March 22, 2001

Statement of Persons Who Have Served the American Civil Liberties Union in Leadership Positions Supporting the Constitutionality of the McCain-Feingold Bill

We have served the American Civil Liberties Union in leadership positions over several decades. Norman Dorsen served as ACLU General Counsel from 1969-76 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, Burt Neuborne, and John Powell served as National Legal Directors of the ACLU from 1962-1992. Charles Morgan, Jr., John Shattuck, and Morton Halperin served as National Legislative Directors of the ACLU from 1972-1992. Together we constitute every living person to have served as ACLU President, ACLU Executive Director, ACLU Legal Director, or ACLU Legislative Director 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 ACLU's opposition to campaign finance reform in general, and the McCain-Feingold Bill in particular, is misplaced. In our opinion, the First Amendment does not forbid content-neutral efforts to place reasonable limits on campaign spending and establish reasonable disclosure rules, such as those contained in the McCain-Feingold Bill.

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 recognize that the Supreme Court's 1976 decision in *Buckley v. Valeo* makes it extremely difficult for Congress to reform the current, disastrous campaign finance system, and we believe that *Buckley* should be overruled. However, even within the limitations of the *Buckley* decision, we believe that the campaign finance reform measures contained in the McCain-Feingold Bill are constitutional.

We support McCain-Feingold's elimination of the "soft money" loophole, which allows unlimited campaign contributions to political parties and undermines Congress's effort to regulate the size and source of campaign contributions to candidates. There can be little doubt that large "soft money" contributions to the political parties can corrupt, and are perceived as corrupting, our government officials.

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." The McCain-Feingold Bill treats as electioneering any radio or television ad that names a federal candidate shortly before an election and is targeted to the relevant electorate. It would ban the use of corporate and labor general treasury funds for such ads, and it would require public disclosure of the sources of funding for such ads when purchased by other groups and individuals. We believe that these provisions are narrowly tailored to meet the vagueness and overbreadth concerns expressed by the Supreme Court in *Buckley*, and thus are constitutional.

Finally, we believe that the current debate over campaign finance reform in the Senate and House of Representatives should center on the important policy questions raised by various efforts at reform. Opponents of reform should not be permitted to hide behind an unjustified constitutional smokescreen.

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