Bill as Introduced

SB 303- AS INTRODUCED

2000 SESSION

00-2713
03/01

SENATE BILL ***303***

AN ACT relative to campaign contributions by corporations.

SPONSORS: Sen. Below, Dist 5; Sen. Russman, Dist 19; Sen. Trombly, Dist 7

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill eliminates the prohibition on political contributions by organizations representing or affiliated with corporations, and by certain persons associated with such organizations.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 303- AS INTRODUCED

00-2713
03/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to campaign contributions by corporations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Elections; Political Expenditures and Contributions; Prohibited Political Contributions; Corporations. Amend RSA 664:4, I to read as follows:

I. By any corporation, or by any ***organization,*** officer, director, executive, agent, or employee acting in behalf of such corporation[~~, or by any organization representing or affiliated with one or more corporations or by any officer, director, executive, agent or employee acting in behalf of such organization~~].

2 Effective Date. This act shall take effect 60 days after its passage.

LBAO
00-2765
Revised 1/13/00

SB 447 FISCAL NOTE

AN ACT relative to campaign contributions and expenditures.

FISCAL IMPACT:

The Secretary of State has determined this bill will increase state restricted revenues and expenditures by an indeterminable amount in FY 2001 and each fiscal year thereafter. There will be no fiscal impact on county and local revenue or expenditures.

METHODOLOGY:

The Secretary of State stated this bill establishes a non-lapsing, revolving, continually appropriated special fund to be known as the Clean Elections Fund effective July 1, 2000. The balance of the fund shall not exceed $6,000,000 on June 30 of each year. The source of funding the Clean Elections Fund will be from many sources, including voluntary donations, unspent seed money contributions, unspent prior distributions, fund interest, and money appropriated from the general fund but not fully expended as of the end of the fiscal biennium. The amount from the general fund would be an amount sufficient to maintain a $6,000,000 balance in the fund. Each qualified candidate for governor is eligible for up to $625,000, each qualified councilor is eligible for up to $50,000, and each qualified state senator is eligible for up to $20,000. This bill also includes a procedure for candidates to receive additional funding above these stated amounts.

Amendments

Public Affairs
March 1, 2000
2000-3615s
05/10

Amendment to SB 303

Amend the title of the bill by replacing it with the following:

AN ACT relative to campaign contributions by business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

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4 Effective Date. This act shall take effect 60 days after its passage.

2000-3615s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions.

Committee Minutes

Date: February 9, 2000
Time: 1:00 p.m.
Room: Rm. 104, LOB

The Senate Committee on Public Affairs held a hearing on the following:

SB 303 relative to campaign contributions by corporations.

SB 447-FN relative to campaign contributions and expenditures.

Members of Committee present:

Senator Trombly
Senator Disnard
Senator Eaton
Senator Krueger
Senator McCarley
Senator Roberge

The Chair, Senator Rick A. Trombly, opened the hearing.

Senator Rick A. Trombly, D. 7: I'll open the hearing on **Senate Bill 303 and 447**. I put them together for the convenience of the public so that we wouldn't have people waiting to testify for one bill or the other. They're basically both campaign finance reform bills, and I think that, when you address your remarks, if you want to address one bill specifically for the benefit of the Senate members, that would be great. I will note for the members of the public and the Senate committee that on Senate Bill 447 I have . . .(background interference). . .so that's good news. . . . .and same on 303. So, I would, at this time, recognize Senator Clif Below who is the prime sponsor of both pieces of legislation.

Senator Clifton Below, D. 5: Thank you, Mr. Chairman and members of the committee. I'm actually waiting for an amendment on 303; so, if you don't mind, **I'll just speak to 447 at this time.** I'm Clifton Below representing Senate District 5.

This bill is a result of a study committee that was established last year, which I had the pleasure of serving with a number of other colleagues who are here in the room today; and **the bill establishes a fund to provide**

campaign financing. A similar bill was introduced in the House. This bill is different from the House bill in a few respects; the most significant of which is that **this covers the Office of State Senate as well as the Office of Governor and Council.**

I think the feeling of the study committee was that that might be appropriate to put before the Senate as to whether the Senate feels that's appropriate or not. **The purpose is really to open up the political system and to reduce the role of money in the campaign effort** so that, of course, as we all know, the compensation for serving as a State Senator or Executive Council for that matter or House members is quite modest in this state. Of course, the Governor is paid a salary, but all of these offices require fundraising huge sums of money relative to the compensation people receive and, increasingly, as time goes on, the importance of that **fundraising has taken on more and more of a role.** I think there's a feeling by many of us that **it detracts from the democratic process,** and **there should be an alternative for those people who are willing to voluntarily limit their fundraising and expenditures.**

So, what I'd like to do is just to sort of walk you through the bill so that you can understand the major elements of the bill and then a respond to questions. Just as a point of context, I would mention that **all of our neighboring states have adopted something like this.** The state of Maine and Massachusetts, through popular referendum, received very strong support and the state of Vermont through legislative action; and **I think that does give an indication of the popular support for this.** As you know, the two candidates who ran in the New Hampshire primary. . .or several candidates. . made campaign finance reform a major issue; and, certainly, on the Republican side, it was interesting. . .the candidate who really emphasized that came out far ahead of the candidates who were saying that campaign finance reform didn't matter; and both the Democratic candidates strongly supported this kind of reform. . . .Well, not this kind, but campaign finance reform.

In any case, looking at the bill. . . . .The first several sections of the bill amended existing statutes to bring in this new chapter. **The new chapter would be RSA 664-A. Section 1** of the bill, of course, is the **Purpose** statement; **Section 2** creates a dedicated fund with a **Clean Elections Fund. Section 3** of the bill is the **Enforcement** section concerning the Attorney General and enforcement for violations of the general campaign. **664** - I'm not sure what the title of that chapter is but it's the general section on **political expenditures and contributions,** and **it adds the reference to the new chapter throughout that enforcement section.**

Section 4 of the bill starts on **Page 2, Line 8**, does provide that penalties which are assessed for when a candidate exceeds the permitted campaign expenditures, the voluntary caps that people can agree to. . .that those funds would go into the Clean Election Fund rather than (I believe) the general fund which is where they would go now.

Sections 5, 6, 7, and 8 of the bill. . . .all on **Page 2**. . . .concern the **Ballot Law Commission** and where there's **Disputes** as to whether someone qualifies for the ballot from party registration or other ballot related disputes concerning **registration of candidates for clean elections funding** would go before the Ballot Law Commission.

Section 9 of the bill **starting at the bottom of Page 2 and really continuing on to Page 3 establishes the new chapter, the CLEAN ELECTIONS FINANCING chapter.** The **Definitions**, at the top of **Page 3** – This does set up a process for **qualification**. . . .qualification with **qualifying contributions** as well as an opportunity to raise some additional seed money contributions before the point of time at which there's funding from the public funding available. So, those terms get defined. **The funding is available both in the primary period as well as in the general election period and is structured so that it would be available both to party candidates as well as independent-those who choose to run as independent candidates.**

On **Line 26** of **Page 3** the **nonlapsing, revolving special fund is established not to exceed $6,000,000** at the end of each year. It's set up so that money goes into the fund. . . .If the fund achieves the $6,000,000, I think that the excess would lapse into the general fund. . . .But, **the intention is to achieve a balance which is sufficient to fund any potential candidates**; but, if the fund gets too large, then, obviously, it doesn't need to be retained there.

The following section, **Roman III** at **Line 33**, **specifies what money goes into the fund**; and **this is where the study committee spent an enormous amount of time and, unfortunately, was unable to identify a significant source of revenue** which was not otherwise claimed for the purposes. So, just to explain right up front. . .This bill doesn't really have the funding to get to $6,000,000, even $1,000,000, in the near term, but **the feeling of the study committee was we should go ahead and get the structure in place so that this is something that could be considered as the next biennial budget is developed**; also, so that the campaign fines could go into the fund. . . any involuntary contributions could go in. But, later in the bill, there's a mechanism that doesn't really set it in operation until there's sufficient money to make it meaningful.

So, in that sense, we still have challenges before us; but let me just run through the sources that would go into the fund. . . . .**voluntary contributions, donations, unspent seed money contributions from qualifying contributions that are not returned to contributors** (That'll be explained a little bit later on), but there's this concept that candidates who want to qualify for this can raise a certain amount of seed money. If they don't spend it by the point of time in which they get the public financing; then they can either return that to the most recent contributors or they can contribute it to this fund instead.

(c) is **Money distributed from the fund and returned by a participating candidate who does not remain a candidate until the election for which the money was distributed.** . . if, for some reason, they moved out of the district and don't qualify as a candidate any longer.

(d) is **Money distributed from the fund which is returned because it was not spent by the date of the primary election for which the money was distributed.**

(e) is the **Fines levied for violation of election laws, including the fines previously referenced for exceeding the voluntary spending caps.**

(f) Interest generated by the fund.

And **(g) is a little unclear**, and I think Representative Splaine may have an amendment that clarifies this a little bit, but it says **"Money appropriated from the general fund but not fully expended as of the end of the fiscal biennium. The amount of such money to be deposited in the fund shall be $6,000,000 minus the amount of money in the fund at the end of the fiscal biennium."** I'm not exactly sure what that means, and **that needs to be clarified.**

Let me clarify. . . . .The intent is not to sweep $6,000,000 of surplus at the end of the biennium into the general fund; rather **the intent is that, if there's money that's been appropriated for these purposes and is unexpended that it remains in the fund**, but I think **that needs clarification.**

The next section of the bill at **Line 12, the proposed RSA 664-A:3** describes how a candidate qualifies to participate in the fund; and, of course, the major point is that it is someone who is going to voluntarily declare that they want to qualify. . .to participate I should say. And, the second **Roman II** there

provides that they become a participating candidate in the general election period if they were a participating candidate in the primary and they were declared nominated; or if they did not have a primary contest. . . .and that would be in the case of an independent candidate who qualified.

Roman III provides that they shall not qualify if they accept any private contributions other than seed money or qualifying contributions other than things prior to the primary election period. The point of this is that, **when you choose to participate, you forego accepting private contributions in excess of either the public financing or the seed money contributions that are permitted.**

The next section, **664-A:4** at **Line 24**, describes **Qualifying Contribution Requirements**, and these are a certain number of contributions that have to be obtained by a candidate who wants to participate in order for them to qualify for the public financing. . . .and this is the number of contributions. Later on the **contribution is described as a $5.00 contribution**, and I think **the intent is it would be $5.00 or more**, although there's a limit to how much that might be. But, in the case of **governor, it would be $5,000 for a candidate, $1,000 for a candidate for councilor, and $3,000 for a candidate for state senator**, and the purpose of here is to show a broad base of support of small contributions. . .that the person is a serious candidate and if they can get some support for their candidacy but without having to go to big money contributors.

The **qualifying contributors would specify their domicile for voting purposes**. This is important in terms of certifying the qualification.

The top of **Page 5, Roman VI,** specifies that **Qualifying contributions shall be made from personal moneys by individuals who are registered to vote and qualified to vote for the candidate.** So, the support that the person has to show is that it's within their district that they're running for. . . . . .statewide for governor, and a particular senate district. For instance, if this was in place and one of us chose to want to participate, you'd have to get a minimum of 300 contributions of at least $5.00 each from qualified voters within the senate district for which you're running. That's that part.

In addition to the sort of qualifying contribution, the next provision, **664-A:5 at Line 5, allows for a certain amount of seed money contributions which I think could also be qualifying contributions.** However, it specifies they shall not exceed more than $500 for a candidate for governor or $100 for councilor or state senator. . . .and that's per each individual adult. . . .and there's a total of the seed money contributions. . . .the amount is limited

($62,500 for governor, $5,000 for councilor, and $3,000 for state senator). That is essentially the seed money that the candidate can raise before they qualify and start getting the money distributed from the Clean Election Fund for their campaign. The point is, if a candidate accepted money in excess of these seed money amounts, they would not be eligible for the fund.

At **Line 17** is the provision that, if they haven't spent the seed money by the end of the qualifying period, then they either return it to the most contributors or they can contribute it to the Clean Election Fund.

There's some additional. . . .just detail provisions about the reporting requirements.

Moving down to **664-A:6 Contributions and Expenditures**, again, it's just some of the requirements. . . .The key part of this is that candidates who are participating do not accept private contributions from any source so their funding is from the Clean Elections Fund.

Senator Rick A. Trombly, D. 7: Senator Below, if I can stop you there. If you hear the phone ring, Doris Haddock is going to be calling in at approximately 1:25, so I would be interrupting.

Senator Clifton Below, D. 5: Okay.

The **next section** just **provides a procedure for how someone would object to registration for somebody to participate in the fund.** The next section on **Page 6, 664-A:8, Clean Elections Fund Financing, spells out the amount of financing that would be available if someone chose to participate.** I don't think I need to review these in detail. They are somewhat lower than the current spending level. . . . .so, for state senator, for instance, (I think this is in addition to the seed money that one might raise and spend of $3,000.) there'd be $10,000 for an uncontested primary election, $20,000 for a contested primary election, which is the current voluntary spending limit as well as $20,000 for the contested general election, which conforms with our current voluntary spending limits as I believe the others do. Although, if there's an uncontested primary, there's a lower spending level than the current voluntary limit.

There's an important point here which is **Roman II** on **Line 28**, which is that the **candidate may receive additional funding to match expenditure by the participating candidate's opponent above the voluntary expenditure limitation**. . . .not to exceed 200 percent of the amount allocated. So, if there's a candidate who has not chosen to participate

in this and voluntary spending limits, then the participating candidate could raise additional money and spend up to that matching level.

The next section, **Roman III** at **Line 32** spells out when the disbursements, the payments, would come from the fund. I think the schedules of it there attempt to be a reasonable timeliness to be billed. . .(inaudible). . .any funds for the progress of campaigning.

The next section, **Line 8** on **Page 7**, is the **reporting requirements** which are more rigorous than in the case of the current campaign requirements. However, primarily, what people are reporting is their expenditures rather than contributions because they wouldn't necessarily have the private contributions.

The next part is very important. . . .At **Line 16, Shortfall in the Fund**. . . .If the fund is established and the program starts and there isn't sufficient money so that everyone gets their amount that they should qualify for, then they would receive a proportional share based on the amount in the fund to what they qualify for. . . . .and then a participating candidate may supplement the pro-rated payments with private contributions up to amount equal to the difference between the pro-rated payment amount and the amount to which the candidate would have been entitled. In other words, say the fund is only funded at 50 percent and instead of getting $20,000 for the general election, someone gets $10,000. Then, they can still raise the balance of the $10,000 through private contributions.

There's a little section on **Administration** for the secretary of state to preparing a manual and such forms necessary to administer this.

The next section at **Line 27** is **Reports to Legislature** so that we can evaluate this and be informed about how it's working and make recommendations relative to the enforcement by the secretary of state.

At the tope of **Page 8** is **Fines for Excess Expenditures** so a candidate who spends or obligates to spend more than the amounts permitted for the clean elections may be subject to a fine in an amount equal to 10 times the excess expenditures. It's pretty hefty. . . . We may want to consider whether we may be bankrupting somebody that goes over by $100 and they pay $1,000. I think the point is to say. . . .If you're going to do this, you're going to have to be rigorous in your accounting, and maybe that offsets the amount of time you're out fundraising.

The next part. . .There's a **Severability** provision, but the final section of the bill, **Section 10**, is a critical part, which is **when would this fund actually**

start to be administered. . . .and there are sort of two stages to this. The **Roman I** at **Line 9** provides that when the fund reaches $1,000,000, then the state treasurer would certify that that level has been reached to the secretary of state, and on the April 1st following such certification, the secretary of state would commence administering the fund for governor and council. Just looking at this, we figured if one candidate for governor and a couple of candidates for councilor participate, that alone could be on the order of. . . . .if there were contested primaries and such, that would be on the order of $1,500,000 total expenditure. . . .$1,000,000 at least would be a substantial portion of that and it might cover the whole amount if there's an uncontested primary and just the general election.

So, that gets us up to the range where it's meaningful. The next threshold is, **once the fund achieves $2,000,000, then it also would be administered for state senate races**. The feeling is that some number of them need to get up to a meaningful level, otherwise it's not worth trying to do from an administrative point; and, also, **the feeling was this certification needs to come by April 1st so that people who are planning to run know whether this is a route that they might go,** whether this fund would be operational and available or not. . . . .and, really, much later than that date; it wouldn't really be practical to change course so close to a filing period.

So, that's the overview and the technicalities of the bill.

Senator Rick A. Trombly, D. 7: Senator Disnard?

Senator George F. Disnard, D. 8: A few questions, if I may.

Senator Clifton Below, D. 5: Certainly.

Senator George F. Disnard, D. 8: How is **soft money** handled, or how will it be handled?

Senator Clifton Below, D. 5: **This bill doesn't really address that;** and I think that's another challenge that we need to address.

Senator George F. Disnard, D. 8: One more, if I may. On **Page 6**, you mentioned that if the opponent raised a certain amount of money, you could raise additional money. Would that come from the fund, or would that come from private donations?

Senator Clifton Below, D. 5: From the fund. . . .I'm sorry this is from the fund. . .Yes. I think I said something different in my testimony, but this does say from the fund.

Senator George F. Disnard, D. 8: Thank you.

Senator Clifton Below, D. 5: It could be privately raised if the fund didn't have money available.

Senator George F. Disnard, D. 8: Appreciate your explaining it in a manner I could understand. Thank you very much.

Senator Rick A. Trombly, D. 7: I noticed, Senator Below, the key to this bill for me was the part that said that the information will be written in a non-technical sense.

Are there any other questions? Senator McCarley?

Interruption – Teleconference call received from Doris Haddock ("Granny D").

Doris Haddock, Dublin, NH: Good afternoon.

Senator Rick A. Trombly, D. 7: Welcome to the committee. How are you doing today?

Doris Haddock, Dublin, NH: Just fine, thank you.

Senator Rick A. Trombly, D. 7: Where are you located today?

Doris Haddock, Dublin, NH: We're in Hartford, Connecticut.

Senator Rick A. Trombly, D. 7: How's the weather down there?

Doris Haddock, Dublin, NH: Well, they have snow and ice, but the sun is shining and there are big puddles everywhere.

Senator Rick A. Trombly, D. 7: Thank you. This is Senator Rick Trombly, Chairman of the Public Affairs; and if you wish to testify on this legislation, I'll turn the floor over to you.

Doris Haddock, Dublin, NH: Yes, I would like to speak on it, if I could.

Senator Rick A. Trombly, D. 7: Please.

Doris Haddock, Dublin, NH: Thank you. I'm so happy you've asked me to speak to the senate committee with whom you are meeting today on "clean elections."

If people in New Hampshire could talk to you as individuals, I'm sure you would hear from them what I have been hearing all over the 11 states and the 3,100 miles I have traveled. They want campaign reform. . . .They want to be able to vote for candidates in their state who have not been elected by big business interests, but elected by their friends and neighbors and who will become their constituents once they are elected.

Please join the other states who have voted in public financing for campaigns in the state. It is a democratic way to go. If New Hampshire and Rhode Island were to become the fifth and sixth states to vote for public financing, then the whole of the New England states would be complete. We would be an example for the rest of the country. Please try to become patriots of old and set forward bravely into this new adventure. Don't let our democracy in our state down. . . . . .We are not as brave as were our early forefathers. Make your constituents proud of you. If you choose clean campaigns with public financing, you can go to bed knowing you are free of having to raise any more money over and over again; and you will know that you have not let down New Hampshire boys and men who have fought and died for our state in wars from the Revolutionary to Vietnam. They fought to keep our state and our country free and be democratic. Don't break faith with them. . . .keep democracy alive in New Hampshire. Thank you for listening to me.

Senator Rick A. Trombly, D. 7: Thank you now. Would you accept any questions?

Doris Haddock, Dublin, NH: Yes, of course, I will.

Senator Rick A. Trombly, D. 7: Are there any questions from members of the committee? (no response)

Thank you very much. Thank you for calling in.

Senator McCarley?

Senator Clifton Below, D. 5: While you're thinking about it, I would say that she raises a key point, which is to put the public back in public office; and some people have sometimes questioned. . . .Well, why should we use taxpayer dollars for funding of campaigns? To me it's rather obvious that these are public offices, and it's reasonable to say we're going to use a very small proportion of our total public funds to allow candidates on an equal

footing that voluntarily choose to participate to be able to get a basic campaign message across then be available to voters to be. . . .if choosen or not choosen based on what their message is rather than who are their friends and their connections and their ability to raise money is.

Senator Rick A. Trombly, D. 7: Senator McCarley, do you remember your question?

Senator Caroline McCarley, D. 6: I do remember my question, and I'm just trying to make sure I understand certain of the fundamental underlying way this would work. If we assume that all of us choose to voluntarily take this approach (understanding that we can choose later to break the law); let's assume that nobody's going to do that. We, basically, are talking about putting in legislation what's going to be spent on the elections. . .(inaudible). . So, we will spend in the contested primary for governor in a general election $1.2-$1.5 million whatever it adds up to. . . .Is that (what I understand) to be the case?

Senator Clifton Below, D. 5: If one candidate chose to participate. Obviously, if there were more candidates in a primary who choose to participate and qualify, there would be a few more expenditures.

Senator Caroline McCarley, D. 6: Oh, surely. I mention. . .(inaudible). . there's the contestant issues of those two people, I mean there's a general election for which, conceivably, you're right; there could be independents on the. . . . . .(inaudible). . .

Senator Clifton Below, D. 5: Right.

Senator Caroline McCarley, D. 6: Thank you.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

Senator Below, how would you respond to the positions that some have raised to me that there have been some very high profile-high finance campaigns that have gone down in flames, which tends to show that the amount of money spent in a race in fact doesn't affect the outcome?

Senator Clifton Below, D. 5: I think the point is not that money can buy an election. . . .because a person can spend all they want; and if they have a message that voters don't like, it won't succeed – it'll go down in flames. But, it's sort of the reverse of the question. . .The question is. . .Does somebody who is willing to serve and, maybe, has a message the voters would support and like, necessarily even get before them if they're not willing to enter the

fray and try and raise the money that's required? So, I would say it's to give people an opportunity to participate.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Caroline McCarley, D. 6: In your study committee, did you arrive at the numbers in contributions based on scanning what people have filed over the years for numbers of contributions and all that kind of stuff?

Senator Clifton Below, D. 5: I'm not sure. I think Representative Splaine or Flanagan might be able to better speak to that. I wanted to point out one other interesting feature of this bill on **Page 5** at **Line 30**. It did state. . . .and this, I think, is an important way to try to clarify things. . . .and this may differ a little bit from the House version of the bill. It says, ... **"Participating candidates shall not accept any non-monetary contributions except the volunteer donations permitted by this paragraph."** Then, it goes on to clarify what a volunteer donation is because I think there's an. . .(inaudible). . .right now in the way campaigns work. it says. . ."**A volunteer may donate up to $50 worth of goods and services to a participating candidate per month."** So, somebody who's providing some incidental things. . .bring cookies to meetings or providing small degrees of goods and services. . .you don't try to hang people up on the technicality in that regard. Also, it provides that. . . **A volunteer's time or voluntary use of personal vehicles shall not be considered a donation for purposes of this campaign.** So, again, we don't end up with a technicality. . .and say that you've got a volunteer driving around in their own car putting up signs – that wouldn't count as a contribution; so we don't get hung up on that.

Senator Rick A. Trombly, D. 7: Senator Disnard?

Senator George F. Disnard, D. 8: Back to the question of soft money. Was there a reason that wasn't included or would be considered as an amendment?

Senator Clifton Below, D. 5: Well, the question of soft money gets into the whole question of sort of third parties. There's soft money in political parties; that's an issue. There's also soft money which can go to a third party vehicle to independent campaign expenditures to support or oppose a candidate, and I don't really recall it being discussed much in the study committee because I think that this seemed like such a big task to sort through that we didn't try to take that on as well. . . .and I'm not sure it was in the charge of the study committee either.

Senator George F. Disnard, D. 8: It seems so, that the Senate can see our. . .(inaudible). . . If a group or a county political organization established an office, they certainly could use it for the democratic governor if it was a democratic party? Would that be considered for $50 or not?

Senator Clifton Below, D. 5: You're asking if, for instance, a city party had a. . . .Franklin or Concord democratic or Concord republican office and the candidate for governor or state senate was using that office, does that count towards the campaign? That's a good question. I think, traditionally, that local party committees-state party committees, it's been recognized that they can operate offices during campaign. I think to the extent that there's facilities that are used specifically for a candidate, they should try to track that. I know that my campaign, I paid for my own phone line, the office, and kept track of my own materials that were brought in. In fact, we also paid a portion of the rent. . .We prorated the rent to the different campaigns so it was divided up in that way. . . .But, I think you do raise a good question, and however, your question pertains not simply to this, but it pertains to current election operations because we have these voluntary spending limits, and I don't think we have very clear guidelines as to what should go and what should not go in in that kind of situation.

Senator George F. Disnard, D. 8: And, if that city or county organization paid for ads for a particular candidate, how would that be recorded? If there's no soft money, they can do it?

Senator Clifton Below, D. 5: No. My understanding of the law is that if an ad is up there promoting people to vote for a candidate and it's a party, then it's a coordinating campaign expenditure and has to count.

Senator George F. Disnard, D. 8: If they use the word "vote", but if they just go out say what a good fellow Clif Below is, people like him, more people should like him, then that's a campaign to me. . . .doesn't use the word "vote."

Senator Clifton Below, D. 5: Good point.

Senator Rick A. Trombly, D. 7: Senator Krueger?

Senator Patricia Krueger, D. 16: Senator Below, I just have a quick question. I think I know the answer, but I want to hear it from you, again. How does this piece of legislation improve upon what we've done already in limiting spending and voluntary caps? Could you just sort of put that out front?

Senator Clifton Below, D. 5: Okay. I think it improves upon that by creating an opportunity for people to run for office who might not otherwise do so because of the daunting task of raising fairly substantial sums of money just to be able to get a meaningful campaign across. Right now, somebody either has to have a pretty good organization or support themselves or they have to have a pretty strong support of their party if they're a "challenger" so to speak and don't enjoy the support of the powers that be. . . .They've got more of an uphill battle to try to tap in and raise the substantial amounts that have to be raised. So, I think it's an improvement because it opens up the system, and it also. . . .there's another end product, which is. . .people don't. . .when they get elected to office, if they win an election after clean elections, they don't feel beholden to a bunch of individual interests that contributed to them.

Senator Patricia Krueger, D. 16: I just have one short. . . .I sort of like your answer but I bet most of us in the senate certainly won't feel beholden at you, but my followup to that is. . .I don't know how to say this. . .Do you think that this plan might attract kooks? I mean, I know elections attract kooks, but I don't know how else to say it; but you know that people will think it's pretty funny to walk around with asparagus on your head or something and go out and collect $5 bills and then we've got the taxpayers supporting these people, and I want your answer just to make sense.

Senator Clifton Below, D. 5: Right. That is the reason for having a threshold of qualifying contributions. . . .people within a district – a substantial number. Now, maybe these numbers aren't quite right, but I don't think the kooks can go out and find 5,000 people and give them at least $5 each to run for governor. . .state senate, maybe.

Senator Patricia Krueger, D. 16: But, that's not a lot. . .if you could go to a big ballgame or something and, you know. . .

Senator Clifton Below, D. 5: You are going to have them signing a form under penalty of perjury by the contributors; so, it's not just like getting 5 bucks in a collection plate. They've got to also sign the form that they've contributed the $5 to your campaign. Personally, I wouldn't. . . .well, 300 is a pretty high threshold. I don't know about you, but I think I only had a total of 400 contributors in my campaign for the whole duration. . .maybe more petty ones and the real small ones, but that is. . .I don't know. I think it's not an easy task to go out and ask 300 people for at least $5 and get them to sign the form.

Senator Patricia Krueger, D. 16: That was a great answer. Thank you.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Larsen?

Senator Sylvia B. Larsen, D. 15: I'll go quickly, because I think there're people here who have far more details to offer. For the record, my name is Sylvia Larsen. I'm state senator for District 15, and **I'm here to testify in support of Senate Bill 447.**

In the 1990's campaign finance laws essentially unraveled and left the candidates with less confidence, how to navigate the system fairly, and with voters having much less fate in government in general. Special interests poured money into politics through a variety of devices from bundled campaign contributions to soft money to issue ads. . . .and for candidates, if you don't play that game, all too often you lose. So, as vast amounts of money flow into the system and these costs have skyrocketed (consultants, posters, TV and radio advertising), all taking more candidates catch; and scandals have focused people's attention on the possible illegalities. . . .and they demoralized public perception and their voices can be heard above the louder voices of large contributors when money talks.

Senate Bill 447. . .a chance to solve four of the most serious problems that face voter confidence in our elected officials. The first problem is the voter perception (and all of our perception) that campaigns are too expenseive. **Senate Bill 447 provides constitutionally accepted spending limits.**

Problem number two is that the perception is that too much special interest is influencing our behaviors as elected officials, and the solution is that participating candidates would then not take special interest money.

The third problem that Senate Bill 447 addresses is that candidates and lawmakers have to spend too much time raising. I know, for myself, when people came to me and asked me to run for the senate, I couldn't believe they expected me to raise $40,000 from June until December. I mean, that' s an incredible thing to do for $100 a year job; and, so, the solution in that is that **Senate Bill 447 eliminates the need for fundraising after the candidate has qualified at a much lower level of seeking donations.**

And, finally, the fourth problem that this bill solves is that good people will finally have a fair chance to compete. **Senate Bill 447 provides a financially level playing field for all candidates to compete once they have qualified in terms of public support.** As you might have heard, in New Hampshire there was a recent poll that showed 74 percent of New Hampshirites support most of the measures included in Senate Bill 447. .and

John Anderson (whom some of you may remember) who is now chairman of the Public Finance Campaign National Advisory Board states. . . .The American people instinctively know that when big money rules, ordinary voters are left out in the cold. I say, let's bring them in from the cold. . . .Let's figure out how to make Senate Bill 447 work. Let's find the funding for it, and move this on. I think we'll restore a vote of confidence as we do this. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Questions?

Yes, Senator Roberge?

Senator Sheila Roberge, D. 9: In talking about the difficulty of raising money for a campaign, just we serving here (probably for a year), you're losing at least $40,000 being here instead of out working in the workforce. Would you agree?

Senator Sylvia B. Larsen, D. 15: That, and it costs each of us money out of our own pocket often times to be here.

Senator Sheila Roberge, D. 9: Maybe, but we have this race to run really isn't the whole story, and it's probably a total of what we're not being able to earn because we are here. So, I would suggest that, possibly, if you can't afford to join, you can't afford to be here.

Senator Sylvia B. Larsen, D. 15: That, I would respond that that leaves out a whole lot of people that I would like to see have their voices heard in the state house, and those are people who might not have their own private incomes to be able to serve here. So, I'd hate to see us get to a system where you had to have the money in your pocket. . .(inaudible-background intereference). . .Unfortunately, that's somewhat true, but I think we can solve it to some extent by making it easier to qualify and raise the money through an election to put your name on the ballot and be considered as a candidate regardless of your ability. If you're willing to give up your income for six months out of the year, you ought to be able to serve; and right now, you have to not only be able and willing to give up your income for six months, but you have to go out and ask people for a total of $40,000. . . .and that's a tough thing to do. A lot of people can't afford to give the $100 contributions that it takes to pile up into a $40,000 total.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

Thank you.

Representative Splaine?

Representative James R. Splaine, D. 34: Here are **copies of an amendment that I'll address.** (see Attachment "A")

Mr. Chair and members of the committee, I have the residue of a bad cold. . .I think in about 2 or 3 minutes. . . .my voice gets very scratchy and will fade out. . . So I'll try to be very brief in receipting an amendment that is offered by the people who had worked so hard on this (members of the Clean Elections Coalition) that kind of simplifies for the purpose of interpretation what Clif was eluding to; specifically, in the middle of the page under **(g)**, you'll see that we're **eliminating the provision that money appropriated from the general fund but not fully expended shall go into the fund. Instead, (g) would be "Any money appropriated from the general fund by biennium budgetary appropriations."** meaning that no surplus is involved. But, if the legislature actually donates money in addition to the other monies, that would go into the fund.

On the bottom you'll see the **effective date line. This is a little bit wrong the way this is written even in this amendment.** What **the Clean Elections group wants to suggest**. . . .and I agree with this. . . .I think we felt this in the committee to which this went to. . . .**is that the law might become effective for purposes of appropriating the monies to candidates in 2004 after the pool of money has reached $1,000,000-$2,000,000 as provided for under the bill but that the effective date of the bill should become effective as it currently is in the year 2000 so that monies could start flowing into the pool.** So, if you do support the bill, you support that amendment. I think it helps clarify.

Just two things I want to address. . . .One is to bring you slightly up to date on where we are. You might remember that **this is the result really of the study committee that was created by the original Clean Elections bill that was introduced in the House last year** that was sent to the Election Laws Committee on which I served **(HB 689).** That was sent to a subcommittee of the Election Laws Committee which I chaired. We saw the big picture as being a problem because, whenever you look at the big picture, you got a lot of complications, as Senator Disnard and Senator Krueger already have addressed. There're a lot of questions to answer even in the bill as it is currently written, so we recommended out of our subcommittee that **689** be amended to create a study committee, which the Senate agreed to do with the House; and through the summer and into the fall, we had a very good committee working on this with Lynn Horton from the Election Laws Committee as Chair. Frank Davis was on the committee, Nat Flanagan, a couple of state senators. . .Rick Trombly. We ended up, I think, coming in. . .

Clif Below. . .several others. **We ended up coming with a couple of versions of bills.** That brings you up to date where we are.

One of those versions went to the House. . .one went to the Senate. Last week the House Election Laws Committee (on which I sit) recommended our version which is almost identical to this, except this also addresses state senators. We're recommending our version of the bill go to a further study. . . an Interim Study. I'm hoping that you will support this legislation. . .maybe with some improvements which you will be able to arrive at as you hear people who have really been involved in this cause for the past several years. I would hope that you can pass into the Senate, pass it over to the House, and give us. . .maybe in a month or so. . .another chance to talk about clean elections.

This is my closing remark. . . .I don't get frustrated too often after having been in the legislature off and on for 30 years. . . .seen some of the best days or the worse days in my years of state senate. . . .back in the late 70's and early 80's, when we had budgetary dilemmas. . . .seen the kind of mess that we've been in in the legislature these past couple of years. . . .but I have to admit I was frustrated last week, and I expressed this somewhat to the Election Laws Committee last week, but probably not as vehemently as I would otherwise like to.

I saw a lot of concern for clean elections legislation happening during the past several months in the legislature starting last year. . . .mainly generated by good citizens. . . .some of who sit in back of me, and you're going to hear from. Then we had the primary election on Tuesday, and I have to tell you. . . .and I want to hear some of the other legislators maybe address this in coming months. . . .but it seems stopped. I went into the Election Laws Committee, and I'm still amazed about this. I went into the House Election Laws Committee last Thursday, and the wind behind election, clean elections, and election reform and finance reform just seemed to be blown away from the sails. I would hope that the Senate can put that wind back in. We are sending. . . . .(tape change). . . . .kind of let it go to a study committee, passed it on. . . .let's see if we can talk about other things.

This is an important cause. Granny "D" has been walking around the country telling us that. Citizens turned out last Tuesday in Mass. supporting candidates who were supporting election reform. As I said in the House committee last week, and I'll repeat here; we cannot tell those people to go to hell. . . .and I'm afraid that we are telling those people to go to hell if we don't say yes to something or that we are going to get serious about saying yes to something soon. I hope (and I expect) that the House Election Laws Committee is going to be serious. I have some words of honor from them that

they are really going to seriously look at how to make a clean elections law work, and we'll look at that in December or January of this coming year. . . but it would be nice if we could all collectively come together this election (because we're not through until June) and find a way to make it work now. I mean, we don't have that much work to do this session. So, I urge you as members of the Senate. . . .say yes to this in your body. . . .maybe we'll get it back to the House in a month or so. . . .and maybe the Election Laws Committee will be ready then to start getting serious about this. You know we have no other bills in Election Law in the House for this session. . . .no other bills after we vote on a couple that we've now got in executive session. You've got a lot of things to do in the Senate. . . .but collectively, with these people pushing us, we might be able to say yes to something in the year 2000. So, anyway, that's my frustration for the moment. If you have any questions, I'd be glad to try and answer them. Thank you.

