IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	)	
	)	CIVIL ACTION NO. 02-CV-781
CONGRESSMAN RON PAUL, *et al.,*	)	(CKK, KLH, RJL)
Plaintiffs,	)	
	)	Consolidated with
v.	)	CIVIL ACTION NOS.
	)	02-CV-582 (CKK, KLH, RJL)
	)	(Lead)
FEDERAL ELECTION COMMISSION, *et al.,*	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

REPORT OF PERRY WILLIS

1. My name is Perry Willis. I have spent the past 20 years working almost full time in direct professional involvement with state, local, and federal campaigns, and with state, local, and national Libertarian Party organizations. Because of my extensive practical experience with the real world effects of the federal campaign finance regulations, I have been asked to provide a report concerning those effects on challengers, and on Libertarian Party candidates in particular, both under the FECA and the BCRA. Actual experience with the real practical effects of campaign regulations has taught me a host of consequences of these laws that the scholarly studies in this area that I have read do not cover fully. I have agreed to provide this report and the cross-examine at no fee, only reimbursement for expenses. Below is a brief list of my professional experience followed by a summary of specific work activities as they relate to federal campaign regulation.

a. In 1980, I worked as a volunteer in San Diego, California for the Ronald Reagan for President campaign. When President Reagan failed to push proposals and veto legislation in keeping with his campaign promises, I became active in the Libertarian Party ("LP").

b. I managed Everett Hale's Libertarian for Congress campaign in 1982, and was involved with every aspect of a federal campaign at that level, from fundraising and campaign strategy and execution, to compliance with federal regulations.

c. In 1983, I served as Chair and Executive Director of the Libertarian Party of San Diego and was heavily involved in recruiting candidates for federal office.

d. In 1984, I served as Ballot Access Coordinator and Finance Director for David Bergland's Libertarian campaign for President, gaining extensive experience both with the difficulties of ballot access for minor parties in the United States, and the uneven effects of federal campaign finance regulation on minor party presidential campaigns.

e. During the first part of 1985, I served as Finance Director for the Libertarian Party of California.

f. For the latter half of 1985, through 1986, and into 1987, I served as the National Director of the Libertarian Party's Libertarian National Committee (LNC). As such, I was responsible for national party's overall strategy, including candidate recruitment and training, as well as fundraising, donor recruitment, and the staff work involved in complying with the federal campaign finance laws as they apply to national party committees.

g. In late 1987, I worked briefly for Congressman Ron Paul's Libertarian campaign for President.

h. In 1988, I worked as a consultant for Congressman Sam Steiger's Libertarian campaign for Governor of Arizona, and for an educational choice initiative in California.

i. In 1989 and 1990, I worked as a fundraising consultant for the Libertarian National Committee, and once again had to confront the difficulties minor parties face as a consequence of the federal campaign finance laws.

j. During the latter part of 1991 and the first part of 1992, I served as Chief of Staff (campaign manager) for Andre Marrou's Libertarian campaign for president. I was responsible for every aspect of the campaign's strategy and execution, including ballot access, media relations, candidate scheduling and travel, relations with state and local party organizations and candidates, volunteer coordination, fundraising via direct mail, telephone solicitation, campaign events, and personal meetings with donors, as well as FEC compliance.

k. For the remainder of 1992 and part of 1993, I served as the Chair of the Libertarian Party of Arizona and was once again involved with candidate recruitment and training for races at all level, including federal.

l. From late 1993 until late 1997, I served again as the National Director of the Libertarian National Committee, and was again responsible for the same broad range of activities as during my first period of duty as the Libertarian Party's top professional manager. During this time I was responsible for an unprecedented growth in national LP membership and revenue and oversaw the creation of the

national LP's first software for filing automated FEC reports. Prior to this time all of the national LP's FEC reports had been prepared by hand.

m. After the LP's presidential nomination in 1996, Harry Browne's presidential campaign was run from my office with my close coordination as LNC National Director. As with the Marrou campaign in 1991/92, I was involved with every aspect of a national presidential campaign.

n. During 1997 and 1998, I served as a fundraising contractor for the LNC, and from late 1997 through the 2000 election I was also the campaign manager for Harry Browne's second Libertarian campaign for President. As with the Marrou campaign in 1991/92, I was again responsible for every aspect of the campaign's strategy and execution, including ballot access, media relations, candidate scheduling and travel, relations with state and local party organizations and candidates, volunteer coordination, fundraising via direct mail, telephone solicitation, campaign events, and personal meetings with donors, as well as FEC compliance.

o. At various times, in between paying political jobs, I have also served brief stretches as a member of the LNC.

