

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 - - - - - X

4 SENATOR MITCH McCONNELL, et al.,:

5 Plaintiffs, : Case No.

6 v. : 02-0582

7 FEDERAL ELECTION COMMISSION, et : (CKK, KLH, RJL)

8 al., :

9 Defendants. :

10 - - - - - X

11 REPUBLICAN NATIONAL COMMITTEE, :

12 et al., :

13 Plaintiffs, : Civil No.

14 v. : 02-874

15 FEDERAL ELECTION COMMISSION, et : (CKK, KLH, RJL)

16 al., :

17 Defendants. :

18 - - - - - X

19 Washington, D.C.

20 Monday, October 14, 2002

21 Deposition of DEREK BOK, a witness herein,
22 called for examination by counsel for Plaintiffs in
23 the above-entitled matter, pursuant to notice, the
24 witness being duly sworn by SUSAN L. CIMINELLI, a
25 Notary Public in and for the District of Columbia,

<p style="text-align: right;">Page 2</p> <p>1 taken at the offices of Wilmer, Cutler & Pickering, 2 2445 M Street, N.W., Washington, D.C., at 9:10 a.m., 3 Monday, October 14, 2002, and the proceedings being 4 taken down by Stenotype by SUSAN L. CIMINELLI, CRR, 5 RPR, and transcribed under her direction. 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 CONTENTS 2 WITNESS EXAMINATION BY COUNSEL FOR 3 DEREK BOK RNC PLAINTIFFS 4 By Mr. Barnett 5 5 6 7 EXHIBITS 8 BOK EXHIBIT NO. PAGE NO. 9 1 Letter 9/23/02 w. attach Effects of 10 Campaign Financing Quality Govt. D Bok 5 11 2 Common Purpose L.B. Schorr 44 12 3 Congress as Public Enemy J.R. Hibbing 13 E.T. Morse Cambridge University Press 51 14 4 The Trouble with Government D. Bok 15 Harvard University Press 54 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES: 2 3 On behalf of the Plaintiffs RNC, et al. 4 THOMAS O. BARNETT, ESQ. 5 Covington & Burling 6 1201 Pennsylvania Avenue, N.W. 7 Washington, D.C. 20004-2401 8 (202)662-5407 9 10 On behalf of Senator McCain: 11 RANDOLPH D. MOSS, ESQ. 12 Wilmer, Cutler & Pickering 13 2445 M Street, N.W. 14 Washington, D.C. 20037-1420 15 (202) 663-6640 16 17 ALSO PRESENT: 18 DONALD J. SIMON, ESQ. 19 JERROD PATTERSON 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS 2 Whereupon, 3 DEREK BOK, 4 business address at Kennedy School of Government, 5 Harvard University, Cambridge, MA 02138, was called 6 as a witness by counsel for RNC Plaintiffs, and 7 having been duly sworn by the Notary Public, was 8 examined and testified as follows: 9 EXAMINATION BY COUNSEL FOR RNC PLAINTIFFS 10 BY MR. BARNETT: 11 Q. Please state your name for the record. 12 A. Derek Bok. 13 Q. Mr. Bok, my name is Tom Barnett, and I'm 14 here representing what we call the RNC Plaintiffs in 15 this action in which you are a witness. Why don't we 16 just start off things, go ahead and mark as Exhibit 1 17 the declaration that you submitted. 18 (Bok Exhibit No. 1 was 19 marked for identification.) 20 BY MR. BARNETT: 21 Q. I have left off the biography just because 22 I know this is going to be reproduced many times, and 23 I was trying to save a tree or two. But other than 24 that, I believe that's your complete statement. 25 Would you just look at Exhibit 1 and</p>

<p style="text-align: right;">Page 6</p> <p>1 identify it, please?</p> <p>2 A. This appears to be a statement that I</p> <p>3 prepared for use in this case.</p> <p>4 Q. And other than omitting the biography and</p> <p>5 the statement at the end about compensation, does it</p> <p>6 appear to be complete?</p> <p>7 A. It does. Yes.</p> <p>8 Q. Have you ever held an elected public</p> <p>9 office?</p> <p>10 A. No.</p> <p>11 Q. Have you ever run for office?</p> <p>12 A. Not in an official campaign. Only a</p> <p>13 campus politics.</p> <p>14 Q. You have never run for public office?</p> <p>15 A. Never run for public office.</p> <p>16 Q. And have you ever held a position in a</p> <p>17 political party?</p> <p>18 A. No, I have not.</p> <p>19 Q. And do you make contributions to</p> <p>20 candidates for Federal office?</p> <p>21 A. Rarely.</p> <p>22 Q. Have you in the last two years?</p> <p>23 A. I have not. I'm not entirely sure whether</p> <p>24 my wife has or not.</p> <p>25 Q. But you yourself have no recollection?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Have you ever hosted a political fund</p> <p>2 raiser?</p> <p>3 A. No.</p> <p>4 Q. So do you have any direct experience in</p> <p>5 raising money for political campaigns or political</p> <p>6 party committees?</p> <p>7 A. No.</p> <p>8 Q. That would be true for either hard money</p> <p>9 or so-called Federal money or for soft money or</p> <p>10 non-Federal money?</p> <p>11 A. All kinds of money. That's right.</p> <p>12 Q. No experience in that area?</p> <p>13 A. No experience.</p> <p>14 Q. And also just as a general matter, talking</p> <p>15 about your declaration, there is some polling and</p> <p>16 opinion data that you cite in there?</p> <p>17 A. Yes.</p> <p>18 Q. None of that is work that you performed</p> <p>19 yourself, correct?</p> <p>20 A. No. That is all published work by others.</p> <p>21 Q. Turning to your declaration itself, I'd</p> <p>22 like to just make sure I understand. You don't</p> <p>23 reference in here any evidence of an express</p> <p>24 agreement between a Federal candidate or Federal</p> <p>25 official to take a particular action in response to a</p>
<p style="text-align: right;">Page 7</p> <p>1 A. No.</p> <p>2 Q. You wouldn't remember the last</p> <p>3 contribution to a Federal candidate that you made?</p> <p>4 A. No.</p> <p>5 Q. Do you contribute to any candidates for</p> <p>6 state or local office?</p> <p>7 A. Certainly not recently.</p> <p>8 Q. You wouldn't remember the last such</p> <p>9 contribution you would have made?</p> <p>10 A. No. I seem to recall some years ago</p> <p>11 making, I could recall sort of two contributions.</p> <p>12 One was I believe -- no. I'm not even sure. I don't</p> <p>13 think -- they were, anyway, many years ago. They are</p> <p>14 really quite vague in my mind.</p> <p>15 Q. Do you contribute to any national</p> <p>16 political party committees?</p> <p>17 A. Certainly; not currently. No.</p> <p>18 Q. Would you remember your last such</p> <p>19 contribution?</p> <p>20 A. No. I think my wife made a contribution,</p> <p>21 but that would have been a decade ago. I'm not even</p> <p>22 sure the details of that.</p> <p>23 Q. Do you contribute to any state or local</p> <p>24 party committees?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 9</p> <p>1 promise of a contribution, do you?</p> <p>2 A. No. Any explicit quid pro quo? No.</p> <p>3 Q. That's right. And you understand that</p> <p>4 that would be illegal under current laws?</p> <p>5 A. Yes.</p> <p>6 Q. So that's not the concern that you are</p> <p>7 really trying to address in your declaration?</p> <p>8 A. I think that's fair to say.</p> <p>9 Q. If you look at pages, really the bottom of</p> <p>10 page 1 over to the top of page 2.</p> <p>11 A. Yes.</p> <p>12 Q. You make reference to a series of rulings</p> <p>13 by the Federal Election Commission that allowed</p> <p>14 unlimited gifts of "soft money" to political parties.</p> <p>15 A. Yes.</p> <p>16 Q. That you think were ostensibly for certain</p> <p>17 purposes, but in practice permit wealthy individuals</p> <p>18 and groups to give huge sums to help specific</p> <p>19 candidates.</p> <p>20 A. Yes.</p> <p>21 Q. Can you first tell me the uses that you</p> <p>22 understand it was specifically used for, or strike</p> <p>23 that.</p> <p>24 Why don't you just explain if you would</p> <p>25 for me, you talk about ostensibly one use, but in</p>

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1 fact in practice another use. Can you elaborate what
2 you mean by that?

3 A. I think the principal use of soft money
4 was to pay for various kinds of media ads on behalf
5 of specific candidates.

6 Q. And how would you identify the media ads
7 that help specific candidates, versus ads that may
8 not help specific candidates? If you would
9 distinguish between such ads.

