you to represent those traditions and principles in the litigation ahead.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen M. Sullivan", with a long horizontal flourish extending to the right.

Kathleen M. Sullivan