2. The above work has given me extensive familiarity with campaign management and campaign fundraising, as well as party management and fundraising, including knowledge of donor motivations, campaign and party accounting, and database management, as well as campaign finance regulation and compliance at the local, state, and federal levels. I have designed multitudes of fundraising packages, including direct mail letters, major donor presentations, email appeals, online contribution pages, and all of the "lift pieces," inserts, and

response forms that are normally associated with such packages. I also have extensive experience with the design of campaign and party databases and the forms and procedures required to comply with campaign finance regulations. I have overseen the development of both party and campaign finance reporting software, and served as a treasurer or assistant treasurer of federal campaigns. I have raised money by direct mail, over the phone, at events, and by personal meetings with hundreds of donors. I have experienced first hand the effects that campaign finance laws have on the behavior of volunteers and donors, as well as professional campaign and party staff. My long and varied work experience has given me an understanding of the profound effect campaign finance regulations have on the operations of campaigns and party committees, as well as on the outcome of elections.

3. My political activity is motivated by my desire to effectively express my political values, and to seek representation for those values in the halls of government. I have been unable to accomplish this aim in significant part due to the limitations on political expression and association imposed by the federal campaign finance laws. As detailed herein, these laws serve the interests of incumbent politicians, as well as their allies in the established corporate news media. These laws restrict, trample, violate, and dramatically diminish my ability to speak, print, and broadcast my political preferences, and to freely associate with like-minded people for the same purpose.

4. With the exception of 1980, I have never voted for a candidate who has won political office (Ronald Reagan and other Republicans I voted for won in that year). Throughout all that time, I have considered myself to be virtually un-represented in government. I am not alone in this regard.

Nearly all elected representatives are either self-professed liberals or conservatives, but not all Americans are liberals or conservatives. Indeed, numerous polls and surveys have demonstrated that there may be as many philosophical libertarians as there are philosophical liberals or conservatives in America.

For more than 20 years, the Libertarian Party has conducted surveys at fairs, trade shows, and flea markets across America. Depending on when and where these surveys were conducted, they have shown that somewhere between 12% and 33% of the populace hold views that can only be described as libertarian. Other surveys by polling organizations such as Gallup and Rasmussen Research have also shown a high degree of libertarian belief in the country. A Gallup poll in January 1996 found that 20% of Americans held libertarian beliefs, while 13% were liberal, 35% conservative, and 20% populist.[1] Other Gallup polls at other times have found libertarian beliefs in 19% and 22% of the populace. An extensive survey by Rasmussen Research, called Portrait of America, conducted on August 23, 2000, found the following breakdown in political beliefs among Americans: 32.1% centrist, 17.2% with views bordering on other categories, 16.3% libertarian, 12.8% liberal, and 7.2% conservative.[2] All of these surveys show a significant libertarian presence in society, and a wider range of belief systems among Americans than are represented in government. In particular, liberals and conservatives, in the form of Democrats and Republicans, seem to be significantly over-represented in government compared with Libertarians. In contrast, there is only one person in Congress who consistently espouses libertarian beliefs (Congressman Ron Paul), no Libertarian Party members in federal office at all, and precious few LP members in state and

[1] http://www.lp.org/lpn/9606-Gallup.html

[2] http://www.lp.org/lpnews/0010/16percent.html

local office. This disparity, between the broad range of beliefs held by the public and the narrow range of beliefs held by elected office holders, is a strong indication that the distribution of political representation in America is artificially created, rather than the natural outcome of market forces.

Some of this artificial distribution can be attributed to the United States' "winner-takes-all" voting system in conjunction with ballot access restrictions on new parties, and district gerrymandering that disenfranchises libertarian voters; however, none of these factors can explain other survey findings indicating that nearly all of America's philosophical libertarians are completely unaware of the Libertarian Party alternative to the Democrats and Republicans. I believe, and will more fully explain below, that the public's ignorance of the Libertarian Party alternative is largely due to the federal campaign finance laws and their counterparts at the state and local levels.

5. The absence of representation for philosophical libertarians in government is matched by a similar absence of libertarian ideas expressed by media businesses. The full range of widely-held political beliefs in America is not expressed by the established corporate news media. Instead, libertarians must endure the media's relentless parroting of the views of the politicians and parties already in power, as well as their promotion of Democratic and Republican office holders and party leaders, to the virtual exclusion of Libertarians and other minor parties and views.

The established corporate news media have rarely given any airing to libertarian ideas or candidates, and have never done so to a sufficient extent to have them properly evaluated by the American public. This has been true even when Libertarian Party candidates have been

newsworthy in terms of the criteria the corporate news media apply to liberals and conservatives, Democrats and Republicans. I can provide at least two specific examples.

