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THE GOVERNMENTAL AFFAIRS COMMITTEE AND THE 1996 PRESIDENTIAL CAMPAIGN

Mr. **THOMPSON**. Mr. President, as everyone knows, the Governmental Affairs Committee has begun an investigation into foreign campaign contributions and fundraising activities of the 1996 Presidential campaign. I believe that it is appropriate at the outset to set forth exactly what we were about, to discuss the committee's jurisdiction, the scope of its investigation, its purpose, and what principles we will apply in resolving the issues that will face us. The reasons to discuss this now at this time are several.

First, we who are on the committee and in the Congress need to remind ourselves of these basics so we may keep our focus in the days ahead.

Second, the American people need to understand the nature and purpose of our work in order that they will respect the process and the results of our efforts.

Third, it is necessary to respond to some of the questions in the media and elsewhere as to the committee's role and purpose.

Mr. President, my own analysis of these issues is just that; it's my own analysis. It is certainly subject to other views by other people. However, I do believe that there are certain principles that apply to our endeavor that can be gleaned from the Constitution, from the rules of the U.S. Senate, from court interpretations and, hopefully, from common sense in applying the lessons learned from the successes and failures of other committee investigations.

Mr. President, the granting of the legislative power to Congress in article I of the Constitution includes the power to investigate. As the Supreme Court held 70 years ago, "A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it." So long as an investigation addresses issues that can be the subject of legislation, the investigation is constitutionally permissible. Some of the most important inquiries the Congress has conducted in the past two centuries have involved the role of money in politics and its effect on policy: the Credit Mobilier scandal of the 1870's; an investigation of corporate campaign contributions in the 1912 campaign, at which Theodore Roosevelt testified concerning his own campaign; and, of course, the investigation of the 1972 Presidential campaign.

Congress' powers to investigate broadly encompasses all areas of the operation of the Federal Government, as well as flaws in the electoral system that makes the Government accountable to the American people. As Chief Justice Warren stated, the investigatory power "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste."

Indeed, President Woodrow Wilson wrote that, "Unless Congress have and use every means of acquainting itself with the facts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served. * * *" Then he went on to say, "The informing function of Congress should be preferred even to its legislative function. * * * The only really self-governing people is that people which discusses and interrogates its administration."

Although every committee in this body exercises oversight

jurisdiction, the full range of the Senate's informing functions is granted to the Senate Committee on Governmental Affairs. Its jurisdiction includes the effectiveness of the operations of all branches of Government, including misfeasance, corruption, and conflicts of interest. It is broad enough to include Presidential campaigns and even congressional campaigns if they are relevant to and reflect upon the way our Government currently operates. No other committee has within its investigatory authority the entire range of the Governmental Affairs Committee's jurisdiction, which is as broad as the Constitution permits.

The investigation we are now undertaking is neither a criminal investigation nor a seminar on campaign finance reform, although, it involves elements of both. Based on the information before us at this time, it is an inquiry into illegal or improper campaign finance activities in the 1996 Presidential campaign and related activities. This means, however, that any facts that may have occurred before the 1996 campaign that are relevant to or shed light upon that campaign or the operation of our Government may also be subject to our inquiry. Such a scope will necessarily involve examining our current campaign spending laws and how they operate.

Now, certainly, our work will include any improper activities by Republicans, Democrats, or other political partisans. It is of extreme importance that our investigation and our hearings be perceived by the American people as being fair and evenhanded. This does not mean that we must strain to create some false balance or that we have some sort of party quota system. It simply means letting the chips fall where they may. We are investigating activities here, not political parties.

While no one should be shut off for partisan advantage, we must have a sense of priorities based upon the seriousness of the activities or allegations

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that come to our attention. Otherwise, we will be at this much longer than anyone will want us to be. Neither I nor anyone else can determine at the outset all of the activities or areas that we will investigate. As matters arise, the committee will simply have to make those determinations.

It should be pointed out that these questions are not under the exclusive province of the majority. I have the greatest respect for **Senator** John Glenn, the ranking Democrat on the Governmental Affairs Committee. His many years of service in this body have demonstrated beyond question his integrity and his love of his country. We are working together with our staffs to ensure that all information is equally available to appropriate staff members and committee members. We hope that in all cases the work of the committee can be done by the staff in a cooperative fashion. Consensus should emerge on which issues are the most serious and those matters which will receive the greatest consideration. But if legitimate disagreement arises as to priorities, the majority will in no way limit the minority's rights to investigate any and all parties within the jurisdiction of the committee. Moreover, the minority will be given the opportunity to call witnesses in for public hearings if we cannot agree upon a joint witness list.