Senator George F. Disnard, D. 8: Hearing no questions, Representative Flanagan?

Representative Natalie S. Flanagan, D. 31: I didn't sign up to say anything. I go along with. . .(inaudible). . .

Senator George F. Disnard, D. 8: Representative Davis? You wish to speak?

Representative Francis W. Davis, D. 12: Thank you, Mr. Chairman, but I would prefer to listen to testimony from the public.

Senator George F. Disnard, D. 8: Representative Curran, co-sponsor of the bill.

Unidentified Speaker: He is not. . . .(inaudible). . . .

Senator George F. Disnard, D. 8: Murray Loss?

Unidentified Speaker: He had to leave for a doctor's appointment.

Senator George F. Disnard, D. 8: . . . .does not wish to speak, but was in favor. Ann Crowley does not wish to speak but is in favor. Betsy Parker does not wish to speak but is in favor. Mia Poliquin does not wish to speak but is in favor. Clifton Below has spoken. Charles Denton does not wish but is in favor. Beatrice Newbury desires to speak.

Beatrice Newbury, Concord, NH – NH Citizens Alliance for Action: Thank you members of the committee. My name is Beatrice Newbury, and

I'm with New Hampshire Citizens Alliance for Action, and we are part of the coalition of organizations that have been working on this bill for a number of years. . . .or on this type of thing for a number of years.

(Reads from written testimony) – See Attachment "B"

Just to address what Senator Krueger said earlier. . .I think it was you anyway. Part of the problem here is the public perception. . . .maybe there is no corruption, but the public believes there is and that's really the concern that we're trying to address. . . .or one of the concerns we're trying to address.

(Resumes reading from written testimony)

Senator Rick A. Trombly, D. 7: Thank you. Any questions from members of the committee?

Representative Gary Gilmore of Dover recorded in favor of the bill does not wish to speak. Daniel Weeks?

Daniel Weeks, Temple, NH – Conval High School (Democracy In Practice: Thank you members of the committee and Mr. Chairman. My name is Daniel Weeks, and I am co-Director of the statewide youth initiative **Democracy In Practice-New Hampshire Youth Voter Alliance.** I'm a resident of Temple, New Hampshire and a junior at Conval High School in Peterborough. I prepared some words but would like to just preface them by saying that, I'm not an expert on the issue; but I simply intend to address the broad issue of campaign finance reform and **urge you to pass this measure. . . this bill. . .two bills.** . .which I view as an important first step in reforming the entire system.

Democracy In Practice, which consists of nearly 400 students and virtually every New Hampshire high school, has as its goal to interest and inspire youth ages 18-24 to vote and assume an active role in our political process. It is not an easy goal. As a junior in high school, I'm constantly made aware of the enormous degree of apathy that exists among my generation. In the 1996 presidential election, for example; a mere 28 percent of New Hampshire's students ages 18-24 turned out to the polls. I believe firmly that, before we can effectively work to change the sad trend of that, certain key issues need to be addressed. As such, I'm here today to provide a youth perspective on what I believe to be the single most important issue facing our country today and the key to increase public participation in politics – Campaign finance reform. . . .specifically public financing of elections.

Three months ago at a New Hampshire youth summit organized by Democracy In Practice here in Concord, I led an issue group on the issue of campaign finance reform with several high school students from across the state. In beginning my presentation, I stressed the inner-connectedness of campaign finance reform to virtually every other major issue of our day, how we will never effectively address the other important issues until we solve the problems presented by our current campaign system. What the students in my group grasped from the discussion, regardless of their understanding of the intricacies of compaign finance reform, was that the youth voice counts less and less in state and national politics. . . .not because we're unimportant. . . . . .but because politicians in their desire to get re-elected cater to those who finance their costly campaigns.

We're in a vicious cycle of ever increasing campaign expenditures, and at the same time, a growing influence of corporate and special interest and a declining emphasis on the citizens. . . .the very essence of our democracy. In a survey of several hundred high school students conducted by Democracy In Practice, we found out a large majority of young people believe that their concerns are not being addressed by politicians in today's system. I can assure you that, to today's youth, politics which centers not around people but around big money interest at the higher levels, is not only uninspiring but disenchanting. Youth do not care for politics as usual; and to us, our current system of campaign finance represents just that.

My reasons for speaking today are simple. I see apathy among young citizens rising to a frightening height, and I fear for a state in which citizens are too turned off by politics to exercise their basic responsibilities. I fear for our democracy. If the overall trend continues, this is likely to occur. I'm doing everything I can to revive the spark in public responsibility among my generation; and my efforts and those of other individuals in organizations doing similar work cannot alone change the trend. Students and, I believe, citizens at large are searching for a reason to truly trust and respect their public servants, but the influence of big money in the system is hindering that trust. Why would young people be inspired to run for political office when they see all around them that many of the candidates for higher office who lack political connections or large personal wealth have no chance of really competing. Too many good candidates are being driven out of the playing field for lack of money. Is this what democracy in our state is about?

Public financing of elections presents a clear and simple solution to this problem. Restore the voice of the people to its rightful place as the primary influence in politics by barring the corruption and undue influence of silent money donors.

Senator Patricia Krueger, D. 16: I'm sorry I wasn't here when you started. Just a couple of questions. . . .I hear what you're saying, but it sounds to me like what you're describing is sort of national, and we're here making laws in New Hampshire. . . . .and so, my couple of questions to you are based on that, and maybe you could help me understand youth or your particular perception with regard to that.

First of all, would you believe that, when polled, the people who voted for Senator John McCain did not vote for him because of campaign finance reform, but rather voted for him on the character issue.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): I believe that for some and many citizens that was the main issue, but I believe for many other citizens, his stance on reform. . . .the main reform. . .(inaudible-background interference). . .advocating its campaign finance but many others as well. I think that was. . . .My perception is that was a major determining factor.

Senator Patricia Krueger, D. 16: The most common concerns voters have are. . . . .quoting off the paper. . . .Campaigns are too expensive and special interests have too much influence. I would have a tendency to agree with your other two points, #3 and #4. I'm having a hard time with especially #1 because the amounts that we limit ourselves to voluntarily seem to be in line with what it takes to win. . . . . .So, I was hoping that you could help me a little bit with those two. . . . .that they're too expensive. . . .or state senator or governor, whichever, and certainly, I don't know too many special interests that had too much influence in my election, but just help me understand why you think that. I appreciate the fact that you do.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice: Certainly. . . . .First of all, I should say that I was addressing the broader issue of campaign finance, and I realize that, in many instances, it applied more nationally because that's where the huge influence is. I'd also like to say that, when I think of a typical politician. . . .the negative connotation. . . .I certainly don't think of our state reps and senators who are paid very little for their work etc. . . . . .So, obviously, it's less of an issue in the Senate and the House. I think it is an issue to a degree at least in the gubernatorial races and, also, to a lesser degree in the executive council races. It's my feeling. . . .and again, I'm not an expert on the issue, but it's my feeling that there are many candidates, for example – for governor, who aren't able to compete at a high level because of funding; and while races for the senate may probably only cost a few thousand dollars. . .perhaps more, but not a huge amount. I know that races for governor can get up to

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): Certainly. . . . .First of all, I should say that I was addressing the broader issue of campaign finance, and I realize that, in many instances, it applied more nationally because that's where the huge influence is. I'd also like to say that, when I think of a typical politician. . . .the negative connotation. . . .I certainly don't think of our state reps and senators who are paid very little for their work etc. . . . . .So, obviously, it's less of an issue in the Senate and the House. I think it is an issue to a degree at least in the gubernatorial races and, also, to a lesser degree in the executive council races. It's my feeling. . . .and again, I'm not an expert on the issue, but it's my feeling that there are many candidates, for example – for governor, who aren't able to compete at a high level because of funding; and while races for the senate may probably only cost a few thousand dollars. . .perhaps more, but not a huge amount. I know that races for governor can get up to $1,500,000. . . .a lot of money, which most people. . .even if they had the convictions. . .a message that can really resound with and serve the constituents. . . that they don't get a chance to bring that forward. So, yes, it probably does apply more nationally and so, I apologize for that; but I think it is also important in the gubernatorial races and the executive council to a degree.

Senator Patricia Krueger, D. 16: Thank you so much.

Senator Rick A. Trombly, D. 7: Thank you. Any other questions? I just do want to say, Daniel, that I'm the town moderator for the town of Boscawen, and I know that, because of the efforts that your group has done, some schools. . .some classes at Merrimack Valley High School. . .let out early on primary day so the 18 year olds can vote; and as moderator, I did see several young people coming in to register to vote. So, I think everyone on this committee would most certainly applaud your efforts, and we are seeing some effect to that.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): Thank you very much.

Senator Rick A. Trombly, D. 7: You deserve that. Congratulations! Thank you.

Anne Campbell? Anne does not wish to speak but supports the bill. Michael Power of Deerfield does not wish to speak but supports the bill. Linn Harwell, League of Women Voters.

Linn Harwell, New London, NH – League of Women Voters: The first I'd like to do is ask Daniel to join the League of Women voters. . .(sic). . .

Ladies and gentlemen, it's a privilege to speak with you today **in support of SB 447**. My name is Linn Harwell, and I am a member of the League of Women Voters of Kearsarge-Sunapee; and I speak on behalf of the League of Women Voters of New Hampshire.

The League of Women Voters have long urged politicians to enact campaign finance reforms by public financing of candidates. Our state primary last week has been called "retail politics". How could any New Hampshire resident have escaped some message from the several candidates for President. New Hampshire has shown the nation how important the voice of the people is. We heard several candidates espouse campaign finance reform. With this demonstration of grassroots participation, New Hampshire citizens and the general court may yet give another lesson by passing this bill.

The legislature has a grand opportunity to elevate the voice of the people. . the grassroots to its deserved position of influence in the matter of political decision making. We must not abandon these voices by allowing self-serving groups with huge amounts of money to quiet them. **The League of Women Voters of New Hampshire calls for meaningful campaign finance reform through public finance.**

Associate Justice of the United States Supreme Court, New Hampshire resident David Souter, said, "I think most people assume. . .I do, certainly. . . that someone making an extraordinary large contribution is going to get some kind of an extraordinary return for it. I think that is a pervasive assumption; and there's certainly an appearance. . .call it an attenuated corruption, if you will. . .that large contributors are simply going to get better service – whatever the service may be – from a politician than the average contributor, let alone no contributor." With these words, our league's members inquire how we might better show respect for the democratic process than voting for campaign finance reform, and I urge you all to make a bipartisan effort to have this bill passed in the New Hampshire Senate. . .and I'll answer any questions if I'm able.

Senator Rick A. Trombly, D. 7: Thank you very much. Thank you for your testimony. Representative Linda Garrish supports the bill and does not wish to speak. Steve Buckley of NHPIRG supports the bill and does not wish to speak. Jeffrey Peters supports the bill and wishes to speak.

Jeffrey Peters, Jackson, NH – We The People: Members of the committee, ladies and gentlemen, my name is Jeffrey Peters, and I'm chairman of **We The People**, which is a nationwide citizens' movement committed to genuine campaign finance reform. . . .and. . .Today I have just two simple points for you.

Number one. . . .On February 1 John McCain did ride the campaign finance reform issue to victory, and he did it in a big way; and that issue is the engine for his campaign. My question to you is. . . . How long will the statehouse ignore the will of the people?

My second point is that. . . .On February 29 "Granny D", with whom I had the pleasure of walking 100 miles in Texas, will be walking into Washington, DC. When I walked with her in Texas, people came out from their neighborhoods to join us; truck drivers honked their horns to support us; people signed her petition at truck stops. There is a grassroots support for campaign finance reform in this country, and I ask you win this one not for the giver. . . .win this one for "Granny D". Vote your conscience. . . .Do not ignore the will of the people.

Senator Rick A. Trombly, D. 7: Any questions? Thank you very much.

John Rowe representing Common Cause.

John Rauh, Sunapee, NH – Common Cause: I'm . . .John Rowe representing the National Board of Common Cause. Most of you have heard me testify before on this; so, I will be brief. . . . .but I think, Senator Krueger, if I might say, you're 100 percent right that the race here that's key is the governor's race. . . .That's where the real big money is, and it's my view that the pool of those who can run for governor is exceedingly small. Either you've made some real money or inherited. . . .or you have the contacts to raise it. . . or you will not be governor of the state.

I look at it from the standpoint, as you know. . . .the people, not the candidates, and the people being deprived of the potential for some fabulous leadership. The pool is peanuts of those. When somebody comes to us as democrats and says they're considering running for governor, what's the first question they're asked?. . . . .Do you have?. . or. . . Can you raise?. . . .or forget it. That's not democracy. I think Dan did a fabulous job; just a fabulous job, and I don't plan to go over the points that he made, because he expressed them better than I could.

For those of you who haven't thought a lot about public funding, it's a whole new way of looking at reform. So, I think what one needs to do is just forget about these restrictions. . . .which have First Amendment problems; and note we're talking about voluntary public funding so Steve Forbes can run in his state or, hypothetically, somebody. . . . .Jay Lucas can run here and spend all that he wishes. . . .and the First Amendment supports it. This is a whole new way of looking down the pipe at this problem, which looks at it from the

standpoint of the voters and says the candidates who qualify. . . .and there's debate about how you should walk in with $5,000, $5 checks...(sic). Candidates who qualify are going to get the resources so that the public (the voters) get the information that they need.

Two myths that I'd just like to point out. . . . .One is that you can buy an election, and I think we've all. . .(inaudible). . .that you can't buy an election. Pick any example – You can lose an election if you don't have enough resources to get your message out, but can't buy it. Secondly, the public funding is expensive and it's clearly not expensive. We're talking about $3 million here a year and most for the governor's race. . . .That's $3 a person. . . that's too much. $3 a person in our state of a million plus people to pay for what I think is a very democratic move.

One of the beauties of voluntary public funding is it is consistent with our beautiful First Amendment. It's those who have the resources. . .this says. . Go ahead don't take the funds and spend your resources. You're not going to be able buy it; but those who are running against you. . .the public will at least get to find out what they stand for and what their perspectives are. There is no question the public wants this. I'm on the Advisory Board of a group called Public Campaign that has backed the effort into four states that have passed it, and we have seen, in state after state,(we polled 12 states) that the public – well over 60 percent wants it. The number one state for campaign finance reform in America is our state. We're about 75 percent supporting public funding versus private funding, and I think we saw some indication. . .(inaudible-background interference). . .on the primary.

Lastly, I point this out. . . . .Martin Luther King frequently was asked to address the question. . . .Why did. . . .The Civil Rights Movement was quite obvious, wasn't it? I mean black people can't eat in a restaurant in Jackson, Mississippi. . . .I mean, that's kind of amazing. That's where it was when I graduated from high school. As we look in retrospect, it's kind of clear that we needed the Civil Rights Act of '64. No matter what our political persuasion, I think we would all agree that black people might be allowed to eat wherever they wished as we who are not black. So, it's kind of odd. . . How did it take so long? . . . .and King was frequently asked. . . .Why did it take so long?. . . .and what King said was. . .Because good people (real good people) kept silent. You just heard the younger generation; there isn't going to be silence from that generation I can assure you. . . .and I think the voters are getting the message. – Please come forward and let's get this done. I think you're going to see a quality of leadership in the years to come. . . .It'll be very, very positive. Thank you.

Senator Rick A. Trombly, D. 7: Senator Krueger?

Senator Patricia Krueger, D. 16: Just a question that relates back to the question previously asked relative to "soft money". I mean, if there is unrest out there. . . .whether it's in Daniel's generation or from mine. . . .it certainly evolves around problems of infinite expenditures and soft money; but yet, this doesn't even go near there. Do you think that. . .and I'll ask you the same question I asked Daniel, but it's paramount in my mind to resolve this issue because I hear what you're saying very clearly. Do you think that this particular bill, stand alone, makes an immense difference in what we currently have. . .voluntary taxes, etc. etc. . . .and couldn't that be solved by lowering the amount per person? You could almost do the same thing but not have public financing. So, that's the bulk of my question.

John Rauh, Sunapee, NH – Common Cause: Senator Disnard? As you leave. . .I'm sorry. I'll be very brief, George. I think the two. . . .The question that you asked about soft money I think relates to Senator Krueger's question. This deals 100 percent, in my view, with the problem of soft money. Why?. . . . .Over here we have Senator Eaton, who's running for governor, okay?. . . .and has taken voluntary public funding in the range of $1,250,000. Over here we have Senator Krueger, exceeding wealthy-it's terrific, and you have your own resources. . . .or if you're not wealthy. . .but if you're not, you have huge soft money behind you as Senator Disnard described it – not using the word "vote". So, we have now a race for governor where you have huge soft money backing you. That's great in my book. I love the first amendment. Let people speak. . .Let the NRA speak. . .Let the American Civil Liberties Union speak. What's wrong with speech in America? But, Senator Eaton, who is not wealthy and doesn't have political contacts, hypothetically, did get the 5,000 $5 checks, and he, able to get his message out. . . .and, Senator Krueger, when he's attacked by the independent expenditure for you from soft money; he has the resources to respond.

That's democracy. I believe this bill completely deals with the soft money problem. That doesn't mean I'd vote against McCain fund awards; it's another point. But, once you get it, you can relax on the restrictions once you let Senator Krueger communicate with the people of the state. That's my view. Thank you, Senator.

Senator Patricia Krueger, D. 16: (tape change). . . . .expenditures were deducted from the amount. . .(inaudible). . ..If, for example, the one that you gave were true and Senator Eaton and I were both spending out of the pool that we decided we're going to spend, the expenditures of soft money on my side against him. . . .He would have to reach into his own pool of money and not go above that to basically argue that. So, ...

John Rauh, Sunapee, NH – (Common Cause): I think you've asked a very, very important question, and let's frame and see if you're comfortable with how I frame.

Senator Eaton, candidate for governor, got the 5,000 $5 checks; and Senator Eaton, candidate for governor, has $1,250,000 to spend in the campaign. The soft money effort behind you is $10 million, hypothetically, and you, yourself very wealthy, might throw in $2 or $3 million. . . .So, you've got $10-$15 million over here in northern court. I think to me the question then is it clear that you win? I think we've seen time and time again that it's absolutely not clear at all that you win; because Senator Eaton has the resources to get his message out, communicate his values and perspectives. . . .at $600,000 I suggest that Senator Eaton loses, and I think a committee. . . . .and this committee has a beginning, whether it should be $1,250,000 or $1,900,000 or $1,100,000 – work it through. Okay? We know it's not $600,000, we know it's not $3 million, but there's been enough experience here. What you need to be sure to deal with your question is, when you pass this bill, Senator Eaton has the resources to respond to get his message and his values out there. . . .and I don't think it matters whether you have $20 million or $100 million. . . .you can't buy it, but you can lose it. . . .and that's what's going on; and, frankly, with all due respect to Senator Eaton for the reasons stated, most Senator Eaton's can't run. We are deprived, therefore, of the potential of leadership.

Senator Rick A. Trombly, D. 7: Any further questions?

Senator Patricia Krueger, D. 16: Last one. Why do you believe the public has been convinced that there is such political corruption? . . . because, John, I quite frankly don't see that corruption in the state, and I serve in the Senate under a governor of another party and, yet, I couldn't even imagine thinking of Governor Shaheen as part of a corrupt system of money. . . .I couldn't even imagine that.

John Rauh, Sunapee, NH – (Common Cause): Well, I think it's previous people, Senator. (. .inaudible. .) I think perception is important; I happen to agree with you here on what you say. I certainly agree with you about not only current senators but previous senators on both sides of the aisle; but I think that perception is important. . . .but, let me be very, very clear. The primary reason to go to public funding is not, in my view, to get rid of special interest monies. I think it's important. . .(inaudible-background interference). . .The primary reason is to attract the leadership that we do not attract today. How can you be comfortable as a senator in our state saying only a few thousand people are the pool to run for governor of the state. . . .I don't think you can. It's, obviously, not very democratic; but leadership does

make a difference. If you look across the spectrum. . . .take a look today. Who may be governor in the next ten years in this state, once Jeanne Shaheen. . .(inaudible). . .and what you're going to see is those who are wealthy or those who have tremendous contacts, which our current governor did (which was very helpful to her-with all due respects). . . .or you had the name that your dad built (like Governor Gregg), which is fine. . . .or potential Governor Sununu, which is fine.

The pool is peanuts. That to me is a higher criteria. . . .a demanding criteria; particularly because it's so cheap. So, I say. . . .Why not do it?

Senator Patricia Krueger, D. 16: Last question. Did you find, John, that in familial campaigns that asking for small donations cured the problem?

John Rauh, Sunapee, NH – (Common Cause): When you're looking at my example of having to run on $100, it was sort of the beginning of this movement, and I was trying to make a lot of different points with that. I had to try get some recognition around the issue; so, I did find a tremendous amount of interest. Obviously, I didn't have sufficient resources if anybody looks at whether I would have won it or lost. I didn't quite raise enough; as my wife didn't either, but we were doing this to make. . . .if we won that way, we would have had a bully pulpit in order to. . .at the federal level. . .advance this cause. So, we were willing to take a risk. I don't think it proved anything at all.

Senator Patricia Krueger, D. 16: Thank you very much.

Senator Rick A. Trombly, D. 7: John, do you agree with me that the whole campaign finance reform. . .this bill leaves unresolved the issue of soft money. . .even the use of public airwaves to improve campaign finance. Would you agree with me that those issues are unsettled?

John Rauh, Sunapee, NH - (Common Cause): I think those are two separate questions.

Senator Rick A. Trombly, D. 7: And they're really big issues, aren't they?. . . But, would you also agree with me that, if we don't take at least some steps along this road, prior to solving every single question that we'll never begin the journey?

John Rauh, Sunapee, NH – (Common Cause): Oh, I agree with the latter point. I think you raised two other questions. . . one has to do with soft money. . .and one has to do with public airwaves, and I think, Senator,

they're different. As I've indicated before, I think this does deal with some of them. I, John Rauh, am not particularly concerned about restrictions. . . I love the first amendment. . .I really do. David Souter did some beautiful writing in the Missouri case and is trying to find a way to deal with restrictions (which I respect and applaud), but you don't have to worry about restrictions; and we've just gone through the example of $10 million of soft money over here, and Senator Eaton has the $1,250,000 (which is fine-he, maybe needs more to work that through). . . .because you can't buy it. So, I'm relaxed about the soft money thing, although certainly, I would, were I in the U.S. Senate, vote to get rid of soft money. Yes, why not? As you say, it's tough work.

Public airwaves does not deal with. . .and I think it's an option for you all to deal with. . .When I think of public airwaves, I put that in the bag of public funding. It's a way to publicly fund. If you want to take. . . .take Senator Eaton running for governor, again. If you're going to mandate that he have (which I would support) some public airwaves, then, I think you can lower the amount of cash. I strongly would agree with you there, and we haven't dealt with it here. . .I think partly because of simplicity, but it's certainly an important option.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Rubens?

Jim Rubens, Sunapee, NH – Common Cause: I'm Jim Rubens. I was a State Senator from District 5 between 1994 and 1998, and I'm here today representing **Think New Hampshire**, which is an organization of New Hampshire residents (primarily Republicans-although Independents) which endorsed this bill actually last year. . . .and we worked on its drafting process. It's largely similar to the one that was introduced as you heard last year. I point that out. . . .It's interesting that to think New Hampshire is largely a Republican organization which endorsed this legislation. . . .The present system, as you heard, screens out candidates except those who are able to self-finance or raise a lot of money. . . .You heard that from John Rauh. . . .and that's your first screen. If you don't come through that screen, you're not a candidate. You can pretend to be a candidate, and you can stand around like you've seen some guys doing it-have no one listening to you, but you're not able to raise any issues.

And so, the present system we have of funding. . . .It suppresses debate. It suppresses a range of issues; it suppresses the kind of approaches that people would take to mobilize issues. You see, the first amendment doesn't work in politics unless you have a megaphone. . . .and it cost money to have a

megaphone. Without it there is no communication. It shuts out most of the otherwise qualified candidates. It shuts out people whose criteria for success might be leadership, judgement, experience, background. . . .record in other walks of life. All of those criteria are relevant. . . .irrelevant if you can't make it through the first screen, which is a money screen. That's the system we have right now here in New Hampshire, not just at the Federal level, but right here. . . .certainly at the level of governor. It's becoming more so at the level of state senate.

Money is necessary but not sufficient. . . .John talked about that at length, so, I won't go over that again.

My own experience – I ran for governor in 1998 in the primary, and I raised about a third of $1 million and spent. My opponent raised somewhere in excess of $1 million spent on the primary. For five months, I watched myself . . .(Not frequently because I didn't spend time doing that-I was out campaigning.). . .on TV with my face merging into Arnie Arneson's face. For five months, that campaign went on, and I knew it was a problem. . .and I couldn't do anything about it because I couldn't buy TV ads to rebut it. Regardless of how well I did it through earned media. . . .getting into the newspaper and rebutting it there or in face-to-face communications-speeches. It wasn't sufficient because the television reaches more people than you can face to face. So, without sufficient sums of money, you can't communicate in ways that are necessary. During the last weekend of the campaign we were ahead in our polls until about a week into the primary. The last weekend there was a barrage pushpulls. . . .50,000 of them we learned were unleashed at that time, which happened to be legal-but that doesn't matter.

We were unable to respond. . . .We were unable to purchase at $.60-$1.00 apiece our own telephone campaign. We used volunteers to the maximum extent we could. . . .We bought some telephone campaigns, but not enough to overcome the facial merging ads and the pushpulls during that period of time. I myself decided to run on a couple of issues that cut me off from funding, and I did so because I felt the issues were more important than the money. I made tactful decisions. On the sludge issue, I came out early in the campaign in early 1998 and said that I was opposed to the poisons being spread on farmlands and 6 inches over water tables. I cut myself off knowingly from a pool of a donor base in the Seacoast of New Hampshire,and those of you who are familiar with politics in the state know what I'm talking about if you've run for senate in that part of the state or run for governor are familiar with this. – You know the pool I'm talking about. . . .and I cut myself off from that pool of money knowlingly. . . .and it did occur. . . .and I did get blackballed as a result of that position.

I took a position vigorously opposed to excessive recovery of stranded costs on the electric utility issue. . . .You're dealing with it here, again. . . .and I cut myself off from another pool of money in the Manchester area. We know where the money comes from, but we know how it's worked over decades in the state. I did so knowlingly because I felt the issue was more important than getting the money; but if you don't make decisions like that which handicap you in elections, those issues don't get raised. The voters don't hear them; the voters don't hear how they're being ripped off to the tune of $2 billion in the deal that's being shoved at you here. . . .this year. . . .once again. You won't hear that in the elections.

On the issue of "Claremont" last year. . . . You had a campaign; you came out of the primary into the general; you had neither candidate proposing a solution to the "Claremont" issue. Everyone acknowledged it was the largest issue in the state at the time. . . .and neither candidate. . . .both of them sitting up. . . .It was a maze to watch the debates that transpired, and I can assure you that that would not have occurred had I been able to pay for just a few more TV ads and get another 2700 votes in with the primary, there would have been a debate. At least. . . .perhaps people wouldn't have agreed, but there would have been options; and my option would have forced other options and to decide out of the table. There would of at least been exploration of the mess you got yourself into last year.

Item 4-McCain – I was a McCain supporter and volunteer worker for many months, and I was in many of his town meetings. I watched the response of these growing audiences that would seek these meetings (They got to be 1000-1200 people.). He'd talk about campaign finance. . .he'd talk about all the issues. I watched people at these meetings. . . .not just stand up on the floor. . . .I watched tears from the people's eyes. . . .Honest to God! . . . . . .ordinary members of the public. When he said, I'm going to. . .campaign finance reform is more than just money so candidates can run it by TBS. People were hearing the guy saying that he was going to restore the ability of people to have democratic choice. . . .small "d" democratic choice in a republic; and people know that that has been removed from the system. . .ordinary citizens crying when he said this. This mobilized people in a way that I haven't seen in decades in politics. This is a real issue.

This bill is 100 percent constitutional; it's voluntary. . . .so, I don't know of any technical issues. I spent a great deal of time last year. . . .actually it was on a study committee in 1997 where this process emerged. . . .It was a third year this bill. . .or the subject matter. . .has come forth. A great deal of time has been spent designing this bill. It's very well designed; it's very clean; there are no constitutional issues. . . .It's 100 percent volunteer.

How is the money calculated to fund it? We worked very hard in looking at other state laws and other bills moving through the legislatures in other states. The sum of money per voter is a bit comfortably above average among the other bills and other laws in the other states. - It's a carefully calculated sum of money.

I do recommend a couple of changes to the bill. Because we have so many fiscal problems this year, I recommend the amendment put forth by Representative Splaine in large measure removing **on Page 4, Lines 9 thru 11.** If that's removed, I need the state budgeting source of funding if that one piece is removed. Obviously, the bill is not funded adequately. I acknowledge that. It's my estimation the bill will not survive with that in there based upon reading the tea leaves in the legislature. If you remove that, you have the structure in place so that people can begin. . .(audio interference). . .sums of money on a purely voluntary basis and the other sums of money that are non-budgetary to the system; and it will gradually become effective. I say that. . . .**remove Lines 9 thru 11.** . . .That sentence is actually my idea as a way to come up with money and sidesteps the budget-making process at least for two years by removing from the unexpended surplus a some of money sufficient to fund it for the first year. So, I recommend removing that.

In reviewing all the hearings that I've attended, all the objections were raised. If that funding source removed, I don't recall a single objection to the bill that would remain. . . . .and, therefore, I know from past testimony and conversation about the bill, no remaining objections. One other minor correction **on Page 6, Line 25**, I would **add the word "not."** Actually replace the word "out" with the word "not.". . .seems like a typo there.

And finally – Again, this is the third year on this bill. I don't think studying it's going to help anymore. The bill has come back in nearly identical form that the bill came back in the prior year. The issue is. . . .Do you folks here in the Senate (forget the House). . . .Do you folks here in the Senate, in this committee, agree with this upsurge of desire expressed in the primary last week among the people of the state across both parties and independent voters. . .Do you agree with that upsurge of desire of the people of this state to connect again with their government and to know that they're going to have viable campaigns, viable candidates expressing a full range of issues that need to be expressed during campaigns and elections. Is that a good thing? Does this committee feel it's a good thing? I sure hope you do, and I sure hope you don't study this bill again-I would kill it if you feel the desire to study it. It doesn't need more study, it needs action.

Thank you.

Senator Rick A. Trombly, D. 7: Thank you, Senator.

Any questions? (no response)

Sam MeKrut – NH Citizens Alliance for Action: **Reads from written testimony – See Attachment "C".**

I have a couple of clips here that I brought to share with the committee – a clip from USA TODAY the day following the primary saying **"A New Hampshire message: Money is corrupting politics".** . . .another clip here from The New York Times from earlier during the primary campaign.

Resumes reading from written testimony.

In reference to this issue that it's not an issue in and of itself, I think it's hard de-link campaign finance reform from many of the other issues that people care about; and I also think it's very hard to delink it from the character which was clearly defined in this last presidential primary. The idea that people with greater character or political outsiders rose above in some instances. I think we need to think about that.

Resumes reading from written testimony.

Just in closing, I'd like to say that we've heard a lot today about whether or not this is really a problem or is it just a perceived problem. I almost think that's to some extent irrelevant because I think it's very clear that the public very strongly holds the belief that there is corruption and there is special interests dictating the outcome of our elections. If that is the case, why not do something about it. We've heard a lot about why we should do it, and the questions have all been more specific details; but I haven't heard anyone really address "why not." I think it's a very small price to pay to insure democracy. . . .So, I would urge you to pass it.

Senator Rick A. Trombly, D. 7: Thank you.

Any questions? (no response)

Bill McCarthy, NH Citizens Alliance, is in favor of the bill – does not wish to speak.

Jay Ward, in favor of the bill, did not wish to speak.

Steve Blackledge?

Steve Blackledge – NH PIRG: Questions Chairman regarding bill for testimony. . . .(inaudible). . . .

Senator Rick A. Trombly, D. 7: That's **303**. If you wish to address it now, **we're doing a joint hearing**. . . . .because, as far as I see, you're the last person signed to speak on either bill.

Steve Blackledge – NH PIRG: **Senator Below**, who's not here to do the first speech on his bill, **has two amendments (see Attachments "D", "E", & "F")** that he wanted to . . . . . .

Senator Rick A. Trombly, D. 7: Do you know what they are?

Steve Blackledge – NH PIRG: Yes.

Senator Rick A. Trombly, D. 7: Then feel free to testify. If you know what they are, feel free to testify.

Steve Blackledge - NH PIRG: This bill, **SB 303**, is in response to a recent court ruling. . .U.S. District Court ruling. . .which threw out the corporate ban that has been in existence in New Hampshire for decades. . at least since 1955. I'd asked the Secretary of State's office to look into how long it had been around. They did an initial search and found out that it was in the books as far back as 1955. . . .it may be further, but they were unsure at that point. So, this has been a long tradition of banning corporate contributions here in New Hampshire; and, in fact, I'll point out that it's not just in New Hampshire, but the Federal Government has banned corporate contributions since 1907. . . .and numerous other states have also banned corporate contributions.

In the ruling where Judge Steven McAuliffe threw out the state ban on corporate contributions, he did state that. . .and I'll quote. **"the supreme court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds."** So, he does state that states do have a compelling interest to do this. In fact, he quotes from a supreme court case which is the FEC v. Mass. Citizens for Life, Inc., and he states that **"Resources in the treasury of a business corporation are not an indication of popular support for the corporation's political ideas. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas."**

So, he's using the supreme court cases to show that states have done this. States do have a compelling interest to ban corporate contributions; yet, he threw out the state law on corporate contributions, and I'll go into detail and explain a little bit why he did that.

Corporations are allowed to. . . .While it is fine to ban corporate contributions from a corporation, corporations are allowed to set up what are called **segregated accounts**. In fact, that's the way the law has always been interpreted in New Hampshire. Corporations have always been allowed to set up segregated accounts and use those accounts to make contributions. But, Judge McAuliffe, in this ruling, wrote that. . . . .Oh, in fact, the judge in this ruling wrote that. . ."**the statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does the statute even mention segregated accounts or segregated funds.**"

So, the ruling is basically saying in practice this law is fine, but if you read the text of the ruling, it's overly broad and, therefore, doesn't work as written. . . .as it's currently written. Judge McAuliffe did go on to say that. . . . . ."**There is, of course, a simple solution to this simple problem. The solution lies with the legislature.**" In other words, if the legislature were to clarify what was meant that corporate contributions from the treasury of a corporation were banned but corporations could set up segregated accounts where they raise money from their members, from their shareholders, from their employees, from their board of directors, and from their officers, that's acceptable and, in fact, is the way the segregated accounts are set up. . . .and, in fact, the judge stated that. . ."**These segregated accounts also represent corporate money-but money that does reflect some degree of popular support for the corporations political goals and ideas**. He stated that because they are raising this money from their employees, from their shareholders, and from their directors as opposed to using money from the treasury.

So, in essence, and this is sort of like a. . .I don't know quite how to explain it, but it's. . . . . .by changing the wording of the election law, what Senator Below. . .what the intention of this bill is is to have the law enforced as it's always been enforced since at least 1955-to have a ban on direct corporate contributions so that these direct corporate contributions from the treasuries aren't flowing into the political system in the electoral process here-to have it set up exactly like how it's always set up. And, the reason why change is necessary – reason why a clarification to the state law is necessary - is because, again, a recent court found that the language was overly broad. . . . . .not that the concept was wrong, but the language was overly broad, and that is what this legislation does.

