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TO: (See Below)

FROM: Jennifer Senan
Office of Communications

SUBJECT: PBS FUTURE CONGRESS DEBATE 9-29-96

TRANSCRIPT
PBS HOSTS THE DEMOCRACY PROJECT DEBATE ON THE FUTURE CONGRESS
SEPTEMBER 29, 1996

SPEAKERS LIST: JIM LEHRER, MODERATOR
U.S. SENATOR TRENT LOTT (R-MS)
SENATOR MAJORITY LEADER
U.S. SENATOR THOMAS DASCHLE (D-SD)
SENATE MINORITY LEADER
U.S. REPRESENTATIVE NEWT GINGRICH (R-GA)
SPEAKER OF THE HOUSE
U.S. REPRESENTATIVE RICHARD GEPHARDT (D-MO)
HOUSE MINORITY LEADER

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LEHRER: Good evening. I'm Jim Lehrer. Welcome to the House of Burgesses in Colonial Williamsburg and to a debate between the

Republican and the Democratic leaders of Congress. There are many national elections coming on November 5 -- one for president and vice president of the United States; the others for the 435 seats in the House of Representatives and 34 of the 100 in the United States Senate.

The outcome of those will decide which party controls Congress -- whether the Republicans remain in charge of the House under Speaker Newt Gingrich of Georgia and the Senate under Majority Leader Trent Lott of Mississippi; or the Democrats take over, led by the current House Minority Leader Richard Gephardt of Missouri and the Senate Minority Leader Tom Daschle of South Dakota.

Over the next hour, these four leaders will make their respective cases for control of Congress. We'll start and end with an overview question to each side, but the rest of the hour will be divided into four main topics, each introduced by a resolution supported by one side, rebutted by the other.

These formal statements and rebuttals will be 90 seconds long.

A series of lights will alert the participants as they reach the limits. I will assist them in watching those lights.

After the formal statements and rebuttals, we'll have a free-flowing less structured question and answer dialogue in each of the four subject areas.

We start now with our opening question. It is addressed in accordance with a coin toss that established the order for this entire evening. It goes to the Republicans, and the question is this: Why should Congress remain Republican?

LOTT: Well, first, Jim, I want to thank you and PBS and your station affiliates all across America for giving us this opportunity. It truly is historic.
LOTT: I understand this is the first time the leaders of Congress have gotten together like this. And it's an honor for us to be here on this occasion, on this historic...

(AUDIO GAP)

Even the bipartisanship we saw this very week in the Congress sets the stage for us having a good discussion tonight about the solutions for our country.

Two years ago the American people said enough of too much wasteful Washington spending, enough of too much taxation out of Washington, enough with too many regulations affecting their lives and we heard that message and we went to work.

We have delivered for the American people. We have given them genuine welfare reform that requires work that ends the endless games of cash payments. We had common-sense health insurance reform that's going to work for the American people. We're going to have illegal immigration reform and we began by reforming ourselves.

In short, we have delivered for the American people. We will continue to do that. There is more to do, but next year with the new majority being Republican, we will continue what we have started.

LEHRER: Democrats, why not a Republican Congress to continue?

GEPHARDT: Jim, I wish we'd had this debate two years ago, because I think two years ago the American people voted for change, but I don't think they got the change that they were looking for. We always have to ask the question, who do we stand and who do we fight for?

And I think the Republicans really answered that question over the last two years. It tried to cut Medicare to pay for tax cuts for the wealthiest Americans. They tried to cut school lunch and student loans. They tried to roll back 30 years of progress on clean air and clean water to help special interests.
They even tried to raise taxes on working Americans.

The question that we asked as we went around the country and listened to people was what are your everyday problems? What do you really face?

And that brought us to our agenda. We call it Families First. It is things like tax breaks for health care and education; making pensions portable, expanding individual retirement accounts; trying to put 25,000 more police on the streets.

GEPHARDT: And balancing the budget consistent with all those other actions.

The choice in this election in '96 is very clear. Do you want even bigger Medicare cuts to pay for tax cuts for the wealthiest Americans -- the Dole tax plan? Or do you want a solve the practical, every day problems that people in this country face -- Families First?

LEHRER: All right. Let's go now to our first topic, the economy. Borrowing the debate language and procedures, appropriate to our 18th century setting here, the question is posed in the form of a resolution.

Be it resolved that the Republican Party in Congress can best meet the challenges facing the nation's economy.

GINGRICH: Jim, let me say first of all, I'm delighted to be here. And as a history teacher, I want to commend you for picking this site where Patrick Henry, George Washington, Tom Jefferson -- so many historic figures worked.

I also want to congratulate you for becoming America's debate master. I understand today that you're now going to also be, after practicing on us, you're going to do all the others.

LEHRER: This is it.

GINGRICH: So the country will get very used to being the moderator.

I think I want to start with what my good friend, Dick Gephardt just said to clarify something because it's at the heart of this debate.

We were told -- and this relates direct to the economy, but also to solving our problems -- we were told last year that Medicare is going to go broke. That was a Clinton Trustee's Report. We're told this year it's going broke faster. It's losing $22 million a day, now. Next year it will lose $36 million a day. The year after it will lose $60 million.

This is Medicare, which my 81 year old mother-in-law's on; my mom and dad and their 70s are on.

GINGRICH: We attempted to save Medicare with a plan which went from $4,800 a year up to $7,100 a year per senior citizen per year -- a big increase.

My only point is this. To solve our economic problems, we have to have a candid, factual conversation; to deal with tax cuts versus tax increases, whether you have money in your family budget or you have money in Washington; to learn how to cut out wasteful Washington spending without doing damage; and frankly, to reform education and win the war on drugs so that our young people can compete with Germany and Japan and China in the world market.

These are the core kind of dialogue we need so we can focus on solutions for our economy and the country.

LEHRER: The Democratic rebuttal?

DASCHLE: Jim, let me also add my congratulations. It's a remarkable tribute to you and to your fairness and to the expertise that you bring to debates. And we're delighted that you will be moderating. And thank you for inviting us tonight.

Every presidential election year, I think the American people generally ask, are we better off? And this year I think the answer is yes! -- with an exclamation point.

Just last week the Census Bureau reported that household income had increased by almost $1,000. That's the biggest single increase we've seen in over a decade.

We have created 11 million new jobs, 3 million new small businesses. We've reduced the deficit now four years in a row -- 60 percent below what it was in 1992. That's the biggest deficit reduction and the most consistent deficit reduction we've seen since before the Civil War.

The stock market up. Inflation is down. Even Bob Dole last February said this is the best economy we've seen in about 30 years.

Unfortunately, our Republican colleagues have fought most of our efforts to get to this point, and now they want to go back to the deja voodoo economics of the early 1980s.

Newt has talked about Medicare. And the fact is that they are proposing tax cuts which will be paid for by deep cuts in Medicare, the environment and education.

As Dick said, we need Families First. We're making progress. We can do a lot more, but we've got to do the kinds of things that affect the American working family, and the Families First agenda will allow us to do that.

LEHRER: All right. To the dialogue on the subject of the economy, a question from the Republicans to the Democrats, and let's go.

LOTT: Well, as a matter of fact, I might say to my colleagues on the other side of the aisle, don't they remember that in the 103rd Congress -- the one before this one -- as a matter of fact the only thing's that really memorable was an effort to take over health care by the government, not a common-sense approach like we passed this year. And as a matter of fact, the most memorable thing was a tremendous tax increase.

I think that to get the economy going, to get people into jobs, to create more jobs, to help families in Pascagoula, Mississippi, or in South Dakota, they need tax relief.

LOTT: My young son is in business now. And he called me and said, Dad, I just figured it out. Fifty percent of what I'm making is being taken in taxes.

When you drink a cup of coffee you pay taxes. When you drive to work you pay gasoline tax. When you work you pay income tax and when you die you pay an estate tax.

Republicans have tried to give relief in that area. In fact, we did it. President Clinton vetoed it.

So the first thing we would do next year is give the American people genuine tax relief, because we think it will create jobs. It'll help families and communities in America, instead of keeping that money in Washington.

Why do you want to have all this money in Washington and decisions made out of Washington? Why shouldn't it be made in South Dakota and Missouri?

GEPHARDT: Trent, I think the big difference on taxes between our parties is who we want to cut taxes for.

We believe the tax cuts should be focused on middle income Americans and people trying to get in the middle class and we don't think we ought to shower a $20,000 a year tax cut on people earning over $200,000 a year. That's why the Medicare cuts had to be as large as they were.

One further thing. Why did you try to raise taxes on working families in your budget?

I mean, I agree with you, we need tax cuts. The question -- the difference between our parties is who you want to cut taxes for. We want to do it for the middle class. You want to do it for people at the top.

GINGRICH: Dick, let me take the two different assertions a minute. First of all, as you know, for working families there was no tax increase.

There were changes for single people without children on the earned income credit, which is a government check to people. It's not a tax cut. It's a government check to people. But for families, there were not tax increases at all of any kind.

But second, let's take the Dole-Kemp tax plan. For a family of four at $20,000 a year the Dole-Kemp tax cut is $1,261 a year. That's $105 a month more in take home pay; $24.25 a week.

Now, if you go to any grocery store in America and you stand out there and ask a young couple with two kids who's earing $30,000 a year, is $1,261 a big increase in your spendable take home pay? I think they're going to say yes.

Part of the difference here is that we believe -- you know, when the Democrats raised taxes in 1993, nobody went out and asked the American people can you afford it? Can you afford to pay more gasoline tax to drive to work? Can you afford to pay more on Social Security if you're only earning $23,000 a year as a senior citizen, in terms of your Social Security?

We've looked at it. We've listened to the American people. We believe that working families deserve a break -- that in fact, marginal taxes for families is too high.

GINGRICH: And that's why we would give a family of $30,000 -- hardly the rich, a family of $30,000 -- a 74 percent reduction if they have two kids. A 74 percent reduction in what they're paying in taxes.

DASCHLE: Newt, you can explain it any way you want to, but the fact is that working families under your proposals would have seen increases in taxes. Regardless of how you explain away that fact, they will see increases in taxes.

And I guess the big concern we've always had with regard to the huge tax breaks that you're proposing is first who they go to, and secondly how they're paid for.

Back in the 1980s, and again in the last couple of years, you proposed a huge tax break for the wealthiest people in this country, largely to be paid for with deep cuts in Medicare, in Medicaid, in education and the environment.

So, I think that's really the fundamental question. If you want to provide tax breaks to that selected group of people, isn't there a way to make them more fair? And how are you going to pay from them without deeply effecting the programs that we've invested in, in people's health and security now, for 30 years?

LOTT: You know, Jim, they just don't get it. They think by taking money away from people -- and that's where growth and progress is really made -- and bringing it to Washington, you get more out of it, by bringing it to Washington.

As a matter of fact, I want tax relief for everybody. You all want to pick winners and losers.

But when you talk about a 15 percent across-the-board tax cut, that's for everybody. When you talk about tax credit for families with children, that really helps people. Five-hundred dollars for every child, that really makes a difference.

But beyond that, what about the IRAs -- the individual retirement accounts -- for spouses? We did that this year. We think that our families, wives working in home, they should have IRAs. And we did that.

And I also liked the education scholarship IRA that Bob Dole has advocating. Allow people to save themselves for education of their children, rather than bringing that money to Washington in taxes, and then sending it back through some program that quite often eats up all the money.

GEPHARDT: Well, again, I think we can agree on tax cuts. What I'd like to ask is...

LOTT: We can agree on tax cuts?

GEPHARDT: Yes. I think we can.

LOTT: We've got something here, Jim. I hear you.

GEPHARDT: Whatever amount we can agree on in tax cuts, why don't we focus it at the people who really need it -- people who are earning $30,000 a year, having trouble paying their bills, having trouble paying for education?

They're the folks that need the tax cuts. So, let's focus it at them, and not spend. In the Dole tax plan, about 45 percent of the funds go to people who earn over $100,000 a year. They don't need a big tax cut.

The people who are earning $50 and $30 and $20 thousand a year, they're the -- and again, you tried to raise taxes on people earning $20,000 a year.

GINGRICH: But let me just ask -- I'm fascinated, partly -- but and I think this is a great format. The four of us can chat in a positive way.

You know we had two tax increases in a row from Democratic Congresses -- the tax increase of 1990 and the tax increase of 1993. We raised taxes on all sort of Americans. Gasoline taxes went up. That's not taxes on the rich. Taxes went up on senior citizens. That wasn't tax increase on the rich.

Now, you have a plan that says a family of $30,000 ought to be able to have $1,261 more a year.

GINGRICH: Your -- part of your answer is, well, we do terrible things to Medicare. And I just want to say this is one of the things that's made me saddest the last two years.

Medicare is going broke. It's losing $22 million a day. It's going to lose $36 million a day next year, and $60 million a day the year after. The money we saved in Medicare went into the Trust Fund Part A to keep it solvent to 2012; Part B to keep it solvent so people who've got health -- as I said, my mother-in-law is 81. She's on Medicare.

You both know under our plan Medicare goes from $4,800 a year per senior citizen up to $7,100 a year. Now it seems to me we can have an honest dialogue about how to save Medicare without scaring people with words like a cut to describe an increase. And then we can talk about how do we cut taxes.

But that's -- you can't have that dialogue otherwise.

DASCHLE: Can I answer that real quickly?

LEHRER: You can. No. I just wanted to say that as we speak now, the Democrats are two minutes under the Republicans, so have at it.

(LAUGHTER)

DASCHLE: We've got a real chance.

LOTT: Just give them half of that.

LEHRER: All right. OK. Have at it, in other words, Senator.

DASCHLE: Let me just sit back and do some of this.

I think it's a very significant burden for senior citizens when the premiums are going to go up $1,000. It's a very significant burden when seniors are going to be denied the opportunity to get breast cancer checks through mammograms.

It's a senior -- it's a problem for seniors, Newt, when you have to tell them that you're going to be limited in your choice of doctors. You can't do that.