Although I believe these comments are sufficient to describe what the committee plans to examine, I expect to receive further inquiries. So I will outline the following as some specific areas we will consider, although this is obviously not an exclusive list:

A. Whether the Presidential campaigns, national political parties, or others engaged in any illegal or improper campaign activities, or whether illegal campaign contributions were made to such entities, in connection with or relevant to the 1996 Presidential campaign.

B. Whether, during the course of the 1996 Presidential campaign, executive branch employees maintained and observed legal barriers between fundraising and the official business of governing.

C. Whether Presidential campaigns remained appropriately independent from the political activities pursued for their benefit by outside individuals or groups.

D. Whether any U.S. policies or national security decisions were affected by, No. 1, contributions made to or for the benefit of the President or, No. 2, improper actions of any executive branch employee or former employee.

E. Whether our existing campaign finance laws, including laws governing the disclosure of contributions to entities established for the benefit of public officials, should be substantially revised and, if so, in what manner.

F. Whether, based on the results of this investigation, laws other than campaign finance laws, such as the laws regulating the conduct of Federal officials and employees, should be revised, and, if so, in what manner.

The committee does not intend to examine specific allegations of wrongdoing that Congress has already previously considered.

Now, a significant portion of our inquiry will necessarily focus on the executive branch. This is consistent with Congress' historical function and obligation to conduct oversight of the executive branch. It is a part of our system of checks and balances. It is, by its very nature, somewhat of an adversarial process. As Justice Jackson wrote, the Constitution ``enjoins upon its branches separateness but interdependence; autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.''

Each branch of government has its rightful prerogatives, Mr. President. And just as Congress must understand its prerogatives and responsibilities in this process, so must the executive branch. And clearly, part of the executive branch's proper role is to protect the rightful prerogatives of the President and the Presidency, but also to provide prompt, truthful information when Congress requires it when it is needed to fulfill Congress' responsibilities. It is important that the executive branch refrain from claiming privileges that are inappropriate or simply do not exist.

For example, executive privilege, though not specifically granted to the President in the Constitution, is an implied power that has been recognized by the courts over the years. Presidents are entitled to candid advice from their aides concerning important policy matters that would not be forthcoming if it were subject to exposure by Congress or anyone else. On the other hand, the privilege does not extend to wrongdoing and it does not extend to any and all information that may prove embarrassing to the President or others. Although it has not been court tested, **Senator** Sam Ervin, chairman of the Watergate Committee, always took the position that matters that were purely political were not covered by executive privilege when confronted with a legitimate congressional need. What the courts have held is that when it is based only on the broad claim of the public interest in confidentiality, executive privilege may be outweighed by other considerations. In other instances, claims of executive privilege are strongest when invoked in the areas of military, diplomatic, or sensitive national security secrets.

Presidents have handled the executive privilege issue with regard to congressional investigations in different ways. President Nixon fought his executive privilege claim all the way to the Supreme Court and lost. President Reagan during the Iran contra investigation waived all executive privilege and attorney client privilege claims that he may have had. Also, President Carter waived all privileges when the activities of his brother were investigated. As instructive examples of the cooperation of these two Presidents, they both allowed congressional examination of all documents, and President Reagan even provided his personal notes and diary entries.

The President and others have correctly pointed out that the American people are tired of petty partisan bickering and the meanness that sometimes seem to pollute the atmosphere in Washington, DC. While this

is undoubtedly accurate, I believe the American people also want us to stand for something, including the truth. That makes it our obligation to find it and lay it out. So the question becomes: Can we carry out our responsibilities and assist the American people in learning the truth about the strengths and weaknesses of the operation of their Government without engaging in mean spiritedness or partisan warfare? From time to time in our history, when the occasion required it, Members of this body have put partisanship aside, vocally criticized and even filed suit against an administration of their own party. Former **Senator** Howard Baker of Tennessee and former **Senator** Warren Rudman of New Hampshire come to mind. I have no doubt that my Democratic colleagues on the committee and in this body will do the same if the evidence calls for it. And I pledge my every effort to insure that their actions are not met with attempts to obtain partisan advantage.