In 1992, my Libertarian Party candidate for president, Andre Marrou, defeated all of his Democratic and Republican rivals in the Dixville Notch voting that kicks off the New Hampshire primary Election Day. This victory was the lead news item all across the nation the following morning, but when voters called into TV networks wanting to learn more about Andre Marrou and the Libertarian Party they were repeatedly told that it would be a waste of time to do any additional reporting about Marrou and the LP. The networks argued that the Dixville Notch vote was clearly a fluke. NBC even said this on the air in response to one voter who called in, asking for more coverage of Marrou. Our campaign staff pointed out to the networks that Dixville Notch, because of its small population, had represented a rare opportunity for Libertarians to have their views heard by voters to the same extent as the Democrats and Republicans. Therefore, the Dixville Notch result was indicative of how other voters might respond to LP candidates if the media were to inform the public of who the Libertarians are and what they believe. The established corporate news media rejected this reasonable argument out-of-hand and provided no additional coverage at all.

A second example occurred in 2000. Pat Buchanan was running for president on the Reform Party ticket. He was a national figure who had previously enjoyed great success in Republican primaries. He accepted federal funding. He received extensive coverage from the established corporate news media, while his LP challenger in that year, Harry Browne, received almost none. But despite all of Buchanan's advantages, Buchanan and Browne were virtually tied in the polls throughout the 2000 campaign.[3] Our campaign argued to the media

[3] http://www.lp.org/press/archive.php?function=view&record=144

that Browne's equal showing, given his inferior public recognition, funding, and media coverage, would seem to indicate that Browne would find more favor with voters than Buchanan if Browne were to be provided with coverage equal to Buchanan's. This sensible argument was made in vain. The news media continued to give attention to the once and future Republican, Pat Buchanan, and to ignore Browne.

These examples are a strong indication that both election results and media coverage are largely artificial, and do not represent the true values, desires, and preferences of millions of American voters. This, too, is a consequence of the federal campaign finance laws, as I will discuss below.

6. If the established corporate news media will not cover libertarian ideas and Libertarian Party candidates, then Libertarians must undertake the burden of making themselves visible entirely through their own efforts. Unfortunately, the law does not permit us to communicate with the public in the same way that the established corporate news media can.

The established corporate news media retain an unrestricted right to raise unlimited amounts of money through a variety of means that are not legally available to political campaigns. The established corporate news media can also spend unlimited amounts giving free publicity to the political causes they favor, attacking those they oppose, and ignoring those they disdain. And they can do (and actually do) all of these things without any legal requirement to report to the government the source of every $200 they take in, or the recipients of their expenditures on expressions of political ideas and preferences. My preferred political ideas, candidates, parties, and campaigns do not enjoy equivalent rights of

capital accumulation and expenditure, and are therefore unable to compete for the public's consideration or approval.

Libertarian campaigns are legally prohibited from operating as a press in the same way that the established corporate news media can, and therefore, cannot make up for the coverage the established corporate news media preferentially confer on our political opponents.

7. Throughout my years of effort, I have tried to live with, and to surmount, the legal obstacles imposed by the federal campaign finance laws. These laws burden my freedom of expression and association as I struggle to compete with media businesses that are exempt from corresponding sets of limits on their freedoms of expression and association.

It is important to understand that campaigns compete with media businesses to gain access to, and influence with, the American public. In particular, the first aim of the campaigns on which I have worked has always been to serve as a press, in every sense of that word, for the purpose of educating the public about libertarian ideas. But the established corporate news media have almost always communicated ideas that were mostly contrary to those my campaigns were trying to express. The competition between Libertarian campaigns and the established corporate news media is real and direct.

The second aim of the campaigns on which I have worked has been to win votes for my candidates. But the established corporate news media, both through acts of omission and commission, have always worked against my candidates. By omitting coverage of Libertarian candidates, the media have sent a message to the public that Libertarians are unworthy of consideration, and by giving extensive coverage to Democrats and Republicans, and by endorsing Democratic and Republican candidates, the media have been able to use their press to do what my press cannot do in the same way because of their broad exemption from

campaign finance laws. Again, the competition between Libertarian campaigns and the established corporate news media is real and direct.

Campaigns and media businesses operate in a similar way. Both specialize in communicating with the public. Campaigns and media businesses also have similar capital requirements. Both must begin with sufficient venture capital to rent office space, buy equipment and supplies, pay staff salaries, and communicate with a broad audience, until such time as enough customers/contributors can be found to generate sufficient revenue to operate the business/campaign profitably. But campaigns and media businesses cannot accumulate capital in the same way.