It's a real problem for seniors if their purchasing power is limited, if the same dollars are not going to buy the same kind of health services in the future.

So it's really that. I mean, obviously there has been a big debate over the last two years over what is a cut. It's a cut if you can't buy the same amount of health care. It's a cut if your premiums go up. It's a cut if you have serious problems with access to very fundamental checks in care that affect breast cancer and other things.

So that's really the issue. That's number one. But it goes back to the other problem that we still have never been able to figure out is how you all find a way to pay for these big cuts, regardless of who they go for, if you don't cut Medicare and Medicaid.

There is no other bank out there to pay for the cuts that you want for those people who don't need them.

LOTT: Jim, the way you do it is called ''will'' -- the determination to do it. I think the American people know full well there's all kind of wasteful spending in Washington. But what you really do is control the rate of growth.

The best example on the Medicare question there. When Mrs. Clinton came to Congress and in a very intelligent statement said that we could allow Medicare to grow 6 percent, that was called a 6 percent increase.

When the Republicans said we're going to allow a 7 percent increase, that was called by the president a cut.

I don't understand the difference.

DASCHLE: Well...

LOTT: We can work this problem out if we will -- if we will get together and stop trying to, you know, position ourselves on something as important as Medicare.

My mother's 83 years of age. She depends on Social Security and Medicare. She's watching this program. And I'm here to assure her that we're not only going to make sure she gets it, we want to preserve it and protect it and improve it for the future, for my daughter.

GEPHARDT: Trent, you can call it anything you want to call it. But when you double the premium and double co-pays and take away choice, those are serious consequences for any senior in this country.

Further than that, if we're going to deal with the Medicare problem, we've got to deal with it for Medicare trust fund, and not in the context of a budget where we've got a tax cut giving a $20,000 tax cut to people earning over $200,000 a year. The American people should not and will not accept that.

LEHRER: All right. Having resolved that we're now going to move on to our second topic. And again, it comes in the form of a resolution.

Be it resolved that the Democratic Party in Congress can best protect the quality of life values important to all Americans.

Democrats?

GERHARDT: Well, Jim, I often go door to door in my district and the other day I met a woman at the door. She was a single mother of two children. She had two jobs. She was working 16 hours a day, both near minimum wage.

She said I still can't pay my bills, but she said that's not my great concern. She said my concern is I'm never at home to deal with my children. She said I'm even worried that they will commit crimes.

Now, I think that what the Republicans have tried to do over the last two years has not helped her situation. In fact, in some ways I think it's made it worse.

First, they opposed the Family and Medical Leave Law which would have allowed her to be at home with those children if they were sick.

They tried to cut out the funding for this network which we're having this debate on tonight so they wouldn't have had Big Bird to watch.

Thirdly, they tried to cut back on school lunches for elementary kids and high school kids.

And then if she wanted to send the kids to college, they were cutting back on student loans.

So I don't think they helped that person.

In contrast, our Families First agenda would help her. It would give her extra tax credits for child care. It would try to get an after school program in every school in this country so kids would have a place to go after school. It would give them tax cuts for health care and for education.

We've got to deal with people's practical everyday problems and Families First does that.

LEHRER: Republican rebuttal.

LOTT: What we're talking about there really in this area of quality in life is opportunity and security. Opportunity to be able to keep more of your own money so that you can look after your own family and help in your own community. And also the right to be secure in your own community.

Crime and drugs are a problem in America. They're a scourge. And when I go to my own state or when I go to other states for my friends in the Senate, people, they come up to me. They're alarmed. They're scared.

When they realize what's happening with our children, with drugs, teenagers that are not just using the marijuana, but the hard stuff and the tremendous increase, they say look, I don't understand. The government has taken my money in taxes, taken it to Washington. I have the feeling it's being wasted. And I don't see real help coming to me for me and my family and my community and my town in terms of fighting drugs and fighting crime.

Now, we have worked on that in the Congress. We passed a half a dozen bills this past two years that really will help some of that -- Megan's Law, which will help deal with the sexual offenders against young children; the stalkings law.

LOTT: Right now we're trying to get a child pornography bill off the Internet; try to get it through the Senate. It was objected to when I tried to do it just yesterday.

And one other thing. Education. We need quality education. But it should be controlled by the parents, the teachers and the children at the local level.

The question on education is not so much how much, but how well. What are we doing to help our children learn more and be smarter. And we need to have that emphasis and that flexibility and that control with the parents and the teachers at the local level.

LEHRER: Democrats, start the dialogue.

DASCHLE: Well, Jim I agree with some of what Trent said. I think it is a question of how much and how well. Obviously, this year we're seeing a tremendous amount of increase in enrollment across the country in schools, in colleges in every state.

Obviously, this year, given that dramatic increase in enrollment, whether or not we provide a good education is dependent in part on how well-funded the programs are.

Now, you have proposed deep cuts, the biggest cuts in the history of our country, with regard to student loans and student grants, Head Start, school lunch, safe and drug-free schools, math and reading, and advocated the abolition of the Department of Education.

Now, I believe that's and extreme proposal. I think that, in light of the fact that we've seen the dramatic increase in enrollment, is something you just can't justify.

Let me ask you this. Would you support next year, adequate funding and all of those programs and renounce your support for the abolition of the Department of Education?

GINGRICH: You know, sometimes I wonder exactly which problem, Tom, you're referring to. First, in the case of Head Start, we increased it every year. My oldest daughter, Cathy (ph), went to Head Start when it was first created when I was graduate student in New Orleans. I'm very familiar with it.

I'm a teacher by background. And I come out of a background where both my daughters went to public school. I went to public school. But I'm very frightened by what I see happening.

I think, first of all, we spend far too much money on bureaucracy and not enough on teachers. Take Washington, D.C. We spent over $9,000 a student in Washington, and the student-teacher ratio is such that if just half that money went to teachers, teachers would make $90,000 a year.

But we have layer after layer of bureaucracy. There's a National Science Foundation fellowship they withdrew from the schools because they didn't take the money and give it to teachers, they hired a $31,000 a year chauffeur for the school board member.

Now, I don't think American public thinks pouring more money in the tub (ph) -- sort of trickle-down bureaucracy. We pour enough money up here in the bureaucrat eats it and the bureaucrat eats and the bureaucrat eats it and the bureaucrat eats. Finally, down here is a teacher a student and a parent and they get a tiny amount.

I would love to work with you in a program to clean up most of the bureaucracies, get the money to the teacher to the parent, to the student, and actually be spending at the local level.

And you see this in New York where Mayor Giuliani is trying to work with the Catholic schools that have a great record of helping kids to actually raise the scholarship money so the poorest children can go to a safe, drug-free school in a neighborhood with a good educational experience.

Those are the kind of child focus things that will make the difference.

GEPHARDT: Well, let me say that I think we ought to be looking for how to get the programs that Tom mentioned to be better funded. Because I think they do get the money to the teachers and the parents and to the students.

Safe and drug-free schools. Every time I've seen it in the schools in my district, it works. It helps kids stay off drugs. It gives them the information they need.

Head Start is accepted in every state in this country. I've never heard anybody say that Head Start wasn't a great program. School lunch is needed by parents who just can't make ends meet, and it helps kids learn.

And student loan is, to me, the best program we've ever had in the government. We had the head of the Young Republicans from Georgetown come to one of our rallies for the student loan program when you had that cut in your budget.

So I think what the federal government has been doing that has worked, we ought to continue and even further fund. And if we can find ways to get the money better to the teachers and to the students, we ought to do that.

DASCHLE: Could I just...

LOTT: I've got to -- if I could?

DASCHLE: Yes.

LOTT: I agree that we should have more funding for education, and as a matter of fact, we are doing it. We have been increasing it each year for the last four years. Last night, the House just voted 370 to 37 for a bill that included significant increases for education.

And you're talking about student loan programs. When I finished college I worked for two years for the University of Mississippi in the placement and financial aids office.

I think every student in America that finishes high school should be able to go forward and get training or an education. Maybe it's vocational education, maybe it's a community college, but every one of them should be told there will be a grant, a loan, or a scholarship, a work study program for you.

I support funding those programs. And in fact, why wait until next year? We're doing it this year.

DASCHLE; Well, but Trent, you know what? I think that's -- I must say I think, in part, that's an election year conversion. I mean, you go back...

LOTT: But did we do it or not?

DASCHLE: Well, you went back just because you finally agreed with the administration, with the Democrats, on what the funding levels ought to be for the next year. My concern is what you're going to do the next year, and I must say you got to go back to the Republican budget.

I don't think anyone would argue with the fact -- CBO and OMB both agree that these are the deepest cuts that have ever been made in educational programs, the deepest cuts.

Now, I know I've heard Newt tonight say that this is just a lot of bureaucracy. Well, you tell a student who can't get a loan that it's just bureaucracy. Tell a Head Start kid that can't get into the program that it's just bureaucracy.

Go up to a principal or superintendent whose walls are caving in and his roof leaks and they can't get the kind of money it takes to build the infrastructure for a good school that it's just bureaucracy. We've got serious funding problems in education across the board.

South Dakotans - a lot of kids in my state today are not able to go to college because they can't get a loan or a grant.

GINGRICH: But in a sense, Tom, you're making our point. The city of Washington spends over $9,000 per student, and we had to pass emergency money this week to keep the boilers from blowing up because the bureaucracy is so bad.

It is so inefficient. It is so incompetent that at $9,000 a student, it's failing. And it's failing to educate the children.

And you mentioned the drug-free school program.

GINGRICH: They had an application from a school in Texas that took over $1,000 to fill out, and they gave them a $13 grant.

Now, this is ridiculous. They got a $13 grant they used to pay for the bus parking at a museum. It took them over $1,000 to apply for it.

We're just saying if that money had gone to teachers' salaries -- if every teacher in America got half the money being spent per child in her school district or his school district, you'd have better teachers, less bureaucracy and better education.

LEHRER: Last word?

GEPHARDT: Maybe we can make some progress. I've had a program I've called A Reward for Results. And it says to the local school -- it goes right down to the building and says you've produced so many kids that can pass the test, whether it's the Motorola Test or the GE Test, this year. For every one more you produce next year, we'll pay you a bonus.

GINGRICH: That's a great idea.

GEPHARDT: It can go wherever you want it to go. You get us the result, we'll help you.

LOTT: How about the Bob Dole proposal for the tax credit scholarship which would allow you to deduct the savings of $500 a year over a child's lifetime?

When they get ready to go to college it'd be $30,000. How about that?

DASCHLE: Well, better yet, what about taking what the president's proposed, which is to extend for two more years what most people need for a good education. Let's go from 12 to 14 years and give every student the ability to go to college for those two years.

I think that's a great idea. I think we all ought to have a mindset that now it's going to be 14 years. In an information age we need that kind of an education.

GEPHARDT: I think it's a good idea if you also make sure they actually are learning. That it's not just paper, it's not just rubber stamps, it's not just social promotion, but there are real standards with real discipline doing real home work.

DASCHLE: Well, we require a B average, of course.

LOTT: As I said earlier, it's not just how much, but how well. Very important.

DASCHLE: They have to have a B average to be eligible. But I think it's a great idea and we ought to have a bipartisan agreement on that.

GINGRICH: Georgia actually does that for the first year of college now.

LEHRER: All right. Let's go now to topic three: international affairs. A reminder that the order for everything we're doing here tonight except in the dialogues themselves was determined by a coin toss.

This resolution is -- Resolved, the Republican Party in Congress can best protect and preserve America's military, political and economic position in the world.

GINGRICH: Well, let me just say, Jim, I think first of all this is where it gets really dangerous. The difference in international relations between rhetoric and reality is very great.

I think our first priority in the short run frankly should be to stop drugs coming into the United States; to help our allies defeat the drug cartels in Latin America. And I think frankly that Bob Dole's right to say we ought to use the National Guard if necessary to help build the fences to do the things necessary to stop the flow of drugs, because the biggest foreign danger to America right now is drugs.

Drug use has doubled in the last four years -- doubled among teenagers. And I think it is a real threat to America's future if we become a drug addicted society.

Second, I think this conference that'll take place this week in Washington is an example of why rhetoric and reality are so important to be examined in foreign policy.

The fact is that talk about peace isn't good enough. If you look at the talks starting in Oslo for peace in the Middle East, more than twice as many Israelis have died since the Oslo talks in 30 months than died in the preceding 30 months.

GINGRICH: And when we deal with the world, we have to focus on being strong enough. We have to focus on the reality of what's happening. We have to, I think, focus on Syria and Iran and terrorism. And we have to be prepared to say that we're going to defend our young men and women, give them the best equipment, the best opportunities, the necessary resources.

Finally, I think we need a national missile defense -- a thin-screen defense to stop countries like Iran, North Korea from being able to threaten the United States. And I think if we don't build that, sometime early in the next century we're going to face a real threat to America.

LEHRER: Democratic rebuttal.

DASCHLE: Jim, I think the post-Cold War period has provided us with tremendous new opportunities -- economically, politically. But obviously it's also presented us with some tremendous challenges -- nuclear proliferation, chemical warfare, the regional conflicts we've seen all over the world today.

I must say I think the administration deserves a tremendous amount of credit for the leadership that it's shown in places around the world -- Northern Ireland, Russia, Bosnia; now with the dramatic announcement just this morning that the president is going to invite every one of the Middle Eastern leaders to come to Washington to begin working out their differences, to try to find a way with which to resolve the impasse that we see right now.

I'm not sure I know what Newt was talking about when he said we are seeing more deaths of Israelis. What's the alternative? Is it more confrontation?

Obviously, this president has had a tremendous amount to do with the kind of peace progress we've made there. But in Haiti and in North Korea and Asia, we need to do a lot more.

I'm disappointed, frankly, that it isn't more bipartisan. We had an opportunity to pass a terrorism bill this year, and unfortunately because Republicans disagreed with providing tracers in gun powder to make bombs, we didn't get that done.

I'm really disappointed we didn't pass the chemical weapons treaty. Sixty-two countries support it. We didn't get that passed, and I believe that if we're ever going to stop chemical warfare, we've got to pass that treaty.