Let me quickly wrap up by stating that Senator Below, as you can see, did introduce an amendment. . . .or actually two amendments. . .for an original bill. The reason why he did this is that the bill was originally in response to the ruling by the court. . . . .(tape change). . . . . .in terms of what was wrong with the current language of the law. That's why the original language of **SB 303** is not what Senator Below wants, but he actually has introduced two separate amendments that basically one is a little bit. . .They basically do the same thing, but he's introducing two separate amendments, and that's the direction that he wants to go.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Caroline McCarley, D. 6: Question?

Does Senator Below have a strong preference for further defining the issue of segregated accounts which is basically what it would appear one of the two amendments gets more specific relevant to independent expenditures as I read it quickly.

Steve Blackledge – NHPIRG: As you read both of them and compare them to each other?

Senator Caroline McCarley, D. 6: Yes, exactly, which is sort of what I assumed Senator Below wanted us to do in this process was to pick or choose; and since he's not here to speak to either one. . . .He appears to in the one of **3380s** which, if you use in numerical concept, was done first. Since it adds further, my assumption would have been not comparing the numerical concept, that actually it was done second, but can you comment at all on Senator Below's preference?

Steve Blackledge – NHPIRG: On the difference between the two? Yes.

I can't comment for his preference, and I don't know his preference. Essentially what he does in both of them is he defines what a segregated account is toward the beginning. . . .you saw that, right?

Senator Caroline McCarley, D. 6: I saw that.

Steve Blackledge – NHPIRG: Then what he does in the latter part of **3380** is he goes on to say that the segregated account phrase does not apply to nonprofit corporations formed for the purpose among others of promoting political ideas. The reason why he did that is because there has been a supreme court case called Massachussetts Citizens for Life v. the FEC, and

the argument was made by the Massachussetts Citizens for Life, a prolife organization, that they were created. . .they were a nonprofit corporation. . and they were created in a part to do exactly this. . .and that's to engage in the political process and, therefore, to hold the same standards to them as you would to a for-profit organization was wrong. That was their challenge. They brought to the supreme court, and the supreme court ruled with them. So, I think that's what the extra language in the one bill attempts to do is to say that the segregated account versus treasury applies to a for-profit corporation but not to a not-for-profit corporation set up to engage in the political process. Does that answer your question?

Senator Caroline McCarley, D. 6: Yes.

Senator Rick A. Trombly, D. 7: Any further questions?

Steve, I have seen real problems with the amendment only in that I think the board of directors always bundle. The problem I have with corporations and other organizations. . . .I don't want to single out corporations. . . .but organizations where those people who've fallen on board, someone sits down and says "We're supporting this candidate.". . .and you see. . .and I've seen them. . .in campaigns. . . .where the board of directors meeting is February 1; there are seven checks for $1,000 dated February 1-all going to the same candidate. . .and that's fine if it's an individual contribution. I think people (human beings) should, obviously, have the right to speak; but we create corporations, even they exist and exist as people only because we let them be. I don't know the constitutionality of carving out an exception. Under the corporate statute it says for the purposes of existence to the corporation. – You don't have a voice.

Now, I don't know if a corporation has the same. . . .if we have a little bit of flexibility as legislators because created the animal. I'm not certain their rights are inalienable or whatever and whether we can play with them. To be honest with you, my inclination is, personally, not to go with allowing them to create their own pool where you're going to have directors giving money individually. . . .now you're going to have them giving money as the corporation or the business. . . .The same goes with unions. I'll say the same thing goes with the unions as far as I'm concerned. . . . .That they're entities that we allow to exist to conduct business under the laws of the state of New Hampshire. It's a business organization. . . .Corporations exist to do one thing-hopefully, make money for the people that invest in them; and I don't know why they should have voice. Now, as far as a charitable thing, Steven. If you choose to organize as a nonprofit political charitable organization, you do that for one reason – so you escape. . .(inaudible). . .and enjoy the benefits of other advantages and maybe one of the things that people need to think

about if you're going to do that – maybe you don't get the voice in terms of political contributions because your members have the right to contribute, and that's their force. So, I just kind of want to put. . .I know you worked hard on this, you worked very hard on this, but I tend to be a purist on the issue of that. I don't think people that organize businesses and then we breathe life into those businesses; I'm not certain what we create should have the same rights as those of us who are simply born into this world and slapped by a doctor.

Steve Blackledge – NHPIRG: Philosophically, I agree with you. In fact,

Senator Rick A. Trombly, D. 7: Oh, Clif's here, I can start it all over again; but I mean I just want to let you know where I'm going with this because I don't think I like the amendment.

Steve Blackledge – NHPIRG: I'll say that. . .what you said is actually along the lines of what Allan Keyes said, which is "if it doesn't breathe, it can't give," and, philosophically, I can agree with you. What this is in response to is your philosophy there actually butts heads directly with the recent ruling that threw out the whole law in the first place, and so this is a way to basically mimic in New Hampshire the wording of the federal government's clause which states that corporations cannot give directly from the treasury. So, you would go beyond that.

Senator Rick A. Trombly, D. 7: But if we clarify it, would that. . . .and I know you're not. . .I don't know if you're worried or not. . . . .

Steve Blackledge – NHPIRG: I'm not.

Senator Rick A. Trombly, D. 7: . . . .and I don't practice that type of law, so I don't know, but if we carve out a specific exemption and say, for the purpose of political speech, corporations don't have a voice. . . .Does that seem to take care of Judge McAuliffe's decision on lack of specificity?

Steve Blackledge – NHPIRG: For the purpose of contributions, corporations don't have a political place.

Senator Rick A. Trombly, D. 7: What you seem to testify to is that the reason why he threw out our ban was that it was overly broad, but if he wants it to be specific; I'll be more than happy to make it specific by creating a ban.

Steve Blackledge – NHPIRG: Here's is what. . . . .and actually then, based on his ruling, he would threw that out. Here's what he stated. . .

"Generally corporate political contributions come from one of two different sources. One is directly from the treasury-treasury accounts". . . .and he goes on to state why there is a component just to ban contributions from the treasury from the treasury account. . . .But, then he also does say that the other potential source of corporate political contributions is "segregated account." This is different for the reasons I've stated before.- Money that does reflect some degree of popular support for the corporation's political goals. Therefore, the segrated account is something that the courts have upheld and that they should be able to create as segregated account.

Then, at one point in the ruling, and I think it might be in one of the handouts that went to all of you. . . he does say "constitutionally" the difference is significant and goes on to state why and so forth.

Senator Rick A. Trombly, D. 7: I just think I need to do a little research before I can do what I want to do, because if I can, I'll try to push it through at the same time.

Steve Blackledge – NHPIRG: Cause you'd like to go further?

Senator Rick A. Trombly, D. 7: I just don't think that business entities have the same rights as human beings to affect a political process, period.

Steve Blackledge – NHPIRG: I don't disagree with you. . . . . .

Senator Rick A. Trombly, D. 7: I'm talking about across the board; I'm talking about labor unions, corporations, and anybody else.

Steve Blackledge – NHPIRG: There are some exerpts from the ruling that I handed out **(See Attachment "G")** and you can certainly. . . .at the Attorney General's office (and her name is Jennifer Gavilondo at the Attorney General's office, who's following this very closely. . .So, she's someone you can consult as well.)

Senator Rick A. Trombly, D. 7: Thank you.

Steve Blackledge – NHPIRG: You're welcome.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

I did have Lloyd Heidgerd who's for the bill and does not wish to speak, and Senator Below and Beatrice Newbury.

Clif, did you want to address your amendment?

Senator Clifton Below, D. 5: Sure.

Senator Rick A. Trombly, D. 7: My observations of inkling to private. . .

Senator Clifton Below, D. 5: Okay.

Thank you. Let me give you copies of the formal amendments.

I have had the opportunity to read through the Judge's order from December 23 in which he clarified. I think the ruling is pretty clear (as a non-lawyer) that the problem with our laws that it prohibits all corporate contributions, and that's not constitutional. We can prohibit them from the treasury of the corporation, but not from a segregated account where they're collected from employees or whatever knowing that it's a solicited contribution for the purposes of political expenditures.

So, the point of this language. . . .Currently, in **Chapter 664**, we have a set of definitions. One of the defined terms is **Business Organization**. . . . .So, right now what we have is a language that talks about, and the specific challenge was this prohibition by any corporation. – That's **Roman I**.

Then, in **Roman II**, we have **prohibition by partnerships**; and in **Roman III**, we have **prohibition of political contributions by labor unions.**

The amendment attempts to just use the term "Business Organization" because that means **any enterprise where the corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization, organized for gain or profit**, but it specifically doesn't include political committees. My thought-in the first part of this amendment-is to say. . . .instead of just do corporations and partnerships (because we have other forms of business entities. . . .just say **Business Organizations**. It's a defined term; it picks up all these different kinds of business organizations. . . .and deal with them all in the same way.

It prohibits in the first instance contributions by business organizations, but then it goes on to say, **"This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee"**. . . .So, it makes it a political committee that has to register with the state, and it **operates independently of the business organization to be used for making political contributions**

and expenditures if the fund consists only of voluntary contributions solicited from employees, officers, shareholders, directors, partners or members of the business organization. That seems to address the language of the case and what the Judge seems to suggest. . . .that, if we prohibit contributions essentially from the corporate treasury or the partnership treasury but we allow from the segregated account. . . .and he talks about the segregated account where money solicited from employees or shareholders, or whatever. . . .He seems to suggest that that would withstand constitutional muster.

The **third section** of this. . . . .Well, there is a statement. . .the provision that said **this section shall not apply to sole proprietorships** for the obvious reason that sole proprietorships are simply individuals, and individuals can make contributions. Some people own their business. . .just as a person, they may have a separate trade name and they file on a separate part of their tax return; but the bottom line is it's the same as their personal funds.

The third part of this first amendment was to repeal the section about partnerships.

Now, an alternative way to construct this is to leave the corporation language and leave the partnership language and then provide the exception for segregated accounts. My only thought about that was it leaves these other business entities (limited liability, perhaps some professional associations). . . I'm not really sure, but it potentially leaves these other forms of business organizations out there to do whatever they want not covered by the law.

The **second amendment version**. . . .and maybe this has already been addressed by Steve. . . .**has some additional language** in it that **tries to address nonprofit entities that are incorporated in part for the purpose of promoting political ideas.** I don't feel strongly one way or the other. . . .I think, if you talk with Jennifer Gavilondo at the Attorney General's office, she might have some perspective on this. She didn't feel real strongly one way or the other, but they had some concerns about putting this in because **it would mean that nonprofits would be sort of free to make these contributions in a way that's not really regulated,** and it's not clear how you would ascertain that they do not accept in aggregate more than 5 percent of their annual revenue from foreign or domestic for-profits. Be that as it may, I don't feel strongly one way or the other about that particular part which is why I've offered them both ways.

Senator Rick A. Trombly, D. 7: Which do you prefer the committee adopt. . . .?

Senator Clifton Below, D. 5: This amendment here (3381s). . . .and I just think it's obvious that businesses should not be giving from their business treasury. If they want to solicit contributions from their employees or shareholders, fine. . . .set it up as a political committee. The Judge's main point was that the Attorney General said, "Well, that, in effect, is what happens under New Hampshire law, but that's not really what it says, and I can't read that into the law that they're allowed to have segregated accounts that are like political action committees.

The only other point I would make is that there is this definition of a "Political Committee." **It means an organization of 2 or more persons to influence elections or measures, including the political committee of a political party as here and after defined.** This would make these segregated accounts political committees even though per se they may not meet that definition. I guess there was even a discussion over at the AG's office as to whether the political committee definition should be changed or not, and the feeling was. . . .It doesn't really have to be because this would define it, but you could add to the political committee definition means segregated account under here or an organization of 2 or more persons. You could do that.

Senator Rick A. Trombly, D. 7: Senator Below, I'm intrigued by why sole proprietorships would be treated differently. . . .because if I'm a chairman of a board, I would be able to give a $5,000 contribution to someone who'd take the money under the cap and then I could give $5,000 to my pact, correct?. . . .because we're talking about creating business pacts?

Senator Clifton Below, D. 5: Right.

Senator Rick A. Trombly, D. 7: Sole proprietors don't? New form of doing business, so proprietor takes $5,000 out of his/her bank account. . .Why not allow them to take one out of the other one?

Senator Clifton Below, D. 5: Out of the other one?

Senator Rick A. Trombly, D. 7: The business account.

Senator Clifton Below, D. 5: In additional contribution?

Senator Rick A. Trombly, D. 7: Well, we're allowing that. . . .Under the amendment we're allowing that for stockholders; we're allowing it for members of the board.

Senator Clifton Below, D. 5: Well, a sole proprietor could belong to a business association that has a pact. They could belong to the national Federation of Independent Businesses which would have a pact, so that sole proprietor could do it in the same manner. The point of singling them out is that a sole proprietor is an individual. Individuals are allowed to contribute, so it doesn't make sense to say a sole proprietor can't contribute and then turn around and say but individuals can. They just don't fit the criteria of all these other kinds of businesses.

Senator Rick A. Trombly, D. 7: Thank you. . . . .Just one final point. . . . Wasn't there a case out there somewhere with. . . .I think it had to do with unions. . . .I think NH Bar. . .(tape not clear). . .where people have to bring money/dues or whatever can't, they have to segregate certain portions of it. . . . . . .a certain requirement. The voluntary nature of the contribution gets them out of that trouble.

Senator Clifton Below, D. 5: Hm!

Senator Rick A. Trombly, D. 7: I believe in New Hampshire if our lobbies against. . .(tape unclear). . .reform, lawyers for the insurance company. . .I think. . .I hope I'm going to remember this right, the lawyers for the insurance companies were never forced to disclose their fees, but I guess that's another issue. . . .took the bar to court and said, "Look, we make our living off of representing insurance companies, and, if this legislation passes, it's good for us. We get lobbying against it and, therefore, because we have to pay dues to go to the bar (to be a member of the bar), you're in effect speaking in a way we don't want to do." I'm presuming, because you make that voluntary, you get out of that type of situation.

Senator Clifton Below, D. 5: I think so. There's a major distinction which is lobbying for or against legislation is different than contributing to candidates for office or political expenditures that support or oppose a candidate as opposed to a particular piece of legislation. . .There's a distinction. Yes, the point is by making it a voluntary contribution to segregated account, we are re-establishing what has been law in New Hampshire which is the that the corporate treasury (the business entity treasury), because people contribute to that in effect for other than political reasons – for reasons that have nothing to do with the political views around a candidate, but that cannot be used for political candidate advocacy. Certainly, corporations lobby on legislation all the time.

Senator Rick A. Trombly, D. 7: Thank you.

Does anyone else wish to testify? Seeing nobody, I'll close the hearing on these two bills.

Hearing closed at 3:15 p.m.

Respectfully submitted,

Carolyn Carey
Senate Secretary

Attachment "A"

Suggested Amendments to SB 447, *relative to campaign contributions and expenditures*

Beginning on page 3, line 33

Amended to say:

III. The following moneys shall be deposited in the fund:

(a) Voluntary donations made directly to the fund.

(b) Unspent seed money contributions and qualifying contributions remaining at the end of the qualifying period and not returned to contributors.

(c) Money distributed from the fund and returned by a participating candidate who does not remain a candidate until the primary or general election for which the money was distributed.

(d) Money distributed from the fund and returned by a participating candidate because it is not spent by the date of the primary or general election for which the money was distributed.

(e) fines levied for violations of the elections laws, including fines assessed under RSA 664:21.

(f) Interest generated by the fund.

~~(g) Money appropriated from the general fund but not fully expended as of the end of the fiscal biennium. The amount of such money to be deposited in the fund shall be $6,000,000 minus the amount of money in the fund at the end of the fiscal biennium.~~

(g) Any money appropriated from the general fund by biennium budgetary appropriations.

Beginning page 7, line 8

664-A:9 Reports. In addition to the reports required by RSA 664:6 and RSA 664:7, a ***non***-participating candidate whose total expenditures for either the primary election campaign period or the general election campaign period exceeds $625,000 for governor....

Page 8, line 17

11 Effective Date. This act shall take effect July 1, ~~2000~~ 2004.

Attachment "B"

Testimony in support of SB 447
by Beatrice F. Newbury
New Hampshire Citizens Alliance for Action

A few years ago, when I began following campaign finance reform legislation in New Hampshire, a study committee was created to look at whether New Hampshire needs campaign finance reform. Nothing came of that study committee. Then last session, I worked with a bi-partisan group of current and former legislators and organization leaders to write a bill. Another study committee was created. I attended every meeting of this study committee, which decided unanimously that comprehensive campaign finance reform was needed and submitted two bills for this session--the one before you today and a similar bill in the House, both virtually identical to the bill that initially created the last study committee.

The House Election Law Committee has already voted to create another study committee. I hate to think we are still in the same place we were four years ago. Clearly New Hampshire voters want campaign finance reform—polling shows us that, and the recent presidential primary shows us that. The New Hamsphire legislature must take a stand and they must do it now. I strongly urge this committee to move forward and take action.

The best reform proposal, one supported by two out of three New Hampshire voters, is Clean Money Campaign Reform. Clean Money Campaign Reform addresses voters greatest concerns about the current campaign finance system and will help restore voter's belief in our democratic process. It is upon this model which this legislation before you is based.

The most common concerns voters have with our current campaign finance system are:

- Campaigns are too expensive;
- Special interests have too much influence;
- Good candidates without money or connections to special interests don't have a fair chance of competing for office; and
- Politicians spend too much time raising campaign money instead of devoting their full energies to the duties of public office.

This bill will address all of these concerns. It will reduce the cost of election spending by giving candidates strong incentives to limit spending. The incentive is full public funding of the campaign for any candidate who can show a basic amount of grassroots support within his or her district. Full public funding will reduce or eliminate the role of special interests in elections because candidates will have the option of running for office without catering to large campaign donors. It will level the playing field so candidates without money or connections can mount a competitive

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campaign if they can collect $5 contributions from friends, neighbors, co-workers and other members of their community. Finally, full public funding will give candidates the opportunity to spend time talking to voters rather than fundraising because they won't have to spend all their time dialing for dollars to raise thousands or hundreds of thousands of dollars. The money will instead be provided by the general public, whom the candidates will be campaigning to represent.

I strongly urge you to vote for SB 447. Thank you.

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LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE PRESENTATION

BEFORE NH SENATE PUBLIC AFFAIRS COMMITTEE, FEB. 9, 2000

Ladies and gentlemen:

It is a privilege to speak with you today in support of SB 447-FN. My name is Linn Duvall Harwell. I am a member of LWVKearsarge-Sunapee and speak on behalf of LWVNH.

The LWV has long urged politicians to enact campaign finance reform by public financing of candidates.

Our state primary last week has been called "retail politics". How could any NH resident have escaped some message from the several candidates for president? NH has shown the nation how important the voice of the people is. We heard several candidates espouse campaign finance reform. With this demonstration of grass-roots participation, NH citizens and the General Court may give yet another lesson by passing this bill. The legislature has a grand opportunity to elevate the voice of the people, the grass roots, to its deserved position of influence in the matter of political decision-making. We must not abandon these voices by allowing self-serving groups with huge amounts of money to quiet them. LWVNH calls for meaningful campaign finance reform through public finance. Associate Justice of the Supreme Court, NH resident, David Souter said: "I think most people assume - I do, certainly - that someone making an extraordinarily large contribution is going to get some kind of an extraordinary return for it. I think that is a pervasive assumption. And, there is certainly an appearance, call it an attenuated corruption, if you will, that large contributors are simply going to get better service, whatever that service may be, from a politician than the average contributor, let alone no contributor."

With these words our League members inquire how we might better show respect for the democratic process. Linn Duvall Harwell, 4 Quarry Rd. New London, NH 03257

Attachment "C"

New Hampshire
Citizens Alliance for Action

Testimony on SB 447

Sam Mekrut, Executive Director NH Citizens Alliance for Action

Good afternoon Chairman, members of the committee. My name is Sam Mekrut and I am the executive director of NH Citizens Alliance for Action, a non-partisan, non-profit organization whose mission is social, economic and political justice for all NH people. On behalf of my organization's 6,000 members, I am here today to speak in strong support of SB 447.

You have heard today from an array of NH residents calling for real campaign finance reform. You've heard from republicans, democrats, men and women, youth and older people – all who share a desire to see democracy returned to the hands of voters. You've heard from citizens who would like to see elections freed from endless fundraising. Elections in which qualified candidates – even those without connections to wealth - have a fair shot at being elected to serve in public office. Elections which yield officials beholden to voters rather than special interests.

For the last year, as presidential candidates traveled our state, we all heard the strong call for campaign finance reform. In town hall forums, during televised debates and in local diners, NH citizens pressed candidates on their positions on campaign finance reform. NH voters this year sent a clear message to national candidates, launching a movement for reform that will follow candidates through Delaware, South Carolina and beyond.

With 79 percent of NH voters in favor of campaign finance reform, their call for action cannot be ignored. The outcome of NH's primary lent credence to what those of us

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who work in the field have always known – that people care deeply about campaign finance reform. Whether voters cite campaign finance reform as a specific issue on which they vote, or simply consider the willingness of candidates to hold themselves accountable to voters as evidence of personal character, voters *do* think about candidates' positions on reform when they enter the polls.

And it is not only the voters in NH that feel reform is necessary. More than 80 of your peers – NH senators and representatives – recently signed statements in support of comprehensive campaign finance reform. Many of you here today supported presidential candidates Bill Bradley, Al Gore and John McCain in the recent primary, helping them get their message out to the public about the need for a campaign finance system that fosters trust in government and in our elected officials. Many of you have supported this bill in the past. Yet, surprisingly, we hear that support in the legislature for real reform has begun to wane, now, as public support for reform has blossomed.

It is time for the NH legislature to take action on SB 447. The bill was carefully crafted by a bi-partisan coalition. After lengthy study, a dedicated sub-committee resubmitted this exact language for your consideration. To scuttle this bill off to study yet again would not only be a misuse of energy and time, but would demonstrate to NH voters a lack of willingness on the part of the legislature to address an issue that the vast majority of voters feel is fundamental to our democracy. When voters go to the polls in 2000, let them go with the knowledge that this legislature passed comprehensive campaign finance reform. We urge you to send SB 447 to the floor of the Senate as Ought to Pass. Thank you.

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LATE SPORTS



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SPURS ROUT LAKERS 105-81 NBA, 1,4,8C

USA TODAY

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ONE LAST 'SCREAM'

The final piece of the slice-and-dice trilogy serves up some new victims, like Jenny McCarthy (or hey, maybe she's the killer). A slasher scrapbook, 1,6D



EDNESDAY FEBRUARY 2, 2000

New Hampshire shakes up race

A New Hampshire message: Money is corrupting politics

The voters of New Hampshire sent a strong message to Washington, D.C., and the rest of the country Tuesday: Get serious about campaign-finance reform.

John McCain and Bill Bradley, the candidates who talk most about cleaning up the special-interest money that makes everyone in politics look soiled, may never win the presidency. But they scored impressively in New Hampshire's primaries, running uphill against candidates backed strongly by the Republican and Democratic establishments.

What's more, while defenders of the status quo long have claimed that the public doesn't care about how special-interest money drives politics, New Hampshire shows otherwise.

Not only did reform candidates run strongly, voters in the Republican primary said by 5-1 in an exit poll that campaign reform would help improve government. Democratic primary voters placed it in the top five issues influencing their choice, ahead of taxes and world affairs albeit below the economy, Social Security and Medicare. Believe it or not, among GOP primary voters it ranked with abortion and education as a concern.

None of that should be surprising. In a 1998 poll, 74% of New Hampshire voters said they want comprehensive campaign reform. Polls in eight other states have shown solid majorities not only for closing the loophole that lets corporations, unions and individuals make unlimited and otherwise illegal contributions, but also for public financing of campaigns, and enforceable limits on private contributions.

In the present system, even those who talk reform wind up looking beholden to special-interest money. McCain's campaign has been heavily fueled by industries dependent on the favor of the Senate Commerce Committee, which he heads. Bradley's treasury is conspicuously dependent on Wall Street, where he had alliances when he was in the Senate and where he worked after leaving Washington.

In the weeks ahead, keeping their campaigns going against such well-financed opponents as Al Gore and George W. Bush likely will require more such apparent hypocrisy.

The Supreme Court put it simply two weeks ago in upholding the principle of limiting political contributions: The public has an interest in not only stopping outright corruption, but also curbing the appearance of impropriety that undermines confidence in democracy.

Reform is slow. Efforts to close the so-called "soft money" loophole exploited by special interests and money-hungry politicians remain stymied by a Senate filibuster. Conversion to the public financing of elections, under way in four states, likely will be on the ballot in two more elections this November.

But the claim that nobody cares has been unmasked by the voters of New Hampshire.

Where they stand

All four major candidates have talked about campaign reform. Their positions:

- **Bill Bradley:** Ban soft money to national parties and prohibit state party committees from spending their soft money on federal elections. Increase taxpayer financing of elections and require all broadcasters to give candidates free time.
- **George W. Bush:** Ban soft money from businesses and unions, but not from others; raise individual contribution limits.
- **Al Gore:** Ban soft money and increase public financing; require TV networks to give candidates free time.
- **John McCain:** Ban soft money; abolish matching funds for presidential candidates; make congressional candidates raise more than half their money in home states; raise individual contribution limit.

Source: The Associated Press; USA TODAY research

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The Betraying Handshake

Former Senator Bill Bradley used a vivid metaphor to describe Washington's continual failure to free American elections from the influence of special-interest money. Speaking in New Hampshire on Monday, he recalled the moment in 1995 when President Clinton and Newt Gingrich, then Speaker of the House, shook hands in public on a promise to pass campaign finance legislation. Nothing happened, Mr. Bradley said, because Democrats, Republicans and their big contributors had long ago made a "secret handshake" on "a deal between politicians and business to keep things as usual."

Mr. Bradley is right. The public has been continually sold out on this issue. In 1993, for example, Mr. Clinton allowed Mr. Gingrich's Democratic predecessor, Thomas Foley, to talk him into delaying his inaugural pledge to pass campaign finance legislation. After that default, Mr. Clinton went on to conduct in 1996 the most financially reckless campaign since Watergate.

But the day when presidents and presidential candidates could get away with sleazy fund-raising may be passing. Senator John McCain has made a ban on soft money the center pole of his campaign and has been the candidate most prominently identified with the reform issue. But Mr. Bradley has also made campaign finance reform one of his four main themes. Both are using the issue to compete for independent swing voters in New Hampshire, and that may have had something to do with Mr. Bradley's desire for a higher profile on the issue. Vice President Gore, worried about his history with the Clinton money machine, is emphasizing his support for the public financing of federal elections. So far Gov. George W. Bush of Texas has remained an old-fashioned harvester of special-interest money and believes that individuals should be free to make unlimited soft-money contributions to the parties.

But that could be a shortsighted strategy. Mr. Bradley and Mr. McCain have agreed that if they meet in a general election, both will forswear using soft money — corporate, union or individual contributions channeled through the party organizations to pay for thinly disguised campaign ads. Mr. Gore says he will do the same, provided his Republican opponent takes the pledge.

So far no presidential candidate has promised that, if nominated, he would not allow his national party committee to harvest soft money regardless of what his opponent does. The conventional wisdom is that this would amount to unilateral disarmament in the general-election spending wars over television and turnout. But Mr. Bradley says he thinks that the approximately $80 million allowed a nominee in reported contributions and matching funds may be adequate for running a general-election campaign without the soft-money subterfuge. "I've kept that as an option," he said of a unilateral pledge. He added that if nominated, he would first need to "figure out the lay of the land. But I haven't foreclosed that possibility."

In only four years, then, we have gone from two nominees, Mr. Clinton and former Senator Bob Dole, who planned their fall campaigns around soft money from corporations and unions to several major candidates vying to illustrate their independence of the special interests who hide behind the "secret handshake." In Washington, Congress continues to believe that voters do not mind having a financially compromised political system. But in Iowa and New Hampshire, the voters are applauding each new escalation of pledges in the competition over campaign finance reform.

Attachment "D"

Sen. Below, Dist. 5
February 9, 2000
2000-3381s
05/10

Amendment to SB 303

Amend the title of the bill by replacing it with the following:

AN ACT relative to campaign contributions by business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

2000-3381s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions.

Attachment "E"

Sen. Below, Dist. 5
February 9, 2000
2000-3380s
05/10

Amendment to SB 303

Amend the title of the bill by replacing it with the following:

AN ACT relative to campaign contributions by business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships, or to independent expenditures made by a nonprofit corporation formed for the purpose, among others, of promoting political ideas, and that:

(a) Does not engage in business activities;

(b) Has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;

(c) Does not accept foreign or domestic for-profit corporations as members; and

(d) Does not accept in aggregate more than 5 percent annually of its total revenue from foreign or domestic for-profit corporations.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

2000-3380s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions. The bill also eliminates the prohibition on political contributions by certain nonprofit corporations.

Attachment "F"

NHPIRG
New Hampshire Public Interest Research Group

80½ N. Main Street, Suite 204
Concord, NH 03301
(603) 229-3222
www.pirg.org/nhpirg

Senator Rick Trombley, Chair
Members of the Public Affairs Committee
Legislative Office Building, Room 104
Concord, NH 03301

February 9, 2000

RE: CORPORATE CAMPAIGN CONTRIBUTIONS (SB303)

Dear Senator Trombley:

As a result of the Kennedy v. Shaheen, et al. case that found the current New Hampshire ban on corporate contributions unconstitutional, we urge this committee to clarify the election law language so that a ban on corporate contributions remains intact. There is a long tradition in New Hampshire of banning corporate contributions, dating back to at least 1955. (The law may be much older; an initial search by the office of Secretary of State found the law on the books in 1955).

Judge Stephen McAuliffe stated in Kennedy v. Shaheen, et al. that "the Supreme Court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds." This compelling interest has prompted the federal government in 1907 and numerous states throughout the years to pass legislation that bans corporate contributions. The reasoning for such a ban is expressed in a 1986 Supreme Court Ruling, FEC v. Mass. Citizens for Life, Inc., that states, "Resources in the treasury of a business corporation ... are not an indication of popular support for the corporation's political ideas. ... The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas."

Since the courts have consistently ruled that corporations cannot use their treasuries to contribute, are corporations unable to participate? No. Corporations can set up "segregated accounts," whereby they solicit money from their directors, officers, shareholders, and employees for use in the political arena. Wrote Judge McAuliffe in Kennedy v. Shaheen, et al., "These [segregated] accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas."

In fact, New Hampshire has always allowed corporations to set up "segregated accounts" and contribute from them. But the Kennedy v. Shaheen, et al. ruling found that "the statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does [the statute] even mention segregated accounts or segregated funds."

Judge McAuliffe concluded the ruling by stating, "There is, of course, a simple solution to this simple problem. The solution lies with the legislature." NHPIRG concurs with Judge McAuliffe in this regard. The legislature must act to prevent corporate contributions from flooding our elections. Money can corrupt. Money can influence who runs and who wins. Keeping the corporate ban intact protects our state electoral tradition and our democracy.

Sincerely,

Steve Blackledge
Program Director

printed on recycled paper

Attachment "G"

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

DEC 23 2 46 PM '99

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Richard E. Kennedy;
Eric Carlson; and
Lander Associates, Inc.,
Plaintiffs

v. Civil No. 98-608-M

William M. Gardner, New Hampshire
Secretary of State; Philip T. McLaughlin,
New Hampshire Attorney General; and
Governor Jeanne Shaheen,
Defendants

O R D E R

Plaintiffs, Richard Kennedy and two potential contributors to his political campaign, filed this action pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief. They claim that two separate campaign financing restrictions imposed by New Hampshire Revised Statutes Annotated ("RSA") 664:4 violate the First Amendment and are, therefore, unconstitutional. By prior order, the court granted in part and denied in part plaintiffs' motion for summary judgment, concluding:

> The ban on all corporate political contributions imposed by RSA 664:4 I is overly restrictive and unconstitutionally infringes plaintiffs' First Amendment rights. The "cap gap" created by RSA 664:4

V, however, does not unconstitutionally burden plaintiffs' political speech and, therefore, survives their constitutional challenge.

Kennedy v. Gardner, No. 98-608-M (D.N.H. September 30, 1999).

Defendants, the Governor, Attorney General, and Secretary of State of New Hampshire, now move to amend the judgment - essentially seeking reconsideration of that portion of the court's order declaring RSA 664:4,I unconstitutional as an overly broad abridgment of rights guaranteed by the First Amendment to the United States Constitution. Plaintiffs object.

The grounds upon which reconsideration is sought are somewhat unclear. Defendants merely restate their earlier position and, without much elaboration, declare that Supreme Court precedent dictates a result contrary to that reached by the court in its order of September 30. Nevertheless, they seem to agree that a state's absolute across-the-board ban on corporate political contributions cannot withstand constitutional scrutiny. And, although they do not directly concede the point, defendants surely must recognize that the plain text of RSA 664:4,I

accomplishes just that - a complete ban on any corporate political contributions, under threat of criminal prosecution.

To avoid the inevitable conclusion of unconstitutionality, then, defendants strive to limit the statute's literal reach by inferring limitations not apparent in its facially unambiguous text. That is, they argue that notwithstanding its plain language, the statute should be held constitutional because defendants discern within its text an implicit intention by the legislature to permit corporations to make at least some contributions for the purpose of promoting the success or defeat of a candidate or political party in a state election.

If the court would only read (no doubt meaning "write") the additional terms suggested by defendants into the statute, then, say defendants, it necessarily follows that RSA 664:4,I, is just like both Michigan's campaign finance statute (held constitutional in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)), and the Federal Election Campaign Act of 1971, as amended ("FECA"). So, defendants reiterate, if New

Hampshire's statute is properly construed, by inferring discrete limiting provisions, it easily passes constitutional muster.

Defendants' suggestion might represent a workable and effective fix of the statute's inherent deficiencies if this court were free to legislate for New Hampshire, but it is not. That part of New Hampshire's campaign finance law at issue in this case, as drafted by the legislature, is nothing like either the Michigan statute or the federal statute, and it simply cannot survive constitutional scrutiny given its plain language and the Supreme Court's reasonably clear explanation of the extent to which the First Amendment protects corporate political speech.

Discussion

I. Preliminary Matters.

A. Types and Sources of Political Contributions.

Generally, corporate political contributions come from two different sources. One is the corporation's operating or treasury accounts. Money in that type of account is derived from corporate business activities, such as the sale of goods and services or the sale of corporate stock. It is generally

accepted that a corporation's ability to amass such funds reflects its business acumen, but not popular support (or even the support of its shareholders) for its political views. See, e.g., Federal Election Commission v. Mass. Citizens For Life, Inc., 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.").

The other potential source of corporate political contributions is a "segregated account." Typically, segregated accounts are funded by contributions solicited from corporate officers, directors, employees, and shareholders. These accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas.

> Because persons contributing to such funds understand that their money will be used solely for political purposes, the speech generated accurately reflects contributors' support for the corporation's political views.

Austin v. Michigan Chamber of Commerce, 494 U.S. at 660-61.

A corporate political contribution qualifies as "political speech," protected by the First Amendment. See, e.g., Austin, 494 U.S. at 657 ("Certainly, the use of funds to support a political candidate is 'speech'; . . . The mere fact that the [plaintiff] is a corporation does not remove its speech from the ambit of the First Amendment.") (citing First National Bank of Boston v. Bellotti, 435 U.S. 765, 777 (1978)). Nevertheless, the distinction between contributions from "treasury funds" and those from "segregated accounts" is both meaningful and constitutionally significant. The Supreme Court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds. To date, however, the Court has not recognized any state interest sufficient to justify an absolute ban on either corporate contributions or independent expenditures made from segregated funds. See generally, Austin, supra.