Media businesses can borrow money to meet their capital needs, but campaigns are prohibited by the federal campaign finance regulations from borrowing money, except from banks, and even then only in narrowly constrained ways that make it difficult for minor party campaigns to take advantage of this source of capital. Minor party federal campaigns almost always lack sufficient assets to acquire secured bank loans.

Media businesses can also seek large investments from individuals, but campaigns are legally limited to relatively small contributions of $1,000 per election (and even the higher $2,000 limits under BCRA are totally insignificant compared with the amounts media businesses are legally allowed to raise).

All of these legal inequalities deprive the public of information that campaigns would otherwise provide, in opposition to the competing information provided by the established corporate news media. This distorts the political process.

8. It is a simple fact that the public cannot consider new political ideas, or the candidates who express them, unless they first become aware of them. This is a fundamental

and inescapable truth. But, for ideas and candidates to become known, they must first compete for the time and attention of the public against all the other ideas and candidates clamoring to be heard. It must be understood that I am not talking about equality of outcome in this competition. I am talking about equality of opportunity, and more specifically still, of equality before the law. There can be no equality between campaigns and media businesses when the political expressions of campaigns are heavily regulated while the political expressions of media businesses are almost entirely exempt. The mere opportunity to become known by voters, quite apart from becoming accepted by them, is entirely a function of money. Money, and the various ways money can be accumulated, cannot be separated from speaking, printing, and broadcasting.

So how can we partisan Libertarians give our political preferences an equal opportunity to be heard? Should we be required to have some of our philosophical allies purchase a national television network, a national radio network, a national newspaper chain, and a weekly national news magazine, simply to be able to match the same level of expression that the established corporate news media already enjoy without legal impediment, or that our political opponents already achieve through their close relationship with the established corporate news media? But what if our philosophical allies are not willing or competent to capitalize and operate such media outlets? Is our freedom to speak, print and broadcast the way we want thereby foreclosed? The answer is yes under the current laws, because the comparative competence that partisan Libertarians do have, which is to use campaigns as a press to speak, print, and broadcast expressions of our political preferences, is legally limited by contribution limits and reporting requirements.

Does this then mean that our freedom to speak, print, and broadcast our political beliefs should be limited to non-profit educational efforts relating only to public policy issues, because such expressions are largely free from the contribution limits and reporting requirements that so severely restrict political campaigns? Certainly our desire to express ourselves is not limited to those kinds of purposes. We also desire to express our preferences for and against candidates and parties in the same way that media businesses can.

I know that there are people with whom we would want to associate in ways that might counteract the similar expressions of our political opponents, and of the established corporate news media. But the ability of our campaigns to associate with others for the purpose of expressing political preferences in competition with media businesses cannot be achieved under the campaign finance laws.

9. The legal inequalities challengers face in their competition with media businesses are matched by similar legal inequalities between challengers and incumbents. These inequalities are many and varied, including the franking privilege, easier ballot access for major party candidates, and gerrymandered districts that protect incumbents. These legal advantages are bad enough, but they are compounded greatly by the advantages conferred upon incumbents by the campaign finance laws. The most obvious such advantage is the incumbent's greater access to sources of funds, as well as the more numerous methods of fundraising that are available to incumbents in comparison with challengers. Major parties also benefit because their Presidential nominating conventions are federally subsidized and candidates for President receive federal funds on a different basis than minor party candidates.

Challengers and minor party candidates rarely benefit from the special interest contribution bundling that funds incumbent candidates. Likewise, political action committees

(PACs), which tend to organize around specialized interests, only rarely fund challengers against incumbents. The reasons for these disparities are simple and obvious. Challengers do not have the same power to help or harm special interests that incumbents have. And Libertarians are especially disadvantaged in that we are philosophically opposed to the expansive and activist state that is the source of special interest government favors. Libertarians have both a moral and constitutional objection to using government power to help or harm any commercial or other special interest, and cannot therefore promise policies that would be attractive to most special interest donors.

In my appeals to major donors for campaign contributions I have often been rejected because the donor was already contributing to incumbents who could help or harm the donor's interests. I have also applied for support from PACs, and been rejected because my candidate was not an incumbent. And no donor or organization has ever been willing to bundle contributions for my candidates. The only effective way to overcome these disparities in funding sources and fundraising methods between challengers and incumbents would be for the challengers to solicit larger contributions from the funding sources they do have, but the legal contribution limits make this impossible.