We need more leadership, but we need more statesmanship and a lot less partisanship.

LEHRER: Dialogue or question?

LOTT: One of the most important reasons I think the American people will re-elect a Republican majority is this area. They have more confidence in us when it comes to national security of our country and defense posture.

As a matter of fact, President Clinton vetoed the defense bill in 1995. Just two nights ago, when we were negotiating on this bipartisan compromise, the White House was saying, well, can't you give us just a little bit more out of the defense of our country, out of the defense budget?

Now, I really worry about proposals to put U.S. troops under UN command. I really worry about international social engineering, and what we have seen happen without a clear policy in Somalia and Haiti, what is going to be the situation in Bosnia.

Already it appears evident to me that the president is probably not going to pull our troops out of Bosnia on December like he indicated that he would. Now, I hope he will. But I'm very nervous about it.

As far as anti-terrorism, we certainly agree on that. In fact, we have tremendous funding in the bill that we are working on improving right now for increased funding for anti-terrorism. That is a bipartisan area.

But just one other thing. We passed a strong anti-terrorism bill just last year. Aside from the funding, we passed authorization.

LEHRER: Democrats?

GEPHARDT: Well, I think there are three goals in a post-Cold War world that we've got to look toward. And one is to get freedom in every place in this world that it can possibly be achieved.

The second is to have prosperity in other nations. And that usually comes with freedom, eventually.

And finally, security, first obviously for America, but for the whole world.

I think this administration has done a very good job of dealing with a very complicated world and lots of tough situations. Haiti, has I think, been a success story. I think what they've done in Bosnia has worked, it may not work forever, but it sure has made things better. People aren't dying in Bosnia tonight.

And third -- and Newt, you and I have worked on this -- we've had a good bipartisan policy with regard to Russia -- probably the most important relationship because they have nuclear weapons and we do.

And I want to say again what Tom has written about and said, and I think you both believe. And that is that partisanship really should stop at the water's edge.

We can disagree about the policies, but if we can possibly find a way to agree, especially in a complicated world where you have such strong goals, it will really do our country proud. And I hope we can work together on that.

LOTT: And I think you will admit that when you've been in control of the Congress and when we've been in control of Congress with presidents of the other party, we tried hard to do that. And for the most part, when it's involved trade and foreign policy, we have done it.

Tom and I have worked together on that.

DASCHLE: I agree with you. The only problem -- and I have to give you credit for trying to work through this. But we had a lot of Republican opposition to the chemical weapons treaty this year. And as a result of that opposition, we weren't able to get it done.

That was something that I feel is really one of our serious -- most serious challenges. We are facing...

LOTT: Sure.

DASCHLE: ... chemical proliferation, and unless we get that treaty enacted and...

LOTT: Well, since...

DASCHLE: ... signed, you've got 62 countries. Every chemical company in the world has endorsed it. They want us to pass it because we've got to stop chemical warfare from continuing and spreading. This is going to give us that opportunity.

So, Republican opposition is what killed it. And hopefully, we -- in a bipartisan way we can bring it up next year and get it done.

LOTT: As a matter of Jim, it was pulled down at the request of the secretary of state and the president of the Untied States. I talked to the secretary of state, myself.

But let me just...

DASCHLE: ... and you know the...

LOTT: You know, they raised the issue not once, but twice. Let me tell you why. It's the very situation we're talking about. You've got a treaty there that's fine between those that are willing to control themselves. But, there's no verification, no way of knowing what's going to happen in Iraq, Iran, North Korea and even Russia which says, give us $3.2 billion and we'll get rid of our chemical stockpile.

There's lots of problems with that treaty. And we to look at it very carefully.

DASCHLE: But, Jim, let me just say this was a treaty begun by President Reagan; worked on for four years with President Bush. We were going to unilaterally abide by the treaty in any case. And if you don't have the treaty, you're still going to have verification problems.

DASCHLE: Verification is a problem in virtually every treaty.

But obviously this makes a statement. Is the United States willing to join 62 other nations in stopping the spread of chemical weapons? I would hope we could say unequivocally, yes, we've got to do that.

GINGRICH: But this is a perfect example of what I mean by rhetoric versus reality. The Japanese chemical attack in the subway was by a terrorist group that would not have been covered by the treaty. And Japan, by the way, makes chemical weapons unconstitutional and illegal, and yet here are people dying in a subway from a chemical weapon.

There are German companies that have sold equipment to Libya and to Iran in total violation, saying that they are for a baby food factory or they are for agricultural things or they're going to be a pesticide factory.

The fact is, we need more intelligence capability at the CIA. We need a firmer policy against terrorism and against chemical warfare as it exists today.

But let me go back, because I seem to be slightly confusing about the Middle East. Here's my point.

Talking about peace is fine. But is while you're talking about peace Iran and Syria are financing Hizbollah and Hamas and Israelis are killed in a shopping mall and they're killed at a bus stop, and they're killed standing outside their home, then Israel can hardly be told well, at least we're talking.

I just hope this week when they come here that we're going to look at Syria and Iran and Hizbollah and Hamas and ask the question don't the Israelis have some right to expect that their people will be safe?

And that's why in foreign policy words aren't enough. You have to have deeds.

DASCHLE: Absolutely. They deserve to be safe and we've got to give them all the protection that certainly they can expect.

But I must say, what is the alternative, Newt? If we don't -- you talk about the need for something beyond rhetoric. I think we've seen something beyond rhetoric with the peaceful coexistence now Israel has with Jordan; with the peaceful coexistence that they have

with Egypt; with the peaceful potential that they had in other areas, in the Gaza Strip in particular.

I mean, for a while there was peace. That came as a direct result of the diplomacy and the negotiations that have been ongoing now for the last couple of years. That ought to continue.

We ought to use the kind of American leadership that this president has represented to make peaceful coexistence a real reality. That isn't rhetoric, that is reality. And that's what this administration's been trying to do.

LEHRER: All right. Now we're going to go to our fourth and last topic tonight, and it is governing. Running the government. Again, the question comes in the form of a resolution.

Be it resolved that the Democratic Party can best manage the work of Congress.

GEPHARDT: Well, I think there are three things that we need to do to improve our Congress and our country. The first is campaign finance reform.

In my view the most important thing for the operation of our democracy in the future is to get meaningful campaign finance reform. We have disagreed, I think, on the key element in it. We believe that you've got to limit the amount that can be raised and spent in congressional campaigns.

I think some Republicans believe that we need more money in campaigns. I've heard people quoted to that effect.

GEPHARDT: I believe we've got to find an agreement on what we're trying to do, what the goal is. And then we've got to go about getting it done.

Secondly, we should never, ever shut the government down, as was done last year for three weeks. I know that there was a desire to put pressure on the president to get him to sign the budget the Republicans had, but it was wrong. It was irresponsible. Taxpayers paid money for those services, and they shouldn't have been denied.

For our part, we will never, ever shut the government down.

Third, we've got to make government work for working families. And that brings me back to Families First. We've got to listen to what people are saying to us. They've got practical everyday problems. We've got to have practical, modest, realistic solutions to those problems. I think Families First is that.

LEHRER: The Republican rebuttal.

GINGRICH: Well, I'm not so sure it's a rebuttal. Let me just say first of all we were delighted when President Clinton went to Chicago and cited 14 specific accomplishments of this Congress -- increased funding, for example, for breast cancer research; the Violence Against Women Act being funded, which we did; the welfare reform bill; the illegal immigration reforms.

Fourteen times President Clinton said this was a pretty good Congress. He only cited the previous Democratic Congress five times in his acceptance at a Democratic Convention.

Second, we passed a law for the first time putting the

Congress entirely under the same laws as everybody else. If OSHA visits you, it visits the Congress. If you have wage and hour laws, the Congress has wage and hour laws.

It was very important for us to put the Congress under the same laws, and its beginning to change things as members of Congress encounter with small businesses across America have encountered in red tape.

Third, we just frankly use common sense and save money. I carry an ice bucket around this fall as a campaign prop. When were elected we discovered that the were 14 full-time people delivering ice every day, two buckets in the morning, two buckets in the afternoon, 82 years after the invention of the refrigerator.

LEHRER: To whom were they delivering ice?

GINGRICH: They were delivering it to every office in the Capitol. Automatically, you arrived in your office, most...

LOTT: That was on the House side.

GINGRICH: On the House side...

LOTT: Not in the Senate.

GINGRICH: And what we found was that literally, people were putting the ice buckets next to their refrigerator. Now...

LOTT: How much money did you save by eliminating that?

GINGRICH: We saved \$500,000 a year. We did, we saved \$200 million a year by doing those kind of common-sense practical things for the U.S. Congress.

LEHRER: The dialogue, Democrats?

(LAUGHTER)

DASCHLE: Well, you know, you've -- I think I know where you put all that ice, in some room someplace where you put also the Campaign Finance Reform Bill. It's been iced for another Congress.

But if you talk about saving in that common sense, Newt. Let me ask you this. I recall, as I guess we all do, that Oval Office series of negotiations where at one point you indicated to the president you felt that while he had the veto, you had the ability to shut the government down.

That cost \$1.4 billion. That was a, we were shut down for \$27 days. That little money you saved, with saving the ice was all lost in 27 days of shutting the government down.

I hope we could we all agree, and I guess this is my question.

Will you agree with us that in the 105th Congress, regardless of the circumstances, you'll never shut the government down again?

GINGRICH: Well, let me say just two quick things, and then go to Trent.

LEHRER: Go ahead.

GINGRICH: But since it's directly tied to me. First of all, we were all sort of surprised to learn from Dick Morris' comments that he'd planned for five months, as he said it.

GEPHARDT: Did he call you about that, Trent?

LOTT: Yes. He told me he'd planned it for months.

(LAUGHTER)

GINGRICH: The president's former adviser, as you know.

Second, we -- I think we did learn a lot out of that. And I think it's a tribute, the bipartisan way we passed things recently, that we have learned a lot.

But I also think it's important to recognize that the American people do want a balanced budget. They do want government coming under control.

And frankly, we were gratified when the president said this January that the era of big government is over. We're just trying to help shrink it some, and I think that's part of what we're all about.

LOTT: Well, as a matter of fact, I might say that if the Senate does its job tomorrow, we'll complete the work the House completed last night, and there won't be any threats of any kind of shutdowns.

But just remember, when the president vetoed that bill and shut it down, what was it he was vetoing? He was vetoing the first balanced budget in 26 years. He was vetoing tax relief for the American people. He was vetoing legitimate entitlement reform.

So just remember the president vetoed those. And it included a lot of other things, including eliminating the marriage penalty for young couples when they get married.

But I'll tell you what. The proof is in the pudding, Jim, because we have produced. We started off with these common-sense reforms. We made them apply to ourselves. We cut the numbers of subcommittees and committees. We cut spending on Congress itself. We made the laws apply to ourself, as Newt mentioned.

We stopped unfunded federal mandates where the federal government was telling people, oh, you've got to do this, do that; but by the way, how you pay for it is your problem.

And one other thing. When you talk about governance, we also are going to pass tomorrow night, after a lot of effort on our part, an illegal immigration bill. You can't have governance if you can't control your borders.

In America, we have a tremendous problem with illegal immigrants. And they're coming in and they're getting into our welfare systems and our food stamp systems, and they're staying there forever.

If we're going to have genuine governance, we better learn how to control our own borders. And we're going to pass a bill, under our leadership, that will get that job done.

GEPHARDT: Well, I don't think Democrats take a back seat to anybody on getting the budget into balance. The budget we passed cut spending more than you cut it in the last two years.

We also got the budget down from over $300 billion, where it was when President Clinton came in, to now about $100 billion. And we both have plans -- they're different -- for getting it the rest of the way to balance the budget.

I'm glad to hear that we're not going to see another government shutdown. Tom DeLay was quoted in the paper today as saying, if Bob Dole gets elected and the Republicans retain their majority, there will be a second revolution. I don't think we need a second revolution. I think that scares people, and I don't think we need to do that.

But I want to come back to campaign finance reform. Do you both believe that we can figure out a way to put all of our beliefs aside and figure out how we can finally reach an agreement that we can both live with to limit the amount of money that is raised and spent in campaigns?

We have got to do this for our democracy.

LOTT: You've been waiting for this. Go ahead.

GINGRICH: Well, let me say, first of all, I was very disappointed after the president and I shook hands in New Hampshire that despite three or four efforts to get a commission off the ground, we couldn't for, I think, reasons that go back to partisanship.

But let's take two examples, Dick. The unions have announced a $35 million effort to buy control of the U.S. House outside of what you'd call campaign reform. And that's coerced money.

Republican union members, independent union member, union members who are for Ross Perot -- they all are compelled to give their money. So we have $750,000 being spent by union against Steve Chabot in Cincinnati.

GINGRICH: We've already had $2 million spent by the unions against J.D. Hayworth in Phoenix. I'm faced with a millionaire running against me who has said already he'll spend $3 million out of his own pocket.

Now, I don't think the Supreme Court will let us stop him, because of the right of free speech under Buckley -- under the decision. But tell us, how can you have the unions as a group, coercing money, spending $35 million and targeting individual members with $2 million and then talk about campaign reform only over here at the congressional campaign level?

I mean I frankly think if the Democrats were sincere about campaign reform, part of it will be to say the unions don't take money from Republicans who are union members, don't take money from Independents who are union members and don't go out and spend $2 million in one city trying to beat poor J.D. Hayworth who's just out there as a candidate.

LOTT: There's not even a report.

DASCHLE: It's against the law to coerce money and take money from people that they don't want to give voluntarily.

But why shouldn't union members have the right to express themselves in campaigns?

GEPHARDT: But let's me ask you this...

LOTT: Why shouldn't they have to report it as a campaign contribution, which it really is.

GINGRICH: Let me make just make a different point for one second, Dick. This money is dues money that is coerced. This is not voluntary contributions. These are dues that are being coerced.

GEPHARDT: This is not true.