B. "Contributions" and "Independent Expenditures."

For purposes of this case, there are two distinct means by which corporations might seek to exercise their First Amendment rights in the political arena. First, they might make a "contribution" directly to a candidate for public office. RSA 664 defines a contribution to include any payment, gift, forbearance, or loan to a candidate or political committee made for the purpose of influencing the nomination or election of a candidate. RSA 664:2,VIII. Thus, "contributions" include anything of value given directly to a candidate or political committee.

Alternatively, corporations (like other citizens) might make an independent expenditure on behalf of a candidate or political party. RSA 664 defines "independent expenditure" to include an expenditure expressly advocating the election or defeat of a candidate, that is made without cooperation or consultation with a candidate. RSA 664:2,XI. So, for example, a corporation or individual might decide to finance, produce, and run a television advertisement supporting or opposing the election of candidates from a particular political party based upon their position on,

say an income tax. As long as that advertisement is created and funded without input from a particular candidate, it constitutes an "independent expenditure." See generally, Buckley v. Valeo, 424 U.S. 1, 46-47 (1976).

C. Plaintiffs' Standing.

Although defendants have not contested it, it bears noting that plaintiffs do have standing to bring a pre-enforcement challenge, on First Amendment grounds, to the constitutionality of a state statute providing criminal penalties for its violation. See New Hampshire Right to Life Political Action Committee v. Gardner, 99 F.3d 8, 13-14 (1st Cir. 1996). The statute at issue here presents a credible threat of present or future prosecution for its violation, and plaintiffs have been chilled from exercising their rights to political expression in order to avoid enforcement consequences. "In such situations the vice of the statute is its pull toward self-censorship," id., "a harm that can be realized without an actual prosecution." Virginia v. American Booksellers, 484 U.S. 383, 393 (1988). Having engaged in arguably prohibited conduct, plaintiff Lander Associates faces a credible threat of prosecution under the

statute and defendants have not disavowed any intention to enforce the statute against it. See generally, Rhode Island Ass'n of Realtors v. Whitehouse, __ F.3d __, 1999 WL 1128676 (1st Cir. Dec. 14, 1999).

And, while neither plaintiffs nor defendants mention the source of the corporate contribution by Lander Associates (from treasury or segregated funds), that issue is immaterial here since, in the First Amendment context, parties with standing may challenge a statute under the overbreadth doctrine even if, had the statute been more narrowly drafted, it could constitutionally regulate the specific conduct in which the party proposes to engage (say, a contribution from treasury funds). See e.g., Lewis v. City of New Orleans, 415 U.S. 130, 134 (1974).

The Supreme Court has described the "overbreadth doctrine" in the following terms:

> Simply put, the doctrine asserts that an overbroad regulation of speech or publication may be subject to facial review and invalidation, even though its application in the instant case is constitutionally unobjectionable. Thus, a person whose activity could validly be suppressed under a more narrowly drawn law is allowed to challenge an overbroad law because of its

> application to others. The bare possibility of unconstitutional application is not enough; the law is unconstitutionally overbroad only if it reaches substantially beyond the permissible scope of legislative regulation. Thus, the issue under the overbreadth doctrine is whether a government restriction of speech that is arguably valid as applied to the case at hand should nevertheless be invalidated to avoid the substantial prospect of unconstitutional application elsewhere.

City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 800 n.19 (1984) (quoting Jeffries, Rethinking Prior Restraint, 92 Yale L. J. 409, 425 (1983)). Accordingly, where the statute at issue "unquestionably attaches sanctions to protected conduct, the likelihood that the statute will deter that conduct is ordinarily sufficiently great to justify an overbreadth attack." Id.

In short, where a statute presents a realistic danger that it will significantly chill or compromise recognized First Amendment freedoms of parties not currently before the court, and when that statute does not readily lend itself to a narrowing construction by the state courts, a party may challenge that statute on grounds that it is overbroad even if the conduct in which that party engaged might legitimately be restricted if the

statute had been properly drafted, in less sweeping terms. See Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975).

Based upon the undisputed facts of this case, the court concludes that Lander Associates has standing to challenge RSA 664:4,I. Moreover, plaintiff may challenge not only the specific ban on the conduct in which it engaged (that is, corporate political contributions directly to a candidate's campaign), but also those aspects of RSA 664:4,I which purport to restrict other forms of arguably protected corporate political speech (e.g., corporate contributions to political parties and political committees). See generally Gooding v. Wilson, 405 U.S. at 520-21; Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940).

II. The Statute's Constitutional Deficiencies

A. Determining the Scope of RSA 664:4,I.

The text of RSA 664:4 provides, in pertinent part, as follows:

> No contribution, whether tangible or intangible, shall be made to a candidate, a political committee, or political party, or in behalf of a candidate or political committee or political party, directly or indirectly, for the purpose of promoting the success or

defeat of any candidate or political party at any state primary or general election:

I. By any corporation, or by any officer, director, executive, agent or employee acting in behalf of such corporation, or by any organization representing or affiliated with one or more corporations or by any officer, director, executive, agent or employee acting in behalf of such organization.

RSA 664:4,I (emphasis supplied). As mentioned earlier, elsewhere in the statute the term "contribution" is defined as any "payment, gift, subscription, assessment, contract, payment for services, dues advance, forbearance or loan to a candidate or political committee made for the purpose of influencing the nomination or election of any candidate." RSA 664:2,VIII (emphasis supplied).

No doubt because defendants tacitly acknowledge that, post-Austin, a complete statutory ban on corporate political contributions cannot survive constitutional scrutiny, they assert that the statute is not unconstitutionally overbroad because it "does not prohibit corporate contributions that originate from a segregated account or fund." Defendants' memorandum (document

no. 10) at 5.[1] Defendants argue, specifically, that New Hampshire's statute should be understood (and presumably that it would be understood by any potential corporate contributor) to ban only contributions made from "treasury funds" but not to ban political contributions if the source is "segregated funds." The statute's seemingly absolute prohibition against corporate political contributions does not actually preclude corporations

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[1] Defendants also say Austin does not apply, because unlike the Michigan statute at issue in Austin, New Hampshire's statute does not speak directly to corporate "independent expenditures." Defendants' legal point is incorrect; Austin is both instructive and applicable precedent. But, defendants' factual point perhaps exposes another major weakness in the statute, if the general statutory scheme is indeed intended to restrict corporate participation in state election campaigns to the full extent permitted by the First Amendment. That is, nothing in New Hampshire's campaign finance law seems to prohibit corporations from making "independent expenditures" of an unlimited amount from treasury funds to elect or defeat a candidate for state office. "Contributions" and "independent expenditures" are, of course, quite different forms of political speech. Nevertheless, nothing in the statutory scheme addresses corporate independent expenditures (i.e., no provision either prohibits corporations from making them or limits their source to defined segregated funds). While the statutory definition of "independent expenditure" probably covers those made by a corporation (as an "other entity"), see RSA 664:2,XI, the "Prohibited Political Expenditures" section of the statute, RSA 664:5, does not purport to ban independent expenditures by corporations from "treasury funds" or otherwise, or to limit them at all for that matter, with one minor exception: all independent expenditures for political advertising in newspapers and on radio or television, etc., must be paid for at the applicable rates filed with the secretary of state. RSA 664:5.

from making such contributions, say defendants, so long as the funds used represent voluntary donations and are held in a segregated account (and are not derived from "amassed wealth" attributable to corporate business activity).[2]

Besides, say defendants, they have collectively determined not to enforce the statute as it is written, but rather as they construe it (pointing to instances in which corporations have been permitted to form separate political action committees). Thus, defendants suggest that all is well and no corporation faces potential prosecution for making political contributions, if they are made from a segregated account in a manner consistent with defendants' own reading of the statute. Defendants' argument recognizes, then, that states may not constitutionally prohibit all corporate political contributions.

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[2] Actually, defendants may also imply that a corporation cannot even maintain a segregated fund and make political contributions in its own name from that fund, but, instead, must actually form a separate political committee. Under the statute, however, a political committee is a separate entity comprised of "2 or more persons [organized] to influence elections . . . ." RSA 664:2,III. So, a corporation could not form a political committee by itself. And, the speech of a political committee is not speech of the corporation that formed it. In any event, the issue here is not whether a corporation can form another entity to raise funds to contribute to a candidate, but whether a corporation may itself raise funds to contribute to a candidate.

But, of course, the reality is that the statute's language does not admit of any exceptions, and neither the governor, the other defendants, nor this court is in a position to effectively rewrite the legislation actually enacted by the General Court. Nor can defendants overcome the statute's overreaching character by unilaterally implementing relaxed (and necessarily transitory) enforcement policies.

Facially, the statutory language used by the legislature is both straightforward and all-encompassing: A corporation shall not, under pain of criminal sanction, make any direct or indirect contribution to a candidate, political committee, or political party. See RSA 664,I and 21,V. Nor may a corporation make any expenditure "in behalf of [probably meaning at the direction of or in coordination with] a candidate or political committee or political party" where the purpose is to promote "the success or defeat" of any candidate or political party at any state primary or general election. RSA 664:4.

Defendants' contention that the broad statutory ban is actually a limited one, and precisely targets only that corporate

political speech subject to permissible regulation, (i.e., that the ban only applies by its terms to corporate political contributions made from treasury funds) is untenable. First, defendants' suggested words of limitation are nowhere to be found in the statute. The statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does RSA 664 even mention "segregated accounts" or "segregated funds." And, the phrase "no contribution" - meaning no "payment, gift, subscription, assessment, contract, payment for services, dues, advance, forbearance or loan" - hardly requires an exhaustive search for meaning.

That defendants might agree the statute must, constitutionally, permit corporate political contributions from segregated accounts, does not, of course, make it so. The legislature could well have both meant exactly what it said, and said exactly what it meant. Lewis Carroll's egg notwithstanding, the meaning of words is not so elastic as to accommodate any and all convenient interpretations.[3] The legislature is entitled to

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[3] "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make

the courtesy of a presumption that it knew what it was trying to accomplish, chose its words thoughtfully, knew the meaning of the words it chose, and intended its words to be read straightforwardly.

Defendants' proposed construction of RSA 664:4,I not only imposes meaning that the words used do not convey, but it is also inconsistent with established principles of statutory construction. The applicable principle was described by the Supreme Court as follows:

> It has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be "readily susceptible" to a narrowing construction that would make it constitutional, it will be upheld. The key to the application of this principle is that the statute must be "readily susceptible" to the limitation; we will not rewrite a state law to conform to constitutional requirements.

American Booksellers, 484 U.S. at 397 (citations omitted).

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words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master - that is all." Alice Through the Looking Glass, Lewis Carroll (1872).

The reasons underlying this rule of statutory interpretation are fairly well established and widely understood. First, federal courts must be always mindful of their limited role in the American system of government, which is to insure that statutes are interpreted in accordance with their terms, as the legislature intended, and applied in a fair and neutral manner. Even to save defective laws, courts must not intrude upon the function of the legislative branch which is, at its core, concerned with writing (and amending) legislation. See, e.g., United States v. Reese, 92 U.S. 214, 221 (1875) ("It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government."); United States v. Albertini, 472 U.S. 675, 680 (1985) ("Only the most extraordinary showing of contrary intentions in the legislative history will justify a departure from [the plain language of a statute]. This proposition is not altered simply because application of a statute is challenged on constitutional grounds. Statutes should be construed to avoid

constitutional questions, but this interpretive canon is not a license for the judiciary to rewrite language enacted by the legislature. Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers.") (citations and internal quotation marks omitted).[4]

Thus, it is clear, particularly when First Amendment freedoms are at issue, that courts must avoid adopting a statutory interpretation that strays too far from the plain text of the statute:

> This conclusion of unconstitutionality is of course no ground for going back to reinterpret the statute, making it say something that it does not say, but that is constitutional. Not every construction, but only "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." "Although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute . . . or

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[4] Parenthetically, the court notes that defendants have not referenced any supportive legislative history relating to Chapter 664 of New Hampshire's Revised Statutes Annotated. Nor have they shown that their expansive interpretation of the statute is consistent with the actual intent of New Hampshire's legislature. Certainly what history is available provides no hint of an intent to minimize the risks of corruption of the electoral process by prohibiting only corporate contributions made from treasury funds. See N.H. Laws, Chapter 212 (SB 178), section 212:1 (Exhibit 1 to document no. 10).

> judicially rewriting it." Otherwise, there would be no such thing as an unconstitutional statute.

United States v. X-Citement Video, Inc., 513 U.S. 64, 86 (1994) (Scalia, J. dissenting) (citations omitted). See also George Moore Ice Cream Co. v. Rose, 289 U.S. 373, 379 (1933) (Cardozo, J.) ("A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score. But avoidance of a difficulty will not be pressed to the point of disingenuous evasion. . . . The problem must be faced and answered.") (cited in Seminole Tribe of Florida v. Florida, 517 U.S. 44, 57 n.9 (1996)).

Finally, it is important to note that RSA 664 provides criminal penalties for corporations, like Lander Associates, that violate its terms. See RSA 664:21,V. Criminal statutes must provide clear and unambiguous notice to the public of what conduct is proscribed and what conduct is permitted. If a criminal statute fails to give fair warning of its scope to the public, citizens may well forego entirely lawful (and even constitutionally protected) conduct, merely to avoid the (unwarranted) threat of criminal penalties. Even if construed as

defendants wish, RSA 664:4,I fails to provide fair warning of its scope since no reasonable reader would have any idea that the statute's absolute and unequivocal ban on corporate political contributions is in fact quite equivocal and conditional.

Moreover, even if this court were inclined to adopt defendants' proposed construction of RSA 664:4,I, and "read" (or, more accurately, "write") into the law exceptions and limitations necessary to make it both consistent with Austin and constitutional, only those few citizens schooled in constitutional law (or so devoid of other interests in life that they habitually read obscure judicial opinions) would understand that New Hampshire's law does not (and, in fact, can not) prohibit all of the conduct it unambiguously purports to reach. Only a relatively small minority would feel at liberty to engage in constitutionally protected conduct. The vast majority (corporations and individuals), however, unaware of the constitutionally mandated "implicit exceptions" defendants would have the court read into the statute, would be chilled in the exercise of their constitutional rights - mistakenly, but understandably, fearing that any corporate political

contribution, even one from a segregated fund, would violate the law as written and thus, expose them to penalties including criminal sanctions.

Accordingly, the court must interpret RSA 664:4,I, as written: it bans corporations from making any and all political contributions. The next question is whether the statute, as written, is constitutional. It is not.

B. RSA 664:4,I is Unconstitutionally Overbroad.

The absolute ban on any corporate contribution markedly distinguishes RSA 664:4,I, from campaign finance laws found constitutionally inoffensive by the Supreme Court. Contrary to defendants' assertions, for example, New Hampshire's law is quite unlike the Michigan law found valid in Austin v. Michigan Chamber of Commerce, supra. Michigan's legislature drew a careful distinction, in the text of its statute, between prohibited corporate treasury expenditures, and permitted corporate segregated fund expenditures. The Michigan statute unambiguously and specifically prohibits "corporations from using corporate treasury funds for independent expenditures in support of, or in

opposition to, any candidate in elections for state office." Id., at 654 (emphasis added). As the Supreme Court pointed out, Michigan's statute (again, unlike New Hampshire's) also expressly allowed corporations to "make such expenditures from segregated funds used solely for political purposes." Id., at 655. Importantly, the Court took pains to note that "[t]he [Michigan] Act exempts from this general prohibition against corporate political spending any expenditure made from a segregated fund." Id., at 655-56 (emphasis added). And, the High Court pointed out that Michigan's law was carefully modeled after the Federal Election Campaign Act of 1971, 86 Stat. 11, as amended, 2 U.S.C. §§ 431-455, which also explicitly and unambiguously permits "corporations . . . to use segregated funds to finance independent expenditures [and corporate contributions to candidates[5]] made in federal elections" (again, unlike New Hampshire's law that admits of no such exception based on fund

[5] FECA, unlike New Hampshire's statute, specifically permits political contributions and independent expenditures by corporations to candidates, subject to limitations on amount, so long as the source of those contributions is a separate account maintained by the corporation and funded by voluntary donations from a carefully defined class of people related to the corporation. See 2 U.S.C. § 441b(2)(C).

sources or segregated accounts and imposes an outright ban on any corporate contributions).

To be sure, the Supreme Court has recognized that corporate political speech, while protected by the First Amendment, is, nevertheless, subject to reasonable regulation by a state.[6] However, such regulation is constitutionally permissible only to the extent that the statute is narrowly tailored to serve a compelling state interest. See, e.g., Austin, 494 U.S. at 657; Federal Election Comm'n v. Mass. Citizens for Life, Inc., 479 U.S. 238, 256 (1986). States do have a recognized and compelling interest in minimizing the probability of corruption, and even the appearance of corruption, of the electoral process itself. So, state-imposed limitations on large contributions (from anyone - individual or corporation) to candidates for public office do

[6] Of course a state can constitutionally place reasonable limits on the amount of such contributions, currently as low as $1,000. See Buckley v. Valeo, 424 U.S. 1 (1976); see also, RSA 664:4,V. Defendants say, alternatively, that the legislature imposed such a limit, since the term "person" as employed in RSA 21:9 covers corporations, and existing legislation limits the amount any "person" can contribute to a candidate under various circumstances. So, even though RSA 664:4,I, is unenforceable, corporations are arguably limited in the same manner as individual citizens in the amount they may contribute. That issue is not raised in this case, so it need not be resolved.

not violate First Amendment guarantees because "[t]o 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." Buckley v. Valeo, 424 U.S. 1, 26-27 (1976).

And, because "direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace," Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 257 (1986), the Court has recognized another state interest sufficiently compelling to support legislation restricting corporate political spending. Albeit over vigorous dissent, a majority of the Justices held in Austin that a state may also constitutionally restrict corporations from making "independent expenditures" from treasury funds to support or oppose a candidate for election to state office, because states have a compelling interest in limiting "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the

public's support for the corporation's political ideas." Austin, 494 U.S. at 660.

Having recognized that interest as compelling, the Court then determined that Michigan's statute survived constitutional challenge because it was narrowly tailored to address that interest. The statute was narrowly tailored because, significantly, it clearly did not purport to impose an absolute ban on corporate independent expenditures made to elect or defeat a candidate. Instead, the Michigan statute drew a careful and explicit distinction between corporate political expenditures made from treasury funds (funds amassed in the marketplace, employing the state-conferred advantages of doing business in corporate form, not representing any particular support for the corporation's political ideas, and potentially capable of corruptly and unfairly distorting the political process) on the one hand, and corporate political contributions from segregated funds (funds not derived from the marketplace and the advantages of doing business in the corporate form, voluntarily donated, and that do represent popular support for the corporation's political ideas), on the other. While the state's compelling interest

warranted prohibiting expenditures from treasury funds, it did not warrant prohibiting expenditures from segregated funds. And, because the statute was narrowly focused, prohibiting only political contributions from treasury funds and not restricting those from segregated accounts, it passed constitutional muster.

Defendants, of course, do not suggest that New Hampshire has some compelling interest in prohibiting corporations from making contributions to candidates from so-called segregated funds, nor could they reasonably make that argument in light of Austin. Corporate contributions from segregated funds (particularly if limited in amount, as currently allowed by Buckley v. Valeo), do not raise any spectre of quid pro quo corruption, or the appearance of it, nor do they pose any of the risks of corrosive, distortive, or unrepresentative effects on the electoral process that contributions from corporate treasury funds pose. Corporations seeking to contribute to candidates (and political committees or political parties) from segregated funds are constitutionally indistinguishable from individual citizens seeking to contribute to candidates from their own funds. If, as Buckley teaches, a $1,000 contribution from a private citizen

does not implicate compelling state interests related to the fact or appearance of quid pro quo corruption, how can it be said that a $1,000 corporate contribution from segregated funds implicates a compelling state interest related to the fact or appearance of quid pro quo corruption? And, if corporate contributions originate from funds donated by those who choose to support the corporation's political ideas and agenda, no issue of corporate diversion of "amassed business wealth" arises.

But to be fair to defendants, they do seem to recognize those points. They base their defense of the statute, as mentioned earlier, not on the premise that the legislature can constitutionally ban any and all corporate political contributions, but rather on their own hopeful and rather strained reading of implicit limitations into the statute's

text.[7] They argue that the legislature did not mean what it said

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[7] Defendant's reliance on Pipefitters Local Union No. 562, et al. v. United States, 407 U.S. 385 (1972) in that regard is also misplaced for several reasons, among them: 1) the Court did not hold in Pipefitters that Congress could impose a blanket prohibition on union (or corporate) political contributions, but, to the contrary, the majority recognized that union (and corporate) political contributions to candidates are protected under the First Amendment to the extent made from a separate fund or segregated account and the money represents voluntary contributions from members (or others); 2) the union and government agreed in that case that the federal statutory ban on union (and corporate) political contributions (then in effect) did not preclude so-called segregated fund contributions or expenditures (an "agreement" Justice Powell, in dissent, vigorously challenged, given the plain words used in the statute); 3) the detailed and extensive legislative history of the federal statute (then 18 U.S.C. § 610) satisfied the majority (but not the dissent) that the parties' "agreement" was supportable since it revealed Congress' intent to prohibit only political contributions by unions (or corporations) from general treasury revenues; and 4) in any event, the federal statute was amended by Congress in 1971, while the case was pending, to make it statutorily explicit and unambiguous (again unlike RSA 664:4,I) that indeed the prohibition on union (and corporate) contributions did not apply to contributions from segregated funds maintained by a union (or corporation).

With regard to RSA 664:4,I, the parties: 1) do not agree as to its applicable scope; 2) the broad language is plain and resort to legislative history would not be appropriate, nor necessary to appraise an "agreed upon" construction; 3) besides, there is apparently no legislative history suggesting limited application (or defendants surely would have referenced it); 4) the legislature has not amended the statute to explicitly limit its application; and, 5) reasonable corporations (like Lander Associates) can not be expected to discern from the broad prohibitory language used that some corporate political contributions are nevertheless permitted, and could reasonably anticipate prosecution if it made any corporate contribution.

or did not say what it meant.

In the end, the statute does not lend itself to defendants' reading. The words employed by the legislature are clear and unambiguous and evidence an intent to preclude corporations from making any political contributions, regardless of the source of those contributions. Thus, the statute reaches too far, prohibiting constitutionally protected conduct without any compelling state interest in doing so.

Conclusion

The relevant Supreme Court opinions addressing campaign finance laws make one thing perfectly clear: corporations have a constitutionally protected right to make political contributions and independent expenditures, in their own names, from what have come to be known as segregated funds. The plain terms of New Hampshire's statute infringe that right without serving any compelling state interest, or, perhaps more accurately, the statute is not narrowly tailored to serve any compelling state interest.

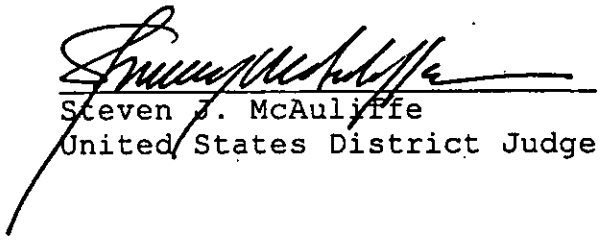
Defendants' reargument does little more than invite this federal court to rewrite New Hampshire's statute to meet First Amendment requirements - a rather inescapable irony given recent local events and times. With respect, however, the court must decline defendants' collective invitation, however well-intentioned, to rewrite RSA 664:4,I.

There is, of course, a simple solution to this simple problem, but it is not found in judicial lawmaking or executive policies of casual enforcement of the State's campaign finance laws. The solution lies with the legislature. If, as defendants seem to believe, New Hampshire's General Court did not mean what it said or did not say what it meant, and, when it banned <u>any</u> corporate political contributions, direct or indirect, it actually intended to <u>permit</u> corporations to make some discrete political contributions to candidates, political committees, and political parties from segregated accounts, then the General Court can easily and effectively amend the statute to reflect its actual (constitutional) intent.

In the meantime, however, the court reads the statute as it is plainly written, and as plainly written it is undeniably unconstitutional. Words mean something and the words used by the legislature in RSA 664:4,I, are neither ambiguous nor imprecise. The phrase "No contribution . . . shall be made to a candidate, a political committee, or political party . . . directly or indirectly . . .[b]y any corporation," requires no deep analysis or tortured interpretation. Those words unmistakably express the legislature's far-reaching intent - that all corporate political contributions to candidates for state office, political committees, and political parties, from whatever source, are prohibited. Any reasonable corporate citizen would certainly read the prohibition in that way. If, as defendants suggest, FECA was indeed the model for RSA 664:4,I, the drafters left out significant and critical provisions that should be fairly easy to restore.

Having fully reconsidered the matter, defendants' motion to alter or amend judgment (document no. 15) is denied. RSA 664:4,I, is unconstitutional and unenforceable.

SO ORDERED.



Steven J. McAuliffe
United States District Judge

December 23, 1999

cc: Alfred J. T. Rubega, Esq.
William C. Knowles, Esq.
Martin P. Honigberg, Esq.
Senior Assistant Attorney General

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U.S. District Court, NH #98-608-M
Kennedy v. Gardner, excerpts from Order dated 12/23/99

Hampshire's statute is properly construed, by inferring discrete limiting provisions, it easily passes constitutional muster.

Defendants' suggestion might represent a workable and effective fix of the statute's inherent deficiencies if this court were free to legislate for New Hampshire, but it is not. That part of New Hampshire's campaign finance law at issue in this case, as drafted by the legislature, is nothing like either the Michigan statute or the federal statute, and it simply cannot survive constitutional scrutiny given its plain language and the Supreme Court's reasonably clear explanation of the extent to which the First Amendment protects corporate political speech.

Discussion

I. Preliminary Matters.

A. Types and Sources of Political Contributions.

Generally, corporate political contributions come from two different sources. One is the corporation's operating or treasury accounts. Money in that type of account is derived from corporate business activities, such as the sale of goods and services or the sale of corporate stock. It is generally

accepted that a corporation's ability to amass such funds reflects its business acumen, but not popular support (or even the support of its shareholders) for its political views. See, e.g., Federal Election Commission v. Mass. Citizens For Life, Inc., 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.").

The other potential source of corporate political contributions is a "segregated account." Typically, segregated accounts are funded by contributions solicited from corporate officers, directors, employees, and shareholders. These accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas.

political speech subject to permissible regulation, (i.e., that the ban only applies by its terms to corporate political contributions made from treasury funds) is untenable. First, defendants' suggested words of limitation are nowhere to be found in the statute. The statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does RSA 664 even mention "segregated accounts" or "segregated funds." And, the phrase "no contribution" - meaning no "payment, gift, subscription, assessment, contract, payment for services, dues, advance, forbearance or loan" - hardly requires an exhaustive search for meaning.

That defendants might agree the statute must, constitutionally, permit corporate political contributions from segregated accounts, does not, of course, make it so. The legislature could well have both meant exactly what it said, and said exactly what it meant. Lewis Carroll's egg notwithstanding, the meaning of words is not so elastic as to accommodate any and all convenient interpretations.[3] The legislature is entitled to

[3] "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make

Defendants' reargument does little more than invite this federal court to rewrite New Hampshire's statute to meet First Amendment requirements - a rather inescapable irony given recent local events and times. With respect, however, the court must decline defendants' collective invitation, however well-intentioned, to rewrite RSA 664:4,I.

There is, of course, a simple solution to this simple problem, but it is not found in judicial lawmaking or executive policies of casual enforcement of the State's campaign finance laws. The solution lies with the legislature. If, as defendants seem to believe, New Hampshire's General Court did not mean what it said or did not say what it meant, and, when it banned any corporate political contributions, direct or indirect, it actually intended to permit corporations to make some discrete political contributions to candidates, political committees, and political parties from segregated accounts, then the General Court can easily and effectively amend the statute to reflect its actual (constitutional) intent.

SB 303
File

Date: February 9, 2000
Time: 1:00 p.m.
Room: Rm. 104, LOB

The Senate Committee on Public Affairs held a hearing on the following:

SB 303 relative to campaign contributions by corporations.

SB 447-FN relative to campaign contributions and expenditures.

Members of Committee present:
Senator Trombly
Senator Disnard
Senator Eaton
Senator Krueger
Senator McCarley
Senator Roberge

The Chair, Senator Rick A. Trombly, opened the hearing.

Senator Rick A. Trombly, D. 7: I'll open the hearing on **Senate Bill 303 and 447**. I put them together for the convenience of the public so that we wouldn't have people waiting to testify for one bill or the other. They're basically both campaign finance reform bills, and I think that, when you address your remarks, if you want to address one bill specifically for the benefit of the Senate members, that would be great. I will note for the members of the public and the Senate committee that on Senate Bill 447 I have . . .(background interference). . .so that's good news. . . . .and same on 303. So, I would, at this time, recognize Senator Clif Below who is the prime sponsor of both pieces of legislation.

Senator Clifton Below, D. 5: Thank you, Mr. Chairman and members of the committee. I'm actually waiting for an amendment on 303; so, if you don't mind, **I'll just speak to 447 at this time.** I'm Clifton Below representing Senate District 5.

This bill is a result of a study committee that was established last year, which I had the pleasure of serving with a number of other colleagues who are here in the room today; and **the bill establishes a fund to provide**

campaign financing. A similar bill was introduced in the House. This bill is different from the House bill in a few respects; the most significant of which is that **this covers the Office of State Senate as well as the Office of Governor and Council.**

I think the feeling of the study committee was that that might be appropriate to put before the Senate as to whether the Senate feels that's appropriate or not. **The purpose is really to open up the political system and to reduce the role of money in the campaign effort** so that, of course, as we all know, the compensation for serving as a State Senator or Executive Council for that matter or House members is quite modest in this state. Of course, the Governor is paid a salary, but all of these offices require fundraising huge sums of money relative to the compensation people receive and, increasingly, as time goes on, the importance of that **fundraising has taken on more and more of a role**. I think there's a feeling by many of us that **it detracts from the democratic process**, and **there should be an alternative for those people who are willing to voluntarily limit their fundraising and expenditures.**

So, what I'd like to do is just to sort of walk you through the bill so that you can understand the major elements of the bill and then a respond to questions. Just as a point of context, I would mention that **all of our neighboring states have adopted something like this**. The state of Maine and Massachusetts, through popular referendum, received very strong support and the state of Vermont through legislative action; and **I think that does give an indication of the popular support for this.** As you know, the two candidates who ran in the New Hampshire primary. . .or several candidates. . made campaign finance reform a major issue; and, certainly, on the Republican side, it was interesting. . .the candidate who really emphasized that came out far ahead of the candidates who were saying that campaign finance reform didn't matter; and both the Democratic candidates strongly supported this kind of reform. . . .Well, not this kind, but campaign finance reform.

In any case, looking at the bill. . . . .The first several sections of the bill amended existing statutes to bring in this new chapter. **The new chapter would be RSA 664-A. Section 1** of the bill, of course, is the **Purpose** statement; **Section 2** creates a dedicated fund with a **Clean Elections Fund**. **Section 3** of the bill is the **Enforcement** section concerning the Attorney General and enforcement for violations of the general campaign. **664** - I'm not sure what the title of that chapter is but it's the general section on **political expenditures and contributions**, and **it adds the reference to the new chapter throughout that enforcement section.**

Section 4 of the bill starts on **Page 2, Line 8**, does provide that penalties which are assessed for when a candidate exceeds the permitted campaign expenditures, the voluntary caps that people can agree to. . .that those funds would go into the Clean Election Fund rather than (I believe) the general fund which is where they would go now.

Sections 5, 6, 7, and 8 of the bill. . . .all on **Page 2**. . . .concern the **Ballot Law Commission** and where there's **Disputes** as to whether someone qualifies for the ballot from party registration or other ballot related disputes concerning **registration of candidates for clean elections funding** would go before the Ballot Law Commission.

Section 9 of the bill **starting at the bottom of Page 2 and really continuing on to Page 3 establishes the new chapter, the CLEAN ELECTIONS FINANCING chapter.** The **Definitions**, at the top of **Page 3** – This does set up a process for **qualification**. . . .qualification with **qualifying contributions** as well as an opportunity to raise some additional seed money contributions before the point of time at which there's funding from the public funding available. So, those terms get defined. **The funding is available both in the primary period as well as in the general election period and is structured so that it would be available both to party candidates as well as independent-those who choose to run as independent candidates.**

On **Line 26** of **Page 3** the **nonlapsing, revolving special fund is established not to exceed $6,000,000** at the end of each year. It's set up so that money goes into the fund. . . .If the fund achieves the $6,000,000, I think that the excess would lapse into the general fund. . . .But, **the intention is to achieve a balance which is sufficient to fund any potential candidates**; but, if the fund gets too large, then, obviously, it doesn't need to be retained there.

The following section, **Roman III** at **Line 33**, **specifies what money goes into the fund**; and **this is where the study committee spent an enormous amount of time and, unfortunately, was unable to identify a significant source of revenue** which was not otherwise claimed for the purposes. So, just to explain right up front. . .This bill doesn't really have the funding to get to $6,000,000, even $1,000,000, in the near term, but **the feeling of the study committee was we should go ahead and get the structure in place so that this is something that could be considered as the next biennial budget is developed**; also, so that the campaign fines could go into the fund. . . any involuntary contributions could go in. But, later in the bill, there's a mechanism that doesn't really set it in operation until there's sufficient money to make it meaningful.

So, in that sense, we still have challenges before us; but let me just run through the sources that would go into the fund. . . . .**voluntary contributions, donations, unspent seed money contributions from qualifying contributions that are not returned to contributors** (That'll be explained a little bit later on), but there's this concept that candidates who want to qualify for this can raise a certain amount of seed money. If they don't spend it by the point of time in which they get the public financing; then they can either return that to the most recent contributors or they can contribute it to this fund instead.

(c) is **Money distributed from the fund and returned by a participating candidate who does not remain a candidate until the election for which the money was distributed**. . . if, for some reason, they moved out of the district and don't qualify as a candidate any longer.

(d) is **Money distributed from the fund which is returned because it was not spent by the date of the primary election for which the money was distributed.**

(e) is the **Fines levied for violation of election laws, including the fines previously referenced for exceeding the voluntary spending caps.**

(f) Interest generated by the fund.

And **(g) is a little unclear**, and I think Representative Splaine may have an amendment that clarifies this a little bit, but it says **"Money appropriated from the general fund but not fully expended as of the end of the fiscal biennium. The amount of such money to be deposited in the fund shall be $6,000,000 minus the amount of money in the fund at the end of the fiscal biennium."** I'm not exactly sure what that means, and **that needs to be clarified**.

Let me clarify. . . . .The intent is not to sweep $6,000,000 of surplus at the end of the biennium into the general fund; rather **the intent is that, if there's money that's been appropriated for these purposes and is unexpended that it remains in the fund**, but I think **that needs clarification.**

The next section of the bill at **Line 12, the proposed RSA 664-A:3** describes how a candidate qualifies to participate in the fund; and, of course, the major point is that it is someone who is going to voluntarily declare that they want to qualify. . .to participate I should say. And, the second **Roman II** there

provides that they become a participating candidate in the general election period if they were a participating candidate in the primary and they were declared nominated; or if they did not have a primary contest. . . .and that would be in the case of an independent candidate who qualified.