It is important to notice the parallels. The campaign finance laws not only disadvantage Libertarians and other challengers vis-à-vis the established corporate news media, but vis-à-vis incumbents as well. Worse still, these kinds of disadvantages not only apply to donors who are not seeking to gain special favors from government, they seem to particularly disadvantage those who contribute for purely philosophical reasons. I will discuss this problem in my next point.

10. During two decades of personal experience fundraising for campaigns, including innumerable discussions with potential donors, I have learned that most potential contributors, and major donors in particular, share similar concerns about the potential results of their contributions. These concerns are expressed in the form of the questions most donors ask of campaigns: "Can you win?" "Will your message be heard?" "Will your message be remembered?" "What will be the lasting impact of my contribution?" Contribution limits and reporting requirements make it almost impossible for third party candidates and other challengers to give potential donors fully satisfying answers to these questions.

Our political system is "winner-takes-all." This reality leads most would-be donors to base their giving decisions on whether candidates can climb from zero support to a plurality or a majority. In addition, even challengers who are only seeking to educate the public, rather than unseat the incumbent, must still demonstrate to donors that their message can effectively compete not only with the incumbent's communications, but also those of the established corporate news media. It does little good to spend money on a message that will be drowned out by other communications, and/or forgotten for lack of sufficient repetition. By way of contrast:

a. An incumbent candidate must only demonstrate to a prospective donor that he or she can retain his or her previous plurality or majority. This is no hurdle at all. It is normally assumed that incumbents can retain the support that got them elected the first time. Re-election rates confirm this supposition.
b. Media businesses that express political ideas can accumulate resources merely by demonstrating the ability to earn a marginal profit on <u>all</u> of their expressions, both political and non-political. They are not burdened by the need to gain a plurality or

majority market-share for their political expressions. A small market-share for political expressions can still be profitable, and/or other forms of communication such as sports and entertainment can even subsidize the media business's political expressions.

The same considerations do not hold true for challengers. Challengers have a much greater burden to demonstrate to potential donors that they can match both the communications of the incumbent, and the media. This usually means that the challenger will actually need more resources than the incumbent.

Worse still, the challenger is also going to have higher fundraising costs than the challenger. Most challengers have to build donor lists from scratch, an expensive undertaking. It costs less for the incumbent to receive income from bundling and PACs, and to solicit repeat contributions from previous donors, than it does for a challenger to build his or her initial donor base. These considerations tend to hold true even when a challenger is running again after a first or second unsuccessful campaign. Prior electoral losses tend to instill skepticism in previous donors and increase the cost of earning new contributions from them. This also tends to hold true for candidates who are only running for educational purposes. Previous failures to saturate a market breed doubt that a second or third effort will do any better. Overcoming this doubt increases fundraising costs vis-à-vis what incumbents and the media pay to fund their communications.

11. It is very important to understand that contribution limits increase the marginal cost of each donation the challenger raises, more so than for incumbents who have broad and pre-existing sources of revenue. Contribution limits increase marginal fundraising costs by reducing the net effect of every appeal made to a donor who would have contributed more

than the legal limit, if not for the law. As an additional negative result, the increased costs created by contribution limits also increase the risk that the challenger's effort to compete with the communications of the incumbent and the media will fail. If a challenger does not raise the entire amount needed to be competitive, then the effective value of earlier contributions is largely negated. Potential donors tend to recognize this risk and reduce their contributions accordingly – often to zero. By contrast, donations larger than the limit, if the challenger could receive them, would lower the marginal cost of fundraising, shorten the time required to raise the needed amount, and thereby reduce the risk that the effort to gain communications parity would fail. This decreased cost and risk would cause potential donors to increase both their rate of giving and the size of their donations.

How can these difficulties be overcome? I know of only one way: the challenger needs to be able to raise larger amounts from his or her most stalwart supporters. This is impossible because it is illegal under the campaign contribution limits of both FECA and BCRA. The other potential option, of raising more contributions in smaller amounts, is subject to diminishing returns. The acquisition costs for each new contributor tend to rise higher and higher as the donor recruitment effort reaches more people who have fewer areas of agreement with the challenger. The sum spent on donor acquisition over time grows as a percentage of all funds raised. Worse still, earlier donors begin to object to the challenger spending their money simply to raise more money. This growing discontent on the part of earlier donors reduces fundraising efficiency still further by decreasing the number and size of additional gifts from previous donors. Valuable time is also lost as the effort to obtain sufficient small contributions progresses. While the incumbent and the media are busy

communicating their messages to the public the challenger is spending time finding new donors.

12. None of the above factors has any appreciable impact on incumbents. Most significantly, the elimination of contribution limits would do little to increase meaningfully incumbents' communications with the electorate. Most of them are already able to saturate their districts with campaign communications. The marginal increases in funding that could come to incumbents with the end of contribution limits would have almost no effect on their ability to communicate with voters.