DASCHLE: Newt, I want to ask you.

LOTT: Dick, how can you say that? I'm astonished.

DASCHLE: Could I, in the short time that we have available, let me just -- speaking of special interests, I've never been able -- I've never had an explanation of this.

How was it that you created this project relief organization, this effort about a year ago, where 200 hundred of the biggest polluters were actually invited into a committee room in which we could dirty the air and dirty the water and find ways with which to eviscerate the rules and regulations...

LOTT: People planned to dirty the air, dirty the water? Come on, Tom, they breathe the air and drink the water, too.

DASCHLE: Absolutely. To create the loopholes, to change the regulatory environment, to allow us to find news ways to create remarkable loopholes in the law to give polluters more ability to dirty the air and dirty the water.

LOTT: We passed the Safe Drinking Water Act.

DASCHLE: That happened under project relief. It was well reported. How did that happen? And would you prevent that from happening again in the 105th Congress?

GINGRICH: Well, first of all, the way you described it I think I can tell you unequivocally, I do not know of any meeting we ever had planning to dirty the water.

DASCHLE: You didn't organize a project relief?

GINGRICH: But by the way, what we did try to do is we did try to pass the Superfund legislation to try to clean up toxic waste dumps, and did try to bring in scientific experts to get the toxic waste dumps out of the way and to not spend the money on trial lawyers and on bureaucrats, but to spend it on engineers.

DASCHLE: But you're avoiding the question. Did you not have a project relief for 200 of the largest who were called into a committee room to write the law itself?

GINGRICH: To the best of my knowledge we have never ever had a meeting the way you described it.

DASCHLE: OK.

GINGRICH: But I'm going to go back to what I said about Dick. The union money being spent today is not voluntary contributions. It is dues that were raised by the Washington union bosses without ever having a vote of the union members.

GINGRICH: They, in fact, aren't told about it. They don't voluntarily do it. And I think it is totally wrong to spend the money of Republican and Independent union members and to focus it in that kind of way.

LEHRER: We've got a time problem here. The Democrats...

GEPHARDT: Can I just ask one short question?

LEHRER: Yes.

GEPHARDT: If we could get campaign reform by getting the amendment to the Constitution, could we work on amending the Constitution to say that we're going to be able to regulate what can be done in campaigns?

GINGRICH: If we conclude it doesn't threaten the freedom of the American people.

LOTT: Two other -- if I could get a point in here, Jim?

GEPHARDT: Absolutely. I don't think it does. I think it helps the American people.

LEHRER: We've got a ton of problems, Senator. I'm sorry, the Democrats...

LOTT: As far as this environmental issue, I want to point out that this Congress once again produced. We passed the Safe Drinking Water Act in a bipartisan way. You all, I presume, both voted for it. I know Tom did.

We passed pesticide reform. We passed a Freedom to Farm Act, which is probably the most sweeping conservation and environmental law passed in years. Again, we did it. We didn't talk about it.

DASCHLE: But let me say that what you wanted to do was to absolutely emasculate the rules and regulations that protect the environment, Trent. You and the Republicans.

And I -- and you know, that's your position, and I respect it.

LOTT: We want to reduce regulations in Washington. You got that right.

DASCHLE: The fact is -- well, yes. You want to give the polluters every chance they can to...

LOTT: I live in this world, too. I don't want to do that.

DASCHLE: ... pollute the air, to pollute the water. Well, I'm afraid that's what was going to be the result, and we know that that was it. And fortunately, we stopped you from doing it.

LEHRER: That is it for the last segment. And now, to a final question for each side that comes in the form of a question rather than a resolution.

We have three minutes left, and we will split that in half. And it starts with the Republicans.

And the question is, what is the connection on November 5 between the vote for president and the vote for members -- individual members of Congress?

LOTT: Well, we have, as I said at the beginning, delivered on our commitments to get health insurance reform and welfare reform and reform the Congress and illegal immigration reform. But there were many things that we wanted to do and we will do next year.

The first things we will try to do is to give that tax relief to create jobs and help the families and the children at the local level. We will move to balance the budget as we've already tried. We've already cut $53 billion in spending that would have been spent otherwise.

We will continue to try to help this problem with drugs with children in America.

But you know what we need? We need a president that will sign those laws. We have a president now that when he was sent a balanced budget, he vetoed it. When he was sent a law to get rid of the marriage penalty, he vetoed it. When he had a chance to eliminate tax cuts -- or assign tax cuts, he vetoed that.

We will produce, but we need a president that will work with us to get that job done.

And in conclusion, I just want to say this about this past two years. We have fought the good fight. We have a lot things that we feel very strongly about is the right thing to do for our country.

We haven't quite finished the race. We want to continue to do battle for our children, for the future of our country.

And we will keep the faith with the voters if they will give us that opportunity. We will do these things we have promised in the next two years.

LEHRER: Final word on the connection between the presidential vote and the vote for Congress.

DASCHLE: Jim, I think there's a big connection, and I think this president's going to be re-elected. And I think, as a result, Democrats across the country will be re-elected, too.

But it isn't party. You know, I think people like the noise of democracy. I think what they'd like to see, though, is that the decibel level come down. Tonight was a good illustration of how oftentimes that can happen.

DASCHLE: I think that in South Dakota what really is at stake is not whether we're R's and D's, but whether we're C's and D's, come the 105th Congress -- whether we're constructive or destructive.

I think that in some cases over the 104th Congress there have been some destructive policies that the American people have opposed.

But we need constructive leadership. We don't need to shut the government down. We don't need to raise the level of volatility in politics.
What we need is working together, reaching across the aisle to try to build on the tremendous accomplishments of this administration and what Democrats have attempted to do.

Dick and I have both talked a lot tonight about the Families First Agenda. We believe that that really is the basis upon which we could seek real, bipartisan compromise.

We think there ought to be greater responsibility in government, reducing the deficit. We really want to see more opportunity for education, for people of all ages. We think families ought to have more security in their neighborhoods, and certainly in the workplace -- and for health care.

LEVEL 1 - 1 OF 1 CASE

Association of American Physicians and Surgeons, Inc., et al., Appellees v. **Hillary** Rodham **Clinton,** et al., Appellants **Association of American Physicians** and Surgeons, Inc., et al., Appellants v. **Hillary** Rodham **Clinton,** et al., Appellees

No. 93-5086, No. 93-5092

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

997 F.2d 898; 1993 U.S. App. LEXIS 14831; 21 Media L. Rep. 1705; 302 U.S. App. D.C. 208

April 30, 1993, Argued

June 22, 1993, Decided

PRIOR HISTORY: [**1] Appeals from the United States District Court for the District of Columbia (93cv0399).

COUNSEL: Mark B. Stern, Attorney, U.S. Department of Justice, argued the cause for appellants/cross-appellees Hillary Rodham Clinton, et al. With him on the briefs were J. Ramsey Johnson, United States Attorney, Stuart E. Schiffer, Acting Assistant Attorney General, Robert E. Kopp, Patricia A. Millett, and Malcolm L. Stewart, Attorneys, U.S. Department of Justice. Stuart M. Gerson, Attorney, U.S. Department of Justice, entered an appearance for appellants/cross-appellees.

Kent Masterson Brown argued the cause for appellees/cross-appellants Association of American Physicians and Surgeons, Inc., et al. With him on the briefs were Frank M. Northam and Alan P. Dye.

Steven R. Ross, General Counsel, and Charles Tiefer, Deputy General Counsel, Office of General Counsel, United States House of Representatives, filed the brief for amicus curiae Speaker and Bipartisan Leadership Group.

Ronald A. Zumbrun, Anthony T. Caso, and Robin L. Rivett filed the brief for amici curiae Pacific Legal Foundation and the National Taxpayers Union.

Jane E. Kirtley, [**2] J. Laurent Scharff, James E. Grossberg, Richard M. Schmidt, Jr., Allan R. Adler, Bruce W. Sanford, Henry S. Hoberman, and Whitney M. Adams filed the brief for amici curiae Reporters Committee for Freedom of the Press, et al.

Joseph Gregory Sidak filed the brief for amicus curiae J. Gregory Sidak.

Samuel B. Wallace, IV, filed the brief for amicus curiae Samuel B. Wallace, IV.

JUDGES: Before: Silberman, Buckley, and Williams, Circuit Judges. Opinion for the Court filed by Circuit Judge Silberman. Opinion concurring in the judgment filed by Circuit Judge Buckley.

OPINIONBY: SILBERMAN

OPINION: [*900] Silberman, Circuit Judge: This expedited appeal presents the question whether the President's Task Force on National Health Care Reform ("Task Force") and its working group are advisory committees for purposes of the Federal Advisory Committee Act ("FACA"). If they are, we are asked to decide whether FACA unconstitutionally encroaches on the President's Article II executive powers. We hold that the Task Force is not an advisory group subject to FACA, but remand to the district court for further proceedings to determine the status of the working group.

I.

On January 25, 1993, President Clinton [**3] established the President's Task Force on National Health Care Reform. The President named his wife, Hillary Rodham Clinton, as the chairman of the Task Force, and appointed as its other members the Secretaries of the Treasury, Defense, Veterans Affairs, Health and Human Services, Labor, and Commerce Departments, the Director of the Office of Management and Budget, the chairman of the Council of Economic Advisers, [*901] and three White House advisers. President

Clinton charged this body with the task of "listening to all parties" and then "preparing health care reform legislation to be submitted to Congress within 100 days of our taking office." 29 Weekly Comp. Pres. Doc. 96 (Feb. 1, 1993).

On the same day, the President also announced the formation of an interdepartmental working group. According to the government, the working group was responsible for gathering information and developing various options on health care reform. It was composed of three types of members: (i) approximately 300 permanent federal government employees drawn from the Executive Office of the President, the federal agencies, and Congress; (ii) about 40 "special government employees" hired by the agencies and the [**4] Executive Office of the President for a limited duration; and (iii) an unknown number of "consultants" who, it is asserted, "attend working group meetings on an intermittent basis." Ira Magaziner, the senior adviser to the President for Policy Development, headed the working group and was the only member of the Task Force who attended the group's meetings.

According to the government, the working group had no contact with the President. In addition to gathering information, the working group developed alternative health care policies for use by the Task Force. But only the Task Force, it was contemplated, would directly advise and present recommendations to the President. On March 29, 1993, the Task Force held one public hearing where interested parties could present comments on health care reform. See *58 FR 16,264 (1993).* However, the Task Force met behind closed doors at least 20 times in April and May to "formulate" and "deliberate" on its advice to the President. As the government publicly has announced, in those meetings "the Task Force reviewed materials it received from the interdepartmental working group; formulated proposals and options [**5] for health care reform; and presented those proposals and options to the President." Statement of the White House Press Secretary (June 4, 1993). In accordance with its charter, the Task Force then terminated its operations on May 30. n1 All of the working group's meetings remained closed to the public.

n1 The Task Force's "termination" does not render this case moot. As both parties, in anticipation of this event, agreed before oral argument, this case still presents a live controversy concerning the availability of Task Force and working group documents, which the appellees sought below pursuant to FACA.

Appellees are the Association of American Physicians and Surgeons, which represents physicians; the American Council for Health Care Reform, which represents health care consumers; and the National Legal & Policy Center, which seeks to promote ethics in government. They sought access to the Task Force's meetings under the Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (1972) (reproduced at *5 U.S.C. App. 1* [**6] (1988)). Their efforts were rebuffed by the Counsel to the President, who informed them that the Task Force was not an advisory committee subject to FACA.

Appellees thereupon brought suit against the Task Force in district court. They claimed that the Task Force was a FACA committee because it was chaired by Mrs. Clinton, a private citizen, and that the Task Force had violated FACA by failing to file an advisory committee charter. They further asserted that FACA permitted them to attend all of the meetings of the Task Force and of any of its subgroups. Appellees sought a temporary restraining order and a preliminary injunction halting the operation of the Task Force until it complied with FACA and allowed the public to attend its meetings. The government responded that the Task Force was exempt from FACA because all of its members--including Mrs. Clinton--were government officers and employees. The government alternatively challenged any application of FACA to the Task Force as an unconstitutional infringement on the President's executive power.

In a memorandum opinion issued on March 10, 1993, the district court granted in part appellees' motion for a preliminary injunction. The [**7] court determined that appellees had a substantial likelihood of success on the merits. Mrs. Clinton, the court held, was not an officer or employee of the federal government merely by virtue of her status as "First Lady." Therefore, the Task Force [*902] could not qualify for an exemption from FACA as an advisory group composed solely of "full-time officers or employees" of the government. See Association of Am. Physicians & Surgeons v. Hillary Rodham Clinton, Civil Action No. 93-0399, Mem. Op. at 16-17 (D.D.C. March 10, 1993) ("Mem. Op."); see also *5 U.S.C. App. 1* § 3(2)(iii). The court, however, agreed with the government that FACA encroached on the President's constitutional authority to receive confidential advice for the purpose of recommending legislation. But the court thought that executive prerogatives were implicated only when the Task Force was advising the President, not when it engaged in information-gathering. The district court accordingly granted a preliminary injunction requiring the Task Force to meet all the requirements of FACA except when it met to formulate advice or recommendations for the President.

gument that Congress itself has recognized that the President's spouse acts as the functional equivalent of an assistant to the President. The legislative authorization to the President to pay his White House aides includes the following provision:

Assistance and services authorized pursuant to this section to the President are authorized to be provided to the spouse of the President in connection with assistance provided by such spouse to the President in the discharge of the President's duties and responsibilities. If the President does not have a spouse, such assistance and services may be provided for such purposes to a member of the President's family whom the President designates.