Roman III provides that they shall not qualify if they accept any private contributions other than seed money or qualifying contributions other than things prior to the primary election period. The point of this is that, **when you choose to participate, you forego accepting private contributions in excess of either the public financing or the seed money contributions that are permitted.**

The next section, **664-A:4** at **Line 24**, describes **Qualifying Contribution Requirements**, and these are a certain number of contributions that have to be obtained by a candidate who wants to participate in order for them to qualify for the public financing. . . .and this is the number of contributions. Later on the **contribution is described as a $5.00 contribution**, and I think **the intent is it would be $5.00 or more**, although there's a limit to how much that might be. But, in the case of **governor, it would be $5,000 for a candidate, $1,000 for a candidate for councilor, and $3,000 for a candidate for state senator**, and the purpose of here is to show a broad base of support of small contributions. . .that the person is a serious candidate and if they can get some support for their candidacy but without having to go to big money contributors.

The **qualifying contributors would specify their domicile for voting purposes.** This is important in terms of certifying the qualification.

The top of **Page 5, Roman VI,** specifies that **Qualifying contributions shall be made from personal moneys by individuals who are registered to vote and qualified to vote for the candidate.** So, the support that the person has to show is that it's within their district that they're running for. . . . . .statewide for governor, and a particular senate district. For instance, if this was in place and one of us chose to want to participate, you'd have to get a minimum of 300 contributions of at least $5.00 each from qualified voters within the senate district for which you're running. That's that part.

In addition to the sort of qualifying contribution, the next provision, **664-A:5** at **Line 5, allows for a certain amount of seed money contributions which I think could also be qualifying contributions.** However, it specifies they shall not exceed more than $500 for a candidate for governor or $100 for councilor or state senator. . . .and that's per each individual adult. . . .and there's a total of the seed money contributions. . . .the amount is limited

($62,500 for governor, $5,000 for councilor, and $3,000 for state senator). That is essentially the seed money that the candidate can raise before they qualify and start getting the money distributed from the Clean Election Fund for their campaign. The point is, if a candidate accepted money in excess of these seed money amounts, they would not be eligible for the fund.

At **Line 17** is the provision that, if they haven't spent the seed money by the end of the qualifying period, then they either return it to the most contributors or they can contribute it to the Clean Election Fund.

There's some additional. . . .just detail provisions about the reporting requirements.

Moving down to **664-A:6 Contributions and Expenditures**, again, it's just some of the requirements. . . .The key part of this is that candidates who are participating do not accept private contributions from any source so their funding is from the Clean Elections Fund.

Senator Rick A. Trombly, D. 7: Senator Below, if I can stop you there. If you hear the phone ring, Doris Haddock is going to be calling in at approximately 1:25, so I would be interrupting.

Senator Clifton Below, D. 5: Okay.

The **next section** just **provides a procedure for how someone would object to registration for somebody to participate in the fund.** The next section on **Page 6, 664-A:8, Clean Elections Fund Financing, spells out the amount of financing that would be available if someone chose to participate.** I don't think I need to review these in detail. They are somewhat lower than the current spending level. . . . .so, for state senator, for instance, (I think this is in addition to the seed money that one might raise and spend of $3,000.) there'd be $10,000 for an uncontested primary election, $20,000 for a contested primary election, which is the current voluntary spending limit as well as $20,000 for the contested general election, which conforms with our current voluntary spending limits as I believe the others do. Although, if there's an uncontested primary, there's a lower spending level than the current voluntary limit.

There's an important point here which is **Roman II** on **Line 28**, which is that the **candidate may receive additional funding to match expenditure by the participating candidate's opponent above the voluntary expenditure limitation**. . . .not to exceed 200 percent of the amount allocated. So, if there's a candidate who has not chosen to participate

in this and voluntary spending limits, then the participating candidate could raise additional money and spend up to that matching level.

The next section, **Roman III** at **Line 32** spells out when the disbursements, the payments, would come from the fund. I think the schedules of it there attempt to be a reasonable timeliness to be billed. . .(inaudible). . .any funds for the progress of campaigning.

The next section, **Line 8** on **Page 7**, is the **reporting requirements** which are more rigorous than in the case of the current campaign requirements. However, primarily, what people are reporting is their expenditures rather than contributions because they wouldn't necessarily have the private contributions.

The next part is very important. . . .At **Line 16, Shortfall in the Fund**. . . .If the fund is established and the program starts and there isn't sufficient money so that everyone gets their amount that they should qualify for, then they would receive a proportional share based on the amount in the fund to what they qualify for. . . . .and then a participating candidate may supplement the pro-rated payments with private contributions up to amount equal to the difference between the pro-rated payment amount and the amount to which the candidate would have been entitled. In other words, say the fund is only funded at 50 percent and instead of getting $20,000 for the general election, someone gets $10,000. Then, they can still raise the balance of the $10,000 through private contributions.

There's a little section on **Administration** for the secretary of state to preparing a manual and such forms necessary to administer this.

The next section at **Line 27** is **Reports to Legislature** so that we can evaluate this and be informed about how it's working and make recommendations relative to the enforcement by the secretary of state.

At the tope of **Page 8** is **Fines for Excess Expenditures** so a candidate who spends or obligates to spend more than the amounts permitted for the clean elections may be subject to a fine in an amount equal to 10 times the excess expenditures. It's pretty hefty. . . . We may want to consider whether we may be bankrupting somebody that goes over by $100 and they pay $1,000. I think the point is to say. . . .If you're going to do this, you're going to have to be rigorous in your accounting, and maybe that offsets the amount of time you're out fundraising.

The next part. . .There's a **Severability** provision, but the final section of the bill, **Section 10**, is a critical part, which is **when would this fund actually**

start to be administered. . . .and there are sort of two stages to this. The **Roman I** at **Line 9** provides that when the fund reaches $1,000,000, then the state treasurer would certify that that level has been reached to the secretary of state, and on the April 1st following such certification, the secretary of state would commence administering the fund for governor and council. Just looking at this, we figured if one candidate for governor and a couple of candidates for councilor participate, that alone could be on the order of. . . . .if there were contested primaries and such, that would be on the order of $1,500,000 total expenditure. . . .$1,000,000 at least would be a substantial portion of that and it might cover the whole amount if there's an uncontested primary and just the general election.

So, that gets us up to the range where it's meaningful. The next threshold is, **once the fund achieves $2,000,000, then it also would be administered for state senate races**. The feeling is that some number of them need to get up to a meaningful level, otherwise it's not worth trying to do from an administrative point; and, also, **the feeling was this certification needs to come by April 1st so that people who are planning to run know whether this is a route that they might go,** whether this fund would be operational and available or not. . . . .and, really, much later than that date; it wouldn't really be practical to change course so close to a filing period.

So, that's the overview and the technicalities of the bill.

Senator Rick A. Trombly, D. 7: Senator Disnard?

Senator George F. Disnard, D. 8: A few questions, if I may.

Senator Clifton Below, D. 5: Certainly.

Senator George F. Disnard, D. 8: How is **soft money** handled, or how will it be handled?

Senator Clifton Below, D. 5: **This bill doesn't really address that**; and I think that's another challenge that we need to address.

Senator George F. Disnard, D. 8: One more, if I may. On **Page 6**, you mentioned that if the opponent raised a certain amount of money, you could raise additional money. Would that come from the fund, or would that come from private donations?

Senator Clifton Below, D. 5: From the fund. . . .I'm sorry this is from the fund. . .Yes. I think I said something different in my testimony, but this does say from the fund.

Senator George F. Disnard, D. 8: Thank you.

Senator Clifton Below, D. 5: It could be privately raised if the fund didn't have money available.

Senator George F. Disnard, D. 8: Appreciate your explaining it in a manner I could understand. Thank you very much.

Senator Rick A. Trombly, D. 7: I noticed, Senator Below, the key to this bill for me was the part that said that the information will be written in a non-technical sense.

Are there any other questions? Senator McCarley?

Interruption – Teleconference call received from Doris Haddock ("Granny D").

Doris Haddock, Dublin, NH: Good afternoon.

Senator Rick A. Trombly, D. 7: Welcome to the committee. How are you doing today?

Doris Haddock, Dublin, NH: Just fine, thank you.

Senator Rick A. Trombly, D. 7: Where are you located today?

Doris Haddock, Dublin, NH: We're in Hartford, Connecticut.

Senator Rick A. Trombly, D. 7: How's the weather down there?

Doris Haddock, Dublin, NH: Well, they have snow and ice, but the sun is shining and there are big puddles everywhere.

Senator Rick A. Trombly, D. 7: Thank you. This is Senator Rick Trombly, Chairman of the Public Affairs; and if you wish to testify on this legislation, I'll turn the floor over to you.

Doris Haddock, Dublin, NH: Yes, I would like to speak on it, if I could.

Senator Rick A. Trombly, D. 7: Please.

Doris Haddock, Dublin, NH: Thank you. I'm so happy you've asked me to speak to the senate committee with whom you are meeting today on **"clean elections."**

If people in New Hampshire could talk to you as individuals, I'm sure you would hear from them what I have been hearing all over the 11 states and the 3,100 miles I have traveled. They want campaign reform. . . .They want to be able to vote for candidates in their state who have not been elected by big business interests, but elected by their friends and neighbors and who will become their constituents once they are elected.

Please join the other states who have voted in public financing for campaigns in the state. It is a democratic way to go. If New Hampshire and Rhode Island were to become the fifth and sixth states to vote for public financing, then the whole of the New England states would be complete. We would be an example for the rest of the country. Please try to become patriots of old and set forward bravely into this new adventure. Don't let our democracy in our state down. . . . . .We are not as brave as were our early forefathers. Make your constituents proud of you. If you choose clean campaigns with public financing, you can go to bed knowing you are free of having to raise any more money over and over again; and you will know that you have not let down New Hampshire boys and men who have fought and died for our state in wars from the Revolutionary to Vietnam. They fought to keep our state and our country free and be democratic. Don't break faith with them. . . .keep democracy alive in New Hampshire. Thank you for listening to me.

Senator Rick A. Trombly, D. 7: Thank you now. Would you accept any questions?

Doris Haddock, Dublin, NH: Yes, of course, I will.

Senator Rick A. Trombly, D. 7: Are there any questions from members of the committee? (no response)

Thank you very much. Thank you for calling in.

Senator McCarley?

Senator Clifton Below, D. 5: While you're thinking about it, I would say that she raises a key point, which is to put the public back in public office; and some people have sometimes questioned. . . .Well, why should we use taxpayer dollars for funding of campaigns? To me it's rather obvious that these are public offices, and it's reasonable to say we're going to use a very small proportion of our total public funds to allow candidates on an equal

footing that voluntarily choose to participate to be able to get a basic campaign message across then be available to voters to be. . . .if choosen or not choosen based on what their message is rather than who are their friends and their connections and their ability to raise money is.

Senator Rick A. Trombly, D. 7: Senator McCarley, do you remember your question?

Senator Caroline McCarley, D. 6: I do remember my question, and I'm just trying to make sure I understand certain of the fundamental underlying way this would work. If we assume that all of us choose to voluntarily take this approach (understanding that we can choose later to break the law); let's assume that nobody's going to do that. We, basically, are talking about putting in legislation what's going to be spent on the elections. . .(inaudible). . So, we will spend in the contested primary for governor in a general election $1.2-$1.5 million whatever it adds up to. . . .Is that (what I understand) to be the case?

Senator Clifton Below, D. 5: If one candidate chose to participate. Obviously, if there were more candidates in a primary who choose to participate and qualify, there would be a few more expenditures.

Senator Caroline McCarley, D. 6: Oh, surely. I mention. . .(inaudible). . there's the contestant issues of those two people, I mean there's a general election for which, conceivably, you're right; there could be independents on the. . . . . .(inaudible). . .

Senator Clifton Below, D. 5: Right.

Senator Caroline McCarley, D. 6: Thank you.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

Senator Below, how would you respond to the positions that some have raised to me that there have been some very high profile-high finance campaigns that have gone down in flames, which tends to show that the amount of money spent in a race in fact doesn't affect the outcome?

Senator Clifton Below, D. 5: I think the point is not that money can buy an election. . . .because a person can spend all they want; and if they have a message that voters don't like, it won't succeed – it'll go down in flames. But, it's sort of the reverse of the question. . .The question is. . .Does somebody who is willing to serve and, maybe, has a message the voters would support and like, necessarily even get before them if they're not willing to enter the

fray and try and raise the money that's required? So, I would say it's to give people an opportunity to participate.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Caroline McCarley, D. 6: In your study committee, did you arrive at the numbers in contributions based on scanning what people have filed over the years for numbers of contributions and all that kind of stuff?

Senator Clifton Below, D. 5: I'm not sure. I think Representative Splaine or Flanagan might be able to better speak to that. I wanted to point out one other interesting feature of this bill on **Page 5** at **Line 30**. It did state. . . .and this, I think, is an important way to try to clarify things. . . .and this may differ a little bit from the House version of the bill. It says, ... **"Participating candidates shall not accept any non-monetary contributions except the volunteer donations permitted by this paragraph."** Then, it goes on to clarify what a volunteer donation is because I think there's an. . .(inaudible). . .right now in the way campaigns work. it says. . ."**A volunteer may donate up to $50 worth of goods and services to a participating candidate per month."** So, somebody who's providing some incidental things. . .bring cookies to meetings or providing small degrees of goods and services. . .you don't try to hang people up on the technicality in that regard. Also, it provides that. . . **A volunteer's time or voluntary use of personal vehicles shall not be considered a donation for purposes of this campaign.** So, again, we don't end up with a technicality. . .and say that you've got a volunteer driving around in their own car putting up signs – that wouldn't count as a contribution; so we don't get hung up on that.

Senator Rick A. Trombly, D. 7: Senator Disnard?

Senator George F. Disnard, D. 8: Back to the question of soft money. Was there a reason that wasn't included or would be considered as an amendment?

Senator Clifton Below, D. 5: Well, the question of soft money gets into the whole question of sort of third parties. There's soft money in political parties; that's an issue. There's also soft money which can go to a third party vehicle to independent campaign expenditures to support or oppose a candidate, and I don't really recall it being discussed much in the study committee because I think that this seemed like such a big task to sort through that we didn't try to take that on as well. . . .and I'm not sure it was in the charge of the study committee either.

Senator George F. Disnard, D. 8: It seems so, that the Senate can see our. . .(inaudible). . . If a group or a county political organization established an office, they certainly could use it for the democratic governor if it was a democratic party? Would that be considered for $50 or not?

Senator Clifton Below, D. 5: You're asking if, for instance, a city party had a. . . .Franklin or Concord democratic or Concord republican office and the candidate for governor or state senate was using that office, does that count towards the campaign? That's a good question. I think, traditionally, that local party committees-state party committees, it's been recognized that they can operate offices during campaign. I think to the extent that there's facilities that are used specifically for a candidate, they should try to track that. I know that my campaign, I paid for my own phone line, the office, and kept track of my own materials that were brought in. In fact, we also paid a portion of the rent. . .We prorated the rent to the different campaigns so it was divided up in that way. . . .But, I think you do raise a good question, and however, your question pertains not simply to this, but it pertains to current election operations because we have these voluntary spending limits, and I don't think we have very clear guidelines as to what should go and what should not go in in that kind of situation.

Senator George F. Disnard, D. 8: And, if that city or county organization paid for ads for a particular candidate, how would that be recorded? If there's no soft money, they can do it?

Senator Clifton Below, D. 5: No. My understanding of the law is that if an ad is up there promoting people to vote for a candidate and it's a party, then it's a coordinating campaign expenditure and has to count.

Senator George F. Disnard, D. 8: If they use the word "vote", but if they just go out say what a good fellow Clif Below is, people like him, more people should like him, then that's a campaign to me. . . .doesn't use the word "vote."

Senator Clifton Below, D. 5: Good point.

Senator Rick A. Trombly, D. 7: Senator Krueger?

Senator Patricia Krueger, D. 16: Senator Below, I just have a quick question. I think I know the answer, but I want to hear it from you, again. How does this piece of legislation improve upon what we've done already in limiting spending and voluntary caps? Could you just sort of put that out front?

Senator Clifton Below, D. 5: Okay. I think it improves upon that by creating an opportunity for people to run for office who might not otherwise do so because of the daunting task of raising fairly substantial sums of money just to be able to get a meaningful campaign across. Right now, somebody either has to have a pretty good organization or support themselves or they have to have a pretty strong support of their party if they're a "challenger" so to speak and don't enjoy the support of the powers that be. . . .They've got more of an uphill battle to try to tap in and raise the substantial amounts that have to be raised. So, I think it's an improvement because it opens up the system, and it also. . . .there's another end product, which is. . .people don't. . .when they get elected to office, if they win an election after clean elections, they don't feel beholden to a bunch of individual interests that contributed to them.

Senator Patricia Krueger, D. 16: I just have one short. . . .I sort of like your answer but I bet most of us in the senate certainly won't feel beholden at you, but my followup to that is. . .I don't know how to say this. . .Do you think that this plan might attract kooks? I mean, I know elections attract kooks, but I don't know how else to say it; but you know that people will think it's pretty funny to walk around with asparagus on your head or something and go out and collect $5 bills and then we've got the taxpayers supporting these people, and I want your answer just to make sense.

Senator Clifton Below, D. 5: Right. That is the reason for having a threshold of qualifying contributions. . . .people within a district – a substantial number. Now, maybe these numbers aren't quite right, but I don't think the kooks can go out and find 5,000 people and give them at least $5 each to run for governor. . .state senate, maybe.

Senator Patricia Krueger, D. 16: But, that's not a lot. . .if you could go to a big ballgame or something and, you know. . .

Senator Clifton Below, D. 5: You are going to have them signing a form under penalty of perjury by the contributors; so, it's not just like getting 5 bucks in a collection plate. They've got to also sign the form that they've contributed the $5 to your campaign. Personally, I wouldn't. . . .well, 300 is a pretty high threshold. I don't know about you, but I think I only had a total of 400 contributors in my campaign for the whole duration. . .maybe more petty ones and the real small ones, but that is. . .I don't know. I think it's not an easy task to go out and ask 300 people for at least $5 and get them to sign the form.

Senator Patricia Krueger, D. 16: That was a great answer. Thank you.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Larsen?

Senator Sylvia B. Larsen, D. 15: I'll go quickly, because I think there're people here who have far more details to offer. For the record, my name is Sylvia Larsen. I'm state senator for District 15, and **I'm here to testify in support of Senate Bill 447.**

In the 1990's campaign finance laws essentially unraveled and left the candidates with less confidence, how to navigate the system fairly, and with voters having much less fate in government in general. Special interests poured money into politics through a variety of devices from bundled campaign contributions to soft money to issue ads. . . .and for candidates, if you don't play that game, all too often you lose. So, as vast amounts of money flow into the system and these costs have skyrocketed (consultants, posters, TV and radio advertising), all taking more candidates catch; and scandals have focused people's attention on the possible illegalities. . . .and they demoralized public perception and their voices can be heard above the louder voices of large contributors when money talks.

Senate Bill 447. . .a chance to solve four of the most serious problems that face voter confidence in our elected officials. The first problem is the voter perception (and all of our perception) that campaigns are too expenseive. **Senate Bill 447 provides constitutionally accepted spending limits.**

Problem number two is that the perception is that too much special interest is influencing our behaviors as elected officials, and the solution is that participating candidates would then not take special interest money.

The third problem that Senate Bill 447 addresses is that candidates and lawmakers have to spend too much time raising. I know, for myself, when people came to me and asked me to run for the senate, I couldn't believe they expected me to raise $40,000 from June until December. I mean, that' s an incredible thing to do for $100 a year job; and, so, the solution in that is that **Senate Bill 447 eliminates the need for fundraising after the candidate has qualified at a much lower level of seeking donations.**

And, finally, the fourth problem that this bill solves is that good people will finally have a fair chance to compete. **Senate Bill 447 provides a financially level playing field for all candidates to compete once they have qualified in terms of public support.** As you might have heard, in New Hampshire there was a recent poll that showed 74 percent of New Hampshirites support most of the measures included in Senate Bill 447. .and

John Anderson (whom some of you may remember) who is now chairman of the Public Finance Campaign National Advisory Board states. . . .The American people instinctively know that when big money rules, ordinary voters are left out in the cold. I say, let's bring them in from the cold. . . .Let's figure out how to make Senate Bill 447 work. Let's find the funding for it, and move this on. I think we'll restore a vote of confidence as we do this. Thank you.

Senator Rick A. Trombly, D. 7: Thank you. Questions?

Yes, Senator Roberge?

Senator Sheila Roberge, D. 9: In talking about the difficulty of raising money for a campaign, just we serving here (probably for a year), you're losing at least $40,000 being here instead of out working in the workforce. Would you agree?

Senator Sylvia B. Larsen, D. 15: That, and it costs each of us money out of our own pocket often times to be here.

Senator Sheila Roberge, D. 9: Maybe, but we have this race to run really isn't the whole story, and it's probably a total of what we're not being able to earn because we are here. So, I would suggest that, possibly, if you can't afford to join, you can't afford to be here.

Senator Sylvia B. Larsen, D. 15: That, I would respond that that leaves out a whole lot of people that I would like to see have their voices heard in the state house, and those are people who might not have their own private incomes to be able to serve here. So, I'd hate to see us get to a system where you had to have the money in your pocket. . .(inaudible-background intereference). . .Unfortunately, that's somewhat true, but I think we can solve it to some extent by making it easier to qualify and raise the money through an election to put your name on the ballot and be considered as a candidate regardless of your ability. If you're willing to give up your income for six months out of the year, you ought to be able to serve; and right now, you have to not only be able and willing to give up your income for six months, but you have to go out and ask people for a total of $40,000. . . .and that's a tough thing to do. A lot of people can't afford to give the $100 contributions that it takes to pile up into a $40,000 total.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

Thank you.

Representative Splaine?

Representative James R. Splaine, D. 34: Here are **copies of an amendment that I'll address. (see Attachment "A")**

Mr. Chair and members of the committee, I have the residue of a bad cold. . .I think in about 2 or 3 minutes. . . .my voice gets very scratchy and will fade out. . . So I'll try to be very brief in receipting an amendment that is offered by the people who had worked so hard on this (members of the Clean Elections Coalition) that kind of simplifies for the purpose of interpretation what Clif was eluding to; specifically, in the middle of the page under **(g)**, you'll see that we're **eliminating the provision that money appropriated from the general fund but not fully expended shall go into the fund. Instead, (g) would be "Any money appropriated from the general fund by biennium budgetary appropriations."** meaning that no surplus is involved. But, if the legislature actually donates money in addition to the other monies, that would go into the fund.

On the bottom you'll see the **effective date line. This is a little bit wrong the way this is written even in this amendment.** What **the Clean Elections group wants to suggest**. . . .and I agree with this. . . .I think we felt this in the committee to which this went to. . . .**is that the law might become effective for purposes of appropriating the monies to candidates in 2004 after the pool of money has reached $1,000,000-$2,000,000 as provided for under the bill but that the effective date of the bill should become effective as it currently is in the year 2000 so that monies could start flowing into the pool.** So, if you do support the bill, you support that amendment. I think it helps clarify.

Just two things I want to address. . . .One is to bring you slightly up to date on where we are. You might remember that **this is the result really of the study committee that was created by the original Clean Elections bill that was introduced in the House last year** that was sent to the Election Laws Committee on which I served **(HB 689)**. That was sent to a subcommittee of the Election Laws Committee which I chaired. We saw the big picture as being a problem because, whenever you look at the big picture, you got a lot of complications, as Senator Disnard and Senator Krueger already have addressed. There're a lot of questions to answer even in the bill as it is currently written, so we recommended out of our subcommittee that **689** be amended to create a study committee, which the Senate agreed to do with the House; and through the summer and into the fall, we had a very good committee working on this with Lynn Horton from the Election Laws Committee as Chair. Frank Davis was on the committee, Nat Flanagan, a couple of state senators. . .Rick Trombly. We ended up, I think, coming in. . .

Clif Below. . .several others. **We ended up coming with a couple of versions of bills.** That brings you up to date where we are.

One of those versions went to the House. . .one went to the Senate. Last week the House Election Laws Committee (on which I sit) recommended our version which is almost identical to this, except this also addresses state senators. We're recommending our version of the bill go to a further study. . . an Interim Study. I'm hoping that you will support this legislation. . .maybe with some improvements which you will be able to arrive at as you hear people who have really been involved in this cause for the past several years. I would hope that you can pass into the Senate, pass it over to the House, and give us. . .maybe in a month or so. . .another chance to talk about clean elections.

This is my closing remark. . . .I don't get frustrated too often after having been in the legislature off and on for 30 years. . . .seen some of the best days or the worse days in my years of state senate. . . .back in the late 70's and early 80's, when we had budgetary dilemmas. . . .seen the kind of mess that we've been in in the legislature these past couple of years. . . .but I have to admit I was frustrated last week, and I expressed this somewhat to the Election Laws Committee last week, but probably not as vehemently as I would otherwise like to.

I saw a lot of concern for clean elections legislation happening during the past several months in the legislature starting last year. . . .mainly generated by good citizens. . . .some of who sit in back of me, and you're going to hear from. Then we had the primary election on Tuesday, and I have to tell you. . . .and I want to hear some of the other legislators maybe address this in coming months. . . .but it seems stopped. I went into the Election Laws Committee, and I'm still amazed about this. I went into the House Election Laws Committee last Thursday, and the wind behind election, clean elections, and election reform and finance reform just seemed to be blown away from the sails. I would hope that the Senate can put that wind back in. We are sending. . . . .(tape change). . . . .kind of let it go to a study committee, passed it on. . . .let's see if we can talk about other things.

This is an important cause. Granny "D" has been walking around the country telling us that. Citizens turned out last Tuesday in Mass. supporting candidates who were supporting election reform. As I said in the House committee last week, and I'll repeat here; we cannot tell those people to go to hell. . . .and I'm afraid that we are telling those people to go to hell if we don't say yes to something or that we are going to get serious about saying yes to something soon. I hope (and I expect) that the House Election Laws Committee is going to be serious. I have some words of honor from them that

they are really going to seriously look at how to make a clean elections law work, and we'll look at that in December or January of this coming year. . . but it would be nice if we could all collectively come together this election (because we're not through until June) and find a way to make it work now. I mean, we don't have that much work to do this session. So, I urge you as members of the Senate. . . .say yes to this in your body. . . .maybe we'll get it back to the House in a month or so. . . .and maybe the Election Laws Committee will be ready then to start getting serious about this. You know we have no other bills in Election Law in the House for this session. . . .no other bills after we vote on a couple that we've now got in executive session. You've got a lot of things to do in the Senate. . . .but collectively, with these people pushing us, we might be able to say yes to something in the year 2000. So, anyway, that's my frustration for the moment. If you have any questions, I'd be glad to try and answer them. Thank you.

Senator George F. Disnard, D. 8: Hearing no questions, Representative Flanagan?

Representative Natalie S. Flanagan, D. 31: I didn't sign up to say anything. I go along with. . .(inaudible). . .

Senator George F. Disnard, D. 8: Representative Davis? You wish to speak?

Representative Francis W. Davis, D. 12: Thank you, Mr. Chairman, but I would prefer to listen to testimony from the public.

Senator George F. Disnard, D. 8: Representative Curran, co-sponsor of the bill.

Unidentified Speaker: He is not. . . .(inaudible). . . .

Senator George F. Disnard, D. 8: Murray Loss?

Unidentified Speaker: He had to leave for a doctor's appointment.

Senator George F. Disnard, D. 8: . . . .does not wish to speak, but was in favor. Ann Crowley does not wish to speak but is in favor. Betsy Parker does not wish to speak but is in favor. Mia Poliquin does not wish to speak but is in favor. Clifton Below has spoken. Charles Denton does not wish but is in favor. Beatrice Newbury desires to speak.

Beatrice Newbury, Concord, NH – NH Citizens Alliance for Action: Thank you members of the committee. My name is Beatrice Newbury, and

I'm with New Hampshire Citizens Alliance for Action, and we are part of the coalition of organizations that have been working on this bill for a number of years. . . .or on this type of thing for a number of years.

(Reads from written testimony) – See Attachment "B"

Just to address what Senator Krueger said earlier. . .I think it was you anyway. Part of the problem here is the public perception. . . .maybe there is no corruption, but the public believes there is and that's really the concern that we're trying to address. . . .or one of the concerns we're trying to address.

(Resumes reading from written testimony)

Senator Rick A. Trombly, D. 7: Thank you. Any questions from members of the committee?

Representative Gary Gilmore of Dover recorded in favor of the bill does not wish to speak. Daniel Weeks?

Daniel Weeks, Temple, NH – Conval High School (Democracy In Practice: Thank you members of the committee and Mr. Chairman. My name is Daniel Weeks, and I am co-Director of the statewide youth initiative **Democracy In Practice-New Hampshire Youth Voter Alliance.** I'm a resident of Temple, New Hampshire and a junior at Conval High School in Peterborough. I prepared some words but would like to just preface them by saying that, I'm not an expert on the issue; but I simply intend to address the broad issue of campaign finance reform and **urge you to pass this measure. . . this bill. . .two bills.** . .which I view as an important first step in reforming the entire system.

Democracy In Practice, which consists of nearly 400 students and virtually every New Hampshire high school, has as its goal to interest and inspire youth ages 18-24 to vote and assume an active role in our political process. It is not an easy goal. As a junior in high school, I'm constantly made aware of the enormous degree of apathy that exists among my generation. In the 1996 presidential election, for example; a mere 28 percent of New Hampshire's students ages 18-24 turned out to the polls. I believe firmly that, before we can effectively work to change the sad trend of that, certain key issues need to be addressed. As such, I'm here today to provide a youth perspective on what I believe to be the single most important issue facing our country today and the key to increase public participation in politics – Campaign finance reform. . . .specifically public financing of elections.

Three months ago at a New Hampshire youth summit organized by Democracy In Practice here in Concord, I led an issue group on the issue of campaign finance reform with several high school students from across the state. In beginning my presentation, I stressed the inner-connectedness of campaign finance reform to virtually every other major issue of our day, how we will never effectively address the other important issues until we solve the problems presented by our current campaign system. What the students in my group grasped from the discussion, regardless of their understanding of the intricacies of compaign finance reform, was that the youth voice counts less and less in state and national politics. . . .not because we're unimportant. . . . . .but because politicians in their desire to get re-elected cater to those who finance their costly campaigns.

We're in a vicious cycle of ever increasing campaign expenditures, and at the same time, a growing influence of corporate and special interest and a declining emphasis on the citizens. . . .the very essence of our democracy. In a survey of several hundred high school students conducted by Democracy In Practice, we found out a large majority of young people believe that their concerns are not being addressed by politicians in today's system. I can assure you that, to today's youth, politics which centers not around people but around big money interest at the higher levels, is not only uninspiring but disenchanting. Youth do not care for politics as usual; and to us, our current system of campaign finance represents just that.

My reasons for speaking today are simple. I see apathy among young citizens rising to a frightening height, and I fear for a state in which citizens are too turned off by politics to exercise their basic responsibilities. I fear for our democracy. If the overall trend continues, this is likely to occur. I'm doing everything I can to revive the spark in public responsibility among my generation; and my efforts and those of other individuals in organizations doing similar work cannot alone change the trend. Students and, I believe, citizens at large are searching for a reason to truly trust and respect their public servants, but the influence of big money in the system is hindering that trust. Why would young people be inspired to run for political office when they see all around them that many of the candidates for higher office who lack political connections or large personal wealth have no chance of really competing. Too many good candidates are being driven out of the playing field for lack of money. Is this what democracy in our state is about?

Public financing of elections presents a clear and simple solution to this problem. Restore the voice of the people to its rightful place as the primary influence in politics by barring the corruption and undue influence of silent money donors.

Senator Patricia Krueger, D. 16: I'm sorry I wasn't here when you started. Just a couple of questions. . . .I hear what you're saying, but it sounds to me like what you're describing is sort of national, and we're here making laws in New Hampshire. . . . .and so, my couple of questions to you are based on that, and maybe you could help me understand youth or your particular perception with regard to that.

First of all, would you believe that, when polled, the people who voted for Senator John McCain did not vote for him because of campaign finance reform, but rather voted for him on the character issue.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): I believe that for some and many citizens that was the main issue, but I believe for many other citizens, his stance on reform. . . .the main reform. . .(inaudible-background interference). . .advocating its campaign finance but many others as well. I think that was. . . .My perception is that was a major determining factor.

Senator Patricia Krueger, D. 16: The most common concerns voters have are. . . . .quoting off the paper. . . .Campaigns are too expensive and special interests have too much influence. I would have a tendency to agree with your other two points, #3 and #4. I'm having a hard time with especially #1 because the amounts that we limit ourselves to voluntarily seem to be in line with what it takes to win. . . . .So, I was hoping that you could help me a little bit with those two. . . . .that they're too expensive. . . .or state senator or governor, whichever, and certainly, I don't know too many special interests that had too much influence in my election, but just help me understand why you think that. I appreciate the fact that you do.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice: Certainly. . . . .First of all, I should say that I was addressing the broader issue of campaign finance, and I realize that, in many instances, it applied more nationally because that's where the huge influence is. I'd also like to say that, when I think of a typical politician. . . .the negative connotation. . . .I certainly don't think of our state reps and senators who are paid very little for their work etc. . . . . .So, obviously, it's less of an issue in the Senate and the House. I think it is an issue to a degree at least in the gubernatorial races and, also, to a lesser degree in the executive council races. It's my feeling. . . .and again, I'm not an expert on the issue, but it's my feeling that there are many candidates, for example – for governor, who aren't able to compete at a high level because of funding; and while races for the senate may probably only cost a few thousand dollars. . .perhaps more, but not a huge amount. I know that races for governor can get up to

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): Certainly. . . . .First of all, I should say that I was addressing the broader issue of campaign finance, and I realize that, in many instances, it applied more nationally because that's where the huge influence is. I'd also like to say that, when I think of a typical politician. . . .the negative connotation. . . .I certainly don't think of our state reps and senators who are paid very little for their work etc. . . . . .So, obviously, it's less of an issue in the Senate and the House. I think it is an issue to a degree at least in the gubernatorial races and, also, to a lesser degree in the executive council races. It's my feeling. . . .and again, I'm not an expert on the issue, but it's my feeling that there are many candidates, for example – for governor, who aren't able to compete at a high level because of funding; and while races for the senate may probably only cost a few thousand dollars. . .perhaps more, but not a huge amount. I know that races for governor can get up to $1,500,000. . . .a lot of money, which most people. . .even if they had the convictions. . .a message that can really resound with and serve the constituents. . . that they don't get a chance to bring that forward. So, yes, it probably does apply more nationally and so, I apologize for that; but I think it is also important in the gubernatorial races and the executive council to a degree.

Senator Patricia Krueger, D. 16: Thank you so much.

Senator Rick A. Trombly, D. 7: Thank you. Any other questions? I just do want to say, Daniel, that I'm the town moderator for the town of Boscawen, and I know that, because of the efforts that your group has done, some schools. . .some classes at Merrimack Valley High School. . .let out early on primary day so the 18 year olds can vote; and as moderator, I did see several young people coming in to register to vote. So, I think everyone on this committee would most certainly applaud your efforts, and we are seeing some effect to that.

Daniel Weeks, Temple, NH – ConVal High School (Democracy In Practice): Thank you very much.

Senator Rick A. Trombly, D. 7: You deserve that. Congratulations! Thank you.

Anne Campbell? Anne does not wish to speak but supports the bill. Michael Power of Deerfield does not wish to speak but supports the bill. Linn Harwell, League of Women Voters.

Linn Harwell, New London, NH – League of Women Voters: The first I'd like to do is ask Daniel to join the League of Women voters. . .(sic). . .

Ladies and gentlemen, it's a privilege to speak with you today **in support of SB 447**. My name is Linn Harwell, and I am a member of the League of Women Voters of Kearsarge-Sunapee; and I speak on behalf of the League of Women Voters of New Hampshire.

The League of Women Voters have long urged politicians to enact campaign finance reforms by public financing of candidates. Our state primary last week has been called "retail politics". How could any New Hampshire resident have escaped some message from the several candidates for President. New Hampshire has shown the nation how important the voice of the people is. We heard several candidates espouse campaign finance reform. With this demonstration of grassroots participation, New Hampshire citizens and the general court may yet give another lesson by passing this bill.