10 A. Well, I suppose one might have ads that
11 simply were directed toward particular issues without
12 any connection to specific elections or candidates,
13 as opposed to ads that were explicitly or in effect
14 were directed toward the election of one candidate or
15 the defeat of another.

16 Q. Let's focus for a moment on the first kind
17 of media advertisement that addresses an issue of
18 public policy, makes no reference to any individual
19 or candidate.

20 Is that part of the problem that you are
21 citing at the top of page 2 on your declaration?

22 A. No.

23 Q. It's the ads that you believe are intended
24 to or have the effect of influencing a Federal
25 election?

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1 If national party committees obtain soft
2 money and use that money to register more voters, do
3 you believe that that is part of the problem that you
4 identify in your declaration?

5 A. Yes, I think it can be.

6 Q. And how so?

7 A. Well, I think if individuals or
8 organizations can give unlimited amounts of money to
9 particular parties for registration drives, which
10 typically will be registration drives at areas where
11 they expect that the predominance of voters, if they
12 get registered, will be for them. That's why the
13 particular party would have a registration drive.
14 That could be a source of influence by the person
15 giving, or the organization giving the funds in terms
16 of policy.

17 Q. In influence on what or on whom?

18 A. An influence on the -- the leadership of
19 the party in setting policy priorities and making
20 other policy decisions that could affect legislation
21 or other government ads.

22 Q. If I can understand here, let's focus for
23 the moment on, is any contribution a problem from
24 your point of view, or is it just certain levels of
25 contributions?

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1 A. Correct.

2 Q. Do I also understand that the use of soft
3 money, and by that I mean money not subject to the
4 Federal campaign contribution limits. Let's just be
5 clear, is that consistent with your use of the term
6 soft money?

7 A. Yes.

8 Q. That the use of soft money for voter
9 registration drives, get out the vote efforts, other
10 party building activities, was that use of soft money
11 part of the concern that you were addressing in your
12 declaration?

13 MR. MOSS: Objection as to form. You can
14 answer the question. I was just making an objection
15 for the record.

16 THE WITNESS: Could you repeat the
17 question?

18 BY MR. BARNETT:

19 Q. Sure. Again, I'm trying to understand
20 exactly what your concerns are as you express them in
21 the declaration. We talked about certain kinds of
22 advertisements are a concern because they may affect
23 the Federal candidacy. Other kinds of advertisements
24 may address issues are not of concern for you. There
25 is reference to national voter registration drives.

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1 MR. MOSS: Are you talking about hard
2 money or soft money?

3 BY MR. BARNETT:

4 Q. I'm just talking about contributions.

5 A. Well, clearly there have to be some
6 contributions that are sufficiently minor that one
7 would not expect them to have any influence.

8 Q. And let's be clear about this, I guess.
9 Is having some influence on the views of a political
10 party on public policy issues necessarily a bad
11 thing?

12 A. If the amount of influence that you have
13 depends on the amount of money you have, I think it
14 can contribute. I think that can create a problem.

15 Q. Should we arrange the system so nobody has
16 any influence?

17 MR. MOSS: Object as to form.

18 THE WITNESS: Ideally, you would hope that
19 you would have a system in which the ability to exert
20 influence on the basis of money was very evenly
21 distributed, and the influence was therefore exerted
22 more by the quality of the ideas, rather than the
23 size of your pocketbook. I'm not saying that's an
24 ideal that's easy to achieve in practice, but I
25 suppose theoretically, that would be a rough

<p style="text-align: right;">Page 14</p> <p>1 approximation of the idea.</p> <p>2 BY MR. BARNETT:</p> <p>3 Q. And in terms of -- let's focus on the</p> <p>4 practicalities here. If I'm able to contribute \$500</p> <p>5 to the Republican National Committee, so that they</p> <p>6 can use that money to go out and register voters,</p> <p>7 does that give me some sort of improper influence</p> <p>8 over the RNC?</p> <p>9 A. Given the amounts of money that are raised</p> <p>10 in campaigns, I would not tend to feel that \$500 from</p> <p>11 any individual is going to achieve any appreciable</p> <p>12 influence.</p> <p>13 Q. How about \$5,000?</p> <p>14 A. Well, it's very difficult to know where</p> <p>15 the line is crossed, and it probably depends on a lot</p> <p>16 of factors, other than the amount of money in any</p> <p>17 particular case. It could be a \$5,000 contribution</p> <p>18 in a particular race at a particular time.</p> <p>19 My, you know, it would be very important</p> <p>20 in the \$5,000 contribution in another time, another</p> <p>21 place would have very little significance. So I</p> <p>22 would be reluctant to try to generalize about</p> <p>23 influence that given sums of money do or don't have.</p> <p>24 Q. Would you prohibit individuals from</p> <p>25 contributing \$5,000 to the national political party</p>	<p style="text-align: right;">Page 16</p> <p>1 THE WITNESS: You know, the reason I find</p> <p>2 that difficult to argue one way or the other is</p> <p>3 because it depends very much on the context. I</p> <p>4 suppose I might for example advocate public funding</p> <p>5 of elections in which case any contributions of this</p> <p>6 kind might be ruled out at least for candidates who</p> <p>7 accepted public funding, so whereas in the context of</p> <p>8 our current system, \$5,000 contribution to a</p> <p>9 political party may not seem to have any significant</p> <p>10 risk, so again, it depends very much on the context</p> <p>11 in which the gift occurs, and to take it out sort of</p> <p>12 as a sort of pluck it out without any context and say</p> <p>13 do you agree with this or that or not, I find</p> <p>14 difficult to answer.</p> <p>15 BY MR. BARNETT:</p> <p>16 Q. Do you advocate the public funding of</p> <p>17 Federal elections?</p> <p>18 A. Well, I think I say in my book that it is</p> <p>19 one alternative that deserves an opportunity to be</p> <p>20 tried, as it is being tried now in Arizona and Maine.</p> <p>21 As I point out in my book, I think it would be</p> <p>22 premature to assume that we know enough without</p> <p>23 further experience to say that full public funding is</p> <p>24 clearly the one way to go, so I think it's a</p> <p>25 promising possibility, but I think its efficacy has</p>
<p style="text-align: right;">Page 15</p> <p>1 committees if it were up to you?</p> <p>2 A. Once again, I mean, not offhand, but I</p> <p>3 would want to look at the totality of the law that</p> <p>4 was being put forward. I think it's hard to take one</p> <p>5 particular thing out of context and say you know, are</p> <p>6 you for this or are you for that.</p> <p>7 Q. I understand that, but do you understand</p> <p>8 that under the Bipartisan Campaign Reform Act that I</p> <p>9 will be entitled to contribute \$5,000 to the RNC if I</p> <p>10 chose to do so. That's consistent with your</p> <p>11 understanding?</p> <p>12 A. Of the law?</p> <p>13 Q. Of the law. Yes?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm trying to understand whether under</p> <p>16 your views as expressed in your declaration, that is</p> <p>17 going to create an appearance of corruption or</p> <p>18 perception of corruption along the lines described in</p> <p>19 your declaration?</p> <p>20 A. Let me say that I'm not significantly</p> <p>21 troubled by that rule.</p> <p>22 Q. So you would not advocate prohibiting such</p> <p>23 \$5,000 contributions?</p> <p>24 MR. MOSS: Asked and answered. You can</p> <p>25 answer it again.</p>	<p style="text-align: right;">Page 17</p> <p>1 yet to be demonstrated.</p> <p>2 Q. Indeed. I think you suggest in your book</p> <p>3 that it would be prudent to wait about a decade to</p> <p>4 let the states experiment before making such</p> <p>5 judgments. Is that accurate?</p> <p>6 A. I believe that the field of campaign</p> <p>7 finance reform is a good example of value of the</p> <p>8 laboratory, the laboratories of democracy that Lewis</p> <p>9 Brandeis once referred to that experimentation could</p> <p>10 be very useful.</p> <p>11 Q. And that we might benefit from further</p> <p>12 experimentation before making certain judgment about</p> <p>13 campaign finance?</p> <p>14 A. Before trying to commit ourselves to any</p> <p>15 one total solution.</p> <p>16 Q. Going back to what level of contribution</p> <p>17 causes you concern, I gather you have not done any</p> <p>18 empirical research to determine precisely what level</p> <p>19 of contribution is going to create the perception of</p> <p>20 corruption that you address?</p> <p>21 A. I think it would be very difficult even to</p> <p>22 conceive of what empirical study could demonstrate</p> <p>23 something of that kind, and I should imagine probably</p> <p>24 that the problem would be further complicated by the</p> <p>25 fact that the public perceptions at one time under</p>

5 (Pages 14 to 17)

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1 one set of circumstances might be different than
2 public perceptions of another, so there probably is
3 no one absolute tipping point at which public
4 cynicism sets in in all times and all places.