3 U.S.C. § *105*(e) (emphasis added). Of course, even without section 105(e), the President presumably could draw upon his spouse for assistance. The statute's importance, rather, lies in its assistance in helping us interpret the ambiguous terms of FACA in pari materia. [**18]

It may well be, as appellees argue, that many in Congress had in mind "ceremonial duties," but we do not think the presidency can be so easily divided between its substantive political and ceremonial functions. In any event, section 105(e) neither limits the particular kind of "assistance" rendered to the President, nor circumscribes the types of presidential duties and responsibilities that are to be aided. We see no reason why a President could not use his or her spouse to carry out a task that the President might delegate to one of his White House aides. It is reasonable, therefore, to construe section [*905] 105(e) as treating the presidential spouse as a de facto officer or employee. Otherwise, if the President's spouse routinely attended, and participated in, cabinet meetings, he or she would convert an all-government group, established or used by the President, into a FACA advisory committee.

Pursuant to this section, moreover, the President's spouse is supported by a substantial staff who are undeniably full-time government officers or employees. Therefore, the President could have--as the government points out--easily designated Mrs. Clinton's chief of staff as a member of the [**19] Task Force, perhaps even as the chairman, who would then be expected to report to Mrs. Clinton. It would seem quite anomalous to conclude that FACA would apply if the President's spouse were a member of the committee, but not if her chief of staff were the actual member.

The President's implicit authority to enlist his spouse in aid of the discharge of his federal duties also undermines appellees' claim that treating the President's spouse as an officer or employee would violate the anti-nepotism provisions of *5 U.S.C.* § *3110*. That section prohibits any "public official" from appointing or employing a relative, such as a spouse, "in the agency in which he is serving or over which he exercises jurisdiction or control." Id. § 3110(b). Although section3110(a)(1)(B) defines agency as "an executive agency," we doubt that Congress intended to include the White House or the Executive Office of the President. *Cf. Franklin v. Massachusetts, 120 L. Ed. 2d 636, 112 S. Ct. 2767, 2775 (1992)* (holding that President is not "agency" for purposes of Administrative Procedure Act); *Meyer, 981 F.2d at 1298* (President's [**20] advisers are not "agency" under FOIA); *Armstrong v. Bush, 288 U.S. App. D.C. 38, 924 F.2d 282, 289 (D.C. Cir. 1991)* (President not APA "agency"). So, for example, a President would be barred from appointing his brother as Attorney General, but perhaps not as a White House special assistant. Be that as it may, it is not reasonable to interpret that provision to bring it into conflict with Congress' recognition of (and apparent authorization for) the President's delegation of duties to his spouse. The anti-nepotism statute, moreover, may well bar appointment only to paid positions in government. See *5 U.S.C.* § *3110*(c). Thus, even if it would prevent the President from putting his spouse on the federal payroll, it does not preclude his spouse from aiding the President in the performance of his duties.

In sum, the government musters a strong argument in support of its interpretation of "full-time officer or employee" under FACA as including the President's spouse--whether or not a "First Lady." But it is by no means overwhelming. Indeed, the government is uncomfortable at having to choose whether Mrs. Clinton should be thought of as an officer [**21] or employee. The government's discomfort is quite understandable. Mrs. Clinton has not in any sense been appointed or elected to office, and, assuming she is an officer under Title 1, due to the duties delegated to her under *3 U.S.C.* § *105*(e), how, one might ask, could she be removed? All officers and employees of the United States, except the Vice President, can be removed, at least for cause, through the ultimate authority of the President. We suppose the President could withdraw any or all authority delegated to his spouse, but then he would be left without the official assistance of any family member. The very provision authorizing the delegation to the spouse provides for a delegation to another member of the President's family only "if the President does not have a spouse." *3 U.S.C.* § *105*(e) (emphasis added). That language seems to present the President with rather extreme alternatives.

What is more, section 105(e) would seem to apply application of FACA to the Task Force seriously burdens executive power. And our reading of Morrison does not lead us easily to a conclusion that the burden placed is a permissible one.

The court below correctly recognized the constitutional difficulties that FACA's application to the Task Force created. The court, therefore, ruled the Act partially unconstitutional, insofar as it was applied to the meetings in which the Task Force actually advised the President. When the Task Force was engaged in "information-gathering and information-reporting," however, the court thought that the President's constitutional interests were not so seriously implicated.

We believe it is the Task Force's operational proximity to the President, and not its exact function at any given moment, that implicates executive powers and therefore forces consideration of the Morrison test. The President's confidentiality interest is strong regardless of the particular role the Task Force is playing on any given day. Indeed, the two functions [**40] naturally interrelate and can only be divided artificially. If public disclosure of the real information-gathering process is required, the confidentiality of the advice-giving function inevitably would be compromised. If you know what information people seek, you can usually determine why they seek it. A group directly reporting and advising the President must have confidentiality at each stage in the formulation of advice to him. As we said in Meyer, "proximity to the President, in the sense of continuing interaction, is surely in part what Congress had in mind when it exempted [from FOIA] the President's "immediate personal staff.' " *981 F.2d at 1293* (citation omitted). And, as we recognized in *Soucie v. David, 145 U.S. App. D.C. 144, 448 F.2d 1067 (D.C. Cir. 1971)*, FOIA's exemption may be constitutionally required to protect the President's executive powers. In any event, the district judge decided to truncate the statute in light of constitutional concerns only because it determined that FACA applied to the Task Force.

We think the district court should have acted otherwise. Prudent use of the maxim of statutory construction allows us to avoid [**41] the difficult constitutional issue posed by this case. The question whether the President's [*911] spouse is "a full-time officer or employee" of the government is close enough for us properly to construe FACA not to apply to the Task Force merely because Mrs. Clinton is a member. We follow the Supreme Court's lead, if not its strict precedent, in recognizing that [if the Act] were "read unqualifiedly, it would extend FACA's requirements to any group of two or more persons, or at least any formal organization, from which the President or an executive agency seeks advice." *Public Citizen, 491 U.S. at 452* (footnote omitted). Because it believed that Congress could not have intended such a result, the Public Citizen majority read "utilize" to exclude the ABA committee. If the Supreme Court correctly construed the statute not to cover the advice the Attorney General receives, on behalf of the President, from the ABA, the statutory construction issue we face should be resolved a fortiori in favor of the government.

We, therefore, read the phrase "full-time officer or employee of the government" in FACA to apply to Mrs. Clinton. In doing so, we express no [**42] view as to her status under any other statute. n10

n10 We do not need to consider whether Mrs. Clinton's presence on the Task Force violates the Hatch Act, *5 U.S.C. § 7324*(a), the Anti-Deficiency Act, *31 U.S.C. § 1342*, or any conflict of interest statutes.

IV.

The district court, having concluded that the Task Force was a FACA advisory committee, dismissed under Rule 12(b)(6) appellees' claim that the working group was also covered by FACA. The court thought that under *National Anti-Hunger Coalition v. Executive Committee, 557 F. Supp. 524* (D.D.C.), aff'd, *229 U.S. App. D.C. 143, 711 F.2d 1071 (D.C. Cir. 1983)* ("Anti-Hunger "), subgroups of a FACA committee should be regarded as staff of the advisory committee and not as advisory committees themselves. See *Anti-Hunger, 557 F. Supp. at 529.* Based on Mr. Magaziner's affidavit, the district court determined that the working [**43] group merely gathered information to be passed on to the Task Force. Appellees cross-appeal the district court's ruling and its corollary refusal to permit further discovery into the status and operations of the working group.

The government challenges our jurisdiction to consider the cross-appeal because the district court's rulings on the working group are neither independent final judgments, nor covered by the preliminary injunction against the Task Force which is before us on an interlocutory appeal pursuant to *28 U.S.C. § 1292*(a). We have said that our jurisdiction over an interlocutory appeal, however, is considerably broader:

Review quite properly extends to all matters inextricably bound up with the remedial decision .... The scope of review may extend further to allow disposition of all matters appropriately raised by the record, including entry of final judgment. Jurisdiction of the interlocutory transmitting policy advice on a particular subject matter to the government. These committees also possess a kind of political legitimacy as representative bodies. Membership on a committee is often highly [**52] prized and sought after because it carries recognition and even prestige. When the executive branch endorses its advice and seeks to promote the policy course suggested by the committee, the executive branch draws upon the committee's political legitimacy. Congress' effort to ensure that these committees are balanced in terms of viewpoint recognizes their usefulness for political (and patronage) purposes. But committees bestow these various benefits only insofar as their members act as a group. The whole, in other words, must be greater than the sum of the parts.

Thus, an important factor in determining the presence of an advisory committee becomes the formality and structure of the group. Judge Gesell, in another district court case, *Nader v. Baroody, 396 F. Supp. 1231 (D.D.C. 1975),* seems to have approached the same notion by focusing on the word "established" in FACA. Nader involved meetings between an assistant to the President and a changing slate of federal officials and private sector groups. See id. The groups met for the express purpose of exchanging views on a variety of subjects. In exempting these meetings from FACA, the court noted [**53] that "the committees were not formally organized and there is little or no continuity." *Id. at 1234.*

Since form is a factor, it would appear that the government has a good deal of control over whether a group constitutes a FACA advisory committee. Perhaps, for that reason, it is a rare case when a court holds that a particular group is a FACA advisory committee over the objection of the executive branch. In order to implicate FACA, the President, or his subordinates, must create an advisory group that has, in large measure, an organized structure, a fixed membership, and a specific purpose. The government suggests that the working groups, composed as they are of a crowd of 340 virtually anonymous persons, do not bear the characteristics of the paradigm FACA advisory committee. That may well be so. The working groups, as a whole, seem more like a horde than a committee. On the other hand, the groups have been created ("established") with a good deal of formality and perhaps are better understood as a number of advisory committees. We simply ~~cannot determine~~ how to classify the working groups based on the record before us.

Finally, the government claims [**54] that all of the members of the working groups are full-time officers or employees of the government, and, for that reason alone, the working groups are not FACA advisory committees. The three-hundred members drawn from the agencies, the Executive Office of the President, and from the congressional staffs are concededly within that category. The working group also includes, however, 40 "special government employees." The government claims that these individuals are also "full-time" government employees, even though they have been employed by an agency or the Executive Office of the President for less than 130 days in a year, some without compensation. The record does not reflect where these persons come from, nor does it show how many hours they work. We are, moreover, unsure whether FACA's definition of "full-time" extends to a person who works for the government for less than 130 days out of a year. The government directs us to the conflict of interest provisions of Title 18, which define a "special Government employee" as:

> an officer or employee of the executive or legislative branch of the United States Government ... who is retained, designated, appointed, or employed to perform, [**55] with or without compensation, for not to exceed [130] days during any period of [365] consecutive days, temporary duties either on a full-time or intermittent basis.

18 U.S.C. § *202*(a) (1988) (emphasis added). The government argues that section 202 clearly implies that a temporary employee can be "full-time." Intermittent (or non-full-time) applies, according to the government, to those who work less than a full day.

[*915] We do not believe section 202(a) helps the government. Just as we did not read *5 U.S.C.* §§ *2104,* 2105 to govern the question of whether Mrs. Clinton is a federal officer or employee, we do not think that Title 18's definitions should necessarily control FACA. We must construe FACA in light of its purpose to regulate the growth and operation of advisory committees. FACA would be rather easy to avoid if an agency could simply appoint 10 private citizens as special government employees for two days, and then have the committee receive the section 3(2) exemption as a body composed of full-time government employees. Moreover, section 202 contrasts "full-time" with "intermittent," and so "full-time" [**56] seems to mean no more than not "intermittent." There is no reason to think that not "intermittent" for section 202 purposes has any bearing on whether the employee is "full-time" for FACA purposes. Whether the special government employees are full-time, however, is, in part, a factual issue that was not developed below due to the lack of discovery.

A third class of persons are described as consultants.

According to the government, the consultants attend meetings on an intermittent basis, with or without compensation, and have no "supervisory role or decision-making authority." Drawn from the ranks of the medical profession, the academy, and from business, they only provide information and opinion. These consultants raise a different question from that presented by the other two classes of working group employees. The key issue, it seems to us, is not whether these consultants are "full-time" government employees under section 3(2), but whether they can be considered members of the working group at all. When an advisory committee of wholly government officials brings in a "consultant" for a one-time meeting, FACA is not triggered because the consultant is not really a member of the [**57] advisory committee. In that situation, the relationship between the temporary consultant and committee is very similar to the one between the White House officials and various private sector representatives exempted from FACA in Nader. We are confident that Congress did not intend FACA to extend to episodic meetings between government officials and a consultant. To do so would achieve the absurd result Public Citizen warned against: reading FACA to cover every instance when the President (or an agency) informally seeks advice from two or more private citizens.

But a consultant may still be properly described as a member of an advisory committee if his involvement and role are functionally indistinguishable from those of the other members. Whether they exercise any supervisory or decisionmaking authority is irrelevant. If a "consultant" regularly attends and fully participates in working group meetings as if he were a "member," he should be regarded as a member. Then his status as a private citizen would disqualify the working group from the section 3(2) exemption for meetings of full-time government officials.

* * * *

When we examine a particular group or committee to [**58] determine whether FACA applies, we must bear in mind that a range of variations exist in terms of the purpose, structure, and personnel of the group. Perhaps it is best characterized as a continuum. At one end one can visualize a formal group of a limited number of private citizens who are brought together to give publicized advice as a group. That model would seem covered by the statute regardless of other fortuities such as whether the members are called "consultants." At the other end of the continuum is an unstructured arrangement in which the government seeks advice from what is only a collection of individuals who do not significantly interact with each other. That model, we think, does not trigger FACA.

We simply have insufficient material in the record to determine the character of the working group and its members. We understand why the district court, believing the Task Force covered by FACA, thought it unnecessary and inappropriate to put the working group under further scrutiny. But, as we have indicated, because we differ with the district court concerning the Task Force, we believe further proceedings, including expedited [*916] discovery, are necessary before the district court [**59] can confidently decide whether the working group is a FACA committee.

Accordingly, we reverse the district court and lift the preliminary injunction on the operations of the Task Force. The Task Force need not comply with the requirements of FACA because it is a committee composed wholly of full-time government officials. We also reverse the district court's dismissal of appellees' claims as to the working group under Rule 12(b)(6). We remand for further proceedings, including expedited discovery, regarding the working group.