The legislature has a grand opportunity to elevate the voice of the people. . the grassroots to its deserved position of influence in the matter of political decision making. We must not abandon these voices by allowing self-serving groups with huge amounts of money to quiet them. **The League of Women Voters of New Hampshire calls for meaningful campaign finance reform through public finance.**

Associate Justice of the United States Supreme Court, New Hampshire resident David Souter, said, "I think most people assume. . .I do, certainly. . . that someone making an extraordinary large contribution is going to get some kind of an extraordinary return for it. I think that is a pervasive assumption; and there's certainly an appearance. . .call it an attenuated corruption, if you will. . .that large contributors are simply going to get better service – whatever the service may be – from a politician than the average contributor, let alone no contributor." With these words, our league's members inquire how we might better show respect for the democratic process than voting for campaign finance reform, and I urge you all to make a bipartisan effort to have this bill passed in the New Hampshire Senate. . .and I'll answer any questions if I'm able.

Senator Rick A. Trombly, D. 7: Thank you very much. Thank you for your testimony. Representative Linda Garrish supports the bill and does not wish to speak. Steve Buckley of NHPIRG supports the bill and does not wish to speak. Jeffrey Peters supports the bill and wishes to speak.

Jeffrey Peters, Jackson, NH – We The People: Members of the committee, ladies and gentlemen, my name is Jeffrey Peters, and I'm chairman of **We The People**, which is a nationwide citizens' movement committed to genuine campaign finance reform. . . .and. . .Today I have just two simple points for you.

Number one. . . .On February 1 John McCain did ride the campaign finance reform issue to victory, and he did it in a big way; and that issue is the engine for his campaign. My question to you is. . . . How long will the statehouse ignore the will of the people?

My second point is that. . . .On February 29 "Granny D", with whom I had the pleasure of walking 100 miles in Texas, will be walking into Washington, DC. When I walked with her in Texas, people came out from their neighborhoods to join us; truck drivers honked their horns to support us; people signed her petition at truck stops. There is a grassroots support for campaign finance reform in this country, and I ask you win this one not for the giver. . . .win this one for "Granny D". Vote your conscience. . . .Do not ignore the will of the people.

Senator Rick A. Trombly, D. 7: Any questions? Thank you very much.

John Rowe representing Common Cause.

John Rauh, Sunapee, NH – Common Cause: I'm John Rowe representing the National Board of Common Cause. Most of you have heard me testify before on this; so, I will be brief. . . . .but I think, Senator Krueger, if I might say, you're 100 percent right that the race here that's key is the governor's race. . . .That's where the real big money is, and it's my view that the pool of those who can run for governor is exceedingly small. Either you've made some real money or inherited. . . .or you have the contacts to raise it. . . or you will not be governor of the state.

I look at it from the standpoint, as you know. . . .the people, not the candidates, and the people being deprived of the potential for some fabulous leadership. The pool is peanuts of those. When somebody comes to us as democrats and says they're considering running for governor, what's the first question they're asked?. . . . .Do you have?. . or. . . Can you raise?. . . .or forget it. That's not democracy. I think Dan did a fabulous job; just a fabulous job, and I don't plan to go over the points that he made, because he expressed them better than I could.

For those of you who haven't thought a lot about public funding, it's a whole new way of looking at reform. So, I think what one needs to do is just forget about these restrictions. . . .which have First Amendment problems; and note we're talking about voluntary public funding so Steve Forbes can run in his state or, hypothetically, somebody. . . . .Jay Lucas can run here and spend all that he wishes. . . .and the First Amendment supports it. This is a whole new way of looking down the pipe at this problem, which looks at it from the

standpoint of the voters and says the candidates who qualify. . . .and there's debate about how you should walk in with $5,000, $5 checks...(sic). Candidates who qualify are going to get the resources so that the public (the voters) get the information that they need.

Two myths that I'd just like to point out. . . . .One is that you can buy an election, and I think we've all. . .(inaudible). . .that you can't buy an election. Pick any example – You can lose an election if you don't have enough resources to get your message out, but can't buy it. Secondly, the public funding is expensive and it's clearly not expensive. We're talking about $3 million here a year and most for the governor's race. . . .That's $3 a person. . . that's too much. $3 a person in our state of a million plus people to pay for what I think is a very democratic move.

One of the beauties of voluntary public funding is it is consistent with our beautiful First Amendment. It's those who have the resources. . .this says. . Go ahead don't take the funds and spend your resources. You're not going to be able buy it; but those who are running against you. . .the public will at least get to find out what they stand for and what their perspectives are. There is no question the public wants this. I'm on the Advisory Board of a group called Public Campaign that has backed the effort into four states that have passed it, and we have seen, in state after state,(we polled 12 states) that the public – well over 60 percent wants it. The number one state for campaign finance reform in America is our state. We're about 75 percent supporting public funding versus private funding, and I think we saw some indication. . .(inaudible-background interference). . .on the primary.

Lastly, I point this out. . . . .Martin Luther King frequently was asked to address the question. . . .Why did. . . .The Civil Rights Movement was quite obvious, wasn't it? I mean black people can't eat in a restaurant in Jackson, Mississippi. . . .I mean, that's kind of amazing. That's where it was when I graduated from high school. As we look in retrospect, it's kind of clear that we needed the Civil Rights Act of '64. No matter what our political persuasion, I think we would all agree that black people might be allowed to eat wherever they wished as we who are not black. So, it's kind of odd. . . How did it take so long? . . . .and King was frequently asked. . . .Why did it take so long?. . . .and what King said was. . .Because good people (real good people) kept silent. You just heard the younger generation; there isn't going to be silence from that generation I can assure you. . . .and I think the voters are getting the message. – Please come forward and let's get this done. I think you're going to see a quality of leadership in the years to come. . . .It'll be very, very positive. Thank you.

Senator Rick A. Trombly, D. 7: Senator Krueger?

Senator Patricia Krueger, D. 16: Just a question that relates back to the question previously asked relative to "soft money". I mean, if there is unrest out there. . . .whether it's in Daniel's generation or from mine. . . .it certainly evolves around problems of infinite expenditures and soft money; but yet, this doesn't even go near there. Do you think that. . .and I'll ask you the same question I asked Daniel, but it's paramount in my mind to resolve this issue because I hear what you're saying very clearly. Do you think that this particular bill, stand alone, makes an immense difference in what we currently have. . .voluntary taxes, etc. etc. . . .and couldn't that be solved by lowering the amount per person? You could almost do the same thing but not have public financing. So, that's the bulk of my question.

John Rauh, Sunapee, NH – Common Cause: Senator Disnard? As you leave. . .I'm sorry. I'll be very brief, George. I think the two. . . .The question that you asked about soft money I think relates to Senator Krueger's question. This deals 100 percent, in my view, with the problem of soft money. Why?. . . . .Over here we have Senator Eaton, who's running for governor, okay?. . . .and has taken voluntary public funding in the range of $1,250,000. Over here we have Senator Krueger, exceeding wealthy-it's terrific, and you have your own resources. . . .or if you're not wealthy. . .but if you're not, you have huge soft money behind you as Senator Disnard described it – not using the word "vote". So, we have now a race for governor where you have huge soft money backing you. That's great in my book. I love the first amendment. Let people speak. . .Let the NRA speak. . .Let the American Civil Liberties Union speak. What's wrong with speech in America? But, Senator Eaton, who is not wealthy and doesn't have political contacts, hypothetically, did get the 5,000 $5 checks, and he, able to get his message out. . . .and, Senator Krueger, when he's attacked by the independent expenditure for you from soft money; he has the resources to respond.

That's democracy. I believe this bill completely deals with the soft money problem. That doesn't mean I'd vote against McCain fund awards; it's another point. But, once you get it, you can relax on the restrictions once you let Senator Krueger communicate with the people of the state. That's my view. Thank you, Senator.

Senator Patricia Krueger, D. 16: (tape change). . . . .expenditures were deducted from the amount. . .(inaudible). . ..If, for example, the one that you gave were true and Senator Eaton and I were both spending out of the pool that we decided we're going to spend, the expenditures of soft money on my side against him. . . .He would have to reach into his own pool of money and not go above that to basically argue that. So, ...

John Rauh, Sunapee, NH – (Common Cause): I think you've asked a very, very important question, and let's frame and see if you're comfortable with how I frame.

Senator Eaton, candidate for governor, got the 5,000 $5 checks; and Senator Eaton, candidate for governor, has $1,250,000 to spend in the campaign. The soft money effort behind you is $10 million, hypothetically, and you, yourself very wealthy, might throw in $2 or $3 million. . . .So, you've got $10-$15 million over here in northern court. I think to me the question then is it clear that you win? I think we've seen time and time again that it's absolutely not clear at all that you win; because Senator Eaton has the resources to get his message out, communicate his values and perspectives. . . .at $600,000 I suggest that Senator Eaton loses, and I think a committee. . . . .and this committee has a beginning, whether it should be $1,250,000 or $1,900,000 or $1,100,000 – work it through. Okay? We know it's not $600,000, we know it's not $3 million, but there's been enough experience here. What you need to be sure to deal with your question is, when you pass this bill, Senator Eaton has the resources to respond to get his message and his values out there. . . .and I don't think it matters whether you have $20 million or $100 million. . . .you can't buy it, but you can lose it. . . .and that's what's going on; and, frankly, with all due respect to Senator Eaton for the reasons stated, most Senator Eaton's can't run. We are deprived, therefore, of the potential of leadership.

Senator Rick A. Trombly, D. 7: Any further questions?

Senator Patricia Krueger, D. 16: Last one. Why do you believe the public has been convinced that there is such political corruption? . . . because, John, I quite frankly don't see that corruption in the state, and I serve in the Senate under a governor of another party and, yet, I couldn't even imagine thinking of Governor Shaheen as part of a corrupt system of money. . . .I couldn't even imagine that.

John Rauh, Sunapee, NH – (Common Cause): Well, I think it's previous people, Senator. (. .inaudible. .) I think perception is important; I happen to agree with you here on what you say. I certainly agree with you about not only current senators but previous senators on both sides of the aisle; but I think that perception is important. . . .but, let me be very, very clear. The primary reason to go to public funding is not, in my view, to get rid of special interest monies. I think it's important. . .(inaudible-background interference). . .The primary reason is to attract the leadership that we do not attract today. How can you be comfortable as a senator in our state saying only a few thousand people are the pool to run for governor of the state. . . .I don't think you can. It's, obviously, not very democratic; but leadership does

make a difference. If you look across the spectrum. . . .take a look today. Who may be governor in the next ten years in this state, once Jeanne Shaheen. . .(inaudible). . .and what you're going to see is those who are wealthy or those who have tremendous contacts, which our current governor did (which was very helpful to her-with all due respects). . . .or you had the name that your dad built (like Governor Gregg), which is fine. . . .or potential Governor Sununu, which is fine.

The pool is peanuts. That to me is a higher criteria. . . .a demanding criteria; particularly because it's so cheap. So, I say. . . .Why not do it?

Senator Patricia Krueger, D. 16: Last question. Did you find, John, that in familial campaigns that asking for small donations cured the problem?

John Rauh, Sunapee, NH – (Common Cause): When you're looking at my example of having to run on $100, it was sort of the beginning of this movement, and I was trying to make a lot of different points with that. I had to try get some recognition around the issue; so, I did find a tremendous amount of interest. Obviously, I didn't have sufficient resources if anybody looks at whether I would have won it or lost. I didn't quite raise enough; as my wife didn't either, but we were doing this to make. . . .if we won that way, we would have had a bully pulpit in order to. . .at the federal level. . .advance this cause. So, we were willing to take a risk. I don't think it proved anything at all.

Senator Patricia Krueger, D. 16: Thank you very much.

Senator Rick A. Trombly, D. 7: John, do you agree with me that the whole campaign finance reform. . .this bill leaves unresolved the issue of soft money. . .even the use of public airwaves to improve campaign finance. Would you agree with me that those issues are unsettled?

John Rauh, Sunapee, NH - (Common Cause): I think those are two separate questions.

Senator Rick A. Trombly, D. 7: And they're really big issues, aren't they?. . . But, would you also agree with me that, if we don't take at least some steps along this road, prior to solving every single question that we'll never begin the journey?

John Rauh, Sunapee, NH – (Common Cause): Oh, I agree with the latter point. I think you raised two other questions. . . one has to do with soft money. . .and one has to do with public airwaves, and I think, Senator,

they're different. As I've indicated before, I think this does deal with some of them. I, John Rauh, am not particularly concerned about restrictions. . . I love the first amendment. . .I really do. David Souter did some beautiful writing in the Missouri case and is trying to find a way to deal with restrictions (which I respect and applaud), but you don't have to worry about restrictions; and we've just gone through the example of $10 million of soft money over here, and Senator Eaton has the $1,250,000 (which is fine-he, maybe needs more to work that through). . . .because you can't buy it. So, I'm relaxed about the soft money thing, although certainly, I would, were I in the U.S. Senate, vote to get rid of soft money. Yes, why not? As you say, it's tough work.

Public airwaves does not deal with. . .and I think it's an option for you all to deal with. . .When I think of public airwaves, I put that in the bag of public funding. It's a way to publicly fund. If you want to take. . . .take Senator Eaton running for governor, again. If you're going to mandate that he have (which I would support) some public airwaves, then, I think you can lower the amount of cash. I strongly would agree with you there, and we haven't dealt with it here. . .I think partly because of simplicity, but it's certainly an important option.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Rubens?

Jim Rubens, Sunapee, NH – Common Cause: I'm Jim Rubens. I was a State Senator from District 5 between 1994 and 1998, and I'm here today representing **Think New Hampshire**, which is an organization of New Hampshire residents (primarily Republicans-although Independents) which endorsed this bill actually last year. . . .and we worked on its drafting process. It's largely similar to the one that was introduced as you heard last year. I point that out. . . .It's interesting that to think New Hampshire is largely a Republican organization which endorsed this legislation. . . .The present system, as you heard, screens out candidates except those who are able to self-finance or raise a lot of money. . . .You heard that from John Rauh. . . .and that's your first screen. If you don't come through that screen, you're not a candidate. You can pretend to be a candidate, and you can stand around like you've seen some guys doing it-have no one listening to you, but you're not able to raise any issues.

And so, the present system we have of funding. . . .It suppresses debate. It suppresses a range of issues; it suppresses the kind of approaches that people would take to mobilize issues. You see, the first amendment doesn't work in politics unless you have a megaphone. . . .and it cost money to have a

megaphone. Without it there is no communication. It shuts out most of the otherwise qualified candidates. It shuts out people whose criteria for success might be leadership, judgement, experience, background. . . .record in other walks of life. All of those criteria are relevant. . . .irrelevant if you can't make it through the first screen, which is a money screen. That's the system we have right now here in New Hampshire, not just at the Federal level, but right here. . . .certainly at the level of governor. It's becoming more so at the level of state senate.

Money is necessary but not sufficient. . . .John talked about that at length, so, I won't go over that again.

My own experience – I ran for governor in 1998 in the primary, and I raised about a third of $1 million and spent. My opponent raised somewhere in excess of $1 million spent on the primary. For five months, I watched myself . . .(Not frequently because I didn't spend time doing that-I was out campaigning.). . .on TV with my face merging into Arnie Arneson's face. For five months, that campaign went on, and I knew it was a problem. . .and I couldn't do anything about it because I couldn't buy TV ads to rebut it. Regardless of how well I did it through earned media. . . .getting into the newspaper and rebutting it there or in face-to-face communications-speeches. It wasn't sufficient because the television reaches more people than you can face to face. So, without sufficient sums of money, you can't communicate in ways that are necessary. During the last weekend of the campaign we were ahead in our polls until about a week into the primary. The last weekend there was a barrage pushpulls. . . .50,000 of them we learned were unleashed at that time, which happened to be legal-but that doesn't matter.

We were unable to respond. . . .We were unable to purchase at $.60-$1.00 apiece our own telephone campaign. We used volunteers to the maximum extent we could. . . .We bought some telephone campaigns, but not enough to overcome the facial merging ads and the pushpulls during that period of time. I myself decided to run on a couple of issues that cut me off from funding, and I did so because I felt the issues were more important than the money. I made tactful decisions. On the sludge issue, I came out early in the campaign in early 1998 and said that I was opposed to the poisons being spread on farmlands and 6 inches over water tables. I cut myself off knowingly from a pool of a donor base in the Seacoast of New Hampshire,and those of you who are familiar with politics in the state know what I'm talking about if you've run for senate in that part of the state or run for governor are familiar with this. – You know the pool I'm talking about. . . .and I cut myself off from that pool of money knowlingly. . . .and it did occur. . . .and I did get blackballed as a result of that position.

I took a position vigorously opposed to excessive recovery of stranded costs on the electric utility issue. . . .You're dealing with it here, again. . . .and I cut myself off from another pool of money in the Manchester area. We know where the money comes from, but we know how it's worked over decades in the state. I did so knowlingly because I felt the issue was more important than getting the money; but if you don't make decisions like that which handicap you in elections, those issues don't get raised. The voters don't hear them; the voters don't hear how they're being ripped off to the tune of $2 billion in the deal that's being shoved at you here. . . .this year. . . .once again. You won't hear that in the elections.

On the issue of "Claremont" last year. . . . You had a campaign; you came out of the primary into the general; you had neither candidate proposing a solution to the "Claremont" issue. Everyone acknowledged it was the largest issue in the state at the time. . . .and neither candidate. . . .both of them sitting up. . . .It was a maze to watch the debates that transpired, and I can assure you that that would not have occurred had I been able to pay for just a few more TV ads and get another 2700 votes in with the primary, there would have been a debate. At least. . . .perhaps people wouldn't have agreed, but there would have been options; and my option would have forced other options and to decide out of the table. There would of at least been exploration of the mess you got yourself into last year.

Item 4-McCain – I was a McCain supporter and volunteer worker for many months, and I was in many of his town meetings. I watched the response of these growing audiences that would seek these meetings (They got to be 1000-1200 people.). He'd talk about campaign finance. . .he'd talk about all the issues. I watched people at these meetings. . . .not just stand up on the floor. . . .I watched tears from the people's eyes. . . .Honest to God! . . . . . .ordinary members of the public. When he said, I'm going to. . .campaign finance reform is more than just money so candidates can run it by TBS. People were hearing the guy saying that he was going to restore the ability of people to have democratic choice. . . .small "d" democratic choice in a republic; and people know that that has been removed from the system. . .ordinary citizens crying when he said this. This mobilized people in a way that I haven't seen in decades in politics. This is a real issue.

This bill is 100 percent constitutional; it's voluntary. . . .so, I don't know of any technical issues. I spent a great deal of time last year. . . .actually it was on a study committee in 1997 where this process emerged. . . .It was a third year this bill. . .or the subject matter. . .has come forth. A great deal of time has been spent designing this bill. It's very well designed; it's very clean; there are no constitutional issues. . . .It's 100 percent volunteer.

How is the money calculated to fund it? We worked very hard in looking at other state laws and other bills moving through the legislatures in other states. The sum of money per voter is a bit comfortably above average among the other bills and other laws in the other states. - It's a carefully calculated sum of money.

I do recommend a couple of changes to the bill. Because we have so many fiscal problems this year, I recommend the amendment put forth by Representative Splaine in large measure removing **on Page 4, Lines 9 thru 11**. If that's removed, I need the state budgeting source of funding if that one piece is removed. Obviously, the bill is not funded adequately. I acknowledge that. It's my estimation the bill will not survive with that in there based upon reading the tea leaves in the legislature. If you remove that, you have the structure in place so that people can begin. . .(audio interference). . .sums of money on a purely voluntary basis and the other sums of money that are non-budgetary to the system; and it will gradually become effective. I say that. . . .**remove Lines 9 thru 11**. . . .That sentence is actually my idea as a way to come up with money and sidesteps the budget-making process at least for two years by removing from the unexpended surplus a some of money sufficient to fund it for the first year. So, I recommend removing that.

In reviewing all the hearings that I've attended, all the objections were raised. If that funding source removed, I don't recall a single objection to the bill that would remain. . . . .and, therefore, I know from past testimony and conversation about the bill, no remaining objections. One other minor correction **on Page 6, Line 25**, I would **add the word "not."** Actually replace the word "out" with the word "not.". . .seems like a typo there.

And finally – Again, this is the third year on this bill. I don't think studying it's going to help anymore. The bill has come back in nearly identical form that the bill came back in the prior year. The issue is. . . .Do you folks here in the Senate (forget the House). . . .Do you folks here in the Senate, in this committee, agree with this upsurge of desire expressed in the primary last week among the people of the state across both parties and independent voters. . .Do you agree with that upsurge of desire of the people of this state to connect again with their government and to know that they're going to have viable campaigns, viable candidates expressing a full range of issues that need to be expressed during campaigns and elections. Is that a good thing? Does this committee feel it's a good thing? I sure hope you do, and I sure hope you don't study this bill again-I would kill it if you feel the desire to study it. It doesn't need more study, it needs action.

Thank you.

Senator Rick A. Trombly, D. 7: Thank you, Senator.

Any questions? (no response)

Sam MeKrut – NH Citizens Alliance for Action: **Reads from written testimony – See Attachment "C".**

I have a couple of clips here that I brought to share with the committee – a clip from USA TODAY the day following the primary saying **"A New Hampshire message: Money is corrupting politics".** . . .another clip here from The New York Times from earlier during the primary campaign.

Resumes reading from written testimony.

In reference to this issue that it's not an issue in and of itself, I think it's hard de-link campaign finance reform from many of the other issues that people care about; and I also think it's very hard to delink it from the character which was clearly defined in this last presidential primary. The idea that people with greater character or political outsiders rose above in some instances. I think we need to think about that.

Resumes reading from written testimony.

Just in closing, I'd like to say that we've heard a lot today about whether or not this is really a problem or is it just a perceived problem. I almost think that's to some extent irrelevant because I think it's very clear that the public very strongly holds the belief that there is corruption and there is special interests dictating the outcome of our elections. If that is the case, why not do something about it. We've heard a lot about why we should do it, and the questions have all been more specific details; but I haven't heard anyone really address "why not." I think it's a very small price to pay to insure democracy. . . .So, I would urge you to pass it.

Senator Rick A. Trombly, D. 7: Thank you.

Any questions? (no response)

Bill McCarthy, NH Citizens Alliance, is in favor of the bill – does not wish to speak.

Jay Ward, in favor of the bill, did not wish to speak.

Steve Blackledge?

Steve Blackledge – NH PIRG: Questions Chairman regarding bill for testimony. . . .(inaudible). . . .

Senator Rick A. Trombly, D. 7: That's **303**. If you wish to address it now, **we're doing a joint hearing**. . . . .because, as far as I see, you're the last person signed to speak on either bill.

Steve Blackledge – NH PIRG: **Senator Below**, who's not here to do the first speech on his bill, **has two amendments (see Attachments "D", "E", & "F")** that he wanted to . . . . . .

Senator Rick A. Trombly, D. 7: Do you know what they are?

Steve Blackledge – NH PIRG: Yes.

Senator Rick A. Trombly, D. 7: Then feel free to testify. If you know what they are, feel free to testify.

Steve Blackledge - NH PIRG: This bill, **SB 303**, is in response to a recent court ruling. . .U.S. District Court ruling. . .which threw out the corporate ban that has been in existence in New Hampshire for decades. . at least since 1955. I'd asked the Secretary of State's office to look into how long it had been around. They did an initial search and found out that it was in the books as far back as 1955. . . .it may be further, but they were unsure at that point. So, this has been a long tradition of banning corporate contributions here in New Hampshire; and, in fact, I'll point out that it's not just in New Hampshire, but the Federal Government has banned corporate contributions since 1907. . . .and numerous other states have also banned corporate contributions.

In the ruling where Judge Steven McAuliffe threw out the state ban on corporate contributions, he did state that. . .and I'll quote. **"the supreme court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds."** So, he does state that states do have a compelling interest to do this. In fact, he quotes from a supreme court case which is the FEC v. Mass. Citizens for Life, Inc., and he states that **"Resources in the treasury of a business corporation are not an indication of popular support for the corporation's political ideas. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas."**

So, he's using the supreme court cases to show that states have done this. States do have a compelling interest to ban corporate contributions; yet, he threw out the state law on corporate contributions, and I'll go into detail and explain a little bit why he did that.

Corporations are allowed to. . . .While it is fine to ban corporate contributions from a corporation, corporations are allowed to set up what are called **segregated accounts.** In fact, that's the way the law has always been interpreted in New Hampshire. Corporations have always been allowed to set up segregated accounts and use those accounts to make contributions. But, Judge McAuliffe, in this ruling, wrote that. . . . .Oh, in fact, the judge in this ruling wrote that. . ."**the statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does the statute even mention segregated accounts or segregated funds."**

So, the ruling is basically saying in practice this law is fine, but if you read the text of the ruling, it's overly broad and, therefore, doesn't work as written. . . .as it's currently written. Judge McAuliffe did go on to say that. . . . . ."**There is, of course, a simple solution to this simple problem. The solution lies with the legislature.**" In other words, if the legislature were to clarify what was meant that corporate contributions from the treasury of a corporation were banned but corporations could set up segregated accounts where they raise money from their members, from their shareholders, from their employees, from their board of directors, and from their officers, that's acceptable and, in fact, is the way the segregated accounts are set up. . . .and, in fact, the judge stated that. . ."**These segregated accounts also represent corporate money-but money that does reflect some degree of popular support for the corporations political goals and ideas.** He stated that because they are raising this money from their employees, from their shareholders, and from their directors as opposed to using money from the treasury.

So, in essence, and this is sort of like a. . .I don't know quite how to explain it, but it's. . . . . .by changing the wording of the election law, what Senator Below. . .what the intention of this bill is is to have the law enforced as it's always been enforced since at least 1955-to have a ban on direct corporate contributions so that these direct corporate contributions from the treasuries aren't flowing into the political system in the electoral process here-to have it set up exactly like how it's always set up. And, the reason why change is necessary – reason why a clarification to the state law is necessary - is because, again, a recent court found that the language was overly broad. . . . . .not that the concept was wrong, but the language was overly broad, and that is what this legislation does.

Let me quickly wrap up by stating that Senator Below, as you can see, did introduce an amendment. . . .or actually two amendments. . .for an original bill. The reason why he did this is that the bill was originally in response to the ruling by the court. . . . .(tape change). . . . . .in terms of what was wrong with the current language of the law. That's why the original language of **SB 303** is not what Senator Below wants, but he actually has introduced two separate amendments that basically one is a little bit. . .They basically do the same thing, but he's introducing two separate amendments, and that's the direction that he wants to go.

Senator Rick A. Trombly, D. 7: Thank you.

Senator Caroline McCarley, D. 6: Question?

Does Senator Below have a strong preference for further defining the issue of segregated accounts which is basically what it would appear one of the two amendments gets more specific relevant to independent expenditures as I read it quickly.

Steve Blackledge – NHPIRG: As you read both of them and compare them to each other?

Senator Caroline McCarley, D. 6: Yes, exactly, which is sort of what I assumed Senator Below wanted us to do in this process was to pick or choose; and since he's not here to speak to either one. . . .He appears to in the one of **3380s** which, if you use in numerical concept, was done first. Since it adds further, my assumption would have been not comparing the numerical concept, that actually it was done second, but can you comment at all on Senator Below's preference?

Steve Blackledge – NHPIRG: On the difference between the two? Yes.

I can't comment for his preference, and I don't know his preference. Essentially what he does in both of them is he defines what a segregated account is toward the beginning. . . .you saw that, right?

Senator Caroline McCarley, D. 6: I saw that.

Steve Blackledge – NHPIRG: Then what he does in the latter part of **3380** is he goes on to say that the segregated account phrase does not apply to nonprofit corporations formed for the purpose among others of promoting political ideas. The reason why he did that is because there has been a supreme court case called Massachussetts Citizens for Life v. the FEC, and

the argument was made by the Massachussetts Citizens for Life, a prolife organization, that they were created. . .they were a nonprofit corporation. . and they were created in a part to do exactly this. . .and that's to engage in the political process and, therefore, to hold the same standards to them as you would to a for-profit organization was wrong. That was their challenge. They brought to the supreme court, and the supreme court ruled with them. So, I think that's what the extra language in the one bill attempts to do is to say that the segregated account versus treasury applies to a for-profit corporation but not to a not-for-profit corporation set up to engage in the political process. Does that answer your question?

Senator Caroline McCarley, D. 6: Yes.

Senator Rick A. Trombly, D. 7: Any further questions?

Steve, I have seen real problems with the amendment only in that I think the board of directors always bundle. The problem I have with corporations and other organizations. . . .I don't want to single out corporations. . . .but organizations where those people who've fallen on board, someone sits down and says "We're supporting this candidate.". . .and you see. . .and I've seen them. . .in campaigns. . . .where the board of directors meeting is February 1; there are seven checks for $1,000 dated February 1-all going to the same candidate. . .and that's fine if it's an individual contribution. I think people (human beings) should, obviously, have the right to speak; but we create corporations, even they exist and exist as people only because we let them be. I don't know the constitutionality of carving out an exception. Under the corporate statute it says for the purposes of existence to the corporation. – You don't have a voice.

Now, I don't know if a corporation has the same. . . .if we have a little bit of flexibility as legislators because created the animal. I'm not certain their rights are inalienable or whatever and whether we can play with them. To be honest with you, my inclination is, personally, not to go with allowing them to create their own pool where you're going to have directors giving money individually. . . .now you're going to have them giving money as the corporation or the business. . . .The same goes with unions. I'll say the same thing goes with the unions as far as I'm concerned. . . . .That they're entities that we allow to exist to conduct business under the laws of the state of New Hampshire. It's a business organization. . . .Corporations exist to do one thing-hopefully, make money for the people that invest in them; and I don't know why they should have voice. Now, as far as a charitable thing, Steven. If you choose to organize as a nonprofit political charitable organization, you do that for one reason – so you escape. . .(inaudible). . .and enjoy the benefits of other advantages and maybe one of the things that people need to think

about if you're going to do that – maybe you don't get the voice in terms of political contributions because your members have the right to contribute, and that's their force. So, I just kind of want to put. . .I know you worked hard on this, you worked very hard on this, but I tend to be a purist on the issue of that. I don't think people that organize businesses and then we breathe life into those businesses; I'm not certain what we create should have the same rights as those of us who are simply born into this world and slapped by a doctor.

Steve Blackledge – NHPIRG: Philosophically, I agree with you. In fact,

Senator Rick A. Trombly, D. 7: Oh, Clif's here, I can start it all over again; but I mean I just want to let you know where I'm going with this because I don't think I like the amendment.

Steve Blackledge – NHPIRG: I'll say that. . .what you said is actually along the lines of what Allan Keyes said, which is "if it doesn't breathe, it can't give," and, philosophically, I can agree with you. What this is in response to is your philosophy there actually butts heads directly with the recent ruling that threw out the whole law in the first place, and so this is a way to basically mimic in New Hampshire the wording of the federal government's clause which states that corporations cannot give directly from the treasury. So, you would go beyond that.

Senator Rick A. Trombly, D. 7: But if we clarify it, would that. . . .and I know you're not. . .I don't know if you're worried or not. . . . .

Steve Blackledge – NHPIRG: I'm not.

Senator Rick A. Trombly, D. 7: . . . .and I don't practice that type of law, so I don't know, but if we carve out a specific exemption and say, for the purpose of political speech, corporations don't have a voice. . . .Does that seem to take care of Judge McAuliffe's decision on lack of specificity?

Steve Blackledge – NHPIRG: For the purpose of contributions, corporations don't have a political place.

Senator Rick A. Trombly, D. 7: What you seem to testify to is that the reason why he threw out our ban was that it was overly broad, but if he wants it to be specific; I'll be more than happy to make it specific by creating a ban.

Steve Blackledge – NHPIRG: Here's is what. . . . .and actually then, based on his ruling, he would threw that out. Here's what he stated. . .

"Generally corporate political contributions come from one of two different sources. One is directly from the treasury-treasury accounts". . . .and he goes on to state why there is a component just to ban contributions from the treasury from the treasury account. . . .But, then he also does say that the other potential source of corporate political contributions is "segregated account." This is different for the reasons I've stated before.- Money that does reflect some degree of popular support for the corporation's political goals. Therefore, the segrated account is something that the courts have upheld and that they should be able to create as segregated account.

Then, at one point in the ruling, and I think it might be in one of the handouts that went to all of you. . . he does say "constitutionally" the difference is significant and goes on to state why and so forth.

Senator Rick A. Trombly, D. 7: I just think I need to do a little research before I can do what I want to do, because if I can, I'll try to push it through at the same time.

Steve Blackledge – NHPIRG: Cause you'd like to go further?

Senator Rick A. Trombly, D. 7: I just don't think that business entities have the same rights as human beings to affect a political process, period.

Steve Blackledge – NHPIRG: I don't disagree with you. . . . . .

Senator Rick A. Trombly, D. 7: I'm talking about across the board; I'm talking about labor unions, corporations, and anybody else.

Steve Blackledge – NHPIRG: There are some exerpts from the ruling that I handed out (See Attachment "G") and you can certainly. . . .at the Attorney General's office (and her name is Jennifer Gavilondo at the Attorney General's office, who's following this very closely. . .So, she's someone you can consult as well.)

Senator Rick A. Trombly, D. 7: Thank you.

Steve Blackledge – NHPIRG: You're welcome.

Senator Rick A. Trombly, D. 7: Any questions? (no response)

I did have Lloyd Heidgerd who's for the bill and does not wish to speak, and Senator Below and Beatrice Newbury.

Clif, did you want to address your amendment?

Senator Clifton Below, D. 5: Sure.

Senator Rick A. Trombly, D. 7: My observations of inkling to private. . .

Senator Clifton Below, D. 5: Okay.

Thank you. Let me give you copies of the formal amendments.

I have had the opportunity to read through the Judge's order from December 23 in which he clarified. I think the ruling is pretty clear (as a non-lawyer) that the problem with our laws that it prohibits all corporate contributions, and that's not constitutional. We can prohibit them from the treasury of the corporation, but not from a segregated account where they're collected from employees or whatever knowing that it's a solicited contribution for the purposes of political expenditures.

So, the point of this language. . . .Currently, in **Chapter 664**, we have a set of definitions. One of the defined terms is **Business Organization**. . . . .So, right now what we have is a language that talks about, and the specific challenge was this prohibition by any corporation. – That's **Roman I.**

Then, in **Roman II**, we have **prohibition by partnerships**; and in **Roman III**, we have **prohibition of political contributions by labor unions.**

The amendment attempts to just use the term "Business Organization" because that means **any enterprise where the corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization, organized for gain or profit**, but it specifically doesn't include political committees. My thought-in the first part of this amendment-is to say. . . .instead of just do corporations and partnerships (because we have other forms of business entities. . . .just say **Business Organizations.** It's a defined term; it picks up all these different kinds of business organizations. . . .and deal with them all in the same way.

It prohibits in the first instance contributions by business organizations, but then it goes on to say, **"This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee"**. . . .So, it makes it a political committee that has to register with the state, and it **operates independently of the business organization to be used for making political contributions**

and expenditures if the fund consists only of voluntary contributions solicited from employees, officers, shareholders, directors, partners or members of the business organization. That seems to address the language of the case and what the Judge seems to suggest. . . .that, if we prohibit contributions essentially from the corporate treasury or the partnership treasury but we allow from the segregated account. . . .and he talks about the segregated account where money solicited from employees or shareholders, or whatever. . . .He seems to suggest that that would withstand constitutional muster.

The **third section** of this. . . . .Well, there is a statement. . .the provision that said **this section shall not apply to sole proprietorships** for the obvious reason that sole proprietorships are simply individuals, and individuals can make contributions. Some people own their business. . .just as a person, they may have a separate trade name and they file on a separate part of their tax return; but the bottom line is it's the same as their personal funds.