5 Q. You do address both in your declaration
6 and in your book certain studies about whether PAC
7 contributions affect voting behavior in the Congress?

8 A. Yes.

9 Q. Now, in your declaration I think you say
10 these studies are divided on whether gifts of this
11 size influence votes or merely help in securing
12 access to legislatures by the donor.

13 Do you recall that from your declaration?

14 A. Yes.

15 Q. In your book, you are a little more
16 dismissive of those studies, isn't it fair to say?

17 A. I don't think I regard the two statements
18 as inconsistent. The studies are divided by even the
19 studies that suggest that there is an influence on
20 votes do not demonstrate, able to demonstrate a sort
21 of major effect. But there certainly is a division.

22 There are other studies that do claim that
23 PAC contributions make a dramatic impact so to that
24 extent, there is a clear division. I would say,
25 however, that those studies that say it makes a

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1 money was causing the votes, that there are some
2 facts that are inconsistent with that conclusion.

3 Do you recall that portion of your book?

4 A. I think that's correct. At least if it
5 were true that they were having a major impact. Yes.

6 Q. And would you agree with the statement
7 that careful research has not yet shown that
8 political contributions have a significant effect on
9 the way members of Congress vote?

10 MR. MOSS: Objection as to form.

11 THE WITNESS: I would say that research
12 has not yet demonstrated that PAC contributions have
13 a substantial impact on policy. On the other hand, I
14 think I have to add that there is an interesting line
15 of research that the real effect of campaign
16 contributions is on legislative activity before a
17 vote is taken, and that seems to be more consistent
18 with the evidence than a finding that the -- there is
19 a substantial effect on final vote.

20 BY MR. BARNETT:

21 Q. But you would agree that we do not yet
22 know because there is no evidence of contributions
23 affecting legislative activity, whether that's the
24 case or not?

25 MR. MOSS: Objection as to form. Defining

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1 dramatic impact are, are flawed in that they don't
2 really address the problem of causation. They just
3 assume that because money goes to people who vote a
4 particular way, the money must have caused the vote,
5 and without really showing that it isn't simply an
6 example of the money went because people were
7 rewarding their natural allies

8 Q. Causation --

9 A. So the votes influence the gifts rather
10 than the gifts influencing the votes. Now, those
11 studies simply don't acknowledge that possibility and
12 don't deal with, it but they certainly do reflect a
13 division of the opinion and the people who write
14 those studies do suggest that PAC contributions make
15 a major, have a major effect on policy, so to that
16 extent, my statement is perfectly correct saying
17 there is a division of opinion

18 Q. But you, I think you just testified as
19 well as you said in your book, the studies that you
20 have seen that talk about a major impact are
21 fundamentally flawed?

22 A. The ones that say it is a major impact.
23 Yes.

24 Q. And in fact you cite some evidence in your
25 book that if the direction of causation was that the

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1 contributions.

2 THE WITNESS: There is no convincing
3 empirical demonstration of a substantial effect on
4 policy as a result of PAC contributions.

5 BY MR. BARNETT:

6 Q. And there is no empirical evidence that
7 you can cite of PAC contributions altering
8 legislative activity prior to votes?

9 A. Well, it's an argument that does find that
10 there are, that the recipients of PAC funds do, are
11 more active in committees and other prevote behavior.
12 The difficulty is, of course, that the ability of
13 researchers to get at the behavior prior to a vote is
14 severely limited since a lot of that is not public,
15 and therefore, it's an inherently, it's inherently
16 difficult to prove one way or another what effect PAC
17 contributions would have on prevoting behavior.

18 Q. You said there was an argument to that
19 effect.

20 A. Yes.

21 Q. I asked you whether you can cite an
22 empirical study to that effect?

23 A. There is some indication in the Hall and
24 Wayman article that I cite that legislators were
25 receiving funds prior to their vote on behalf of the

<p style="text-align: right;">Page 22</p> <p>1 donors than those who hadn't received PAC funding, 2 but that's about as close as anything that I can 3 find. 4 Q. Right. You yourself don't find -- 5 A. I assume you are paying the usual fees on 6 all the excerpts of the books you were using? 7 Q. We'll come back to that. I'd like to come 8 back to understanding your views of what particular 9 activities cause you concern and before I do that, I 10 have been talking about a perception of corruption. 11 I'd like you in your words to tell me exactly what it 12 is the problem that you think needs to be 13 addressed? 14 MR. MOSS: Objection as to form. 15 THE WITNESS: What is the problem that 16 needs to be addressed by campaign finance reform 17 generally? 18 BY MR. BARNETT: 19 Q. Yes. 20 A. Well, I think there is several problems. 21 One problem that needs to be addressed is the risk of 22 influencing policy by donations of significant 23 amounts of money. Another risk is even if whether or 24 not you are actually influencing policy, having a 25 system that creates the widespread impression that</p>	<p style="text-align: right;">Page 24</p> <p>1 there is a magic number that we can put on the number 2 of dollars that will distinguish significant from 3 insignificant. It's again one of those difficult 4 judgments. It probably varies with time and 5 circumstance, and would be very difficult to 6 ascertain empirically in any event. 7 Q. But you said that you believe the amount 8 of non-Federal money contributed to national 9 political parties under the current system falls into 10 the significant range? 11 A. I would think so. 12 Q. Now, by amount, do you mean the aggregate 13 amount in the country, or the amount a given source 14 contributes? 15 A. Not just the aggregate amount in the 16 country, but the amounts that individuals, interests, 17 industries, other definable entities with specific 18 policy concerns can give. 19 Q. Do you know what the average non-Federal 20 contribution is to the Republican National Committee? 21 A. I do not. 22 Q. Do you know what the average non-Federal 23 contribution is to the Democratic National Committee? 24 A. No. But I don't think the average gift is 25 all that significant.</p>
<p style="text-align: right;">Page 23</p> <p>1 policy is something that can be purchased, and thus 2 creates public cynicism. 3 A third problem would be the risk that the 4 campaign finance system is sufficiently skewed in 5 favor of incumbents that amount of reasonable 6 competition contemplated by any Democratic system 7 becomes hard to achieve. There are probably other 8 problems, but I think that makes the point that there 9 is not any one single problem that one has to worry 10 about, but several problems. 11 Q. Any other problems that you can think of 12 as you sit here? 13 A. Well, I wouldn't want to say I have 14 exhausted them, but those are certainly three of the 15 most obvious. 16 Q. The first that you cited was donations of 17 significant amounts of money. 18 A. Yes. 19 Q. What do you define as a significant amount 20 of money? 21 A. Well certainly the amounts of money that 22 have been contributed by soft money prior to the 23 passage of McCain-Feingold are certainly in the 24 significant, and often are in the significant range. 25 But once again, I'm simply not going to pretend that</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. And why not? 2 A. Well, if there are a lot of small 3 contributions, but a few large ones, I think one 4 would still be very concerned about the few large 5 ones, even though the average turns out to be 6 considerably lower. 7 Q. In your view then, you wouldn't be as 8 concerned about the small ones. It's the hard ones 9 that you are focused on? 10 A. Yes. I think that's correct. 11 Q. I'd also like to understand -- I know back 12 in the past you have some experience with the law, 13 and -- 14 A. Very distant past. 15 Q. Well, if you can reach back there, you 16 will know that, or you will recall that under our 17 system of government, we have a Federal Government 18 and we have a series of state and local governments. 19 A. Yes. 20 Q. Would you agree with me that the concern 21 of the Federal Government with respect to campaign 22 finance should be on Federal elections? 23 A. Yes. 24 Q. And that the state and, states should be 25 the parties principally concerned with state and</p>

7 (Pages 22 to 25)

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1 local elections?

2 A. Yes.

3 Q. So I'd like to ask you if you see a
4 concern with Federal elections, if members of a
5 national political party committee solicit campaign
6 contributions for state and local candidates that are
7 within the limits set by those state and local
8 governments?

9 A. Well, I might see lots of problems,
10 depending on what the state laws are, because there
11 are certainly many states in which the campaign
12 finance laws seem to me to admit a considerable
13 influence and the mere fact that they are state laws
14 or local ordinances and that the national party is
15 taking advantage of them doesn't remove the
16 difficulty that I would have in trying to rule out
17 undue influence on state and local policy.

18 Q. But that would be the responsibility of
19 state and local governments to address that problem,
20 would it not?

21 A. Yes. But you asked me whether I would be
22 comfortable, and I am not comfortable with lots of
23 state and local laws on campaign financing.