So ordered.

CONCURBY: BUCKLEY

CONCUR: Buckley, Circuit Judge, concurring in the judgment: I admit at the outset the persuasive force of the majority's opinion--a force derived, I think, from a comparison of the most obvious facts of this case with those of *Public Citizen v. United States Department of Justice, 491 U.S. 440, 105 L. Ed. 2d 377, 109 S. Ct. 2558 (1989)*. Public Citizen interpreted the word "utilized" so as to exclude the Justice Department's use of a committee of the American Bar Association whose only mission was to advise on appointments to the federal judiciary. In concluding that Congress did not intend to subject the ABA Committee on the Judiciary to FACA's [**60] requirements, the Court acknowledged that what "tipped the balance decisively against FACA's application," *id. at 465*, was the "cardinal principle" that where "a serious doubt of constitutionality is raised, ... the Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Id. at 465-66*. Here, to achieve a similar end, we are asked only to stretch the phrase "officer or employee of the Federal Government" far enough to include a person who is greeted like a head of state, guarded by the Secret Service, and funded from the public fisc. On first appearances, Public Citizen would seem to support both the majority's result and the reasoning used to reach it.

If this case is to be distinguished from Public Citizen, modified, means a justice or judge of the United States and an individual who is--

(1) required by law to be appointed in the civil service by one of the following acting [**65] in an official capacity--

(A) the President;

(B) a court of the United States;

(C) the head of an Executive agency; or

(D) the Secretary of a military department;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office....

§ 2105. Employee

(a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer and an individual who is--

(1) appointed in the civil service by one of the following acting in an official capacity--

(A) the President;

[*918] (B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section;

(E) the head of a Government controlled corporation; or

(F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive [**66] act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position....

5 U.S.C. §§ *2104*, 2105 (emphasis added).

The common denominator of these provisions is the requirement that both officers and employees be "appointed in the civil service." In the Executive Branch, the civil service consists of (1) positions requiring Senate confirmation, (2) the "Senior Executive Service," (3) the "competitive service," and (4) "positions which are specifically excepted from the competitive service by or under statute." *5 U.S.C.* § *2102*(a). Mrs. Clinton does not wear any of these labels. See, e.g., *5 U.S.C.* § *3132*(a)(2) (defining "Senior Executive Service position"). The Government's (and the majority's) strategy, then, is to argue that she need not satisfy the section 2104 and 2105 definitions because they do not apply to FACA. Specifically, because FACA has been codified in an appendix to Title 5, not in the title proper, the Government contends that the sections do not govern the meaning [**67] of "officer" and "employee" as used in the definition of "advisory committee." For several reasons, I disagree.

First, there is the plain meaning of the statutory language. An appendix to a title of the United States Code necessarily qualifies as a part of that title. If it did not, then the appendix would be part of no title whatever and would be an appendix to the Code as a whole. Yet FACA appears in the Code under the banner, "Title 5, Appendix." Because sections 2104 and 2105 state plainly that they apply "for the purpose of" Title 5, and because FACA is a part of that title, the definitions apply to FACA.

Second, Congress surely knew that FACA would be codified under Title 5. The same statute that adopted sections 2104 and 2105 also stipulated that Title 5 be captioned: "Government Organization and Employees." Pub. L. No. 89-554, 80 Stat. 378, 408-09 (1966). A glance at the captions of the remaining 49 titles in the Code confirms that Title 5 is the only one under which FACA could have been codified.

Third, there are the practical considerations. The Ethics in Government Act, codified alongside FACA in Title 5's appendix, requires financial disclosures from "each officer or employee [**68] in the executive branch" who meets certain criteria. Ethics in Government Act of 1978, *5 U.S.C. App. 3*, §§ 101(a), 101(f)(3) (1991 Supp.). FACA imposes open-meeting and other requirements on committees not "composed wholly of full-time officers or employees of the Federal Government." *5 U.S.C. App. 1*, § 3(2) (1988). And, although each of those statutes contains a sizable definitional section, neither defines either "officer" or "employee." See *5 U.S.C. App. 1*, § 3 (1988); *5 U.S.C. App. 3*, § 109 (1991 Supp.). The Government tells us that those terms are intentionally left undefined even though

Congress took the trouble, in those statutes, to define terms that are of far less significance. See, e.g., *5 U.S.C. App. 1*, § 3(4) (1988) ("The term "Presidential advisory committee' means an advisory committee which advises the President"); *5 U.S.C. App. 3*, § 109(3) (1991 Supp.) (" "designated agency ethics official' means an officer or employee who is designated to administer the provisions [**69] of this title within an agency"). But without definitions of "officer" and "employee," neither statute could be sensibly administered. The better explanation for the absence of these definitions is that their repetition in FACA and the Ethics in Government Act would have been redundant.

Finally, there is the apparent reasoning behind FACA's location in Title 5's appendix. The United States Code is published pursuant to *1 U.S.C.* §§ *201*-13 (1988). That law [*919] requires the codification of new laws in annual Code supplements and permits the publication of an entirely new Code every five years. See id. § 202. Thus, the current United States Code and supplement contain all laws of the United States that are "general and permanent in their nature." Id. § 204(a). As of 1988, ten of the fifty U.S.C. titles contained an appendix. See 5, 10, 11, 18, 26, 28, 40, 46, 49, 50 U.S.C. (1988). Some statutes have been placed in appendices because, while considered more than temporary, they are viewed as less than permanent additions to the Code. See 40 U.S.C. App. (Appalachian Regional Development Act of 1965). Other statutes have been relegated to appendices [**70] because they were not enacted directly by Congress. See 11 U.S.C. App. (Bankruptcy Rules and Official Forms as promulgated by Supreme Court pursuant to *28 U.S.C. § 2075)*. With respect to Title 5, Congress has divided it into three parts: "The Agencies Generally" (Part I), "Civil Service Functions and Responsibilities" (Part II), and "Employees" (Part III). See Pub. L. No. 89-554, 80 Stat. 378 (1966), as amended by Pub. L. No. 96-54, § 2(a)(1), 93 Stat. 381 (1979). An appendix to Title 5, then, is the natural place to codify statutes that relate to "Government Organization and Employees" but do not pertain to "The Agencies Generally," "Civil Service Functions and Responsibilities," or "Employees." As of 1988, five acts, including FACA, had been codified in Title 5's appendix. None of these fits within any of the three pigeonholes into which the main body of the title has been divided.

As against all of this--the statute's plain language, the imputed knowledge of its draftsmen, the practical need for Title 5's definitions to apply to its appendix, and the apparent reasons for FACA's placement there--the Government can offer a bare shred [**71] of legislative history. It points out that the Senate version of FACA explicitly incorporated the Title 5 definitions of "officer" and "employee," but that these were dropped at conference. The question, of course, is whether the conferees discarded the definitions because they were redundant (as FACA was destined for codification under Title 5), or because they wished the definitions not to apply to FACA.

The evidence on this issue consists of statements from the reports of the Senate Committee on Government Operations and the House-Senate Conference Committee. Referring to the section of the Senate bill that incorporated definitions to be found in the main body of Title 5, namely, those for "agency" *(5 U.S.C. § 551*(1)), "officer" *(5 U.S.C. § 2104)*, and "employee" *(5 U.S.C. § 2105)*, the Senate Report stated only that these three definitions had "been chosen to give the broadest interpretation to the coverage commensurate with generally accepted principles of law." S. Rep. No. 1098, 92d Cong., 2d Sess. 8 (1972). The Conference Committee Report merely noted that "the conference [**72] substitute deletes the Senate amendment definitions of "officer' and "employee.' " H.R. Conf. Rep. No. 1403, 92d Cong., 2d Sess. 9 (1972). The definition of "agency," however, was retained.

The Government infers, from the deletion of two of the Senate definitions and the retention of the third, that the conferees found the definitions of "officer" and "employee" inapplicable to FACA. There is a far more plausible explanation. As sections 2104 ("officer") and 2105 ("employee") were applicable to all statutes codified under Title 5, they were superfluous. The definition of "agency," by contrast, appears under the heading, "For the purpose of this subchapter--," *5 U.S.C. § 551* (emphasis added), and therefore would not apply to FACA unless specifically incorporated into that Act.

Even if we could disregard the definitions found in Title 5, we would still be compelled to attach meanings to the words "officer" and "employee" that Congress might reasonably have had in mind. To this end, I have examined other sources for definitions of these terms. At the outset, I dismiss the possibility that Mrs. Clinton might be considered an employee. In these proceedings, [**73] the Government has not attempted to argue that Mrs. Clinton is an employee for purposes of FACA--no doubt because her services are unpaid. Cf. Black's Law Dictionary 471 (5th ed. 1979) (defining employee as "one who works for an employer; a person working for salary or wages"). And while the majority [*920] does assert that Mrs. Clinton "could still be regarded as an "employee' " under FACA, Maj. Op. at p. 10, it too lacks an argument in support of the proposition. In particular, it ignores the fact that, while subsections (a) and (b) of *3 U.S.C. § 105* explicitly "authorize[ ]" the President "to appoint and fix the pay of [White House] employees," subsection 105(e), the statutory acknowledgment of the First Lady's role, is carefully phrased so as not to authorize her appointment as an employee or any remuneration for her services. An "unpaid employee" is an oxymoron, although an "unpaid officer" is not. FACA's strictures can be avoided, then, only if it can credibly be argued that Mrs. Clinton is an officer of the Federal Government. I can find no such argument.

To begin with the beginning, the Constitution imposes certain requirements on those [**74] who are to serve as officers of the United States. Such persons must be appointed by the President with the consent of the Senate unless Congress, by law, has vested the power of appointment "in the President alone, in the Courts of Law, or in the Heads of Departments," U.S. Const. art. II, § 2, cl. 2. Furthermore, all officers must take an oath to support the Constitution. Id., art. VI, cl. 3. Congress has enacted laws to implement these requirements. See, e.g., *5 U.S.C. § 3331* (officers of the United States required to swear an oath); *5 U.S.C. § 2906* (officers' oath to be "preserved"); *5 U.S.C. § 2902* ("officers appointed by the President" must have commissions made out and sealed by the Secretary of State); *5 U.S.C. §§ 3333*, 7311 (anyone who accepts either "office or employment in the Government of the United States" required to swear their loyalty by affidavit). We have received no indication that any of these requirements have been met with regard to Mrs. Clinton.

More generally, an officer implies an office, and an office implies [**75] duties. Title 1 of the United States Code defines "officer" by reference to an "office" with "duties"--" "officer' includes any person authorized by law to perform the duties of the office." *1 U.S.C. § 1*. And the Supreme Court has interpreted "officer" similarly with reference to the Constitution. In *Burnap v. United States, 252 U.S. 512, 516, 64 L. Ed. 692, 40 S. Ct. 374 (1920)*, the Court reasoned: "Whether the incumbent is an officer or an employee is determined by the manner in which Congress has specifically provided for the creation of the several positions, their duties and appointment thereto." Burnap held that a "landscape architect" was an employee, not an officer, because "there [was] no statute which creates an office of landscape architect ... nor any which defines the duties of the position," *id. at 517*, and because "there [was] no statute which provides specifically by whom the landscape architect ... shall be appointed." Id.

The undoubted value of the services that the wives of Presidents have rendered their husbands and their country notwithstanding, it cannot be said that they have occupied an [**76] office with duties. The provision of the U.S. Code on which the majority relies, *3 U.S.C. § 105*(e), is carefully phrased so as not to name a position or prescribe duties a President's spouse is to fulfill. In fact, section 105(e), strictly speaking, does not even authorize a First Lady to assist the President; rather it authorizes federal employees to assist the First Lady, and, in the course of doing so, acknowledges the assistance that First Ladies commonly render their spouses. In sum, Mrs. Clinton carries none of the indicia of a federal officer. She has neither been appointed to nor confirmed in the position of "First Lady," she has taken no oath of office, and she neither holds a statutory office nor performs statutory duties.

Having searched the U.S. Code and the Government's briefs in vain for definitions of "officer" that might give aid and comfort to the Government, I conclude that under any fair interpretation of the term, Mrs. Clinton is not an officer of the United States. But to complete this tour through the statute books, I note that section 105(e) does not, as the Government and the majority contend, require a finding [**77] that Congress has acknowledged that a President's spouse performs the duties of an officer. Another direct congressional statement on the subject of the First Lady's duties appears in the Anti-Nepotism Act. That Act declares that public officials (expressly including "the President") may [*921] not employ relatives (expressly including a "wife") in "a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control." *5 U.S.C. § 3110*(a), (b). The use of the definite article in the phrase "the agency in which he is serving" appears to imply that every "public official" belongs to some agency and that their relatives may not be employed in that agency, whatever it happens to be. Moreover, as a matter of policy and consistency, the restrictions on the President under the Anti-Nepotism Act must be viewed to be as broad as the Executive Branch: It is inconceivable that Congress, in combatting nepotism, intended to forbid Mrs. Clinton's service as Attorney General while permitting her appointment as National Security Advisor. Viewed purely as a matter of congressional intent, the argument that the Anti-Nepotism Act [**78] applies only to the Departments and not to the White House, see Maj. Op. at p. 12, is a weak one. As a result, any gravitational pull exerted in the direction of congressional acceptance of a President's spouse as a "de facto officer" attributable to section 105(e) is overwhelmed by the opposite force exerted by the Anti-Nepotism Act.

One final consideration. Although we may assume that, when drafting FACA, Congress gave no thought to the possibility that a President might appoint his spouse to an advisory committee, we may not assume that it failed to contemplate the relationship between FACA and the legal obligations and sanctions imposed on officers and employees of the Federal Government.