The **third part of this first amendment was to repeal the section about partnerships**.

Now, an alternative way to construct this is to leave the corporation language and leave the partnership language and then provide the exception for segregated accounts. My only thought about that was it leaves these other business entities (limited liability, perhaps some professional associations). . . I'm not really sure, but it potentially leaves these other forms of business organizations out there to do whatever they want not covered by the law.

The **second amendment version**. . . .and maybe this has already been addressed by Steve. . . .**has some additional language** in it that **tries to address nonprofit entities that are incorporated in part for the purpose of promoting political ideas.** I don't feel strongly one way or the other. . . .I think, if you talk with Jennifer Gavilondo at the Attorney General's office, she might have some perspective on this. She didn't feel real strongly one way or the other, but they had some concerns about putting this in because **it would mean that nonprofits would be sort of free to make these contributions in a way that's not really regulated,** and it's not clear how you would ascertain that they do not accept in aggregate more than 5 percent of their annual revenue from foreign or domestic for-profits. Be that as it may, I don't feel strongly one way or the other about that particular part which is why I've offered them both ways.

Senator Rick A. Trombly, D. 7: Which do you prefer the committee adopt. . . .?

Senator Clifton Below, D. 5: This amendment here **(3381s)**. . . .and I just think it's obvious that businesses should not be giving from their business treasury. If they want to solicit contributions from their employees or shareholders, fine. . . .set it up as a political committee. The Judge's main point was that the Attorney General said, "Well, that, in effect, is what happens under New Hampshire law, but that's not really what it says, and I can't read that into the law that they're allowed to have segregated accounts that are like political action committees.

The only other point I would make is that there is this definition of a **"Political Committee." It means an organization of 2 or more persons to influence elections or measures, including the political committee of a political party as here and after defined.** This would make these segregated accounts political committees even though per se they may not meet that definition. I guess there was even a discussion over at the AG's office as to whether the political committee definition should be changed or not, and the feeling was. . . .It doesn't really have to be because this would define it, but you could add to the political committee definition means segregated account under here or an organization of 2 or more persons. You could do that.

Senator Rick A. Trombly, D. 7: Senator Below, I'm intrigued by why sole proprietorships would be treated differently. . . .because if I'm a chairman of a board, I would be able to give a $5,000 contribution to someone who'd take the money under the cap and then I could give $5,000 to my pact, correct?. . . .because we're talking about creating business pacts?

Senator Clifton Below, D. 5: Right.

Senator Rick A. Trombly, D. 7: Sole proprietors don't? New form of doing business, so proprietor takes $5,000 out of his/her bank account. . .Why not allow them to take one out of the other one?

Senator Clifton Below, D. 5: Out of the other one?

Senator Rick A. Trombly, D. 7: The business account.

Senator Clifton Below, D. 5: In additional contribution?

Senator Rick A. Trombly, D. 7: Well, we're allowing that. . . .Under the amendment we're allowing that for stockholders; we're allowing it for members of the board.

Senator Clifton Below, D. 5: Well, a sole proprietor could belong to a business association that has a pact. They could belong to the national Federation of Independent Businesses which would have a pact, so that sole proprietor could do it in the same manner. The point of singling them out is that a sole proprietor is an individual. Individuals are allowed to contribute, so it doesn't make sense to say a sole proprietor can't contribute and then turn around and say but individuals can. They just don't fit the criteria of all these other kinds of businesses.

Senator Rick A. Trombly, D. 7: Thank you. . . . .Just one final point. . . . Wasn't there a case out there somewhere with. . . .I think it had to do with unions. . . .I think NH Bar. . .(tape not clear). . .where people have to bring money/dues or whatever can't, they have to segregate certain portions of it. . . . . . .a certain requirement. The voluntary nature of the contribution gets them out of that trouble.

Senator Clifton Below, D. 5: Hm!

Senator Rick A. Trombly, D. 7: I believe in New Hampshire if our lobbies against. . .(tape unclear). . .reform, lawyers for the insurance company. . .I think. . .I hope I'm going to remember this right, the lawyers for the insurance companies were never forced to disclose their fees, but I guess that's another issue. . . .took the bar to court and said, "Look, we make our living off of representing insurance companies, and, if this legislation passes, it's good for us. We get lobbying against it and, therefore, because we have to pay dues to go to the bar (to be a member of the bar), you're in effect speaking in a way we don't want to do." I'm presuming, because you make that voluntary, you get out of that type of situation.

Senator Clifton Below, D. 5: I think so. There's a major distinction which is lobbying for or against legislation is different than contributing to candidates for office or political expenditures that support or oppose a candidate as opposed to a particular piece of legislation. . .There's a distinction. Yes, the point is by making it a voluntary contribution to segregated account, we are re-establishing what has been law in New Hampshire which is the that the corporate treasury (the business entity treasury), because people contribute to that in effect for other than political reasons – for reasons that have nothing to do with the political views around a candidate, but that cannot be used for political candidate advocacy. Certainly, corporations lobby on legislation all the time.

Senator Rick A. Trombly, D. 7: Thank you.

Does anyone else wish to testify? Seeing nobody, I'll close the hearing on these two bills.

Hearing closed at 3:15 p.m.

Respectfully submitted,

Carolyn Carey
Senate Secretary

Public Affairs
March 2, 2000
2000-3627s
03/01

Amendment to SB 447-FN

Amend RSA 664-A:2, III(g) as inserted by section 9 of the bill by replacing it with the following:

(g) Any money appropriated from the general fund by biennium budgetary appropriations.

Amend RSA 664-A:8, I (c)(3) as inserted by section 9 of the bill by replacing it with the following:

(c)(3) $10,000 for the primary election campaign period if the candidate is not seeking the nomination of a party, as defined in RSA 652:11.

Amend the introductory paragraph of RSA 664-A:9 as inserted by section 9 of the bill by replacing it with the following:

664-A:9 Reports. In addition to the reports required by RSA 664:6 and RSA 664:7, a non-participating candidate whose total expenditures for either the primary election campaign period or the general election campaign period exceeds $625,000 for governor, $50,000 for councilor, or $20,000 for state senator shall file the following additional reports in the form required by RSA 664:6, I:

Amend the bill by replacing section 11 with the following:

11 Effective Date. This act shall take effect upon its passage.

Attachment "A"

Suggested Amendments to SB 447, *relative to campaign contributions and expenditures*

Beginning on page 3, line 33

Amended to say:

III. The following moneys shall be deposited in the fund:

(a) Voluntary donations made directly to the fund.

(b) Unspent seed money contributions and qualifying contributions remaining at the end of the qualifying period and not returned to contributors.

(c) Money distributed from the fund and returned by a participating candidate who does not remain a candidate until the primary or general election for which the money was distributed.

(d) Money distributed from the fund and returned by a participating candidate because it is not spent by the date of the primary or general election for which the money was distributed.

(e) fines levied for violations of the elections laws, including fines assessed under RSA 664:21.

(f) Interest generated by the fund.

~~(g) Money appropriated from the general fund but not fully expended as of the end of the fiscal biennium. The amount of such money to be deposited in the fund shall be $6,000,000 minus the amount of money in the fund at the end of the fiscal biennium.~~

(g) Any money appropriated from the general fund by biennium budgetary appropriations.

Beginning page 7, line 8

664-A:9 Reports. In addition to the reports required by RSA 664:6 and RSA 664:7, a ***non***-participating candidate whose total expenditures for either the primary election campaign period or the general election campaign period exceeds $625,000 for governor....

Page 8, line 17

11 Effective Date. This act shall take effect July 1, ~~2000~~ 2004.

Attachment "B"

Testimony in support of SB 447
by Beatrice F. Newbury
New Hampshire Citizens Alliance for Action

A few years ago, when I began following campaign finance reform legislation in New Hampshire, a study committee was created to look at whether New Hampshire needs campaign finance reform. Nothing came of that study committee. Then last session, I worked with a bi-partisan group of current and former legislators and organization leaders to write a bill. Another study committee was created. I attended every meeting of this study committee, which decided unanimously that comprehensive campaign finance reform was needed and submitted two bills for this session--the one before you today and a similar bill in the House, both virtually identical to the bill that initially created the last study committee.

The House Election Law Committee has already voted to create another study committee. I hate to think we are still in the same place we were four years ago. Clearly New Hampshire voters want campaign finance reform—polling shows us that, and the recent presidential primary shows us that. The New Hamsphire legislature must take a stand and they must do it now. I strongly urge this committee to move forward and take action.

The best reform proposal, one supported by two out of three New Hampshire voters, is Clean Money Campaign Reform. Clean Money Campaign Reform addresses voters greatest concerns about the current campaign finance system and will help restore voter's belief in our democratic process. It is upon this model which this legislation before you is based.

The most common concerns voters have with our current campaign finance system are:

- Campaigns are too expensive;
- Special interests have too much influence;
- Good candidates without money or connections to special interests don't have a fair chance of competing for office; and
- Politicians spend too much time raising campaign money instead of devoting their full energies to the duties of public office.

This bill will address all of these concerns. It will reduce the cost of election spending by giving candidates strong incentives to limit spending. The incentive is full public funding of the campaign for any candidate who can show a basic amount of grassroots support within his or her district. Full public funding will reduce or eliminate the role of special interests in elections because candidates will have the option of running for office without catering to large campaign donors. It will level the playing field so candidates without money or connections can mount a competitive

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campaign if they can collect $5 contributions from friends, neighbors, co-workers and other members of their community. Finally, full public funding will give candidates the opportunity to spend time talking to voters rather than fundraising because they won't have to spend all their time dialing for dollars to raise thousands or hundreds of thousands of dollars. The money will instead be provided by the general public, whom the candidates will be campaigning to represent.

I strongly urge you to vote for SB 447. Thank you.

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LEAGUE OF WOMEN VOTERS OF NEW HAMPSHIRE PRESENTATION

BEFORE NH SENATE PUBLIC AFFAIRS COMMITTEE, FEB. 9, 2000

Ladies and gentlemen:

It is a privilege to speak with you today in support of SB 447-FN. My name is Linn Duvall Harwell. I am a member of LWVKearsarge-Sunapee and speak on behalf of LWVNH.

The LWV has long urged politicians to enact campaign finance reform by public financing of candidates.

Our state primary last week has been called "retail politics". How could any NH resident have escaped some message from the several candidates for president? NH has shown the nation how important the voice of the people is. We heard several candidates espouse campaign finance reform. With this demonstration of grass-roots participation, NH citizens and the General Court may give yet another lesson by passing this bill. The legislature has a grand opportunity to elevate the voice of the people, the grass roots, to its deserved position of influence in the matter of political decision-making. We must not abandon these voices by allowing self-serving groups with huge amounts of money to quiet them. LWVNH calls for meaningful campaign finance reform through public finance. Associate Justice of the Supreme Court, NH resident, David Souter said: "I think most people assume - I do, certainly - that someone making an extraordinarily large contribution is going to get some kind of an extraordinary return for it. I think that is a pervasive assumption. And, there is certainly an appearance, call it an attenuated corruption, if you will, that large contributors are simply going to get better service, whatever that service may be, from a politician than the average contributor, let alone no contributor."

With these words our League members inquire how we might better show respect for the democratic process. Linn Duvall Harwell, 4 Quarry Rd. New London, NH 03257

Attachment "C"

New Hampshire
Citizens Alliance for Action

Testimony on SB 447

Sam Mekrut, Executive Director NH Citizens Alliance for Action

Good afternoon Chairman, members of the committee. My name is Sam Mekrut and I am the executive director of NH Citizens Alliance for Action, a non-partisan, non-profit organization whose mission is social, economic and political justice for all NH people. On behalf of my organization's 6,000 members, I am here today to speak in strong support of SB 447.

You have heard today from an array of NH residents calling for real campaign finance reform. You've heard from republicans, democrats, men and women, youth and older people - all who share a desire to see democracy returned to the hands of voters. You've heard from citizens who would like to see elections freed from endless fundraising. Elections in which qualified candidates - even those without connections to wealth - have a fair shot at being elected to serve in public office. Elections which yield officials beholden to voters rather than special interests.

For the last year, as presidential candidates traveled our state, we all heard the strong call for campaign finance reform. In town hall forums, during televised debates and in local diners, NH citizens pressed candidates on their positions on campaign finance reform. NH voters this year sent a clear message to national candidates, launching a movement for reform that will follow candidates through Delaware, South Carolina and beyond.

With 79 percent of NH voters in favor of campaign finance reform, their call for action cannot be ignored. The outcome of NH's primary lent credence to what those of us

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who work in the field have always known – that people care deeply about campaign finance reform. Whether voters cite campaign finance reform as a specific issue on which they vote, or simply consider the willingness of candidates to hold themselves accountable to voters as evidence of personal character, voters *do* think about candidates' positions on reform when they enter the polls.

And it is not only the voters in NH that feel reform is necessary. More than 80 of your peers – NH senators and representatives – recently signed statements in support of comprehensive campaign finance reform. Many of you here today supported presidential candidates Bill Bradley, Al Gore and John McCain in the recent primary, helping them get their message out to the public about the need for a campaign finance system that fosters trust in government and in our elected officials. Many of you have supported this bill in the past. Yet, surprisingly, we hear that support in the legislature for real reform has begun to wane, now, as public support for reform has blossomed.

It is time for the NH legislature to take action on SB 447. The bill was carefully crafted by a bi-partisan coalition. After lengthy study, a dedicated sub-committee resubmitted this exact language for your consideration. To scuttle this bill off to study yet again would not only be a misuse of energy and time, but would demonstrate to NH voters a lack of willingness on the part of the legislature to address an issue that the vast majority of voters feel is fundamental to our democracy. When voters go to the polls in 2000, let them go with the knowledge that this legislature passed comprehensive campaign finance reform. We urge you to send SB 447 to the floor of the Senate as Ought to Pass. Thank you.

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LATE SPORTS



VERMEIL GOES OUT ON TOP

With Super Bowl trophy in hand, Rams coach steps down, 1C

SPURS ROUT LAKERS 105-81 NBA, 1,4,8C

USA TODAY

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ONE LAST 'SCREAM'

The final piece of the slice-and-dice trilogy serves up some new victims, like Jenny McCarthy (or hey, maybe she's the killer). A slasher scrapbook, 1,6D



EDNESDAY FEBRUARY 2, 2000

New Hampshire shakes up race

A New Hampshire message: Money is corrupting politics

The voters of New Hampshire sent a strong message to Washington, D.C., and the rest of the country Tuesday: Get serious about campaign-finance reform.

John McCain and Bill Bradley, the candidates who talk most about cleaning up the special-interest money that makes everyone in politics look soiled, may never win the presidency. But they scored impressively in New Hampshire's primaries, running uphill against candidates backed strongly by the Republican and Democratic establishments.

What's more, while defenders of the status quo long have claimed that the public doesn't care about how special-interest money drives politics, New Hampshire shows otherwise.

Not only did reform candidates run strongly, voters in the Republican primary said by 5-1 in an exit poll that campaign reform would help improve government. Democratic primary voters placed it in the top five issues influencing their choice, ahead of taxes and world affairs albeit below the economy, Social Security and Medicare. Believe it or not, among GOP primary voters it ranked with abortion and education as a concern.

None of that should be surprising. In a 1998 poll, 74% of New Hampshire voters said they want comprehensive campaign reform. Polls in eight other states have shown solid majorities not only for closing the loophole that lets corporations, unions and individuals make unlimited and otherwise illegal contributions, but also for public financing of campaigns, and enforceable limits on private contributions.

In the present system, even those who talk reform wind up looking beholden to special-interest money. McCain's campaign has been heavily fueled by industries dependent on the favor of the Senate Commerce Committee, which he heads. Bradley's treasury is conspicuously dependent on Wall Street, where he had alliances when he was in the Senate and where he worked after leaving Washington.

In the weeks ahead, keeping their campaigns going against such well-financed opponents as Al Gore and George W. Bush likely will require more such apparent hypocrisy.

The Supreme Court put it simply two weeks ago in upholding the principle of limiting political contributions: The public has an interest in not only stopping outright corruption, but also curbing the appearance of impropriety that undermines confidence in democracy.

Reform is slow. Efforts to close the so-called "soft money" loophole exploited by special interests and money-hungry politicians remain stymied by a Senate filibuster. Conversion to the public financing of elections, under way in four states, likely will be on the ballot in two more elections this November.

But the claim that nobody cares has been unmasked by the voters of New Hampshire.

Where they stand

All four major candidates have talked about campaign reform. Their positions:

- **Bill Bradley:** Ban soft money to national parties and prohibit state party committees from spending their soft money on federal elections. Increase taxpayer financing of elections and require all broadcasters to give candidates free time.
- **George W. Bush:** Ban soft money from businesses and unions, but not from others; raise individual contribution limits.
- **Al Gore:** Ban soft money and increase public financing; require TV networks to give candidates free time.
- **John McCain:** Ban soft money; abolish matching funds for presidential candidates; make congressional candidates raise more than half their money in home states; raise individual contribution limit.

Source: The Associated Press; USA TODAY research

The New York Times

Founded in 1851

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The Betraying Handshake

Former Senator Bill Bradley used a vivid metaphor to describe Washington's continual failure to free American elections from the influence of special-interest money. Speaking in New Hampshire on Monday, he recalled the moment in 1995 when President Clinton and Newt Gingrich, then Speaker of the House, shook hands in public on a promise to pass campaign finance legislation. Nothing happened, Mr. Bradley said, because Democrats, Republicans and their big contributors had long ago made a "secret handshake" on "a deal between politicians and business to keep things as usual."

Mr. Bradley is right. The public has been continually sold out on this issue. In 1993, for example, Mr. Clinton allowed Mr. Gingrich's Democratic predecessor, Thomas Foley, to talk him into delaying his inaugural pledge to pass campaign finance legislation. After that default, Mr. Clinton went on to conduct in 1996 the most financially reckless campaign since Watergate.

But the day when presidents and presidential candidates could get away with sleazy fund-raising may be passing. Senator John McCain has made a ban on soft money the center pole of his campaign and has been the candidate most prominently identified with the reform issue. But Mr. Bradley has also made campaign finance reform one of his four main themes. Both are using the issue to compete for independent swing voters in New Hampshire, and that may have had something to do with Mr. Bradley's desire for a higher profile on the issue. Vice President Gore, worried about his history with the Clinton money machine, is emphasizing his support for the public financing of federal elections. So far Gov. George W. Bush of Texas has remained an old-fashioned harvester of special-interest money, [illegible] individuals should be free to make unlimited soft-money contributions to the parties.

But that could be a shortsighted strategy. Mr. Bradley and Mr. McCain have agreed that if they meet in a general election, both will forswear using soft money — corporate, union or individual contributions channeled through the party organizations to pay for thinly disguised campaign ads. Mr. Gore says he will do the same, provided his Republican opponent takes the pledge.

So far no presidential candidate has promised that, if nominated, he would not allow his national party committee to harvest soft money regardless of what his opponent does. The conventional wisdom is that this would amount to unilateral disarmament in the general-election spending wars over television and turnout. But Mr. Bradley says he thinks that the approximately $80 million allowed a nominee in reported contributions and matching funds may be adequate for running a general-election campaign without the soft-money subterfuge. "I've kept that as an option," he said of a unilateral pledge. He added that if nominated, he would first need to "figure out the lay of the land. But I haven't foreclosed that possibility."

In only four years, then, we have gone from two nominees, Mr. Clinton and former Senator Bob Dole, who planned their fall campaigns around soft money from corporations and unions to several major candidates vying to illustrate their independence of the special interests who hide behind the "secret handshake." In Washington, Congress continues to believe that voters do not mind having a financially compromised political system. But in Iowa and New Hampshire, the voters are applauding each new escalation of pledges in the competition over campaign finance reform.

New Hampshire Clean Elections Act 2000 Why & How

Why do we need campaign finance reform—

That our current campaign finance system is not working is widely recognized. People don't vote, and people don't trust government. The current campaign finance system plays a big role in this.

The most common concerns voters have are:

- Campaigns are too expensive;
- Special interests have too much influence;
- Good candidates without money or connections to special interests don't have a fair chance of competing for office; and
- Politicians spend too much time raising campaign money instead of devoting their full energies to the duties of public office.

National polling overwhelmingly shows, poll after poll, that people want reform. When polling is conducted in New Hampshire specifically, the numbers are similar or higher in support of reform.

So, a bi-partisan group of New Hampshire voters, leaders and legislators came together to create an alternative system of funding campaigns that would:

- Reduce the cost of election spending;
- Eliminate the role of special interests in elections;
- Level the playing field so candidates without money or connections can mount a competitive campaign; and
- Give candidates the opportunity to spend time talking to voters rather than fundraising.

How—

The most comprehensive and constitutional method for reforming our current system that we have found is the "Clean Money Campaign Reform" model, which is full public financing for candidates who choose to limit spending and take no private donations. Reform based on this model has passed in Maine, Massachusetts and Arizona by citizen initiative and in Vermont by the legislature.

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Specific Provisions of the New Hampshire Clean Elections Act–

General Information

Offices Covered	Governor, Executive Council and State Senate*.
Effective Date:	
Estimated Cost:	$3 million per year.

**The study committee went back and forth on whether to include the state senate. This analysis includes funding for state senate campaigns.*

Seed Money

Purpose	To allow candidates to raise some money to use in determining whether a run for office is possible.
Maximum Contribution	▪ $500 for governor ▪ $100 for senate and executive council
Aggregate Limit	▪ $62,500 for a candidate for governor ▪ $5,000 for a candidate for councilor ▪ $2,000 for a candidate for senate
Source	Individual adults
When allowed to raise and spend	Day after election up to day candidate registers in the year of the election.
Use of seed money	Any currently legal campaign activity
Unspent/Excess Seed Money	Either returned to donor or put in NH Clean Elections Fund

Qualifying Contributions

Size/Form	$5 check or money order with a qualifying form
Required Number	▪ 5,000 for governor ▪ 1000 for councilor ▪ 200 for state senator
Source	Individuals who are registered and qualified to vote in the candidate's district.
Qualifying Period	January 1-registration deadline of election year.
Receipt Requirement	Qualifying form-- signed under penalty of perjury to indicate it is from an appropriate source, and who that source is.
Use/Disposition	Can be used for anything allowed in current law.

Obligations of Participating Candidates

Fundraising	During the primary and general election campaign periods, a participating candidate shall not accept private contributions from any source.

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Other donations	The Candidate shall not accept more than $50 in goods and services per month from a volunteer.
Use of Public Funds	May be used for any currently legal campaign activity during the period for which it was allocated.

Public Funding Amounts

Primary Contested	▪ $625,000 Governor ▪ $50,000 Executive Council ▪ $20,000 State Senate
Primary Uncontested	▪ $312,500 Governor ▪ $25,000 Executive Council ▪ $10,000 State Senate
General Contested	▪ $625,000 Governor ▪ $50,000 Executive Council ▪ $20,000 State Senate
General Uncontested	▪ $0 for all offices
Primary Independent Candidate	▪ $312,500 Governor ▪ $25,000 Executive Council ▪ $10,000 State Senate
Contested General Independent Candidate	▪ $625,000 Governor ▪ $50,000 Executive Council ▪ $20,000 State Senate
How Amount is Determined	Same as voluntary spending limits
Funding Shortage Contingency	Payments will be pro-rated so that each qualifying candidates receives a proportional share based on the amount entitled. A participating candidate may make up the difference with private contributions.

Additional Public Funding/Resources

Response to overspending by non-participating candidate	A participating candidate may receive additional funding if opposing candidate spends more than the voluntary spending cap.
Caps on additional public funding	100% of original amount given.

Non-Participating Candidates**

Reporting Requirements	

** *A typo appears in the bill requiring this reporting schedule only for participating candidates. This was never the intention of this bill and correcting it was an oversight in the rush to submit the legislation. These reporting requirements should be indicated for non-participating candidates.*

Administration and Enforcement

Secretary of State	▪ Accepts all qualifying forms and candidate declarations and registration as a participating candidate. ▪ Prepares and distributes all forms ▪ Prepares and distributes a manual for candidates to explain system.
Ballot Law Commission	Rules on objections to candidate registration as a participating candidate and determines whether they are valid.
Attorney General	Accepts written complaints regarding violations of the law and determine if there has been a violation

Source of Funds***

Appropriated Money and Budget Shifts	Money appropriated from the general fund buy not fully expended as of the end of the fiscal biennium.
Seed Money	Unspent at the end of the qualifying period
Qualifying Contributions	Unspent at the end of the qualifying period
Election Related Fines and Penalties	Fines legvied by the ballot law commission for violations of the elections law.
Voluntary Contributions	Contributions made voluntarily to the NH Clean Elections Fund
Drop-out candidates	Unspent money from candidates who do not remain candidates until the primary and general election
Unspent Money	Money distributed but unspent by the end of the election season.
Other	Interest earned

****During study committee deliberations, the committee decided to remove the general fund allocation through lapsed funds into the Clean Elections Fund, however, the bill as presented to committee still includes these provisions.*

Punishment

Over-spending	A participating candidates who overspends is fined 10 times the excess expenditure. The fine must be paid from the candidate's person assets to

	the NH Clean Elections Fund.

Miscellaneous

Electronic Filing	
Severability	All provision are severable which means if one part was declared unconstitutional, that one part would be thrown out while the rest remained intact.

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Attachment "D"

Sen. Below, Dist. 5
February 9, 2000
2000-3381s
05/10

Amendment to SB 303

Amend the title of the bill by replacing it with the following:

AN ACT relative to campaign contributions by business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

2000-3381s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions.

Attachment "E

Sen. Below, Dist. 5
February 9, 2000
2000-3380s
05/10

Amendment to SB 303

Amend the title of the bill by replacing it with the following:

AN ACT relative to campaign contributions by business organizations.

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Definition; "Segregated Accounts." Amend RSA 664:2 by inserting after paragraph XVII the following new paragraph:

XVIII. "Segregated accounts" mean accounts funded by contributions solicited from a business organization's employees, officers, shareholders, directors, partners, or members for political purposes.

2 Prohibited Political Organizations; Business Organizations. RSA 664:4, I is repealed and reenacted to read as follows:

I. By any business organization, officer, director, executive, agent, partner or employee acting in behalf of such business organization. This shall not prohibit the establishment or administration of a separate, segregated account which shall constitute a political committee as defined in RSA 664:2 that operates independently of the business organization to be used for making political contributions and expenditures if the fund consists only of voluntary contributions solicited from an individual who is an employee, officer, shareholder, director, partner or member of the business organization. The provisions of this section shall not apply to sole proprietorships, or to independent expenditures made by a nonprofit corporation formed for the purpose, among others, of promoting political ideas, and that:

(a) Does not engage in business activities;

(b) Has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;

(c) Does not accept foreign or domestic for-profit corporations as members; and

(d) Does not accept in aggregate more than 5 percent annually of its total revenue from foreign or domestic for-profit corporations.

3 Repeal. RSA 664:4, II, relative to prohibited political contributions by partnerships, is repealed.

4 Effective Date. This act shall take effect 60 days after its passage.

2000-3380s

AMENDED ANALYSIS

This bill eliminates the prohibition on political contributions by business organizations which have established certain segregated accounts for voluntary contributions. The bill also eliminates the prohibition on political contributions by certain nonprofit corporations.

Attachment "F"

NHPIRG
New Hampshire Public Interest Research Group

80½ N. Main Street, Suite 204
Concord, NH 03301
(603) 229-3222
www.pirg.org/nhpirg

Senator Rick Trombley, Chair
Members of the Public Affairs Committee
Legislative Office Building, Room 104
Concord, NH 03301

February 9, 2000

RE: CORPORATE CAMPAIGN CONTRIBUTIONS (SB303)

Dear Senator Trombley:

As a result of the Kennedy v. Shaheen, et al. case that found the current New Hampshire ban on corporate contributions unconstitutional, we urge this committee to clarify the election law language so that a ban on corporate contributions remains intact. There is a long tradition in New Hampshire of banning corporate contributions, dating back to at least 1955. (The law may be much older; an initial search by the office of Secretary of State found the law on the books in 1955).

Judge Stephen McAuliffe stated in Kennedy v. Shaheen, et al. that "the Supreme Court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds." This compelling interest has prompted the federal government in 1907 and numerous states throughout the years to pass legislation that bans corporate contributions. The reasoning for such a ban is expressed in a 1986 Supreme Court Ruling, FEC v. Mass. Citizens for Life, Inc., that states, "Resources in the treasury of a business corporation ... are not an indication of popular support for the corporation's political ideas. ... The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas."

Since the courts have consistently ruled that corporations cannot use their treasuries to contribute, are corporations unable to participate? No. Corporations can set up "segregated accounts," whereby they solicit money from their directors, officers, shareholders, and employees for use in the political arena. Wrote Judge McAuliffe in Kennedy v. Shaheen, et al., "These [segregated] accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas."

In fact, New Hampshire has always allowed corporations to set up "segregated accounts" and contribute from them. But the Kennedy v. Shaheen, et al. ruling found that "the statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does [the statute] even mention segregated accounts or segregated funds."

Judge McAuliffe concluded the ruling by stating, "There is, of course, a simple solution to this simple problem. The solution lies with the legislature." NHPIRG concurs with Judge McAuliffe in this regard. The legislature must act to prevent corporate contributions from flooding our elections. Money can corrupt. Money can influence who runs and who wins. Keeping the corporate ban intact protects our state electoral tradition and our democracy.

Sincerely,

Steve Blackledge
Program Director

printed on recycled paper

Attachment "G"

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

DEC 23 2 46 PM '99

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Richard E. Kennedy;
Eric Carlson; and
Lander Associates, Inc.,
Plaintiffs

v. Civil No. 98-608-M

William M. Gardner, New Hampshire
Secretary of State; Philip T. McLaughlin,
New Hampshire Attorney General; and
Governor Jeanne Shaheen,
Defendants

O R D E R

Plaintiffs, Richard Kennedy and two potential contributors to his political campaign, filed this action pursuant to 42 U.S.C. § 1983, seeking declaratory and injunctive relief. They claim that two separate campaign financing restrictions imposed by New Hampshire Revised Statutes Annotated ("RSA") 664:4 violate the First Amendment and are, therefore, unconstitutional. By prior order, the court granted in part and denied in part plaintiffs' motion for summary judgment, concluding:

> The ban on all corporate political contributions imposed by RSA 664:4 I is overly restrictive and unconstitutionally infringes plaintiffs' First Amendment rights. The "cap gap" created by RSA 664:4

V, however, does not unconstitutionally burden plaintiffs' political speech and, therefore, survives their constitutional challenge.

Kennedy v. Gardner, No. 98-608-M (D.N.H. September 30, 1999).

Defendants, the Governor, Attorney General, and Secretary of State of New Hampshire, now move to amend the judgment - essentially seeking reconsideration of that portion of the court's order declaring RSA 664:4,I unconstitutional as an overly broad abridgment of rights guaranteed by the First Amendment to the United States Constitution. Plaintiffs object.

The grounds upon which reconsideration is sought are somewhat unclear. Defendants merely restate their earlier position and, without much elaboration, declare that Supreme Court precedent dictates a result contrary to that reached by the court in its order of September 30. Nevertheless, they seem to agree that a state's absolute across-the-board ban on corporate political contributions cannot withstand constitutional scrutiny. And, although they do not directly concede the point, defendants surely must recognize that the plain text of RSA 664:4,I

accomplishes just that - a complete ban on any corporate political contributions, under threat of criminal prosecution.

To avoid the inevitable conclusion of unconstitutionality, then, defendants strive to limit the statute's literal reach by inferring limitations not apparent in its facially unambiguous text. That is, they argue that notwithstanding its plain language, the statute should be held constitutional because defendants discern within its text an implicit intention by the legislature to permit corporations to make at least some contributions for the purpose of promoting the success or defeat of a candidate or political party in a state election.

If the court would only read (no doubt meaning "write") the additional terms suggested by defendants into the statute, then, say defendants, it necessarily follows that RSA 664:4,I, is just like both Michigan's campaign finance statute (held constitutional in Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)), and the Federal Election Campaign Act of 1971, as amended ("FECA"). So, defendants reiterate, if New

Hampshire's statute is properly construed, by inferring discrete limiting provisions, it easily passes constitutional muster.

Defendants' suggestion might represent a workable and effective fix of the statute's inherent deficiencies if this court were free to legislate for New Hampshire, but it is not. That part of New Hampshire's campaign finance law at issue in this case, as drafted by the legislature, is nothing like either the Michigan statute or the federal statute, and it simply cannot survive constitutional scrutiny given its plain language and the Supreme Court's reasonably clear explanation of the extent to which the First Amendment protects corporate political speech.

Discussion

I. Preliminary Matters.

A. Types and Sources of Political Contributions.

Generally, corporate political contributions come from two different sources. One is the corporation's operating or treasury accounts. Money in that type of account is derived from corporate business activities, such as the sale of goods and services or the sale of corporate stock. It is generally

accepted that a corporation's ability to amass such funds reflects its business acumen, but not popular support (or even the support of its shareholders) for its political views. See, e.g., Federal Election Commission v. Mass. Citizens For Life, Inc., 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.").

The other potential source of corporate political contributions is a "segregated account." Typically, segregated accounts are funded by contributions solicited from corporate officers, directors, employees, and shareholders. These accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas.

> Because persons contributing to such funds understand that their money will be used solely for political purposes, the speech generated accurately reflects contributors' support for the corporation's political views.

Austin v. Michigan Chamber of Commerce, 494 U.S. at 660-61.

A corporate political contribution qualifies as "political speech," protected by the First Amendment. See, e.g., Austin, 494 U.S. at 657 ("Certainly, the use of funds to support a political candidate is 'speech'; . . . The mere fact that the [plaintiff] is a corporation does not remove its speech from the ambit of the First Amendment.") (citing First National Bank of Boston v. Bellotti, 435 U.S. 765, 777 (1978)). Nevertheless, the distinction between contributions from "treasury funds" and those from "segregated accounts" is both meaningful and constitutionally significant. The Supreme Court has generally recognized that states have a compelling interest in prohibiting corporate political contributions from treasury funds. To date, however, the Court has not recognized any state interest sufficient to justify an absolute ban on either corporate contributions or independent expenditures made from segregated funds. See generally, Austin, supra.

B. "Contributions" and "Independent Expenditures."

For purposes of this case, there are two distinct means by which corporations might seek to exercise their First Amendment rights in the political arena. First, they might make a "contribution" directly to a candidate for public office. RSA 664 defines a contribution to include any payment, gift, forbearance, or loan to a candidate or political committee made for the purpose of influencing the nomination or election of a candidate. RSA 664:2,VIII. Thus, "contributions" include anything of value given directly to a candidate or political committee.

Alternatively, corporations (like other citizens) might make an independent expenditure on behalf of a candidate or political party. RSA 664 defines "independent expenditure" to include an expenditure expressly advocating the election or defeat of a candidate, that is made without cooperation or consultation with a candidate. RSA 664:2,XI. So, for example, a corporation or individual might decide to finance, produce, and run a television advertisement supporting or opposing the election of candidates from a particular political party based upon their position on,

say an income tax. As long as that advertisement is created and funded without input from a particular candidate, it constitutes an "independent expenditure." See generally, Buckley v. Valeo, 424 U.S. 1, 46-47 (1976).

C. Plaintiffs' Standing.

Although defendants have not contested it, it bears noting that plaintiffs do have standing to bring a pre-enforcement challenge, on First Amendment grounds, to the constitutionality of a state statute providing criminal penalties for its violation. See New Hampshire Right to Life Political Action Committee v. Gardner, 99 F.3d 8, 13-14 (1st Cir. 1996). The statute at issue here presents a credible threat of present or future prosecution for its violation, and plaintiffs have been chilled from exercising their rights to political expression in order to avoid enforcement consequences. "In such situations the vice of the statute is its pull toward self-censorship," id., "a harm that can be realized without an actual prosecution." Virginia v. American Booksellers, 484 U.S. 383, 393 (1988). Having engaged in arguably prohibited conduct, plaintiff Lander Associates faces a credible threat of prosecution under the

statute and defendants have not disavowed any intention to enforce the statute against it. See generally, Rhode Island Ass'n of Realtors v. Whitehouse, __ F.3d __, 1999 WL 1128676 (1st Cir. Dec. 14, 1999).