But let us be frank at the outset. The extent to which we can have a thorough, bipartisan investigation without many of the recriminations we have seen in the past is going to depend in large part upon the attitude of those in the White House and the executive branch. The same can be said of the length of our inquiry. If one looks solely to the past, there is little reason to be optimistic. We have seen what appears to be a grudging release of information in drips and drabs and, seemingly, only when forced to. We have seen the broadest claims of executive and attorney client privilege in our history. We have seen all manner of delaying tactics which congressional oversight committees claimed were intended to avoid scrutiny by Congress, where noncooperation has been stretched past the cutoff dates of committee investigations or even sessions of Congress. Accusations have abounded that disclosure has been withheld until after the Presidential election to avoid scrutiny by the people. We understand the nature of that game and we will not play it. We will do whatever is necessary and proper to make sure that such actions are not rewarded, including the continuation of investigations and the institution of court proceedings when appropriate.

It doesn't have to be that way. I am still optimistic that it won't be that way. I think it possible that the President may have been overlawyered in

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the past; that while strategies may have been employed that were clever legal defense strategies, they were perhaps detrimental to the good of the country and even to the President himself. I am hoping for a new day. I am hoping the committee can establish its willingness to proceed in good faith. There is a new team in the White House, individuals with excellent reputations who commend respect. I am hoping that the new White House counsel will understand that his position is one of counsel to the office of the President. He is not the President's personal attorney.

And I cannot believe that the President does not want to get to the bottom of the serious allegations that have been made. In the first place, he took an oath of office to preserve, protect, and defend the Constitution, including his article II responsibility to take care that the laws are faithfully executed. The President has publicly acknowledged that some of the DNC's contributions were illegal. Since under the best of interpretations, these are matters that reflect upon him and his Presidency, he above all should want to see them cleared up, and I believe that he does. I would like to think that the President would be outraged at this turn of events and feel an obligation and responsibility to get to the bottom of the matter, including clearing the names of anyone who may have been unjustly accused.

Nor is it enough to simply call for campaign finance reform. I trust

that my position on this issue is well known. I cosponsored along with **Senator McCain** and Feingold, campaign finance reform legislation in 1995, my first year in the Senate. I was for campaign finance reform when campaign finance reform wasn't cool. I have long thought we simply spend too much time soliciting too much money from too many people who are interested in legislation that we consider. I'm not sure that the solution is and I am hopeful that part of what this investigation will do is examine our campaign finance system and seek out ways in which we can improve it. But those of us with responsibilities in this area, whether it be the President or Members of Congress, cannot let the call for reform serve to gloss over serious violations of existing laws. If we do that the reform debate will be cast in a totally partisan context and insure that, once again, campaign finance reform will be killed.

The question constantly arises as to when public hearings will begin. Interestingly, Democrats, Republicans, the White House, and the news media all are seemingly interested in having hearings as soon as possible--I would guess all for different reasons. I share that desire. However, the committee's obligation is not to do it early but to do it right. Certain things should be kept in mind by those who, on a daily basis, ask when hearings will begin. In the first place, establishing a hearing date, or even a target date when dealing with such a broad array of matters as listed above, would be nothing more than guesswork. The hearings should begin as soon as the matters have been properly investigated and not before. Time spent in proper investigation and preparation prevents disjointed hearings and saves time in the long run. This is not a matter of hauling a bunch of people whose names have been in the paper before the camera and hurling charge at them.

This committee as presently constituted and my chairmanship came about less than 3 weeks ago. We must rely extensively upon new staff that is just being hired and we do not have a full complement yet. Clearances must be obtained. Facilities must be set up. Documents must be gathered and carefully reviewed. A check of the history of other major committee investigations reveals that 3 or 4 months of investigation and preparation before the beginning of the hearing phase is the norm. That is not to say that it will take our committee that long. I am hopeful that it will not. But it will take whatever it takes. And as I have stated, the level of cooperation we receive from the White House and the rest of the executive branch is directly relevant. Most importantly, of course, one cannot tell in the beginning of an investigation what leads may be developed.

One final thought: Most of us did not come to Washington to tear down, but to build up. But, the Founding Fathers did not believe that the errors of government were self-correcting. They knew that only constant examination of our shortcomings, and learning from them, would enable representative government to survive for hundreds of years past their own time. They believed correctly that this process makes America stronger, not weaker. We are heirs to that legacy, and we will strive to be deserving of it, by taking this step toward restoring the public's confidence in the Government for which our forebears were willing to sacrifice everything.