24 Q. And to be clear, though, and I appreciate
25 your clarifying that, you would view that as a

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1 minute. And you cite in here, I believe it's three
2 different sets of concerns, and please feel free to
3 reword this, but very briefly, I think they are
4 incoherent legislation, what I call an inefficient
5 regulatory system?

6 A. Yes.

7 Q. And laws that are less favorable to the
8 poor than you might prefer.

9 A. Poor and working people. Yes.

10 Q. Poor and working people. And it is your
11 belief that the campaign finance laws contribute to
12 all three of these problems?

13 A. Yes.

14 Q. That's what you state in the declaration.
15 You also state, and I'd like you to confirm that
16 there are other causes besides the campaign finance
17 system that contribute to these three problems that
18 you have identified?

19 A. That's correct.

20 Q. And I do not believe that you make any
21 assessment in your declaration as to the degree of
22 contribution to the problems between campaign finance
23 and the other causes, do you?

24 A. That would be extremely difficult to do,
25 not only empirically, but also conceptually. For

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1 concern of the state and local governments, as
2 opposed to a concern of the U.S. Congress?

3 A. Yes. So long as the state and local
4 entities were not able in some fashion to influence
5 Federal elections.

6 Q. Let's take an example, just to try and pin
7 this down. Let's take the example of New Jersey,
8 which every few years elects a governor, and they
9 happen to elect it in an odd number of years, a year
10 in which there is no Federal candidate on the ballot.

11 Do you see a Federal concern with members,
12 RNC raising money on behalf of a New Jersey
13 gubernatorial candidate in an off-year election?

14 MR. MOSS: Objection as to form.

15 THE WITNESS: Do I see a Federal problem
16 with -- I think the fairest answer is that's really
17 not a question that I have thought about. And the
18 complications in this area are such that I think I
19 would like to think about it further before I
20 declared myself one way or the other.

21 BY MR. BARNETT:

22 Q. But you cannot identify a Federal concern
23 as you sit here right now?

24 A. As I sit here, I do not.

25 Q. Let's turn back to your declaration for a

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1 example, you could say as far as the incoherence of
2 legislation, that that arises because, I'm sure there
3 are other causes as well, but it arises not just from
4 our campaign finance laws, but also from the fact
5 that you do not have tight party discipline where
6 it's impossible to influence by affecting the
7 judgment of a great many people in the legislative
8 process.

9 I think conceptually, it would be
10 impossible to say which is most important. It's the
11 combination of the two that produces the result, each
12 without the other might not have the effect, so both
13 are important causes and I know of no way of
14 disentangling them to be able to assign some kind of
15 numerical weight to each.

16 Q. But you think these problems would be less
17 severe if we had stronger parties with tighter party
18 discipline?

19 A. I think it would become more difficult
20 probably to get some of the very individualized,
21 localized exceptions, exemptions, special
22 considerations that creep into a great deal of
23 legislation if you had tighter party control.

24 Q. Would it also follow then if you weaken
25 the parties even further that these parties might be

<p style="text-align: right;">Page 30</p> <p>1 exacerbated?</p> <p>2 A. Well, it depends on how you weaken the</p> <p>3 parties. I mean, if the point that you are making is</p> <p>4 that the loss of party control by eliminating large</p> <p>5 soft money contributions will exacerbate this</p> <p>6 problem, I would disagree.</p> <p>7 I mean, I think the risk of undue</p> <p>8 influence through large soft money contributions is</p> <p>9 probably greater in terms of its effect on</p> <p>10 incoherence than any potential loss of party</p> <p>11 discipline resulting from -- because in some ways,</p> <p>12 there isn't that much loss of party discipline</p> <p>13 through campaign finance reform. Because I think</p> <p>14 campaign finance is not a very effective tool for</p> <p>15 parties to control the behavior of individual</p> <p>16 legislators, because when an election comes, their</p> <p>17 desire to elect people of their own party, even if</p> <p>18 they may not always tow the party line predominates,</p> <p>19 and they are not able to enforce party discipline</p> <p>20 through distributing campaign funds very effectively.</p> <p>21 Q. What would be some of the other causes of</p> <p>22 the three problems that we have outlined from your</p> <p>23 declaration? Besides campaign finance and besides</p> <p>24 lack of party discipline.</p> <p>25 A. Well, that's probably easiest with respect</p>	<p style="text-align: right;">Page 32</p> <p>1 though the other two are also very important</p> <p>2 contributing factors.</p> <p>3 Q. But you think it's more than that, don't</p> <p>4 you? You think the lack of involvement and</p> <p>5 willingness to live up to our civic responsibilities</p> <p>6 is the most important factor driving the three</p> <p>7 problems you identified, don't you?</p> <p>8 A. You know, I try to stay away from talking</p> <p>9 about what is trying to assign relative weights to</p> <p>10 things that seem to me to, to defy that kind of</p> <p>11 definitive conclusion. Certainly as I said before,</p> <p>12 the fact that less educated, less affluent people in</p> <p>13 this country vote substantially less, something which</p> <p>14 is not true in other advanced democracies, is a major</p> <p>15 factor that contributes to the fact that they do not</p> <p>16 fare as well as their counterparts in other</p> <p>17 countries. There is no question about that.</p> <p>18 But clearly their lack of power is</p> <p>19 exacerbated by the fact that they also are much less</p> <p>20 influential as contributors to a system which</p> <p>21 campaign finance money is very important.</p> <p>22 Q. I see you have got your book with you</p> <p>23 right here. Could I ask you to look at page 13 of</p> <p>24 that book.</p> <p>25 A. Page 13. I can always summon the strength</p>
<p style="text-align: right;">Page 31</p> <p>1 to the third, the fact that poor and working people,</p> <p>2 let's say the bottom third of the income scale, tends</p> <p>3 to do poorly. And once again, there are more than</p> <p>4 one cause, and they are all sort of interlocking so</p> <p>5 it's very difficult to disentangle and assign a</p> <p>6 weight, a relative weight to each, but certainly the</p> <p>7 fact that working people in this country are not</p> <p>8 strongly organized affects -- the union movement is</p> <p>9 clearly less powerful politically here than it would</p> <p>10 be in Scandinavia or most European countries.</p> <p>11 In addition, the United States is</p> <p>12 virtually the only advanced democracy in which poor</p> <p>13 and working people vote significantly less than more</p> <p>14 affluent, more educated segments of the population.</p> <p>15 That's simply not true in other countries. That has</p> <p>16 an effect since politicians naturally under any</p> <p>17 Democratic system respond to people who vote more</p> <p>18 than people who do not. But a campaign finance</p> <p>19 system that gives disproportionate power to</p> <p>20 contribute to political parties and candidates to</p> <p>21 those people of wealth clearly adds to that.</p> <p>22 You simply, you know, the poor and working</p> <p>23 people are not as large a source of campaign funds as</p> <p>24 other segments, and that certainly reduces their</p> <p>25 influence, so that's a contributing factor, even</p>	<p style="text-align: right;">Page 33</p> <p>1 to read my own prose.</p> <p>2 Q. If you look at the first full paragraph,</p> <p>3 look at the fourth sentence beginning if there is any</p> <p>4 persistent theme.</p> <p>5 Can you just read from there to the end of</p> <p>6 the paragraph out loud, please?</p> <p>7 A. If there is any persistent theme that</p> <p>8 emerges from this book, it is that many of the</p> <p>9 government's failings are not primarily the result of</p> <p>10 scheming politicians, incompetent bureaucrats or</p> <p>11 self-interest groups that have their roots in</p> <p>12 attitudes and behaviors that are widely shared among</p> <p>13 the people themselves. Much of the fault, in other</p> <p>14 words, lies not in Washington but in ourselves.</p> <p>15 Q. And did you believe that statement or</p> <p>16 those praises when you wrote them?</p> <p>17 A. Absolutely. I believe them now.</p> <p>18 Q. I'm not done with page 13. If you look at</p> <p>19 the bottom of page 13, if you could read aloud the</p> <p>20 carryover paragraph starting this is an ominous</p> <p>21 trend?</p> <p>22 A. As the following pages seek to</p> <p>23 demonstrate, the public's growing lack of interest in</p> <p>24 civic affairs contributes in important ways to all</p> <p>25 the deficiencies and frustrations that trouble people</p>