Former Clinton advisor Dick Morris demonstrated the truth of this in an article published on March 21, 2001 in *The Hill* (a weekly political newspaper). The article was titled, "You Don't Need Soft Money." In this article Morris pointed out that incumbents already spend more than enough to reach every voter as many times as necessary, and that raising more and spending more would not add anything significant to their campaigns. FEC Commissioner Bradley A. Smith has made a similar analysis in Chapter 4 of his book "Unfree Speech." Smith, like Morris, argues that increased funding would help challengers be more competitive, but would confer no additional advantage on incumbents. This is one of the dirty little secrets of campaign finance regulation that those who support such regulations never mention. Contribution limits hurt challengers and protect incumbents. Ending them would help challengers, but not hurt incumbents except insofar as voters could then better evaluate incumbents' views by comparing them to the views of challengers.

Donors either intuitively or explicitly understand most or all of the above factors. The increased risks and costs created by contribution limits lead many donors to forego contributions to challengers, even when they prefer the challenger to the incumbent. The

investment seems pointless to the potential donor given the economic realities imposed by the contribution limits. This pernicious effect extends even to donors who can only afford to give amounts that are less than the maximum contribution limit. They know that their smaller contributions will be less effective if they are not also joined by donations that are larger than the legal limit. Smaller donors therefore tend to give less than they otherwise would in the absence of the contribution limits.

The truth is that, under the contribution limits, most challengers cannot raise enough money to win, or to be heard, or to be remembered, or to have any kind of lasting impact. Thus, many donors who agree with a challenger's message refuse to make contributions that they believe will achieve nothing, while others give reduced amounts merely out of sympathy for the quixotic quest. Still others fail to give out of fear, as I will discuss in my next point.

13. The most reliable sources of income for challengers are those citizens who either dissent from current government policies and/or those who have economic interests that are negatively affected by government activity. Both have incentives to <u>not</u> want their names to appear in the federal campaign finance reports challengers are forced to file.

Dissenters tend to have a greater fear of government power than do citizens who support incumbents. This fear is real even when it is poorly justified. The result tends to be that dissenters are less likely to contribute to challengers they would otherwise support, or that they contribute less than they otherwise would in order to fall below the reporting threshold. Donors have often told me that they would not contribute because they did not want to have their names reported. Many have also told me they were contributing $199 in order to avoid having their names and addresses appear in FEC reports.

Much the same holds true for potential donors who have business interests that are affected by government. Many of these donors, like the dissenters, fear the government as an institution, and are particularly concerned with the ability of incumbents to harm them through legislation and regulation. I know from many conversations with donors that this concern is real even when it is poorly justified. Many of these potential contributors do not want incumbents to know that they have given money to challengers. Thus, as with the dissenters, they sometimes fail to give at all, or they give less than the reporting threshold, even though they could easily afford to contribute more.

The reporting requirements also create three other problems.

a. Potential Libertarian donors tend to be especially concerned with privacy. Some are merely concerned about their own privacy. Others want to reduce the amount of information the government has about its citizens in general, feeling that such data can serve as the foundation for a police state. Libertarians with privacy concerns are confronted with having to lose part of their privacy if they want to make political contributions to Libertarian candidates who agree with their views on privacy. Many Libertarians resolve this conflict by not making political contributions, or by making donations that are lower than the amount that would trigger inclusion of their personal information in FEC reports. Once again, this distorts the political process.

b. As FEC Commissioner Bradley A. Smith discusses persuasively in Chapter 10 of his book "Unfree Speech," FECA reporting requirements also open political donors to potential intimidation by employers and union leaders.

c. The burdens of disclosure have a greater negative impact on challengers than incumbents. In addition to the fact that contributors to challengers face a greater risk of

> intimidation from incumbents, employers, and union leaders, there is also the problem that compliance costs represent a larger percentage of challengers' resources than is the case for incumbents. The burden is especially acute for third party presidential campaigns because the reporting requirements are slightly different than for other federal races. Reporting software for the more numerous House and Senate campaigns is readily available, but the market for reporting software for presidential campaigns is so small that it is not profitable for any commercial firm to create such software. This means that presidential campaigns have to design reporting software from scratch, at great expense and difficulty. For Harry Browne's presidential campaign in 2000, I had to employ a person who was expert in databases, programming, accounting, and FEC compliance. Developing all of these talents in one person was extremely expensive. This person was paid at a higher hourly rate than any other person on the campaign, including the campaign manager.