As one reviews the affidavit filed with the district court by Ira Magaziner, Senior Advisor to the President for Policy Development, one is struck by the fact that every member of the Task Force and Interdepartmental Working Group, but one, was subject to one or more of the statutes that Congress has enacted to ensure the proper conduct of members of the Federal Government--the "insiders," as the Government describes those who qualify as "full-time officers and employees" within the [**79] meaning of FACA. These laws impose burdensome ethics requirements. See, e.g., Ethics in Government Act of 1978, *5 U.S.C. App. 3,* § 101(f)(3) (1991 Supp.) (applying financial disclosure requirements on all higher paid "officers and employees" in the Executive Branch); id. §§ 501(a)(1), 505(2) (1991 Supp.) (applying outside income limitations on all higher paid officers and employees except "special government employees"); *18 U.S.C.* § *205* (1991 Supp.) (prohibiting any "officer or employee" from representing outsiders in "matters affecting the Government"); id. § 207 (prohibiting anyone who formerly was an "officer or employee" from participating in certain governmental proceedings and decisions after leaving government employment); id. § 208 (prohibiting an "officer or employee" from "participating personally" in a matter affecting "a financial interest"); *5 U.S.C.* § *7324* (1988) (prohibiting an "employee in an Executive agency" from taking "an active part" in political campaigns). And even though the Government argues that the Interdepartmental Working Group was not [**80] an advisory committee within the meaning of FACA, Mr. Magaziner nevertheless took pains to stress the fact that every member of and consultant to the Group--whether a regular or special government employee, whether working full time or part, for pay or without--was required to file a financial disclosure statement and to comply with other requirements of these laws. See Magaziner Affidavit, Gov't App. at 41-43.

These requirements, then, appear as a signal distinction between what would normally be considered to be "inside" and "outside" members of advisory committees. In fact, this distinction--the legal obligations and sanctions imposed on officers and employees of the Government as opposed to private citizens--undoubtedly provides a substantial part of the justification for the very different requirements imposed by FACA on committees that are composed exclusively of federal officers and employees and those that are not. In enacting FACA, Congress found that "one of the great dangers in the unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns." H.R. Rep. No. 1017, 92 Cong., 2d Sess. 6 [**81] (1972). Because committees not composed exclusively of federal [*922] officers and employees have members who are not required to foreswear their private associations and insulate themselves against potential conflicts of interest, FACA requires, as an alternative check, that their deliberations be conducted in the open.

When the majority states that we "need [not] consider whether Mrs. Clinton's presence on the Task Force violates ... any conflict of interest statutes," Maj. Op. at p. 24 n.10, it indicates that we have not been presented with claims under these statutes that call for adjudication. The question remains, however, whether Congress, if it had ever considered that the President's spouse might be appointed an official member of a Presidential advisory committee, would have labelled her an "officer or employee" within the meaning of FACA. To put it another way, could Congress have intended that Mrs. Clinton, alone of the twelve members of the Task Force and 340 members of the Working Group, would be entirely exempt from the reach of ethics laws that Congress has imposed on the President himself? I think not.

In visiting these sundry provisions, I doubt I have said very much with [**82] which my brethren in the majority would disagree. Our disagreement centers, I think, not on Congress's intent in enacting the relevant statutes, but on the lens through which we must view that intent in this particular case. The majority argues (1) that construing the phrase, "officers and employees," to exclude Mrs. Clinton would give rise to weighty constitutional issues, Maj. Op. at p. 22; (2) that the Public Citizen Court avoided deciding similar issues by embracing "an extremely strained construction of the word "utilized,' " Maj. Op. at p. 14; (3) that "it is reasonable ... to construe section 105(e) as treating the President's spouse as a de facto officer or employee," Maj. Op. at p. 11; and hence (4) that the phrase "full-time officer or employee of the government" must a fortiori be read to apply to Mrs. Clinton, Maj. Op. at p. 24. I remain unconvinced.

First, I do not think that section 105(e) can reasonably be read to create an officer or employee, either de facto or otherwise; and even if it could, I do not think we could avail ourselves of such a reading in this case. I noted above that section 105(e) has been carefully phrased so as not to recognize [**83] an office, an officer, or an employee. But equally important, I know of no case in which the Supreme Court has saved one provision from constitutional difficulty by liberally construing another, entirely unrelated provision. In Public Citizen itself, as well as in every case cited in Public Citizen in which the Court avoided a constitutional challenge, the Court sidestepped the constitutional claims presented through an interpretation of the statute under attack. See *Public Citizen, 491 U.S. at 465-66* (citing cases); see also *id. at 465, 467* (avoiding a constitutional challenge to FACA by construing FACA § 3(2)); see also, e.g., *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575, 588, 99 L. Ed. 2d 645, 108 S. Ct. 1392 (1988)* (avoiding a constitutional challenge to the National Labor Relations Act by construing NLRA § 8(b)(4)); *St. Martin Evangelical Lutheran Church v. South Dakota, 451 U.S. 772, 780-81, 788, 68 L. Ed. 2d 612, 101 S. Ct. 2142 (1981)* (avoiding a constitutional challenge to the Federal Unemployment Tax Act by construing FUTA § 3309(b)). Because it is FACA [**84] that is under attack, I think that any additional degree of interpretive freedom we enjoy in construing FACA cannot be extended to a statute authorizing expenditures for White House staff.

Second, I cannot believe that Public Citizen establishes the rule my colleagues tacitly embrace. In reaching their holding, the majority implicitly distinguishes between "extremely strained construction," which, under their reading, Public Citizen permits or even requires, and "disingenuous evasion," which it explicitly forbids. Compare Maj. Op. at p. 14 with *491 U.S. at 467*. The rule the majority appears to adopt, then, is that judges must strain (but may not evade) the plain meaning of a statute before they may entertain an "as-applied" constitutional challenge. If my colleagues are right, the line between "extremely strained construction" and "disingenuous evasion" will determine the outcome in every case involving an as-applied challenge presenting "formidable [*923] constitutional difficulties." *Public Citizen, 491 U.S. at 466*. While I suspect my colleagues may have some sympathy (as I do) with Justice Kennedy's position [**85] that the Supreme Court majority in Public Citizen had stretched its interpretation of FACA "beyond the point at which such a construction remains "fairly possible,' " *id. at 481* (Kennedy, J., concurring in judgment) (emphasis in original), I cannot believe the Court intended to establish a rule requiring such constructions in cases posing serious constitutional questions.

A review of its reasoning demonstrates that Public Citizen neither explicitly nor implicitly sanctions "strained" statutory interpretation. Its holding--that the ABA Committee was not "utilized" by the President within the meaning of FACA--was based principally on three considerations. The first of these was that, in the Court's memorable phrase, " "utilize' is a woolly verb," *id. at 452*, which necessarily requires judicial definition. Second, it recognized that a "dictionary reading [of the word "utilize" in] FACA's definition of "advisory committee' " would lead to a statute of "almost unfettered breadth" and produce "absurd results." *Id. at 452 & n.8, 452-54*. Taken literally, FACA's definition would have [**86] endowed the President with Midas ears capable of turning any continuing source of consensus opinion into a FACA committee. In such a world, the physicians jointly consulted to protect the President's health, the editorial board of the President's favorite newspaper, and two dietitians jointly planning the President's meals could all be classified as "Presidential advisory committees" subject to regulation. Because "the literal reading of [utilize] would "compel an odd result,' " the Court "searched for other evidence of congressional intent to lend the term its proper scope." *Id. at 454* (citation omitted). Third, on examining FACA's origins and legislative history, the Court concluded that while "it seems to us a close question whether FACA should be construed to apply to the ABA Committee, ... we are fairly confident it should not." *Id. at 465*.

The Court reached this last conclusion in significant part on the basis of the following passage from the FACA Conference Report: "The Act does not apply to persons or organizations which have contractual relationships with Federal agencies nor to advisory committees not directly [**87] established by or for such agencies." *Id. at 462* (emphasis added by Public Citizen). The Court also noted that the relationship between the ABA Committee and the Justice Department had not fallen within the scope of President Kennedy's Executive Order No. 11007, from which FACA was derived. *Id. at 462-63*. From this, the Court concluded that "the phrase "or utilized' therefore appears to have been added simply to clarify that FACA applies to advisory committees established by the Federal Government in a generous sense of that term," *id. at 462;* and that "read in this way, ... the word "utilize' does not describe the Justice Department's use of the ABA Committee," *id. at 463*.

In applying what the majority, Maj. Op. at p. 8, has laconically (and accurately) described as a "rather sweeping" statutory definition of "advisory committee" to the unique relationship between the Justice Department and the ABA Committee, the Court concluded that it was more probable than not that Congress did not intend that FACA apply to such privately organized groups. Nevertheless, [**88] because it considered the question close in light of the broad sweep of the definition, literally interpreted, it applied its venerable rule of statutory construction to tip the balance away from one that would have presented "formidable constitutional difficulties." *Id. at 466.*

In this case, we deal not with woolly terms but with the meaning of two words in common legal usage, "officer" and "employee." Far from creating absurdity, literal interpretations of these terms are necessary in order to give effect to the congressional policy of drawing sharp distinctions between individuals outside the Government and those within it. And in contrast with Public Citizen, in which no statutory definition of "utilize" was [*924] available and great weight was placed on legislative history, definitions of both "officer" and "employee" have been enacted into law by Congress. In this case, none of the considerations animating Public Citizen are remotely presented; and because we do not deal with ambiguous terms, there is no "balance" to be tipped by resort to legal maxims. Despite appearances, Public Citizen has little to do with the case we decide today.

Finally, [**89] to conclude my statutory analysis, I note that the Nixon I Court engaged in a patently straightforward interpretation of Federal Rule of Criminal Procedure 17(c), *418 U.S. at 697-702,* even though it recognized that "if we sustain[ ] this challenge, there [will] be no occasion to reach the claim of privilege asserted." *Id. at 698.* Needless to say, the considerations counseling avoidance of difficult constitutional issues were never more pressing than on the facts of Nixon I. Because I can find no credible argument to the contrary, and because I cannot bring myself to strain the meaning of "officer" or "employee" to produce one, I would hold that the Task Force was not exempt from the public disclosure requirements of FACA; and having done so, I would address the constitutional implications of that holding.

As I pointed out earlier, the Supreme Court has acknowledged a Presidential right to confidentiality that "is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." *Nixon I, 418 U.S. at 708.* Although the privilege is not [**90] absolute, the Court has only twice found that it must yield to competing constitutional interests, such as "the primary constitutional duty of the Judicial Branch to do justice in criminal prosecutions," *id. at 707;* and in each case, it has protected the confidentiality of Presidential communications from unwarranted disclosure.

In Nixon I, in which President Nixon sought to enjoin the subpoenaing of certain of his papers, the Court found it necessary to

> weigh the importance of the general principle of confidentiality of Presidential communications in performance of the President's responsibilities against the inroads of such a privilege on the fair administration of criminal justice.

Id. at 711-12. It concluded that the President's "generalized interest in confidentiality ... cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." *Id. at 713.* Accordingly, it ordered the examination in camera of the papers subject to an instruction that the district court be scrupulous in "protecting against any release or publication [**91] of material not found by the court [to be] probably admissible in evidence and relevant to the issues of the trial for which it is sought." *Id. at 714.*

Nixon II involved a balancing of the President's interest in the confidentiality of his communications against other national interests. In that case, former President Nixon asserted the Presidential privilege in a challenge to the constitutionality of the Presidential Recordings and Materials Preservation Act, which placed his papers in the custody of the Administrator of General Services. See *433 U.S. at 429-30.* The Supreme Court found that the statute was constitutional because of the Nixon papers' historical importance and their possible significance as aids to the legislative process, and because of "the safeguards built into the Act to prevent disclosure of [confidential] materials and the minimal nature of the intrusion into the confidentiality of the Presidency." *Id. at 454.* Those safeguards included the requirement that "any party's opportunity to assert any ... constitutionally based right or privilege" be protected. *Id. at 450* [**92] (quoting section 104 of the Act). The Court concluded "that the screening process contemplated by the Act [, which was to be conducted by Executive Branch archivists,] ... will not constitute a more severe intrusion into Presidential confidentiality than the in camera inspection by the District Court approved in [Nixon I]." *Id. at 455.*

In these two cases, the Court permitted only the most limited intrusions on the privilege. FACA, by contrast, would have required that the Task Force operate in the full glare of provisions requiring public meetings [*925] and disclosure of records. It is hard to imagine conditions better calculated to suppress the "candid, objective, and even blunt or harsh opinions," *Nixon I, 418 U.S. at 708,* that the President was entitled to receive from the twelve advisors he had appointed to his Task Force. Because none of Congress's purposes in enacting FACA are of a gravity that would justify overriding the Presidential privilege in this case, I would conclude that FACA is unconstitutional as applied to the Task Force.

For the foregoing reasons, I concur only in the majority's conclusion, in Part [**93] III of its opinion, that FACA's public disclosure provisions may not be applied to the Task Force. With respect to Part IV, I agree that the district court must develop further facts before it can determine whether the Working Group, or any division thereof, qualified as an advisory committee under FACA.

CITATIONS TO: 997 F.2d 898
SERIES: Shepard's Federal Citations
DIVISION: Federal Reporter, 2d Series
COVERAGE: All Shepard's Citations Through 08/96 Supplement.