<p style="text-align: right;">Page 34</p> <p>1 most about their government. Ignoring this fact 2 merely causes us to pin our hopes on ineffective 3 remedies, leading eventually to even more frustration 4 and finger pointing. 5 Until we are prepared to take our role as 6 citizens more seriously, there is little prospect 7 that institutional tinkering and election reforms can 8 accomplish enough to ease our current discontent. 9 Q. Did you believe that statement when you 10 wrote it? 11 A. I do. 12 Q. And you believe it today? 13 A. I do. 14 Q. I want to jump back for a moment to -- we 15 were talking about the Federal activities, state and 16 local activities. We discussed at the outset that 17 you don't have personal experience with political 18 parties. You have not served in them? 19 A. That's correct. 20 Q. Do you have any sort of detailed 21 understanding of what national political parties do 22 at the state and local level? 23 A. I have some knowledge. 24 Q. You know that they engage in what? 25 A. At the state and local level.</p>	<p style="text-align: right;">Page 36</p> <p>1 of buying access lawmakers in their staffs talk to 2 many individuals and groups that do not give money. 3 Moreover if access were truly critical and money were 4 the key contributors should have a significant impact 5 on policy decisions but this is precisely what 6 researchers have failed to show. 7 MR. MOSS: Do you want him to read the 8 footnote attached as well? 9 BY MR. BARNETT: 10 Q. No. That's okay. Do you agree with that 11 statement? 12 A. Shall I read the footnote? 13 Q. No. I'm asking whether you agree with the 14 statement that you just read? 15 A. I do. 16 Q. And then if you look further down on 17 page 84, the paragraph that begins, Although this 18 explanation seems plausible, and I'd ask you to 19 reference the paragraph prior to that. 20 I believe you are discussing the 21 possibility that contributions influence the level of 22 activity before votes? 23 A. Yes. 24 Q. Which you discussed earlier? 25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Yes. 2 A. Well, they recruit candidates often. They 3 offer advice and help to candidates in how to 4 organize and run an effective campaign. They may 5 provide them with some money. They may have to get 6 out the vote drives. They may kind of create a 7 network of political activists who would become 8 active in campaigns and canvassing and other things 9 of that kind, although that last activity is not 10 nearly as great as it used to be. 11 So yes, it depends clearly on what party 12 or what area of the country you are talking about 13 because there are varying levels of participation and 14 grassroots effort, depending on the party and the 15 area, but you know, most state and local parties 16 engage to some extent in the activities that I 17 mentioned. 18 Q. Now, I guess why don't we go ahead and 19 turn back to page 83 of your book. If you look down 20 the bottom of page 83, it's the carryover paragraph? 21 A. Yes. 22 Q. The sentence that begins but it would be a 23 mistake. Could you read beginning at that sentence 24 to the end of that paragraph? 25 A. But it would be a mistake to make too much</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. If you could just read the paragraph, the 2 two sentences beginning although this explanation 3 seems plausible? 4 A. Although this explanation seems plausible, 5 no one yet knows how much success contributors have 6 had persuading friendly law makers to work harder on 7 their behalf, nor is anyone sure whether the effect 8 they have comes from campaign donations from actions 9 of a more innocent kind. But I do feel obliged to 10 add that all of these comments that you are having me 11 read have to do with PAC donations, which are 12 limited, and not with soft money, which can be given 13 in much larger amounts. 14 It is conceivable that PAC donations of a 15 thousand or two thousand or \$3,000 are given merely 16 to buy access. It becomes quite hard to believe that 17 people who are giving hundreds of thousands of 18 dollars often to both parties do not believe that 19 they are getting more than simply access as well as 20 some of those gifts. 21 Q. We'll come back to that, but I want to 22 finish the thought with respect to page 84. The last 23 part of what you read referenced actions of a more 24 innocent kind. And I think you go on to explain what 25 this is. If you could pick up and read when</p>

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1 lobbyists from to the end of the paragraph then?
 2 A. When lobbyists from the American
 3 Association of Retired People or the National Rifle
 4 Association talk to lawmakers, it's far from clear
 5 that financial contributions speak as loudly as the
 6 fact that these organizations have thousands of
 7 dedicated supporters across America who might not
 8 only vote against the legislators they regard as
 9 unfriendly but could also work hard to defeat them in
 10 the next election.
 11 Q. And you obviously agree with that
 12 statement?
 13 A. I do. It's another example, I think, of
 14 the fact that the influence of money on policy is
 15 hard to determine convincingly because it is
 16 entangled with various other causes and facts that
 17 are very hard to separate empirically.
 18 Q. A moment ago, you testified and I think
 19 you say in your declaration that it's hard to believe
 20 that some of these contributors would give the sums
 21 that they are giving if they were not getting
 22 something for what they are contributing?
 23 A. Yes.
 24 Q. And I believe, correct me if I'm wrong, I
 25 believe you said they must be getting, they must

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1 whatever else has got it into the law.
 2 Q. I'm not sure if you quite answered my
 3 question, though, which is that there is still a
 4 question as to whether, what direction the causation
 5 runs in between these contributions and the actions
 6 that you are referring to, is there not?
 7 MR. MOSS: Objection as to form.
 8 THE WITNESS: I think all that I can say
 9 is that there is, I'm not aware of a clear empirical
 10 demonstration of the effect of financial
 11 contributions on policy, but that is because it's
 12 inherently extraordinarily difficult to demonstrate
 13 what's in the minds of legislators who vote as they
 14 do.
 15 BY MR. BARNETT:
 16 Q. Is it your view that it's impossible that
 17 a corporation might, for example, contribute to the
 18 Republican National Committee's non-Federal account
 19 because they know the RNC tends to work against
 20 raising taxes on corporations as a general matter?
 21 A. I think that's quite possible.
 22 Q. With respect to the, I don't remember
 23 exactly the way you described it, but you make
 24 reference to the special, I don't know, exceptions or
 25 particular provisions in our regulations and laws?

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1 believe they are getting something more than access.
 2 A. Yes.
 3 Q. But exactly what it is that they are
 4 getting, if they are getting anything, is unclear. I
 5 mean, don't you have the staying direction of
 6 causation issue that you talked about earlier? Could
 7 these individuals or corporations be contributing to
 8 political parties that have philosophies that are
 9 consistent with their interests?
 10 A. It may be very difficult to make a direct
 11 empirical demonstration of precisely what influences
 12 any given legislator's vote. We just lack the
 13 capacity to peer into the minds of individual
 14 legislators and disentangle the various influences
 15 that could have helped make up their mind.
 16 I can only say that United States is noted
 17 for the number of special interest exemptions,
 18 subsidies, other beneficial provisions in
 19 legislation, many of which are proceeded by
 20 substantial donations. It -- as a matter of common
 21 sense, it's hard to believe that there isn't some
 22 connection but in any given case it may not be
 23 possible to demonstrate precisely what it is, was
 24 that led the legislator to insert that particular
 25 special provision or to insist on it in committee or

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1 A. Yes.
 2 Q. Certainly the campaign finance system is
 3 in your view not the only mechanism that leads to
 4 complicated laws and regulations?
 5 A. No. Definitely not.
 6 Q. And what would some of the other
 7 mechanisms be?
 8 A. Some. Other causes of complexity?
 9 Q. Yes.
 10 A. Well, one surely is that we have a very
 11 complex society. And some problems are just
 12 inherently complicated. Another is that campaign
 13 finance is not the only, or financial contribution is
 14 not the only reason why particular interest groups
 15 may receive special treatment.
 16 They may receive special treatment because
 17 their particular legislator believes they may
 18 represent a significant part of that legislator's
 19 constituency, so of course there are a variety of
 20 factors that could explain a particular exception or
 21 special provision. Sometimes, as I say, there are
 22 legitimate reasons for the special exception, you
 23 know, in a society like ours that's, most problems do
 24 not allow sweeping simple generalizations to take
 25 care of complicated problems.

11 (Pages 38 to 41)

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1 Q. And the Bipartisan Campaign Reform Act
2 does not address many of these other causes, does it?
3 A. No. It's only dealing with one important
4 cause.

5 Q. And you have not cited as to any evidence
6 that would enable us to assess how important the
7 campaign finance system is to these effects, versus
8 the other causes that you have identified?

9 A. None that demonstrates definitively how
10 important it is. No.

11 Q. I think in your declaration if you look at
12 page 4, for the moment, it's the bottom of page 4,
13 carrying over to page 5, which this is your third
14 point about the campaign finance system in your view
15 helps to undermine the treatment that poor and
16 unorganized Americans receive from the government?

17 A. Yes.

18 Q. And you acknowledge that the weakness of
19 trade unions is one cause?

20 A. Yes.

21 Q. And depressed voting rates are another
22 cause?

23 A. Yes.

24 Q. And again, you cite to no evidence that
25 enables us to assess how important any of these

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1 Q. And so if that continues to be the case
2 under the BCRA, is it not only natural for the
3 interest of the top 2 to 5 percent of the population
4 to be reflected in the legislative and administrative
5 priorities set in work?

6 A. Yes. But that is not to say that campaign
7 finance reform that we are talking about would have
8 no effect on this problem.

