June 19, 1998

Statement of Persons Who Have Served the American Civil Liberties Union in Leadership Positions Supporting the Constitutionality of Efforts to Enact Reasonable Campaign Finance Reform

We have served the American Civil Liberties Union in leadership positions over several decades. Norman Dorsen served as ACLU General Counsel from 1969-1976 and as President of the ACLU from 1976-1991. Jack Pemberton and Aryeh Neier served as Executive Directors of the ACLU from 1962-1978. Melvin Wulf, Bruce Ennis, Burt Neuborne, and John Powell served as National Legal Directors of the ACLU from 1962-1992. Charles Morgan, Jr., and Morton Halperin served as National Legislative Directors of the ACLU from 1972-1976, and 1984-1992, respectively. Indeed, except for one person currently in government service, and, therefore, not free to express a personal opinion, we constitute every living person to have served as ACLU President, ACLU Executive Director, ACLU Legal Director, or ACLU Legislative Director during the past 30 years, with the exception of the current leadership.

We have devoted much of our professional lives to the ACLU, and to the protection of free speech. We are proud of our ACLU service, and we continue to support the ACLU's matchless efforts to preserve the Bill of Rights. We have come to believe, however, that the opposition to campaign finance reform expressed by the ACLU misreads the First Amendment. In our opinion, the First Amendment does not forbid content-neutral efforts to place reasonable limits on campaign spending.

We believe that the First Amendment is designed to safeguard a functioning and fair democracy. The current system of campaign financing makes a mockery of that ideal by enabling the rich to set the national agenda, and to exercise disproportionate influence over the behavior of public officials.

We believe that Buckley v. Valeo, the 1976 Supreme Court case that makes it extremely difficult to reform the current, disastrous campaign financing system, should be overruled for three reasons. First, the Buckley opinion inappropriately treats the spending of money as though it were pure speech, no matter how high the spending limits may be. But such an approach ignores the long-established Supreme Court rule that when speech is inextricably intertwined with conduct, the conduct may be regulated if it threatens to cause serious harm. While we agree that unreasonably low spending limits would unconstitutionally impinge on free speech, the Buckley Court failed to recognize that there is a compelling interest in defending democracy that justifies reasonable spending limits. Reasonable spending limits would free candidates and officials to concentrate on substantive questions of public policy, instead of spending excessive time raising campaign funds. Reasonable spending limits would also free candidates from becoming trapped in

an arms race mentality, where each candidate is forced to continue raising money, not because they wish to, but to prevent being outspent by an opponent.

Second, the Buckley opinion makes an untenable distinction between campaign contributions, which may be subjected to stringent government regulation, and campaign expenditures, which are virtually immune from regulation. The bright-line distinction between contributions and expenditures is neither analytically nor pragmatically defensible. By upholding limits on the size and source of campaign contributions, while preventing any effort to limit the demand for campaign funds by capping spending, the Buckley Court inadvertently created a system that tempts politicians to break the law governing campaign contributions in order to satisfy an uncontrollable need for campaign cash.

Third, the Buckley Court erred in refusing to permit the establishment of reasonable spending limits designed to avoid unfair domination of the electoral process by a small group of extremely wealthy persons. Instead of "one person-one vote", the Buckley decision has resulted in a regime of "one dollar-one vote" that magnifies the political influence of extremely wealthy individuals and distorts the fundamental principle of political equality underlying the First Amendment itself, causing great harm to the democratic principles that underlie the Constitution.

It is our hope that the current Supreme Court, confronted with the unfortunate practical implications of the Buckley decision, and the serious flaws in its constitutional analysis, will reconsider the decision, and permit reasonable legislative efforts to reform our campaign financing system.

Moreover, even within the limitations of the Buckley decision, we believe that significant campaign finance reform is both possible and constitutional. We support elimination of the "soft money" loophole that allows unlimited campaign contributions to political parties, undermining Congress's effort to regulate the size and source of campaign contributions to candidates. We believe that Congress, for the purpose of regulating the size and source of federal campaign contributions, may treat a contribution to the political party sponsoring a federal candidate as though it were a contribution to the candidate directly.

We also support regulation of the funding of political advertising that is clearly intended to affect the outcome of a specific federal election, but that omits the magic words "vote for" or "vote against". We believe that Congress may draft a narrowly tailored provision regulating the funding of so-called "issue advertisements" that mention one or more of the candidates, appear shortly before the election, and are geographically targeted in an obvious effort to affect the outcome of a specific federal election.

We believe that the current debate over campaign financing reform in the House of Representatives and the Senate should center on the important policy questions raised by various efforts at reform. Opponents of reform should no longer be permitted to hide behind an unjustified constitutional smokescreen.

Norman Dorsen
Jack Pemberton
Aryeh Neier
Melvin Wulf
Bruce Ennis
Burt Neuborne
John Powell
Charles Morgan, Jr.
Morton Halperin