**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VICTORIA JACKSON GRAY ADAMS, *et. al.*, *Plaintiffs,* -vs- THE FEDERAL ELECTION COMMISSION *et al.*, *Defendants.*	)	Civil Action No. 02-cv-877-KLH-CKK-RJL *consolidated with* 02-cv-582-KLH-CKK-RJL (lead case) *and* 02-cv-581-KLH-CKK-RJL 02-cv-633-KLH-CKK-RJL 02-cv-751-KLH-CKK-RJL 02-cv-753-KLH-CKK-RJL 02-cv-754-KLH-CKK-RJL 02-cv-781-KLH-CKK-RJL 02-cv-874-KLH-CKK-RJL 02-cv-875-KLH-CKK-RJL 02-cv-881-KLH-CKK-RJL

DECLARATION AND EXPERT REPORT OF DEREK CRESSMAN

1. My name is Derek Cressman. I am the Democracy Program Director of the State Public Interest Research Groups. The PIRGs are a network of non-profit, non-partisan research and advocacy organizations that have analyzed campaign finance issues and other public interest issues for the past 30 years. I have professionally studied federal hard money contributions since 1995 with U.S. PIRG, the national policy office of the State PIRGs. In that time, I have authored or co-authored nine studies and white papers regarding the financing of federal campaigns. I have provided testimony before the United State Senate Rules Committee on the topic of increasing federal contribution

limits. I have not received any compensation for providing this declaration and expert report.

2. It is my expert opinion that hard money contributions and expenditures significantly influence the outcome of elections. In 440 of 469 (or 94%) of 2000 general election races for the House of Representatives and U.S. Senate, the candidate who spent the most money won their race [see exhibit A, *Look Who's Not Coming to Washington*, U.S. PIRG, January 2001, Appendix A]. Winning candidates outraised opponents by a margin of 2.6 to 1 [see exhibit B, *The Best Elections Money Can Buy*, U.S. PIRG, November 2000. page 4]. In 1998, the candidate who spent the most won 94% of House races and 95% of Senate races. Further, in every presidential primary since 1976, the candidate who has raised the most money has won his party's nomination [see exhibit C, *Running for the Money,* U.S. PIRG, September 1999, page 5].

3. While money is not the sole factor in determining elections, it is an overwhelming factor. This is the reason that candidates and campaign directors, who are experts in the business of winning elections, spend so much time and energy raising campaign funds. If money did not largely determine election outcomes, then candidates would not bother raising it.

4. Federal campaign funds come from a small minority of citizens. In the 2000 election cycle, fewer than 232,000 individuals gave contributions of $1,000 or more to federal candidates. This represents just 0.11% of the voting age population [see exhibit D, *Reinforcing the Rich*, Public Citizen, February 2, 2001, page 2]. Clearly the current federal limits only affect a miniscule proportion of U.S. citizens, the vast majority of

whom are limited by their disposable incomes in what they can give at amounts far lower than $1000.

5. The small number of donors who give the maximum amount comprise a significant source of candidate funds. Contributors who gave $1000 or more to a federal candidate gave 46% of all individual contributions to federal candidates from January 1, 1999 to November 28, 2000 [see exhibit E, *The Consequences of Raising Federal Contribution Limits*, U.S. PIRG, March 2001, page 5]. Of those candidates who were successful, 60% of their individual funds came from donors who gave $1000 or more [see exhibit A, page 6].

6. Common sense would indicate that citizens who can afford to give $1000 will tend to be wealthier than those who cannot. This has been documented by surveys showing that of large donors to federal elections, 95% had family incomes greater than $50,000 while almost two-thirds of American households had incomes below that level. Large donors are 95% white, 80% male, and 50% were over 60 years of age. This compares to a U.S. population that is 17% non-white, 51% female, and only 12.8% over the age of 60. Large federal donors are much more likely to be employed in business or law professions than the public at large. They are more conservative than the public at large on economic matters and environmental matters. However, one-third of large donors identified themselves as liberal compared to one-fifth of the general public, so it is primarily the middle of the political spectrum that is underrepresented among large donors [see exhibit F, *Pushing the Limit*, U.S. PIRG, July 1999, page 7 and exhibit G, *Individual Campaign Contributors*: WEALTHY, CONSERVATIVE – AND REFORM MINDED, Green, Hernson, Powell, and Wilcox, June 1998].