Thank you, Mr. President.

The PRESIDING OFFICER. Under the previous order, the **Senator** from Ohio is recognized.

Mr. GLENN. Mr. President, I have listened very carefully to my friend, the senior **Senator** from Tennessee and the chairman of our committee, and heard him describe an investigation that he plans to conduct as chairman of the Governmental Affairs Committee. I welcome his comments.

As the ranking member of the committee and as someone who was chairman for some 8 years, this can be a most important hearing for our committee. Today I want to publicly pledge to him my best efforts to cooperate in establishing the bipartisan atmosphere that he called for and that I believe **Senator Thompson** genuinely wants to have as we go forward.

I am pleased that Chairman **Thompson** in his opening remarks mentioned

the importance of defining the scope of the investigation and its purpose. He also talked about principles that should be applied if the investigation is to be successful. I will refer back to these principles a little later in my remarks. But I think it was helpful that Chairman **Thompson** included a partial list of areas to be considered. There is no question that the issues raised in his list are among those that ought to be examined, and I support them. I agree with him fully when we talk about the informing function of Congress, but I agree with it more as a starting point than as an end to our investigation.

I think it becomes far more meaningful that instead of just limiting this to the 1996 Presidential campaign, we also use this informing function to recommend what can be done about the situation we are investigating. I think that is what the American people want.

So I think that a more meaningful, fair list must include additional questions about improper practices in national campaigns. In addition to looking at the problem of foreign contributions, which certainly should be looked at, the Governmental Affairs Committee must look, for example, at the problem of soft money used by unregistered organizations without disclosure and without limitation to influence elections, and the misuse of Government offices and staff for political purposes, and abuses of power in coercing campaign contributions, the misuse of charitable and other organizations and promises of special access to Government-elected officials. The Governmental Affairs Committee should look into these types of practices whether examples are found in connection with the executive or the legislative branch.

My point, Mr. President, is this: There is no end to the questions that might be asked about improper or illegal fundraising and spending in political campaigns. So we need to establish objectives for the investigation without making the inquiry too narrow and thereby risk at least a perceived partisan approach. Defining the committee's objectives will help determine the scope of the investigation, but, most of all, the committee's scope should be determined by the committee's purpose in these investigations. Any major Senate investigation --and this will be one--ought to have a clear purpose.

To make an analogy, I recall many of my colleagues asking on this Senate floor not too long ago when we were considering United States entry into Bosnia, what is the exit strategy? Demands were made for an exit strategy before there would be a vote.

That was a reasonable question then, and I think it is a reasonable question in regard to this inquiry. In each context, the exit strategy is inseparably linked to purpose. What is the purpose of this investigation? Or perhaps the better question to ask now is, what should be the purpose of this investigation?

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The chairman has stated he intends this exercise to inform the public. That is one of our purposes as an oversight and investigatory committee, so I support that fully and completely. I do not think it is enough that we view our purpose as informational only. We need to take the next step. We need to correct the problems with our campaign system. That is what the American public wants. I think that is what we want on both sides of the aisle. That is what both political parties have said they want. It means that to correct the problems, we are going to have to investigate then wherever those problems may be, not just on a narrowly defined limit of the last election.

All the questions posed by my distinguished colleague in his remarks point to campaign finance practices that may be illegal or, if not, in my view ought to be illegal. I happen to think that the reform of campaign finance laws should be our daily objective in this Congress. However, I am convinced that the fight over passing real campaign finance reform will not be won until the pressure from the American people becomes overwhelming, and I think these hearings and this

investigation can make that interest overwhelming. That is the reason I think we should go the next step.

This investigation, if done right--and I am convinced it will be--could be the vehicle to create that pressure. But it will not happen if this investigation somehow turns into partisan pointing and bickering back and forth, and I do not think it will happen if the inquiry drags on into next year, an election year, when changing the campaign finance laws will be virtually impossible.

If we do not use this unique opportunity to reach real reform, the American people will have a tendency to say a pox on both our houses, and I think they will probably be right.

So I say to Chairman **Thompson** and my Republican colleagues, let us not only inform but let us take that next step of enactment of campaign finance reform this year as our goal and as a major purpose of this investigation. Inform, certainly, but take the next step as well.