Given the above considerations, it is hard to understand why it is reasonable to compel the public disclosure of campaign receipts, disbursements, and contributor names, addresses, and amounts. This seems to be an excessive intrusion on established First Amendment protections of anonymous speech, given that a voluntary system could be used instead. Candidates could seek to attract votes from those who support disclosure by voluntarily reporting their campaign finances, and voters who believe in such disclosure could refuse to vote for any candidate who does not offer this information to the public. Likewise, those contributors who want to remain anonymous could refuse to do donate to any candidate who voluntarily discloses contributor information. Those candidates who see a political value in disclosure could even enhance the value of their reports by offering independent audits,

something that has not occurred under FECA. Instead of lobbying government to compel disclosure, public interest groups could lobby individual campaigns directly, and publicly criticize those that fail to disclose. This kind of voluntary approach is especially viable since the advent of the Internet. There is no reason for the legal intrusions on the First Amendment imposed by compulsory reporting when voluntary and market-driven alternatives are readily available. There is no compelling state interest in using government force, or the threat of such force, to make campaigns disclose information about contributors.

Unfortunately, the exterminating effect of the reporting requirements and contribution limits extend even to issues of candidate recruitment and volunteer participation, as I will discuss below.

14. The federal campaign finance laws constitute a barrier to entry and a prior restraint that effectively reduces the number of citizens who would otherwise run for public office. I have often failed to recruit people as candidates who would have been ideal for the job, not because they did not want to be candidates, but because:

a. They knew the campaign finance laws would make it impossible for them to raise enough money to do an effective job; and/or
b. They did not want to undergo the extreme burden of complying with the federal campaign finance laws. In addition, potential campaign Treasurers are especially intimidated by the personal liability they would assume for compliance mistakes, as well as the accompanying penalties that have become even more draconian under BCRA. The new BCRA penalties, which include potential 5-year prison sentences, have made federal campaign activity potentially ruinous to life, family, and career.

It must be understood that the campaign finance laws raise the cost of participating in the political process and thereby reduce both participation and voter choice. In the case of my own efforts, the result is fewer and often inferior candidates to express libertarian ideas to the public. But even those who do agree to participate, either as candidates or as campaign workers, are negatively affected in others ways, as I will discuss in my next point.

15. I have found that the federal campaign finance laws reduce volunteer participation, and cause dissention and a loss of enthusiasm on the part of candidates and campaign workers. These reductions in volunteer effort and enthusiasm are both direct and indirect.

The direct reductions involve volunteers who want to do things like conduct fundraising raffles, or print their own literature, or raise money to advertise presidential campaigns locally, but who cannot do so because of the regulatory red tape. Some of these volunteers are somewhat unsophisticated, and cannot comprehend that the difficulties are imposed by the government, and not because the campaign's managers lack creativity or a concern for volunteer desires. This misunderstanding creates discontent and diminished support for the campaign. Volunteer efforts work best when driven by emotional enthusiasm, but the regulatory burdens imposed by the campaign finance laws thwart creativity and spontaneity, and replace positive emotions with negative feelings. This has been a problem in every campaign on which I have worked. Worse still, this problem does not apply only to the casual and unsophisticated volunteer. I have also had candidates who have had difficulty understanding why some of their great ideas could not be executed efficiently or at all under the law. Their frustration at our inability to engage in what they have regarded as common sense forms of free expression has often led to a decreased respect for the campaign's staff,

and a decreased interest in those campaign activities that are permitted by the law. Even relatively sophisticated candidates and volunteers can misconstrue respect for the law with passivity, a lack of creativity, a "not invented here" mentality, and a desire to control.

There are also indirect negative impacts on volunteer efforts that are much the same as those that cause artificial reductions in financial support. There is less incentive for volunteer activity if the overall effort is constrained by artificially limited resources. Unsophisticated volunteers often find it impossible to understand why a campaign cannot raise more money, or receive more media attention, given that the incumbent is having no trouble doing so. This too leads to dissatisfaction and reduced efforts.

Another source of friction that results in the loss of both volunteer and financial support is that, because the federal campaign finance laws drive up the costs of fundraising, many supporters come to believe that challengers are wasteful of resources – spending too much money just to raise money. But this is a function of the laws and not the relative competence of the campaigns. It isn't reasonable to assume that all challengers are inefficient fundraisers, but all challengers do have fundraising costs that are much higher than those paid by incumbents.

16. In the past it was possible for some of the negative consequences of the federal campaign laws to be somewhat ameliorated by soft money contributions to party committees in conjunction with coordinated expenditure provisions. But the corrective effect of so-called "soft money" was minor given that the strategic and tactical plans of campaigns and parties do not always coincide, and major donors do not always have the same interest in contributing to a party's "soft money" account that they would have in giving directly to a campaign.