7. In the first 15 months of the 1999-2000 election cycle, 2/3 of Fortune 500 CEOs gave at least one maximum $1000 contribution to a candidate, compared to less than one percent of the general population [see exhibit H, *Legalizing the Loophole,* U.S. PIRG, June 2000 page 3]. Clearly, CEOs have greater influence over election results than ordinary citizens.

8. Because campaign fundraising is such a large factor in electoral success, many potential candidates choose not to run for office or drop out of contention because they do not have the backing of large donors. For example, Congressman John Kasich and Elizabeth Dole withdrew from the Republican Primary for President in the last election before a single vote was cast in large part due to fundraising. Had these candidates had similar large donor support to frontrunner George W. Bush, or had Bush raised amounts similar to Kasich and Dole, those candidates would likely have remained in the race. At the time John Kasich dropped out of the Republican presidential primary, George W. Bush had raised 74.4% of his funds from maximum $1000 donors [see exhibit C, page 2].

9. Therefore, through giving hard money contributions of $1000, a small and unrepresentative group of citizens has vastly more influence than most Americans in determining who runs for federal office, and who wins elections. All citizens do not have equal opportunity to participate in the electoral process in America, and the accompanying results cannot be interpreted to represent the will of the majority of citizens.

10. Low and moderate-income citizens are aware that their voices do not carry equal weight in federal politics. In 1999, only 29% of Americans trusted the government in Washington to do the right thing, according to a poll by the Council for Excellence in

Government. The same survey found that 63% of respondents feel that government serves the special interests, while only 25% said it serves the public interest. Just 39% said that they believed our current government meets Abraham Lincoln's goal of government of, by, and for the people, while 54% said we do not have a government of, by, and for the people [see exhibit I, *Testimony of Campaign Finance Reform*, Derek Cressman, March 29, 2001]. The feeling of disenfranchisement is a significant reason for declining rates of voter participation and a barrier to citizens getting involved in federal elections through volunteering or making small contributions. This then exacerbates the undue influence of large donors on the process.

11. Members of Congress are also aware of the disproportionate role that money plays in influencing election outcomes. Even if a member of Congress grants no access to a donor, and has no personal communication let alone *quid pro quo* understanding with a donor, that member of Congress knows that the donor can influence his or her re-election and is therefore more accountable to that donor than to other constituents. For politicians who favor their political career more than their personal wealth, the unequal influence of large donors on election outcomes can be more corrupting in the form of distortion to the political process than traditional bribery. A recent study by political scientists Lawrence Jacobs and Robert Shapiro found that in 1980, federal lawmakers followed the wishes of the majority of Americans about two-thirds of the time. In 2000, that was down to 40% of the time. The professors concluded that lawmakers answer "to the extreme ideological elements of their parties, to their contributors, and to special interests" [see exhibit J, *Politicians Don't Pander,* Washington Post, March 19, 2000.]

12. If legislators do not follow the wishes of large donors, they may find themselves defeated by candidates who do. For example, with one exception, the candidates in the 2000 election who received the most money from Enron and Arthur Anderson defeated their opponents. One specific example involves the 1994 election for the 18th Congressional District in Texas. Enron CEO Kenneth Lay recruited Sheila Jackson Lee to challenge then-incumbent Craig Washington because of Washington's opposition to NAFTA. Lay and other Enron employees helped raise nearly $600,000 for Jackson Lee, three times as much as Washington had raised in his previous re-election. The result was an overwhelming win for Jackson Lee. This demonstrates how large contributions can influence policy decisions without any quid pro quo or even access granted by the candidate. Representative Jackson Lee's position on NAFTA was likely not influenced by her contributors. However, Lay and his fellow large donors were able to change the vote of the representative of the 18th District of Texas by dint of large campaign contributions. This avenue of political influence is unavailable to most voters in the 18th District of Texas [see exhibit K, *Phantom Fixes*, U.S. PIRG, January 2002, page 10].