Association of American Physicians and Surgeons Inc.
v.
Clinton (1993)

NUMBER	ANALYSIS	CITING REFERENCE	SYLLABUS/HEADNOTE
1	parallel citation	(302 U.S.App.D.C. 208)	
2	same case	813 F.Supp. 82	
3	connected case	837 F.Supp. 454	
		Cir. 4	
4		867 F.Supp. 392	
		Cir. DC	
--		Ct. App.D.C. 95-5070	
6	dissenting opinion	3 F.3d 1562	
7		14 F.3d 630	
8	distinguished	59 F.3d 221	11
9	criticised	61 F.3d 936	
10		76 F.3d 1233	
11	distinguished	826 F.Supp. 14	
12		846 F.Supp. 1010	1
13		846 F.Supp. 1011	
14		869 F.Supp. 1001	
15		879 F.Supp. 105	
16		880 F.Supp. 8	
17	distinguished	880 F.Supp. 9	
18		917 F.Supp. 42	
		D C	
19	dissenting opinion	303 U.S.App.D.C. 278	
20		304 U.S.App.D.C. 332	
21	distinguished	313 U.S.App.D.C. 225	11
22	criticised	314 U.S.App.D.C. 50	
--		56 L.C.P. 93	
24		104 Yale L.J. 54	

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--		56 L.C.P. 93	
--		57 L.C.P. 78	
--		56 L.C.P.(4) 93	
4		104 Yale L.J. 54	

Medicare Premiums: GOP vs. President's Proposal

	1996	1997	1998	1999	2000	2001	2002	7 year total
1995 GOP Budget (CBO, 12/13/95, December CBO baseline)	$51.40	$54.90	$58.60	$62.80	$70.70	$77.20	$84.60	$5,522.40
President's 7-Year Balanced Budget 12/7/95 (CBO, 12/13/95, December CBO baseline)	$42.50	$45.50	$49.50	$53.40	$59.50	$64.60	$70.40	$4,624.80
Monthly Difference from President:	$8.90	$9.40	$9.10	$9.40	$11.20	$12.60	$14.20	
Yearly Difference from President:	$106.80	$112.80	$109.20	$112.80	$134.40	$151.20	$170.40	**$897.60**
Yearly Difference per couple:	$213.60	$225.60	$218.40	$225.60	$268.80	$302.40	$340.80	**$1,795.20**
Vetoed GOP Budget on March 1995 baseline (CBO 11/16/95, CBO didn't score President on March baseline)	$53.70	$57.00	$59.30	$64.10	$73.10	$80.10	$88.90	$5,714.40
Monthly Difference from President:	$11.20	$11.50	$9.80	$10.70	$13.60	$15.50	$18.50	
Yearly Difference from President:	$134.40	$138.00	$117.60	$128.40	$163.20	$186.00	$222.00	$1,089.60
Yearly Difference per couple:	$268.80	$276.00	$235.20	$256.80	$326.40	$372.00	$444.00	$2,179.20

COMPARISONS: Medicare Spending, Savings and Growth Rates Under Various Proposals
(Fiscal Years, CBO Baselines and Estimates)

	Budget Period	Federal Spending (Billions)	Federal Savings (Billions)	As % Federal Baseline	2002 Gross Spending Spending / Bene.	Avg. 1996-02 Growth in Gross Spending / Bene.
CBO MEDICARE BASELINES						
February 1994	7 yrs	$1,705	na	na	$8,900	9.1%
March 1995	7 yrs	$1,693	na	na	$8,500	8.2%
April 1996	7 yrs	$1,651	na	na	$8,100	7.5%
REPUBLICANS						
Balanced Budget Act (March 1995 baseline) (CBO letter to P. Domenici, 11/16/95)	7 yrs	$1,423	-$270	-15.9%	$7,100	5.4%
1996 Proposal (April 1996 baseline) (Senate Budget Resolution Report, 5/13/96)	6 yrs	*For 1997 - 2002* $1,306	*For 1997 - 2002* -$168	*For 1997 - 2002* -11.4%	$6,900	4.8%
ADMINISTRATION						
Health Security Act (February 1994 baseline)** (CBO's "An Analysis of the Administration's Health Proposal", February 1994)	7 yrs	$1,503 Program $1,561 Net	-$202 Program -$114 Net	-11.9% Program -6.7% Net	$7,700	7.1%
	6 yrs	*For 1996 - 2001* $1,235 Program $1,307 Net	*For 1996 - 2001* -$148 Program -$76 Net	*For 1996 - 2001* -10.7% Program -5.5% Net		
1996 Proposal (April 1996 baseline) ("CBO's Estimates of the President's Budgetary Proposals" in "The Economic & Budget Outlook: FY 1997-2002")	6 yrs	*For 1997 - 2002* $1,358	*For 1997 - 2002* -$116	*For 1997 - 2002* -7.9%	$7,300	5.8%

Unless otherwise noted, the period is 1996 to 2002.
"Federal Spending" means outlays minus receipts from premiums. "Gross spending" refers to mandatory outlays excluding premiums.
Gross spending per beneficiary is the 2002 gross spending divided by CBO's Part A enrollment projections, rounded to the nearest $100.
This is the method used by Senate Majority Budget Committee staff.

** CBO estimated "Program" changes and "Net" changes, which inclu[illegible] the Drug [illegible]fit, offset for employed beneficiaries, and other changes.
The Net numbers indicate the o[illegible]ll changes to the Medicare program.

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Medicare Premiums: GOP vs. President's Proposal

	1996	1997	1998	1999	2000	2001	2002	7 year total
1995 GOP Budget (CBO, 12/13/95, December CBO baseline)	$51.40	$54.90	$58.60	$62.80	$70.70	$77.20	$84.60	$5,522.40
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Monthly Difference from President:	$8.90	$9.40	$9.10	$9.40	$11.20	$12.60	$14.20	
Yearly Difference from President:	$106.80	$112.80	$109.20	$112.80	$134.40	$151.20	$170.40	**$897.60**
Yearly Difference per couple:	$213.60	$225.60	$218.40	$225.60	$268.80	$302.40	$340.80	**$1,795.20**
Vetoed GOP Budget on March 1995 baseline (CBO 11/16/95, CBO didn't score President on March baseline)	$53.70	$57.00	$59.30	$64.10	$73.10	$80.10	$88.90	$5,714.40
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Yearly Difference per couple:	$268.80	$276.00	$235.20	$256.80	$326.40	$372.00	$444.00	$2,179.20

President's Propo Title XI--Health Care, estimated under December 1995 baseline

By fiscal year, in billions of dollars

	1996	1997	1998	1999	2000	2001	2002	Total
Subtitle G--Health Insurance for the Temporarily Uninsured	0.0	1.5	2.2	2.3	2.6	2.8	3.1	14.4
Subtitle H--Administrative Simplification	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total, Title XI Health Care	-3.5	-1.3	-5.8	-14.0	-20.7	-26.9	-35.0	-107.3

MEMORANDUM: Monthly Part B Premium (By calendar year)

	1996	1997	1998	1999	2000	2001	2002
		45.50	49.50	53.40	59.50	64.60	70.40
Estimated premium under proposal	$42.50	$45.50	$49.50	$53.40	$59.50	$64.60	$70.40
Estimated premium under current law	$42.50	$45.80	$50.70	$52.20	$53.70	$55.30	$56.90
		45.80	50.70			55.30	56.90

MEMORANDUM: Change in Spending by Medicare, Medicaid, and Other

	1996	1997	1998	1999	2000	2001	2002	Total
			6.4		18.7		30.9	97.5
Total Medicare	-1.2	-3.2	-6.4	-12.4	-18.7	-24.4	-30.9	-97.6
Total Medicaid	-2.3	-3.4	-6.1	-6.7	-6.3	-7.0	-7.7	-37.6
Total Other	0.0	5.3	6.8	5.1	4.3	4.6	3.6	22.7
Total, Title XI	-3.5	-1.3	-5.8	-14.0	-20.7	-26.9	-35.0	-107.3

$62.0

FOOTNOTES:

1/ Included in Subtitle B, Medicare Choice.
2/ For this discretionary provision, the proposal authorizes $3.5 billion for 1997 - 1999, $1.5 billion for 1999 - 2001 and $500 million for 2002 - 2005.
3/ Proposal would transfer $62.1 billion to Part B over 7 years
4/ Includes discretionary grant program, but not the expansion of self-employed tax deduction.
5/ Most of these are to be made budget neutral; other provisions not sufficiently specified to estimate savings.
Probably no significant revenue impacts from repeal of excise tax for non-qualified large group plans etc.
7/ Probably no significant revenue impacts from ERISA provisions.
Assumes the insurance reforms are identical to S. 1028--additional provisions could have cost/revenue implications.

NOTES:

Details may not sum to totals because of rounding.
The estimates assume an enactment date of February 1, 1996.
The estimates do not incorporate changes in discretionary spending for administration.

CBO: 1995 GOP BUDGET on DECEMBER BASELINE.....

13-Dec-95

Title VIII, Medicare, as reestimated under December 1995 baseline

By fiscal year, in billions of dollars	1996	1997	1998	1999	2000	2001	2002	Total
Subtitle H—Rural Areas:								
Medicare-Dependent Payment Extension	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Critical Access Hospitals	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3
Establish REACH Program	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Classification of Rural Referral Centers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
Expand Access to Nurse Aide Training 3/	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Subtotal, Subtitle H	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.7
Change in Net Mandatory Medicare Outlays before Failsafe	-6.4	-13.8	-20.1	-29.6	-39.2	-48.3	-57.8	-215.2
Additional Outlay Reductions Required by Failsafe, Net of Premiums	0.0	0.0	-2.7	-4.6	-2.6	-1.7	0.0	-11.6
Total, Medicare	-6.4	-13.8	-22.8	-34.2	-41.8	-50.0	-57.8	-226.7

MEMORANDUM: Monthly Part B Premium (By calendar year)

	1996	1997	1998	1999	2000	2001	2002
Estimated premium under proposal	$61.40	$54.90	$58.60	$62.80	$70.70	$77.20	$84.60
Estimated premium under current law	$42.50	$45.80	$50.70	$52.20	$53.70	$55.30	$56.90

FOOTNOTES:

1/ Estimate includes medical savings accounts provision.
2/ These items are included in Subtitle H (Rural Areas)
3/ CBO estimates that this provision would cost less than $50 million over seven years.
4/ CBO assumes that the freeze on reasonable costs or charges would apply to all ambulance services.

NOTES:

Details may not sum to totals because of rounding.
The estimates assume an enactment date of November 15, 1995.
The estimates do not incorporate changes in discretionary spending for administration.
Estimates reflect minor revisions made subsequent to those shown in the Economic and Budget Outlook.

VETOED GOP BUDGET (CBO 11/16/95 March Baseline)

Subtitle H--Rural Areas:								
Medicare-Dependent Payment Extension	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Critical Access Hospitals	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.3
Establish REACH Program	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2
Classification of Rural Referral Centers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1
Expand Access to Nurse Aide Training 3/	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Subtotal, Subtitle H	**0.1**	**0.1**	**0.1**	**0.1**	**0.1**	**0.1**	**0.1**	**0.7**
Change in Net Mandatory Medicare Outlays before Failsafe	**-6.8**	**-14.3**	**-21.1**	**-31.2**	**-42.0**	**-52.6**	**-65.3**	**-233.5**
Additional Outlay Reductions Required by Failsafe, Net of Premiums	**0.0**	**0.0**	**-6.2**	**-10.8**	**-7.1**	**-7.0**	**-5.6**	**-36.6**
Total, Medicare	**-6.8**	**-14.3**	**-27.2**	**-42.0**	**-49.0**	**-59.6**	**-70.9**	**-270.0**

MEMORANDUM: Monthly Part B Premium (By calendar year)

Estimated premium under proposal	$53.70	$57.00	$59.30	$64.10	$73.10	$80.10	$88.90
Estimated premium under current law	$42.50	$48.20	$53.20	$55.00	$56.80	$58.60	$60.50

FOOTNOTES:

1/ Estimate includes medical savings accounts provision.
2/ These items are included in Subtitle H (Rural Areas)
3/ CBO estimates that this provision would cost less than $50 million over seven years.

NOTES:

Details may not sum to totals because of rounding.
The estimates assume an enactment date of November 15, 1995.
The estimates do not incorporate changes in discretionary spending for administration.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E

27-Sep-1996 07:48pm

TO: (See Below)

FROM: William White
Office of Public Liaison

SUBJECT: More Senior Group Quotes on Medicare

EXPERTS AGREE THAT THE PROPOSED REPUBLICAN MEDICARE CUTS WOULD HAVE A DEVASTATING IMPACT ON SENIORS

MORE SENIOR QUOTES:

o National Committee to Preserve Social Security and Medicare: "The seniors in this country are sending a message to Congress -- they should not shoulder the burden of balancing the budget. There is something terribly wrong when our lawmakers believe a tax cut for the wealthiest among us is more important than the health of our parents and grandparents." [National Committee to Preserve Social Security and Medicare, 9/26/96]

o National Committee to Preserve Social Security and Medicare: "A carefully and deftly calculated plan to dismantle Medicare under the pretense of saving it... There seem to be several problems with the plan. Although the plan attempts to create choices, the cap placed below private sector inflation will compromise quality." [National Committee to Preserve Social Security and Medicare, 9/21/96]

o Families USA, Special Report: "Congressional proposals will significantly increase Medicare out-of-pocket health costs, while significantly reducing assistance with those costs currently available to low-income Medicare beneficiaries. Millions of low-income beneficiaries will lose protection they have now. Increased out-of-pocket health costs will also be a serious financial burden for millions of other seniors with low and modest incomes, for whom out-of-pocket health costs already consume substantial portions of their incomes." [Families USA, Special Report, 6/11/96]

- Alzheimer's Association: "The Congressional cuts would be achieved by enrolling more older Americans in managed care, decreasing payments to providers, and phasing in higher premiums for upper income beneficiaries. The most controversial change in their plan would establish medical savings accounts, which many analysts believe could siphon funds from the Medicare program and further jeopardize its financial stability. The goal of some in Congress is to restructure Medicare so it would provide a fixed level of payment whether that is adequate to cover health care costs or not." [Alzheimer's Association, 6/14/96]

- Older Women's League: "Had it been enacted, it would have cut future Medicare spending by $270 billion (largely to finance a $245 billion tax cut); established a 'fail-safe' spending cap; and dramatically changed Medicare's structure. Congressional action in 1995 would have cut Medicare benefits and increased premiums." [Older Women's League, 9/27/96]

- The National Council on the Aging: "It is wrong to cut benefits to pay for unwise tax cuts for the wealthy and to meet arbitrary timetables for deficit reduction. Cuts in Medicare will have a devastating effect on millions of seniors, especially those with low income or who are living primarily on Social Security." [The National Council on the Aging, 5/9/96]

Distribution:

TO: Pauline M. Abernathy

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CC: Gene B. Sperling
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CC: Molly Brostrom
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