9 Q. But you don't know how much effect?

10 A. I don't think it would be possible to
11 demonstrate how much effect.

12 Q. And the next paragraph, you talk about how
13 it's not necessarily a malicious intent on the part
14 of politics. They sometimes have to make tough
15 choices, and you cite a legislative leader the quote
16 is I believe if we have \$20 million and the choice is
17 between spending it between senior citizens or poor
18 kids, seniors get the money every time?

19 A. Yes.

20 MR. BARNETT: I'll go ahead and mark this
21 as Exhibit 2

22 (Bok Exhibit No. 2 was
23 marked for identification.)

24 BY MR. BARNETT:

25 Q. If you look at what's been marked as

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1 individual causes is to the effect that you are
2 discussing, is that correct?

3 A. Yes. And I personally doubt whether it
4 would be possible to devise any empirical test that
5 would tell you that.

6 Q. But one of the concerns that you have, in
7 fact, one of the principal concerns is the fact that
8 the poor, the less organized, the less educated tend
9 to vote less often?

10 A. Yes.

11 Q. And that under the campaign finance
12 system, the majority of campaign contributions, even
13 hard money contributions, come from individuals in
14 the top 2 to 5 percent of the population?

15 A. Yes.

16 Q. And even if you had fairly strict limits
17 on those campaign contributions, that the majority,
18 large majority of those contributions would come from
19 that top 2 to 5 percent?

20 A. That's correct.

21 Q. And isn't it at least, if I follow the
22 logic that you are proceeding under, that will
23 continue to be the case even after the Bipartisan
24 Campaign Reform Act goes into effect, will it not?

25 A. Correct.

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1 Exhibit 2, I believe this is the reference cited in
2 footnote 4 of your declaration?

3 A. Yes.

4 Q. And page 183 has been reproduced here.
5 And if you will see at the end of the first full
6 paragraph, that appears to be the same quote. Is
7 that where you drew your quote from?

8 A. Yes.

9 Q. As an initial matter, does this reference
10 deal with campaign finance at all? In this section?

11 MR. MOSS: Objection as to form.

12 THE WITNESS: Probably by implication when
13 they talk about richer interests. I think the fact
14 that the interests are rich has relevance to
15 politicians chiefly because they are not likely to be
16 important contributors.

17 BY MR. BARNETT:

18 Q. And in fact, this is not even talking
19 about the Federal Government?

20 A. No.

21 Q. It's talking about the state governments?

22 A. No. But I think it is talking about what
23 common sense would tell you is a fairly uniform
24 tendency, regardless of the level of government that
25 one is talking about.

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1 Q. And in context if you know isn't it in
2 fact talking about whether the state governments will
3 be as responsive to the poor and underprivileged as
4 the Federal government would be, suggesting the
5 Federal government, would be more responsive?

6 A. In this paragraph? I don't read that in
7 that paragraph. Moreover, as I believe I cite in my
8 book, instances in which government cutbacks at the
9 Federal level had to be made and the cutbacks Federal
10 predominantly on the most vulnerable parts of the
11 population.

12 Q. Isn't it more reasonable to believe that
13 the reason the seniors get the \$20 million, as
14 opposed to the poor kids is because seniors vote and
15 poor kids do not?

16 A. Poor kids' parents don't -- don't. I'm
17 sure that's one of the explanations which is exactly
18 what I said in my statement, but I think that process
19 is exacerbated if people not only vote more, but they
20 also contribute more.

21 Q. You wouldn't, you would not agree with me
22 that the failure to vote -- strike that.

23 You would not agree with me that the
24 relative likelihood of voting is the principal cause?

25 A. Again, I think it's, you know, exceedingly

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1 home to the district?

2 A. I have.

3 Q. That have to do with politicians trying to
4 get sometimes narrow provisions put in the
5 legislation so that they can bring money home to
6 their district and hopefully curry favor with their
7 constituents?

8 A. Yes. But those are a case where although
9 there may be few voters involved, they all reside in
10 a particular legislator's district. They are
11 significant in the eyes of that legislator, even
12 though they may be relatively insignificant to the
13 nation as a whole but it's the administrator who got
14 the pork barrel but of course.

15 I mean, I would be the first one to admit
16 that a lot of special legislation is the result of
17 trying to woo voters rather than contributors, but
18 it's not the only reason.

19 Q. And to the extent one of the problems that
20 you described was a perception that, I guess policy
21 may be improperly influenced by campaign
22 contributions, and how does that manifest itself in
23 your view? I mean, how do you -- well strike that.

24 I think we show that. You state in your
25 declaration, you reference opinion surveys that show

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1 hard to determine what is the principal cause of a
2 legislator's vote. I mean, that is hidden in the
3 legislator's brain. But the fact that the poor who
4 is out not only to the AARP but you also in times of
5 budgetary stringency, you tend to see all manner of
6 tax loopholes that benefit very few individuals are
7 also untouched.

8 They are not done a way with in order to
9 help meet a budgetary deficit, suggests that it is
10 not merely those who vote in large numbers who
11 benefit through this process, but also people who are
12 noted primarily by the amount of money they have.

13 Q. We discussed, there are also other
14 explanations or causes for those more narrow
15 exceptions, tax loopholes, if you will, are there
16 not?

17 A. Well, for some of them. For some, it's
18 pretty hard to see what could be, other than
19 political clout which presumably comes from financial
20 contributions and would explain the existence of
21 those loopholes.

22 Q. Did you ever hear of the term pork barrel
23 politics?

24 A. Yes.

25 Q. Did you ever hear the phrase bring money

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1 majorities believe that interest groups have too much
2 power over the nation's policies and reforms are
3 needed to influence or limit the influence.

4 A. Yes.

5 Q. Would you agree with me that there are a
6 range of causes of the public perception of Federal
7 office holders and Federal candidates -- strike that.
8 Let me be a little more precise.

9 Would you agree with me that there are a
10 range of explanations for public negative perceptions
11 about Congress or other Federal office holders?

12 A. Absolutely.

13 Q. And that campaign finance is only one of
14 the factors you would cite?

15 A. One. Yes.

16 Q. And what are the other factors that you
17 would cite?

18 A. Well, one reason for disillusion is that
19 many voters who don't perceive, don't find that the
20 Congress takes a particular action that they want
21 assume that probably everyone else wanted it, too,
22 and it's just some kind of failing on the part of
23 Congress that has kept them -- in other words, we
24 perhaps exaggerate the degree to which our views are
25 held by everyone else and therefore when we are not

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 satisfied, we assume that the public is not being 2 satisfied. 3 Another reason for public dissatisfaction 4 is that the public probably underestimates the amount 5 of compromise, give and take, controversy, delay is 6 inevitable in a Democratic system where you are 7 trying to reconcile very diverse interests. And the 8 public may have an exaggerated notion of how easy it 9 is to resolve difficult policy problems, and 10 therefore when those policy problems like 11 prescription drugs or better health care system are 12 not forthcoming, the easiest thing to do, of course, 13 is to blame Congress and assume that if only Jimmy 14 Stewarts of the world went to Congress as they did in 15 Mr. Smith Goes to Washington, all our problems would 16 be solved very easily, so yes, there are a number of 17 different problems. 18 Perhaps another one is the well-known 19 capacity of the media to emphasize negative stories 20 over positive stories, which can alter the perception 21 of the public. 22 Q. I think you cite in particular, talking 23 about a negative image about Congress in particular. 24 Would you agree that one of the reasons that the 25 public has a negative -- strike that.</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. BARNETT: 2 Q. This is an excerpt from another of the 3 sources that you cite in your declaration, and I'd 4 like you just to review this. This is page 61 of 5 Congress' Public Enemy, Public Attitudes Towards 6 American Political Institutions, which that is the 7 source, if I'm correct, of what you cite on 8 footnote 5 of your declaration? 9 A. Yes. 10 Q. Did you review page 61? 11 A. Yes. 12 Q. And would you agree with me that they are 13 making the case that the very openness of the 14 Congressional deliberation process is one of the 15 reasons that Congress is viewed in a negative light 16 by certain citizens? 17 A. I think that's the argument they are 18 making. 19 Q. And do you disagree with that point? 20 A. My problem with what they have written is 21 that I don't think they have done a very careful job 22 of demonstrating that distrust would diminish, which 23 is the implication of what they write, distrust would 24 diminish if Congressional deliberations were more 25 secret.</p>
<p style="text-align: right;">Page 51</p> <p>1 Would you agree that some of the public 2 has a negative image about Congress is the very 3 openness of the Congressional deliberations process 4 itself? 5 A. I find that very hard to answer. It could 6 well be. You are asking me to compare the situation 7 we have with a situation that is quite unlike 8 anything that we have. It's very hard to speculate 9 what would be the effect on public attitudes towards 10 Congress if their deliberations were conducted in 11 secret. It could well be that that would just 12 maximize the suspicion and rumor and so forth. One 13 really can't tell without actually trying it. 14 Q. Do you ever hear the saying that you 15 should not know how you make hot dogs or legislation? 16 A. Mr. Bismarck, yes. It is not a pretty 17 process, but -- 18 MR. MOSS: Question, if you thought that 19 you had just 20 minutes or, so I would not take a 20 break. If you think you are going to go longer than 21 that, I would suggest a break. 22 MR. BARNETT: I would like to finish this 23 and take a break and regroup. 24 (Bok Exhibit No. 3 was 25 marked for identification.)</p>	<p style="text-align: right;">Page 53</p> <p>1 I mean, we have plenty of examples of 2 governments that perform in complete secrecy, 3 especially totalitarian governments, and they are not 4 noted for their degree of public trust in them 5 either, so trying to compare, which is what he is 6 doing, our open system with what a more secretive 7 system would be like I find is very, very difficult 8 because we simply have no comprehension of what 9 public attitudes toward Congress would be if we knew 10 a lot less about what they are actually doing in 11 Washington. 12 Q. And although his premise is really to 13 compare the relatively favorable public approval 14 ratings of the presidency and the judicial branch to 15 the legislative branch, is it not? 16 A. Yes. 17 Q. And the presidency and the judicial branch 18 tend to be less open in their deliberative processes 19 than the Congressional branch? 20 A. That's true. 21 Q. And you can agree or disagree. I'm just 22 trying to understand whether -- I took that to be the 23 premise, the author's premise and basis for 24 comparison in making that statement that they made on 25 page 61?</p>