13. The influence of large donors on election outcomes has increased significantly since the Supreme Court upheld the current $1000 limit in 1976. The techniques of television advertising, polling, focus groups, direct mail marketing, and other expensive modern campaign practices were in their infancy in the 1960s and early 1970s. As professional campaign managers have become more skilled at employing these marketing techniques to win political campaigns, the competitive advantage of candidates who have significant large donor backing over those who do not has increased and the influence of large donors has grown correspondingly. A Wall Street Journal Poll in 1997 found that

68% of respondents think that the American political system was more influenced by special interest money than it was twenty years earlier [see exhibit I, page 1].

14. Increasing contribution limits will further reduce the role of small donors in influencing federal elections. I estimate that the proportion of individual funds raised by federal candidates from donors who give less than $200 to candidates will shrink from 30% to 21-25%. Meanwhile, the percentage of individual funds federal candidates raise from donors who give the maximum amount allowed will increase from 46% currently to 55-63% [see exhibit E, page 5].

15. Increasing federal contribution limits will reduce the free speech opportunities of low and moderate-income donors, and of candidates who are backed by these donors. There is a limited amount of advertising time available for purchase during a campaign season. As candidates compete for this limited time, the cost of advertising increases. The price of advertising triples in some markets as a result of increased campaign season demand [see exhibit L, *The Case for Free Air Time*, Alliance for Better Campaigns, March 2002, page 9]. Candidates need to purchase air-time to compete, but those candidates backed by lower income voters are effectively priced out of speech opportunities by candidates who have large donor backing. If the large donor candidates raise even more money under higher contribution limits, it will further drive up the cost of advertisements and literally reduce the number of advertisements that a lesser-funded candidate could purchase, potentially driving their campaigns below the level of notice.

16. Even in races that do not depend upon TV or radio advertising, which is limited by its very nature, voters have a limited capacity to absorb political information. This is limited not only by the time in the day, but by competing demands for a voters attention

in their everyday lives. Candidates backed by large donors can effectively capture nearly all of most voters' attention spans through saturation advertising techniques, and literally drown out the voices of lesser-funded candidates.

17. The rationale used by Congress to increase federal contribution limits is not compelling. Although inflation has occurred since the limits were set, federal candidate fundraising has risen even faster. House and Senate candidate fundraising increased by 425% from 1977-78 to 1999-2000, with inflation accounting for less than half of this increase [see exhibit E, page 4]. Candidates are raising and spending more money than ever in the history of our republic under the current $1000 limits.

18. Increasing contribution limits will not reduce the time candidates spend raising funds. Many states have no contribution limits at all, yet there is no evidence from those states that candidates spend any less time raising funds. Candidates will spend time raising funds to the extent that they believe their opponent is doing so and could therefore defeat them. In fact, higher limits may encourage candidates to spend more of their personal time raising funds. The higher the donation level, the greater the incentive for a candidate to personally speak with a donor as opposed to letting a direct mail piece, internet site, or campaign staff make the solicitation. Further, the larger the donation, the more the donor expects a personal call from the candidate, or a seat at the same dinner table at a fundraiser, or a photograph. Only limits on candidate spending would effectively reduce the time candidates spend raising funds.

19. Increasing contribution limits will not help challengers. Under the current limits, House incumbents outraised House challengers by margins ranging from 2.3 to 1 up to 4 to 1 in elections from 1990-1998. Since there is no reason to believe that higher

contribution limits will allow either challengers or incumbents to find additional donors, only receive more from existing donors, it is certain that higher contribution levels will only increase the fundraising disparity between challengers and incumbents [see exhibit F, page 11].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: Sept. 20, 2002

Derek Cressman