It is important to understand that the primary purpose of most Libertarian campaigns at this stage of the LP's development is not to win elections, but to build the party itself. Most Libertarian Party campaigns seek to serve the same function as the media, a press if you will. They exist primarily to communicate ideas, and only secondarily to win votes. Unfortunately, the BCRA is designed to remove the largest potential source of funding for this kind of idea-oriented communication.

17. The campaign finance laws, and their impositions on the First Amendment, have been justified as necessary to prevent political corruption and the appearance thereof. But it is impossible for me to understand how the campaign finance laws are really directed at corruption. Anti-bribery and coercion laws make sense in this regard, but campaign finance restrictions do not. As long as the Constitution's express limitations on the power of government to confer special favors are ignored, there is no reasonable basis by which special interest contributions can be viewed as corrupt. They are merely the logical result of a constitutional regime that permits the government to favor some interests at the expense of others. It makes no sense to prohibit through the back door what we permit through the front door. Likewise, it is impossible to understand why politicians should be protected from the appearance that their actions are corrupt. Instead, they should have to defend their actions in a free and open public debate. The law should concern itself with discernable facts, not debatable appearances. But instead, we have campaign finance laws that constrain a free and open debate about the real motives behind the actions of our elected officials. Ironically, these laws particularly impede the expression of another solution to the perceived problem of political corruption – the Libertarian solution.

To understand the Libertarian Party, it is important to realize that the libertarian program is based on the idea of limiting government, and thereby reducing or eliminating its ability to favor special interests over the general interest. We want to communicate to the public the idea that the real problem in government is not the abuse of power, but rather the power to abuse. We want to educate the American people about the Tenth Amendment. We want to inform citizens of our view that this amendment limits the federal government to only those powers and functions that are specifically enumerated in the Constitution. We want to argue that the federal government would have almost no power to favor some citizens over others if this amendment were strictly obeyed -- there would be few government favors to confer, there would be little power to abuse, and real opportunities for corruption would be vanishingly small.

We want to tell citizens that the real solution to perceived government corruption is not more restrictions on citizens, but more restrictions on government itself, and not through the creation of new laws, but through a new adherence to the supreme law of the land. And we want to argue that government power should never be expanded by means of the courts determining that the state has a compelling interest in wielding new power, but rather, that all increases in state power should only be accomplished when the American people themselves agree that such a need exists, and that the need really is so compelling that it warrants the remedy of a constitutional amendment.

But our ability to express these ideas is damaged by campaign finance laws that protect incumbent office holders from effective competition, withhold choices and information from the public, and ultimately serve to ensure that special interests will always have more power than the general interest. We, who have no desire to confer any special

favors on anyone, are silenced by and for the benefit of those who do. We Libertarians believe that this is the real source of corruption in government.

If we Libertarians were permitted to compete freely in the political market place, and the voters still rejected our views and our candidates in an election, so be it. It could take us many years to learn how the voters really feel about our ideas, but if we are permitted to conduct free campaigns, at least we will know that we had a fair chance to be heard and to compete, which is all we seek.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

	)	
	)	CIVIL ACTION NO. 02-CV-781
CONGRESSMAN RON PAUL, *et al.,*	)	(CKK, KLH, RJL)
Plaintiffs,	)	
	)	Consolidated with
v.	)	CIVIL ACTION NOS.
	)	02-CV-582 (CKK, KLH, RJL)
	)	(Lead)
FEDERAL ELECTION COMMISSION, *et al.,*	)	02-CV-581 (CKK, KLH, RJL)
Defendants.	)	02-CV-633 (CKK, KLH, RJL)
	)	02-CV-751 (CKK, KLH, RJL)
	)	02-CV-753 (CKK, KLH, RJL)
	)	02-CV-754 (CKK, KLH, RJL)
	)	02-CV-874 (CKK, KLH, RJL)
	)	02-CV-875 (CKK, KLH, RJL)
	)	02-CV-877 (CKK, KLH, RJL)
	)	02-CV-881 (CKK, KLH, RJL)

DECLARATION OF PERRY WILLIS

I, Perry Willis, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I was engaged by the plaintiffs in the above-captioned civil action, Ron Paul, *et al.* v. Federal Election Commission, *et al.*, to provide services as an expert consultant and witness in the above-captioned litigation.

2. I prepared a report detailing my findings, opinions, and conclusions in this matter, which is attached.

I declare, under penalty of perjury, that the foregoing is true and correct.

_____
Perry Willis

Executed on: September __, 2002