And, while neither plaintiffs nor defendants mention the source of the corporate contribution by Lander Associates (from treasury or segregated funds), that issue is immaterial here since, in the First Amendment context, parties with standing may challenge a statute under the overbreadth doctrine even if, had the statute been more narrowly drafted, it could constitutionally regulate the specific conduct in which the party proposes to engage (say, a contribution from treasury funds). See e.g., Lewis v. City of New Orleans, 415 U.S. 130, 134 (1974).

The Supreme Court has described the "overbreadth doctrine" in the following terms:

> Simply put, the doctrine asserts that an overbroad regulation of speech or publication may be subject to facial review and invalidation, even though its application in the instant case is constitutionally unobjectionable. Thus, a person whose activity could validly be suppressed under a more narrowly drawn law is allowed to challenge an overbroad law because of its

> application to others. The bare possibility of unconstitutional application is not enough; the law is unconstitutionally overbroad only if it reaches substantially beyond the permissible scope of legislative regulation. Thus, the issue under the overbreadth doctrine is whether a government restriction of speech that is arguably valid as applied to the case at hand should nevertheless be invalidated to avoid the substantial prospect of unconstitutional application elsewhere.

City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 800 n.19 (1984) (quoting Jeffries, Rethinking Prior Restraint, 92 Yale L. J. 409, 425 (1983)). Accordingly, where the statute at issue "unquestionably attaches sanctions to protected conduct, the likelihood that the statute will deter that conduct is ordinarily sufficiently great to justify an overbreadth attack." Id.

In short, where a statute presents a realistic danger that it will significantly chill or compromise recognized First Amendment freedoms of parties not currently before the court, and when that statute does not readily lend itself to a narrowing construction by the state courts, a party may challenge that statute on grounds that it is overbroad even if the conduct in which that party engaged might legitimately be restricted if the

statute had been properly drafted, in less sweeping terms. See Erznoznik v. City of Jacksonville, 422 U.S. 205, 216 (1975).

Based upon the undisputed facts of this case, the court concludes that Lander Associates has standing to challenge RSA 664:4,I. Moreover, plaintiff may challenge not only the specific ban on the conduct in which it engaged (that is, corporate political contributions directly to a candidate's campaign), but also those aspects of RSA 664:4,I which purport to restrict other forms of arguably protected corporate political speech (e.g., corporate contributions to political parties and political committees). See generally Gooding v. Wilson, 405 U.S. at 520-21; Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940).

II. The Statute's Constitutional Deficiencies

A. Determining the Scope of RSA 664:4,I.

The text of RSA 664:4 provides, in pertinent part, as follows:

> No contribution, whether tangible or intangible, shall be made to a candidate, a political committee, or political party, or in behalf of a candidate or political committee or political party, directly or indirectly, for the purpose of promoting the success or

defeat of any candidate or political party at any state primary or general election:

> I. By any corporation, or by any officer, director, executive, agent or employee acting in behalf of such corporation, or by any organization representing or affiliated with one or more corporations or by any officer, director, executive, agent or employee acting in behalf of such organization.

RSA 664:4,I (emphasis supplied). As mentioned earlier, elsewhere in the statute the term "contribution" is defined as any "payment, gift, subscription, assessment, contract, payment for services, dues advance, forbearance or loan to a candidate or political committee made for the purpose of influencing the nomination or election of any candidate." RSA 664:2,VIII (emphasis supplied).

No doubt because defendants tacitly acknowledge that, post-Austin, a complete statutory ban on corporate political contributions cannot survive constitutional scrutiny, they assert that the statute is not unconstitutionally overbroad because it "does not prohibit corporate contributions that originate from a segregated account or fund." Defendants' memorandum (document

no. 10) at 5.[1] Defendants argue, specifically, that New Hampshire's statute should be understood (and presumably that it would be understood by any potential corporate contributor) to ban only contributions made from "treasury funds" but not to ban political contributions if the source is "segregated funds." The statute's seemingly absolute prohibition against corporate political contributions does not actually preclude corporations

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[1] Defendants also say Austin does not apply, because unlike the Michigan statute at issue in Austin, New Hampshire's statute does not speak directly to corporate "independent expenditures." Defendants' legal point is incorrect; Austin is both instructive and applicable precedent. But, defendants' factual point perhaps exposes another major weakness in the statute, if the general statutory scheme is indeed intended to restrict corporate participation in state election campaigns to the full extent permitted by the First Amendment. That is, nothing in New Hampshire's campaign finance law seems to prohibit corporations from making "independent expenditures" of an unlimited amount from treasury funds to elect or defeat a candidate for state office. "Contributions" and "independent expenditures" are, of course, quite different forms of political speech. Nevertheless, nothing in the statutory scheme addresses corporate independent expenditures (i.e., no provision either prohibits corporations from making them or limits their source to defined segregated funds). While the statutory definition of "independent expenditure" probably covers those made by a corporation (as an "other entity"), see RSA 664:2,XI, the "Prohibited Political Expenditures" section of the statute, RSA 664:5, does not purport to ban independent expenditures by corporations from "treasury funds" or otherwise, or to limit them at all for that matter, with one minor exception: all independent expenditures for political advertising in newspapers and on radio or television, etc., must be paid for at the applicable rates filed with the secretary of state. RSA 664:5.

from making such contributions, say defendants, so long as the funds used represent voluntary donations and are held in a segregated account (and are not derived from "amassed wealth" attributable to corporate business activity).[2]

Besides, say defendants, they have collectively determined not to enforce the statute as it is written, but rather as they construe it (pointing to instances in which corporations have been permitted to form separate political action committees). Thus, defendants suggest that all is well and no corporation faces potential prosecution for making political contributions, if they are made from a segregated account in a manner consistent with defendants' own reading of the statute. Defendants' argument recognizes, then, that states may not constitutionally prohibit all corporate political contributions.

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[2] Actually, defendants may also imply that a corporation cannot even maintain a segregated fund and make political contributions in its own name from that fund, but, instead, must actually form a separate political committee. Under the statute, however, a political committee is a separate entity comprised of "2 or more persons [organized] to influence elections . . . ." RSA 664:2,III. So, a corporation could not form a political committee by itself. And, the speech of a political committee is not speech of the corporation that formed it. In any event, the issue here is not whether a corporation can form another entity to raise funds to contribute to a candidate, but whether a corporation may itself raise funds to contribute to a candidate.

But, of course, the reality is that the statute's language does not admit of any exceptions, and neither the governor, the other defendants, nor this court is in a position to effectively rewrite the legislation actually enacted by the General Court. Nor can defendants overcome the statute's overreaching character by unilaterally implementing relaxed (and necessarily transitory) enforcement policies.

Facially, the statutory language used by the legislature is both straightforward and all-encompassing: A corporation shall not, under pain of criminal sanction, make any direct or indirect contribution to a candidate, political committee, or political party. See RSA 664,I and 21,V. Nor may a corporation make any expenditure "in behalf of [probably meaning at the direction of or in coordination with] a candidate or political committee or political party" where the purpose is to promote "the success or defeat" of any candidate or political party at any state primary or general election. RSA 664:4.

Defendants' contention that the broad statutory ban is actually a limited one, and precisely targets only that corporate

political speech subject to permissible regulation, (i.e., that the ban only applies by its terms to corporate political contributions made from treasury funds) is untenable. First, defendants' suggested words of limitation are nowhere to be found in the statute. The statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does RSA 664 even mention "segregated accounts" or "segregated funds." And, the phrase "no contribution" - meaning no "payment, gift, subscription, assessment, contract, payment for services, dues, advance, forbearance or loan" - hardly requires an exhaustive search for meaning.

That defendants might agree the statute must, constitutionally, permit corporate political contributions from segregated accounts, does not, of course, make it so. The legislature could well have both meant exactly what it said, and said exactly what it meant. Lewis Carroll's egg notwithstanding, the meaning of words is not so elastic as to accommodate any and all convenient interpretations.[3] The legislature is entitled to

[3] "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

"The question is," said Alice, "whether you can make

the courtesy of a presumption that it knew what it was trying to accomplish, chose its words thoughtfully, knew the meaning of the words it chose, and intended its words to be read straightforwardly.

Defendants' proposed construction of RSA 664:4,I not only imposes meaning that the words used do not convey, but it is also inconsistent with established principles of statutory construction. The applicable principle was described by the Supreme Court as follows:

> It has long been a tenet of First Amendment law that in determining a facial challenge to a statute, if it be "readily susceptible" to a narrowing construction that would make it constitutional, it will be upheld. The key to the application of this principle is that the statute must be "readily susceptible" to the limitation; we will not rewrite a state law to conform to constitutional requirements.

American Booksellers, 484 U.S. at 397 (citations omitted).

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words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master - that is all." Alice Through the Looking Glass, Lewis Carroll (1872).

The reasons underlying this rule of statutory interpretation are fairly well established and widely understood. First, federal courts must be always mindful of their limited role in the American system of government, which is to insure that statutes are interpreted in accordance with their terms, as the legislature intended, and applied in a fair and neutral manner. Even to save defective laws, courts must not intrude upon the function of the legislative branch which is, at its core, concerned with writing (and amending) legislation. See, e.g., United States v. Reese, 92 U.S. 214, 221 (1875) ("It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government."); United States v. Albertini, 472 U.S. 675, 680 (1985) ("Only the most extraordinary showing of contrary intentions in the legislative history will justify a departure from [the plain language of a statute]. This proposition is not altered simply because application of a statute is challenged on constitutional grounds. Statutes should be construed to avoid

constitutional questions, but this interpretive canon is not a license for the judiciary to rewrite language enacted by the legislature. Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers.") (citations and internal quotation marks omitted).[4]

Thus, it is clear, particularly when First Amendment freedoms are at issue, that courts must avoid adopting a statutory interpretation that strays too far from the plain text of the statute:

> This conclusion of unconstitutionality is of course no ground for going back to reinterpret the statute, making it say something that it does not say, but that is constitutional. Not every construction, but only "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." "Although this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute . . . or

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[4] Parenthetically, the court notes that defendants have not referenced any supportive legislative history relating to Chapter 664 of New Hampshire's Revised Statutes Annotated. Nor have they shown that their expansive interpretation of the statute is consistent with the actual intent of New Hampshire's legislature. Certainly what history is available provides no hint of an intent to minimize the risks of corruption of the electoral process by prohibiting only corporate contributions made from treasury funds. See N.H. Laws, Chapter 212 (SB 178), section 212:1 (Exhibit 1 to document no. 10).

> judicially rewriting it." Otherwise, there would be no such thing as an unconstitutional statute.

United States v. X-Citement Video, Inc., 513 U.S. 64, 86 (1994) (Scalia, J. dissenting) (citations omitted). See also George Moore Ice Cream Co. v. Rose, 289 U.S. 373, 379 (1933) (Cardozo, J.) ("A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score. But avoidance of a difficulty will not be pressed to the point of disingenuous evasion. . . . The problem must be faced and answered.") (cited in Seminole Tribe of Florida v. Florida, 517 U.S. 44, 57 n.9 (1996)).

Finally, it is important to note that RSA 664 provides criminal penalties for corporations, like Lander Associates, that violate its terms. See RSA 664:21,V. Criminal statutes must provide clear and unambiguous notice to the public of what conduct is proscribed and what conduct is permitted. If a criminal statute fails to give fair warning of its scope to the public, citizens may well forego entirely lawful (and even constitutionally protected) conduct, merely to avoid the (unwarranted) threat of criminal penalties. Even if construed as

defendants wish, RSA 664:4,I fails to provide fair warning of its scope since no reasonable reader would have any idea that the statute's absolute and unequivocal ban on corporate political contributions is in fact quite equivocal and conditional.

Moreover, even if this court were inclined to adopt defendants' proposed construction of RSA 664:4,I, and "read" (or, more accurately, "write") into the law exceptions and limitations necessary to make it both consistent with Austin and constitutional, only those few citizens schooled in constitutional law (or so devoid of other interests in life that they habitually read obscure judicial opinions) would understand that New Hampshire's law does not (and, in fact, can not) prohibit all of the conduct it unambiguously purports to reach. Only a relatively small minority would feel at liberty to engage in constitutionally protected conduct. The vast majority (corporations and individuals), however, unaware of the constitutionally mandated "implicit exceptions" defendants would have the court read into the statute, would be chilled in the exercise of their constitutional rights - mistakenly, but understandably, fearing that any corporate political

contribution, even one from a segregated fund, would violate the law as written and thus, expose them to penalties including criminal sanctions.

Accordingly, the court must interpret RSA 664:4,I, as written: it bans corporations from making any and all political contributions. The next question is whether the statute, as written, is constitutional. It is not.

B. RSA 664:4,I is Unconstitutionally Overbroad.

The absolute ban on any corporate contribution markedly distinguishes RSA 664:4,I, from campaign finance laws found constitutionally inoffensive by the Supreme Court. Contrary to defendants' assertions, for example, New Hampshire's law is quite unlike the Michigan law found valid in Austin v. Michigan Chamber of Commerce, supra. Michigan's legislature drew a careful distinction, in the text of its statute, between prohibited corporate treasury expenditures, and permitted corporate segregated fund expenditures. The Michigan statute unambiguously and specifically prohibits "corporations from using corporate treasury funds for independent expenditures in support of, or in

opposition to, any candidate in elections for state office." Id., at 654 (emphasis added). As the Supreme Court pointed out, Michigan's statute (again, unlike New Hampshire's) also expressly allowed corporations to "make such expenditures from segregated funds used solely for political purposes." Id., at 655. Importantly, the Court took pains to note that "[t]he [Michigan] Act exempts from this general prohibition against corporate political spending any expenditure made from a segregated fund." Id., at 655-56 (emphasis added). And, the High Court pointed out that Michigan's law was carefully modeled after the Federal Election Campaign Act of 1971, 86 Stat. 11, as amended, 2 U.S.C. §§ 431-455, which also explicitly and unambiguously permits "corporations . . . to use segregated funds to finance independent expenditures [and corporate contributions to candidates[5]] made in federal elections" (again, unlike New Hampshire's law that admits of no such exception based on fund

[5] FECA, unlike New Hampshire's statute, specifically permits political contributions and independent expenditures by corporations to candidates, subject to limitations on amount, so long as the source of those contributions is a separate account maintained by the corporation and funded by voluntary donations from a carefully defined class of people related to the corporation. See 2 U.S.C. § 441b(2)(C).

sources or segregated accounts and imposes an outright ban on any corporate contributions).

To be sure, the Supreme Court has recognized that corporate political speech, while protected by the First Amendment, is, nevertheless, subject to reasonable regulation by a state.[6] However, such regulation is constitutionally permissible only to the extent that the statute is narrowly tailored to serve a compelling state interest. See, e.g., Austin, 494 U.S. at 657; Federal Election Comm'n v. Mass. Citizens for Life, Inc., 479 U.S. 238, 256 (1986). States do have a recognized and compelling interest in minimizing the probability of corruption, and even the appearance of corruption, of the electoral process itself. So, state-imposed limitations on large contributions (from anyone - individual or corporation) to candidates for public office do

[6] Of course a state can constitutionally place reasonable limits on the amount of such contributions, currently as low as $1,000. See Buckley v. Valeo, 424 U.S. 1 (1976); see also, RSA 664:4,V. Defendants say, alternatively, that the legislature imposed such a limit, since the term "person" as employed in RSA 21:9 covers corporations, and existing legislation limits the amount any "person" can contribute to a candidate under various circumstances. So, even though RSA 664:4,I, is unenforceable, corporations are arguably limited in the same manner as individual citizens in the amount they may contribute. That issue is not raised in this case, so it need not be resolved.

not violate First Amendment guarantees because "[t]o 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." Buckley v. Valeo, 424 U.S. 1, 26-27 (1976).

And, because "direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace," Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 257 (1986), the Court has recognized another state interest sufficiently compelling to support legislation restricting corporate political spending. Albeit over vigorous dissent, a majority of the Justices held in Austin that a state may also constitutionally restrict corporations from making "independent expenditures" from treasury funds to support or oppose a candidate for election to state office, because states have a compelling interest in limiting "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the

public's support for the corporation's political ideas." Austin, 494 U.S. at 660.

Having recognized that interest as compelling, the Court then determined that Michigan's statute survived constitutional challenge because it was narrowly tailored to address that interest. The statute was narrowly tailored because, significantly, it clearly did not purport to impose an absolute ban on corporate independent expenditures made to elect or defeat a candidate. Instead, the Michigan statute drew a careful and explicit distinction between corporate political expenditures made from treasury funds (funds amassed in the marketplace, employing the state-conferred advantages of doing business in corporate form, not representing any particular support for the corporation's political ideas, and potentially capable of corruptly and unfairly distorting the political process) on the one hand, and corporate political contributions from segregated funds (funds not derived from the marketplace and the advantages of doing business in the corporate form, voluntarily donated, and that do represent popular support for the corporation's political ideas), on the other. While the state's compelling interest

warranted prohibiting expenditures from treasury funds, it did not warrant prohibiting expenditures from segregated funds. And, because the statute was narrowly focused, prohibiting only political contributions from treasury funds and not restricting those from segregated accounts, it passed constitutional muster.

Defendants, of course, do not suggest that New Hampshire has some compelling interest in prohibiting corporations from making contributions to candidates from so-called segregated funds, nor could they reasonably make that argument in light of Austin. Corporate contributions from segregated funds (particularly if limited in amount, as currently allowed by Buckley v. Valeo), do not raise any spectre of quid pro quo corruption, or the appearance of it, nor do they pose any of the risks of corrosive, distortive, or unrepresentative effects on the electoral process that contributions from corporate treasury funds pose. Corporations seeking to contribute to candidates (and political committees or political parties) from segregated funds are constitutionally indistinguishable from individual citizens seeking to contribute to candidates from their own funds. If, as Buckley teaches, a $1,000 contribution from a private citizen

does not implicate compelling state interests related to the fact or appearance of quid pro quo corruption, how can it be said that a $1,000 corporate contribution from segregated funds implicates a compelling state interest related to the fact or appearance of quid pro quo corruption? And, if corporate contributions originate from funds donated by those who choose to support the corporation's political ideas and agenda, no issue of corporate diversion of "amassed business wealth" arises.

But to be fair to defendants, they do seem to recognize those points. They base their defense of the statute, as mentioned earlier, not on the premise that the legislature can constitutionally ban any and all corporate political contributions, but rather on their own hopeful and rather strained reading of implicit limitations into the statute's

text.[7] They argue that the legislature did not mean what it said

[7] Defendant's reliance on Pipefitters Local Union No. 562, et al. v. United States, 407 U.S. 385 (1972) in that regard is also misplaced for several reasons, among them: 1) the Court did not hold in Pipefitters that Congress could impose a blanket prohibition on union (or corporate) political contributions, but, to the contrary, the majority recognized that union (and corporate) political contributions to candidates are protected under the First Amendment to the extent made from a separate fund or segregated account and the money represents voluntary contributions from members (or others); 2) the union and government agreed in that case that the federal statutory ban on union (and corporate) political contributions (then in effect) did not preclude so-called segregated fund contributions or expenditures (an "agreement" Justice Powell, in dissent, vigorously challenged, given the plain words used in the statute); 3) the detailed and extensive legislative history of the federal statute (then 18 U.S.C. § 610) satisfied the majority (but not the dissent) that the parties' "agreement" was supportable since it revealed Congress' intent to prohibit only political contributions by unions (or corporations) from general treasury revenues; and 4) in any event, the federal statute was amended by Congress in 1971, while the case was pending, to make it statutorily explicit and unambiguous (again unlike RSA 664:4,I) that indeed the prohibition on union (and corporate) contributions did not apply to contributions from segregated funds maintained by a union (or corporation).

With regard to RSA 664:4,I, the parties: 1) do not agree as to its applicable scope; 2) the broad language is plain and resort to legislative history would not be appropriate, nor necessary to appraise an "agreed upon" construction; 3) besides, there is apparently no legislative history suggesting limited application (or defendants surely would have referenced it); 4) the legislature has not amended the statute to explicitly limit its application; and, 5) reasonable corporations (like Lander Associates) can not be expected to discern from the broad prohibitory language used that some corporate political contributions are nevertheless permitted, and could reasonably anticipate prosecution if it made any corporate contribution.

or did not say what it meant.

In the end, the statute does not lend itself to defendants' reading. The words employed by the legislature are clear and unambiguous and evidence an intent to preclude corporations from making any political contributions, regardless of the source of those contributions. Thus, the statute reaches too far, prohibiting constitutionally protected conduct without any compelling state interest in doing so.

Conclusion

The relevant Supreme Court opinions addressing campaign finance laws make one thing perfectly clear: corporations have a constitutionally protected right to make political contributions and independent expenditures, in their own names, from what have come to be known as segregated funds. The plain terms of New Hampshire's statute infringe that right without serving any compelling state interest, or, perhaps more accurately, the statute is not narrowly tailored to serve any compelling state interest.

Defendants' reargument does little more than invite this federal court to rewrite New Hampshire's statute to meet First Amendment requirements - a rather inescapable irony given recent local events and times. With respect, however, the court must decline defendants' collective invitation, however well-intentioned, to rewrite RSA 664:4,I.

There is, of course, a simple solution to this simple problem, but it is not found in judicial lawmaking or executive policies of casual enforcement of the State's campaign finance laws. The solution lies with the legislature. If, as defendants seem to believe, New Hampshire's General Court did not mean what it said or did not say what it meant, and, when it banned any corporate political contributions, direct or indirect, it actually intended to permit corporations to make some discrete political contributions to candidates, political committees, and political parties from segregated accounts, then the General Court can easily and effectively amend the statute to reflect its actual (constitutional) intent.

In the meantime, however, the court reads the statute as it is plainly written, and as plainly written it is undeniably unconstitutional. Words mean something and the words used by the legislature in RSA 664:4,I, are neither ambiguous nor imprecise. The phrase "No contribution . . . shall be made to a candidate, a political committee, or political party . . . directly or indirectly . . .[b]y any corporation," requires no deep analysis or tortured interpretation. Those words unmistakably express the legislature's far-reaching intent - that all corporate political contributions to candidates for state office, political committees, and political parties, from whatever source, are prohibited. Any reasonable corporate citizen would certainly read the prohibition in that way. If, as defendants suggest, FECA was indeed the model for RSA 664:4,I, the drafters left out significant and critical provisions that should be fairly easy to restore.

Having fully reconsidered the matter, defendants' motion to alter or amend judgment (document no. 15) is denied. RSA 664:4,I, is unconstitutional and unenforceable.

SO-ORDERED.

Steven J. McAuliffe
United States District Judge

December 23, 1999

cc: Alfred J. T. Rubega, Esq.
William C. Knowles, Esq.
Martin P. Honigberg, Esq.
Senior Assistant Attorney General

STATE OF HH
DEPT OF JUSTICE
99 DEC 27 AM 10:09

U.S. District Court, NH #98-608-M
Kennedy v. Gardner, excerpts from Order dated 12/23/99

Hampshire's statute is properly construed, by inferring discrete limiting provisions, it easily passes constitutional muster.

Defendants' suggestion might represent a workable and effective fix of the statute's inherent deficiencies if this court were free to legislate for New Hampshire, but it is not. That part of New Hampshire's campaign finance law at issue in this case, as drafted by the legislature, is nothing like either the Michigan statute or the federal statute, and it simply cannot survive constitutional scrutiny given its plain language and the Supreme Court's reasonably clear explanation of the extent to which the First Amendment protects corporate political speech.

Discussion

I. Preliminary Matters.

A. Types and Sources of Political Contributions.

Generally, corporate political contributions come from two different sources. One is the corporation's operating or treasury accounts. Money in that type of account is derived from corporate business activities, such as the sale of goods and services or the sale of corporate stock. It is generally

accepted that a corporation's ability to amass such funds reflects its business acumen, but not popular support (or even the support of its shareholders) for its political views. See, e.g., Federal Election Commission v. Mass. Citizens For Life, Inc., 479 U.S. 238, 258 (1986) ("The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.").

The other potential source of corporate political contributions is a "segregated account." Typically, segregated accounts are funded by contributions solicited from corporate officers, directors, employees, and shareholders. These accounts also represent corporate money, but money that does reflect some degree of popular support for the corporation's political goals and ideas.

political speech subject to permissible regulation, (i.e., that the ban only applies by its terms to corporate political contributions made from treasury funds) is untenable. First, defendants' suggested words of limitation are nowhere to be found in the statute. The statute contains no hint at all that corporate political contributions from segregated accounts are permissible. Nor does RSA 664 even mention "segregated accounts" or "segregated funds." And, the phrase "no contribution" - meaning no "payment, gift, subscription, assessment, contract, payment for services, dues, advance, forbearance or loan" - hardly requires an exhaustive search for meaning.

That defendants might agree the statute must, constitutionally, permit corporate political contributions from segregated accounts, does not, of course, make it so. The legislature could well have both meant exactly what it said, and said exactly what it meant. Lewis Carroll's egg notwithstanding, the meaning of words is not so elastic as to accommodate any and all convenient interpretations.[3] The legislature is entitled to

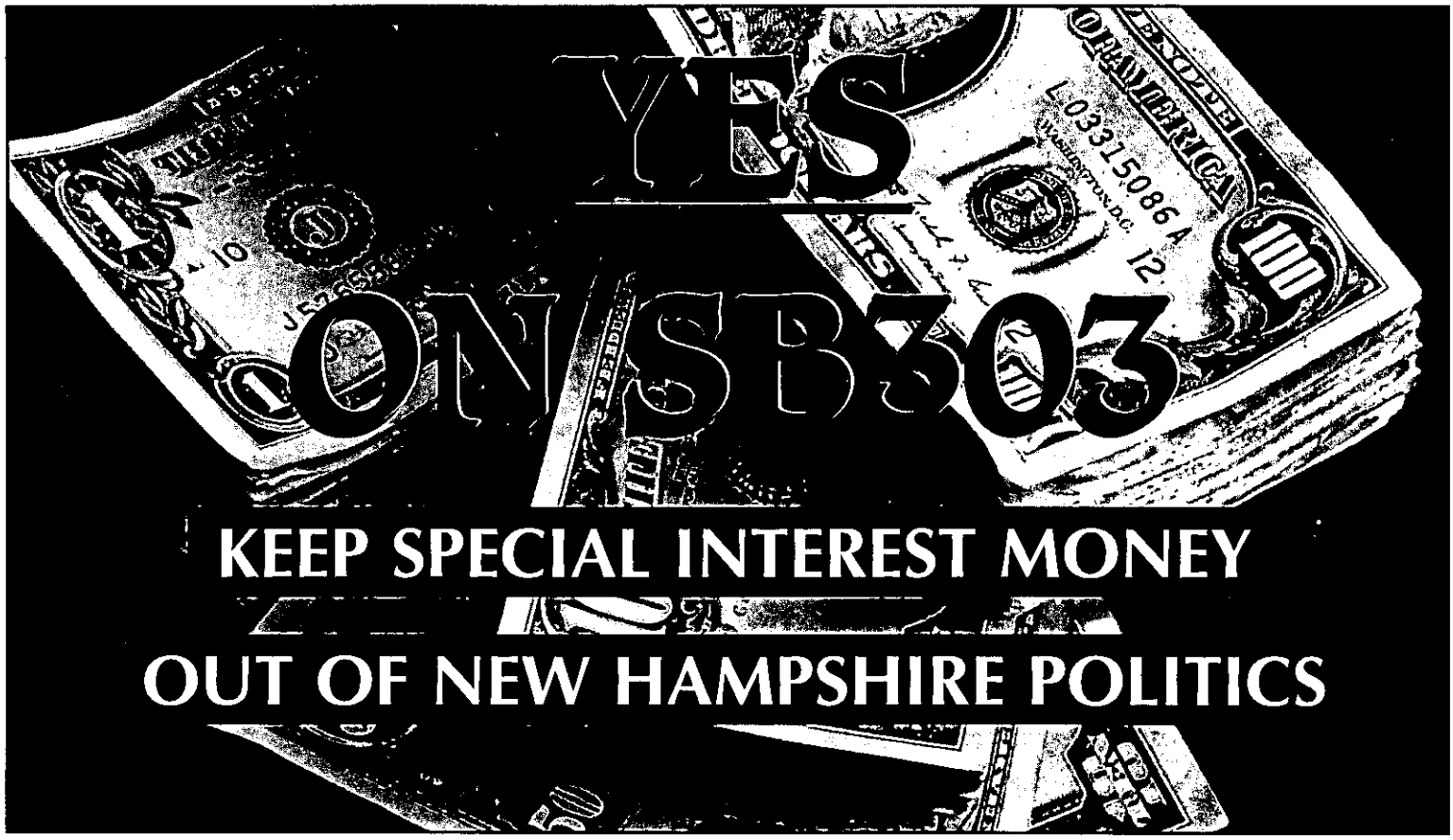
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[3] "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less."

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There is, of course, a simple solution to this simple problem, but it is not found in judicial lawmaking or executive policies of casual enforcement of the State's campaign finance laws. The solution lies with the legislature. If, as defendants seem to believe, New Hampshire's General Court did not mean what it said or did not say what it meant, and, when it banned any corporate political contributions, direct or indirect, it actually intended to permit corporations to make some discrete political contributions to candidates, political committees, and political parties from segregated accounts, then the General Court can easily and effectively amend the statute to reflect its actual (constitutional) intent.



LEGISLATION IS NEEDED

This past fall, U.S. District Court Judge Stephen McAuliffe struck down a piece of New Hampshire's campaign finance tradition. Because Judge McAuliffe interpreted a state campaign finance law to prohibit both direct corporate contributions AND contributions from corporate political committees (PACs), he ruled that the law was overly broad. He also wrote, "there is a simple solution to this simple problem...the solution lies with the legislature". Senate Bill 303 addresses the court ruling by giving corporations the right to set up and contribute from political committees but keeps the ban on direct corporate contributions.

NEW HAMPSHIRE TRADITION

It was in 1911 that Governor Robert P. Bass, a Roosevelt Republican, signed the bill to prohibit corporate contributions. Until the recent court decision, this law had existed and worked well in New Hampshire for 89 years. The New Hampshire law was not unique. Twenty-two other states have banned corporate contributions. Furthermore, the federal government banned corporate contributions in 1907, making this not only a New Hampshire tradition, but an American tradition.

NHPIRG
New Hampshire Public Interest Research Group
603.229.3222 - phone, 603.229-3221 - Fax
www.pirg.org/nhpirg, nhpirg@pirg.org

SUPPORTED BY SUPREME COURT RULINGS

The Supreme Court has ruled that resources in the treasury of a business corporation are not an indication of popular support for the corporation's political ideas. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas. (FEC v. Mass. Citizens for Life, Inc.,1986).

NO SPECIAL INTEREST MONEY

Public support, not corporate wealth, should determine who runs for and who wins elected office in New Hampshire. Passing Senate Bill 303 will continue an 89 year tradition of keeping direct corporate contributions out of New Hampshire electoral politics. Failing to take action will allow corporate wealth to flood New Hampshire's electoral process.



Public Affairs Committee

SB 303 Hearing Report

TO: Members of the Senate

FROM: Susan Duncan
Legislative Assistant

RE: Hearing report on **SB 303 – An Act relative to campaign contributions by corporations.**

HEARING DATE: February 9, 2000

Sponsor: Senator Below, District 5
Senators Trombly, District 7
Senator Russman, District 19

What the bill does: This bill eliminates the prohibition on political contributions by organizations representing or affiliated with corporations, and by certain persons associated with organizations.

Who supports the bill:
Senator Below
Senator Trombly
Senator Russman
Sam Mekrut, NH Citizens Alliance for Action
Steve Blackledge, NH Citizens Alliance for Action

Who opposes the bill: No one testified in opposition.

Summary of testimony received:

- This legislation is filed as a result of the Kennedy v. Gardner Supreme Court ruling.
- This ruling stated that legislation which forbade corporate contributions was an infringement on free speech.
- However, this case ruled that "states have a compelling interest in controlling corporate contributions."
- Corporations have always been able to set up segregated accounts.
- The solution to this issue lies with the Legislature.
- The intention of SB 303 is to set up corporate contributions the way New Hampshire has done it since 1955.
- Senator Trombly asked if it is possible to legislate that for the purpose of contributions, corporations don't have a voice.
- Corporations are a creation of the Legislature – can't they be "played" with?
- Senator Trombly shared that he had some concerns with a proposed amendment which would allow corporate directors to bundle contributions.

Funding: Not applicable.

Future Action: The Committee took the legislation under advisement.

sfd
[file: SB 303]

Speakers

SENATE Public Affairs COMMITTEE

Date 2/09/00 Time 1:00 PM Public Hearing on SB303

Appearing in FAVOR: (Please print) Please check box at left to speak.

Speaking?	Name	Address	Representing
☑	John Rand	Box 725 Sunapee 03782	Common Cause
☐			
☑	Jim Rubens	THINK NH 11 Laramie Rd Etna NH 03750	
☑	Sam McKrat	NH Citizens Alliance for Action	4 Park St Concord
☐	Bill McCarthy	NH Citizens Alliance	4 Park St Concord
☐	Jay Ward	632 N. Pembroke Rd Pembroke	
☐			
☐			
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Appearing in OPPOSITION (Please Print) Please check box at left to speak.

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SENATE Public Affairs COMMITTEE

Date 2/09/00 Time 1:00 PM Public Hearing on SB303

Appearing in FAVOR: *(Please print)* *Please check box at left to speak*

Speaking?	Name	Address	Representing
☒	Steve Blackledge	80 N. main St, Concord NH 03301	NHPIRG
☐	Lloyd Herdgerd	149 E Side Dr, Concord NH 03301	
☒	Clifton Below		Sen. Dist. 5.
☐	Beatrice Newbury	13 Prospect St. Concord	
☐			
☐			
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Appearing in OPPOSITION *(Please Print)* *Please check box at left to speak*

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Voting Sheets

Senate Public Affairs Committee
EXECUTIVE SESSION

Bill# SB 303

Hearing date: 2/23/00 Room: 104-LOB
Motion of: OTPA OTP As amended

Made by Senator:			*Seconded by Senator:*		
	Trombly	☐		Trombly	☑
	Disnard	☐		Disnard	☐
	Eaton	☐		Eaton	☐
	Krueger	☐		Krueger	☐
	McCarley	☑		McCarley	☐
	Roberge	☐		Roberge	☐

3-0

Committee Member	*Present*	*Vote*	*Reported out by*
Senator Rick Trombly, Chairman	☑		Trombly
Senator George Disnard, Vice-Chair	☐		
Senator Thomas Eaton	☑		
Senator Pat Krueger	☑	— did not vote	
Senator Caroline McCarley	☑		
Senator Sheila Roberge	☐		

*Amendments: adopted 2000-3381 (Senator Below)
(2000-3615)

NOTES: Trombly believes he will be asked a floor amendment (Re: Political Action Committee to say Two people or

Committee Report

Date: February 9, 2000 Time: 1:00 pm

The Senate Committee on Public Affairs held its hearing in Room 104 LOB, Concord, New Hampshire.

BILL NO.: SB 303 TITLE: [New Title] relative to campaign contributions by business organizations.

Members of the Committee present:

Senator Trombly
Senator Disnard
Senator Eaton
Senator Krueger
Senator McCarley
Senator Roberge

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☒ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

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STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Public Affairs

to which was referred Senate Bill SB 303

AN ACT relative to campaign contributions by corporations.

VOTE: 3-0

2000-3615s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Rick A. Trombly
For the Committee