<p style="text-align: right;">Page 54</p> <p>1 A. It's very difficult I think to compare the 2 legislature and the Supreme Court and simply single 3 out the openness as the reason for different views. 4 There are many other reasons why the public might 5 have a better view of the Supreme Court than the fact 6 that it's less open than the legislature. 7 MR. BARNETT: Why don't we take a break. 8 (Recess.) 9 BY MR. BARNETT: 10 Q. Professor Bok, I want to spend a little 11 more time talking about your book. I would be happy 12 to continue to use your books. I had provided some 13 excerpts here for convenience purposes. 14 A. This is fine. 15 Q. For reference purposes, do you mind if I 16 have the excerpts marked as Exhibit 4. 17 (Bok Exhibit No. 4 was 18 marked for identification.) 19 BY MR. BARNETT: 20 Q. Turn to page 249. It's in the section of 21 your book discussing campaign finance reform. 22 A. Yes. 23 Q. And if you look on the first full 24 paragraph under the heading Principles of Campaign 25 Finance reform. If you don't mind, just read the</p>	<p style="text-align: right;">Page 56</p> <p>1 backing reforms to accomplish one of two of these 2 purposes while ignoring the effects on others. 3 Q. And then the paragraph goes on to discuss 4 possible implication of prohibiting certain 5 contributions, increasing the burdens of fundraising, 6 and that being, causing one problem by trying to fix 7 another? 8 A. Yes. 9 Q. If you could read the last sentence of 10 that paragraph then? 11 A. Because of such conflict, successful 12 regulation requires the most careful effort to 13 respect all the objectives of reform and to avoid 14 side effects that could make the cure even worse than 15 the disease. 16 MR. MOSS: Just in reading through the 17 quotes here, Professor Bok's book is referenced in 18 his declaration. I take it the entire book is in the 19 record. The only reason I raise that now is just to 20 avoid the need for completeness for him to have to as 21 you go through this to say let me read the whole 22 paragraph. But the whole thing is in the record. At 23 this point we don't need to deal with that. 24 MR. BARNETT: I understand that but for a 25 variety of reasons, I'd like to continue under this</p>
<p style="text-align: right;">Page 55</p> <p>1 full paragraph there? 2 A. Choosing the right set of rules to govern 3 campaign contributions is a complex undertaking. 4 Part of the problem stems from the difficulty of 5 predicting all the consequences of particular reform 6 proposals. 7 Congress may be able to prohibit specific 8 kinds of campaign contributions, but it cannot keep 9 powerful interests from wanting to have an influence 10 on government, so long as that desire remains added 11 limits on political donations will simply cause 12 interest groups to seek other ways of exerting 13 leverage that are not prohibited and may even be 14 immune from any restriction under the Constitution. 15 It is always possible that the new ways will be even 16 more dangerous than the old. 17 Q. I assume you agree with that statement? 18 A. Yes. 19 Q. Let's go to the next page, page 250. This 20 is after a series of goals or principles that you 21 think we should consider in addressing campaign 22 finance reform, and we'll let that speak for itself. 23 But if you would read the first sentence of the 24 following paragraph. 25 A. It is easy to fall into the trap of</p>	<p style="text-align: right;">Page 57</p> <p>1 approach. 2 MR. MOSS: That's fine. I'm fine with 3 this approach with that understanding. 4 MR. BARNETT: Yes. But I mean I certainly 5 agree that it's referenced and although I don't think 6 we were provided a copy, I was referencing the 7 affidavit that we received. 8 MR. MOSS: Our apologies. 9 MR. BARNETT: That's fine. I have it. 10 I'm not complaining. 11 BY MR. BARNETT: 12 Q. I'm sorry. I skipped those two. 13 Page 255, here we discussed this earlier, and I just 14 want to confirm the reference here. 15 The first full paragraph, this is where 16 you reference that the great bulk of private campaign 17 donations will continue to come from people in the 18 top 2 to 5 percent of the income scale, even with 19 fairly strict limits on the size of individual 20 contributions? 21 A. Yes. 22 Q. And that as a result, campaign finance 23 laws that force elected officials to rely on the 24 wealthiest 5 percent of the population for their 25 campaign funds are likely to reinforce this pattern.</p>

15 (Pages 54 to 57)

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1 Do you agree with that statement?
 2 A. Yes.
 3 Q. And then further down the page --
 4 A. I mean I think what I'm saying here is
 5 simply the kind of legislation we are talking about
 6 today is partial. It certainly does not do away with
 7 all of the possible ill effects of private financing
 8 of public campaigns.
 9 Q. And you have testified earlier, I think,
 10 in the next paragraph, you discuss that it's a
 11 complicated system?
 12 A. It is.
 13 Q. And that in the end, we do not know what
 14 the ultimate effects will be so the proposals must
 15 remain a gamble. Do you agree with that statement?
 16 A. Yes. But I think that's true of most
 17 legislation.
 18 Q. Now, one of the areas I'd like to focus on
 19 for a moment which I think you have given some
 20 thought to is what private organizations will be able
 21 to do under the BCRA. I want to focus your attention
 22 on that area for the moment.
 23 A. Under the what?
 24 Q. The Bipartisan Campaign Reform Act, which
 25 I refer to as the BCRA.

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1 A. The McCain-Feingold Act.
 2 Q. The McCain-Feingold Act. The act that is
 3 the subject of this litigation?
 4 A. I would like to say by the way that I
 5 certainly wrote this book. I do not purport to be an
 6 expert on the arcane details. New law.
 7 Q. That's -- and as a result, you are not
 8 necessarily taking a position as to whether all
 9 aspects of the new law are good or proper?
 10 A. No. I don't think there is anything in my
 11 statement that implies that kind of blanket
 12 endorsement.
 13 Q. Then I will ask you, if you know, and if
 14 not, we can proceed under some representations, but
 15 focus for the moment on private special interest
 16 groups, a group such as NARAL or the NRA or the
 17 Sierra Club.
 18 A. Yes.
 19 Q. Are you aware that under the BCRA, they
 20 will continue to be able to publish issue ads, at
 21 least outside of certain windows near elections?
 22 A. Yes.
 23 Q. And that they will be able to, even within
 24 those windows, go public through certain media issue
 25 ads?

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1 A. Yes.
 2 Q. And are you aware that some of those
 3 organizations such as NARAL have been publicly cited
 4 as going after the same soft money contributors that
 5 have been giving to the national political parties?
 6 A. What is NARAL?
 7 Q. You know, I always forget the acronym, but
 8 it's the abortion rights group.
 9 A. I see.
 10 Q. We can use another group if you are more
 11 familiar with one.
 12 A. No. I assume groups like this solicit
 13 money from the same people that political parties do.
 14 Not exactly, but they certainly overlap.
 15 Q. And are you aware that they have been
 16 publicly quoted as saying that with this new law
 17 going into effect, we are going to go after the same
 18 money that was being contributed to the national
 19 political parties?
 20 A. I am not aware of that quotation.
 21 Q. But you are certainly aware of the
 22 possibility that such actions could take place?
 23 A. Yes.
 24 Q. And if you look at, for example, page 259
 25 of your book?