Let us examine the most important and egregious set of political fundraising and spending practices--not just pointing at one spot but let us look at the practice. Let us write a report this year that tells the American people really how badly this system has been operating and how it should be fixed. And Heaven knows, we are experts on it because we deal with this system every day and every time we have to run for reelection. And then let us go out and fix it before the year is over.

Is there misuse, for instance, of nonprofits and tax exempts? There is misuse of foreign funds; we know that. What are the major misuses of soft money? What are the misuses of Government itself? And wherever we need to go to get information that helps us correct those problems and others is where we should go.

These, Mr. President, are my thoughts about purposes and scope and duration of this investigation. So I think we need to devote the next few weeks to an effort hopefully integrating Chairman **Thompson's** vision of this investigation with what I have suggested here today, that we go beyond just the informational role and try and make some suggestions to fix the system.

Then we need to come back to the Senate--together perhaps--and present our plan for approval by the full body because the Senate will be very much involved with this whole effort. This inquiry presents us with an opportunity to accomplish something together. We have had people on both sides of the aisle this year in positions of leadership and regular membership talk about how we must work together this year. We have come off a couple of bruising years here in the Congress of the United States, so I view this inquiry as an opportunity, truly an opportunity as Democrats and Republicans that will be worthwhile and lasting for the American people.

As I indicated earlier in my remarks, I wish to address the issue of principles in the conduct of this investigation. The **Senator** from Tennessee made some very constructive remarks in his presentation regarding the role of the minority and the relationship of majority to minority in the conduct of this investigation, and I thank him for that and I wish to elaborate on them just a little bit.

First, to assure that the committee's investigation is fair, bipartisan, and legislatively productive, I think it is vital the Senate define the scope and procedures and duration of the investigation in the omnibus committee funding resolution.

Now, a definition of scope and duration will enable the Senate in providing funds for the investigation to establish what it is authorizing, the subjects about which it wishes to learn from the committee, and when it wishes the committee to report. There should also be a specification of even-handed procedural ground rules for the investigation.

For example, the majority and minority should have contemporaneous access to all documentary evidence received by the committee. The majority and minority should have the right to be present at and participate equally in all depositions and investigatory interviews. And the majority and minority should have equal opportunity to obtain

and present relevant testimonial and documentary evidence on the subjects of the committee's inquiry.

These are just safeguards for a fair and bipartisan inquiry which is in keeping with contemporary Senate practice. This is the way the last several Senate investigations have been done, and Senate practice from investigations of this kind dictate that it should be expressly spelled out before the actual investigating begins so we do not get into an unpleasant disagreement in the middle of the hearings.

Also, the minority should have sufficient personnel and resources to enable it to take part fully in acquiring and analyzing evidence. That may be a problem because ordinarily the committee split on resources here in the Senate is one-third/two-thirds. I do not anticipate that is going to change in this investigation. But it means on the minority side, that to have an even prospect of having an even ability to look at areas we might want to explore, we are at a disadvantage going in.

So it is obvious that many issues will have to be negotiated in order to reduce the risk that the Governmental Affairs investigation degenerates into a partisan finger pointing exercise. I certainly do not want to see that happen.

All of us in the Senate, and in particular all of us on the committee, have a grave responsibility. That responsibility is to ensure that this investigation moves forward in a constructive and bipartisan manner. I look forward to mutual respect among all participants. Most of all, we need to enter into this with the interests of the American people uppermost in our minds, rather than any partisan political advantage. And that means looking in all directions, wherever we find any information that may direct us to what I see as the secondary objective of our hearings, and that is not only to inform but to recommend ways to correct these problems so we do not go on into the next election with some of the same abuses taking place all over the country that occurred in this last election.

My distinguished chairman has said this is his aim. I certainly take him at his word. He is a man of his word. I know that. We want to work together on this. So I hope we can come quickly to an agreement on scope, on time, on process, on cost of the investigation, and place that agreement in the funding resolution for the Governmental Affairs Committee.

This can be a most important activity we are about to embark on here. From all appearances it is going to be fairly long and arduous, and I think it is important we set these kinds of rules before we get going; not important just for us on a personal basis here, but it is important that somebody work this out for the American people. That is what this committee has the opportunity to do.

I yield the floor. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER [Mr. Brownback]. Without objection, it is so ordered.