Page 61

1 A. Yes.
 2 Q. I think you have given some thought to
 3 this issue. If you look at the paragraph at the top
 4 of page 259, and if you wouldn't mind reading that
 5 first paragraph?
 6 A. The final risk in banning the use of
 7 private funds in an election is that interest groups
 8 might feel impelled to mount their own independent
 9 campaigns for or against particular candidates. In
 10 this event, private money could still have an
 11 influence on elections, and more generally on the
 12 policymaking process.
 13 In setting legislative priorities, party
 14 leaders might be swayed in favor of any organization
 15 or group that regularly campaigned independently for
 16 their candidates. Individual lawmakers could be
 17 influenced in casting their votes by their desire not
 18 to antagonize interests capable of mounting strong
 19 independent campaigns against them in the next
 20 election.
 21 Q. And here you were discussing just the sort
 22 of activity I was mentioning, private special
 23 interest groups trying to step in and do the same
 24 thing that the national committee parties were doing
 25 prior to the implementation of the BCRA?

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1 A. Yes.
 2 Q. And that that could reduce or even
 3 eliminate the beneficial effects of the BCRA,
 4 depending on the scope?
 5 A. I doubt whether it would eliminate it.
 6 Q. For her sake, I need to finish my question
 7 before you answer?
 8 A. I'm sorry. I thought you had.
 9 Q. That's okay. But it is possible that
 10 depending on the scope of that activity, it could
 11 reduce or eliminate what you perceive to be the
 12 beneficial effects of banning soft money
 13 contributions to the national political parties?
 14 A. It might reduce the net benefit. I don't
 15 see that it would eliminate it.
 16 Q. Now, you also go on in your book to
 17 address the fact that trying to restrict such
 18 activity raises fairly significant First Amendment
 19 concerns.
 20 A. Yes.
 21 Q. Is that correct?
 22 A. Yes.
 23 Q. And that you specifically reference the,
 24 trying to reduce issue ads by barring material if it
 25 mentions candidates by name or exhibited their

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1 A. Yes.
 2 Q. Regarding private money, I gather, that is
 3 being used by interest groups for issue advocacy
 4 campaigns?
 5 A. Yes.
 6 Q. And that you are citing them to estimate
 7 that in 1998, somewhere between 275 to \$340 million
 8 of this private money was used for issue advocacy
 9 expenditures?
 10 A. That is the estimate of the Annenberg
 11 Center.
 12 Q. And that's the estimate that you put
 13 forward in your book?
 14 A. I cited the Center and that estimate.
 15 Yes.
 16 Q. And then if you would, just read beginning
 17 conceivably to the end of that paragraph?
 18 A. Conceivably, public financing could
 19 accelerate the trend and lead to huge amounts of
 20 private money being spent on campaigns beyond the
 21 control of the public for candidates or the parties.
 22 I would like to emphasize, of course, that I'm
 23 talking here about public financing. In other words,
 24 clean elections provisions where no private money
 25 could enter the campaign directly.

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1 pictures within a stipulated period, 60 or 90 days
 2 prior to the election?
 3 A. Yes.
 4 Q. That even this limited provision would
 5 require some compelling governmental justification to
 6 overcome the First Amendment interests?
 7 MR. MOSS: Objection as to form.
 8 BY MR. BARNETT:
 9 Q. Is that --
 10 A. Well, I would like to see what I actually
 11 said here.
 12 Q. Please. And if you would like to read the
 13 statement, that's fine.
 14 A. Where is it?
 15 Q. The bottom of the second paragraph.
 16 A. Even this limited provision would
 17 withstand judicial scrutiny only if judges were
 18 persuaded that the decision was truly necessary to
 19 avoid a substantial risk of allowing private
 20 interests to exert undue political influence. Yes.
 21 Q. And you agree with that statement?
 22 A. Yes.
 23 Q. And if you look down further, the bottom
 24 of page 259, the top of 260, you cite some empirical
 25 data from the Annenberg Center?

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1 Q. I understand. Could you, I meant for you
 2 to read the entire paragraph. If you wouldn't mind
 3 just starting again, conceivably, public financing
 4 could accelerate?
 5 A. Conceivably, public financing could
 6 accelerate the trend and lead to huge amounts of
 7 private money being spent on campaigns beyond the
 8 control of the public or candidates or the parties.
 9 Such a process could become so unruly and involve
 10 such large, fast amounts of special interest money
 11 but the public would long for the good old days of
 12 the 1990s.
 13 Q. And you agree with that statement?
 14 A. I think it's conceivable under a system of
 15 public financing.
 16 Q. And the reason that the private money
 17 might expand under that proposal is because the
 18 private interests would be prohibited from
 19 contributing money directly to candidates?
 20 A. That's right.
 21 Q. And so having had their ability to
 22 contribute directly, they would, directly to
 23 candidates, they would engage in their own activities
 24 separate from the candidates?
 25 A. As possible. We don't know that yet.

17 (Pages 62 to 65)

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1 Q. But in your view -- strike that. You also
2 address the possibility that these concerns might
3 actually take care of themselves without any
4 governmental problem, intervention, did you not?

5 MR. MOSS: Objection as to form.

6 THE WITNESS: I don't recall.

7 BY MR. BARNETT:

8 Q. Why don't we look at page 264. I'm not
9 saying you were predicting it, but if you look at the
10 bottom, that bottom paragraph under what is to be
11 done.

12 A. Yes. I think the operative sentence reads
13 On the other hand, it is also just possible that
14 increased use of the Internet will lower the cost of
15 communicating with voters and greatly reduce the
16 dependence of candidates on large donors.

17 What I mean by that is that the great bulk
18 of soft money and other large donations goes into
19 paying for particularly television, also radio
20 advertisements, and if the use of computers were so
21 ubiquitous that people got most of their news and so
22 forth from that, which is free, it could be that it's
23 just possible, certainly not clearly predictable, but
24 just possible that the cost of communicating
25 effectively in political campaigns would be greatly

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1 A. We certainly don't know enough about a
2 reform as radical as public financing without
3 actually trying it.

4 Q. I'd like you to turn to page 266, and
5 believe it or not, this will be the last paragraph I
6 ask you to read. You did say you didn't mind reading
7 your own prose?

8 A. Amongst life's many burdens, reading my
9 own prose is certainly one. Easiest to bear.

10 Q. If you look at the campaign under Campaign
11 Finance Reform and Perspective, if you could read
12 that paragraph?

13 A. 266?

14 Q. Yes?

15 A. What is the first word.

16 Q. Only the most starry-eyed?

17 A. Only the most starry-eyed Utopians believe
18 that America will ever succeed in insulating
19 policymaking completely from the influence of money.
20 Powerful interests will always seek ways to win a
21 favored place in the minds of those with authority to
22 affect their vital interests. Even if the political
23 campaigns are entirely financed with public funds and
24 independent expenditures are somehow contained,
25 lobbyists will find some means to give their sponsors

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1 reduced because you could do it by Internet.

2 Q. And you also said conceivably public
3 funding could push enough private money into
4 independent issue advocacy to swamp any gains
5 achieved by outlawing soft money and PAC
6 contributions.

7 A. Where is that?

8 Q. The sentence before.

9 A. Yes. I want to emphasize that I'm saying
10 conceivably, that is something that could happen, and
11 what I'm talking about is: what the effect of a system
12 of full public financing, where no private money can
13 be raised and spent on political campaigns.

14 Q. So that --

15 A. That is one reason why, to revert to an
16 earlier point that you covered, it does seem to me
17 that we need a period of experimentation before
18 committing ourselves definitely to public financing
19 or any other single, comprehensive final approach to
20 campaign finance problems.

21 Q. Because we just don't have enough evidence
22 to know for certain?

23 A. We don't know for certain.

24 Q. How best or how we can effectively address
25 the problems you have identified?

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1 an edge. They will arrange for their employers to
2 make a handsome gift to the favorite charity of a key
3 lawmaker. They will take pains to hire a close
4 friend or a former staff member of an important
5 committee chair. They will put more effort and
6 resources into issue advocacy if they are blocked
7 from giving money to candidates.

8 Q. And you agree with those statements?

9 A. I do subject to the very next statement,
10 which says these facts of life, however, do not mean
11 that all attempts at campaign finance reform are
12 fruitless.

13 MR. BARNETT: Off the record.

14 (Recess.)

15 MR. BARNETT: Professor Bok, I want to
16 thank you for your time and patience. I appreciate
17 it.

18 THE WITNESS: Let me thank you as well.
19 Very ably done, and I appreciate it.

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