

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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SENATOR MITCH MC CONNELL, :
ET AL. :

Plaintiffs :

vs. : Cause No. 0582
(CKK, KLH, RJL)

FEDERAL ELECTION COMMISSION, :
ET AL. :

Defendants :

and :

SENATOR JOHN MC CAIN, SENATOR :
RUSSELL FEINGOLD, REPRESENTATIVE :
CHRISTOPHER SHAYS, :
REPRESENTATIVE MARTIN MEEHAN, :
SENATOR OLYMPIA SNOWE, SENATOR :
JAMES JEFFORDS, :

Intervenors. :

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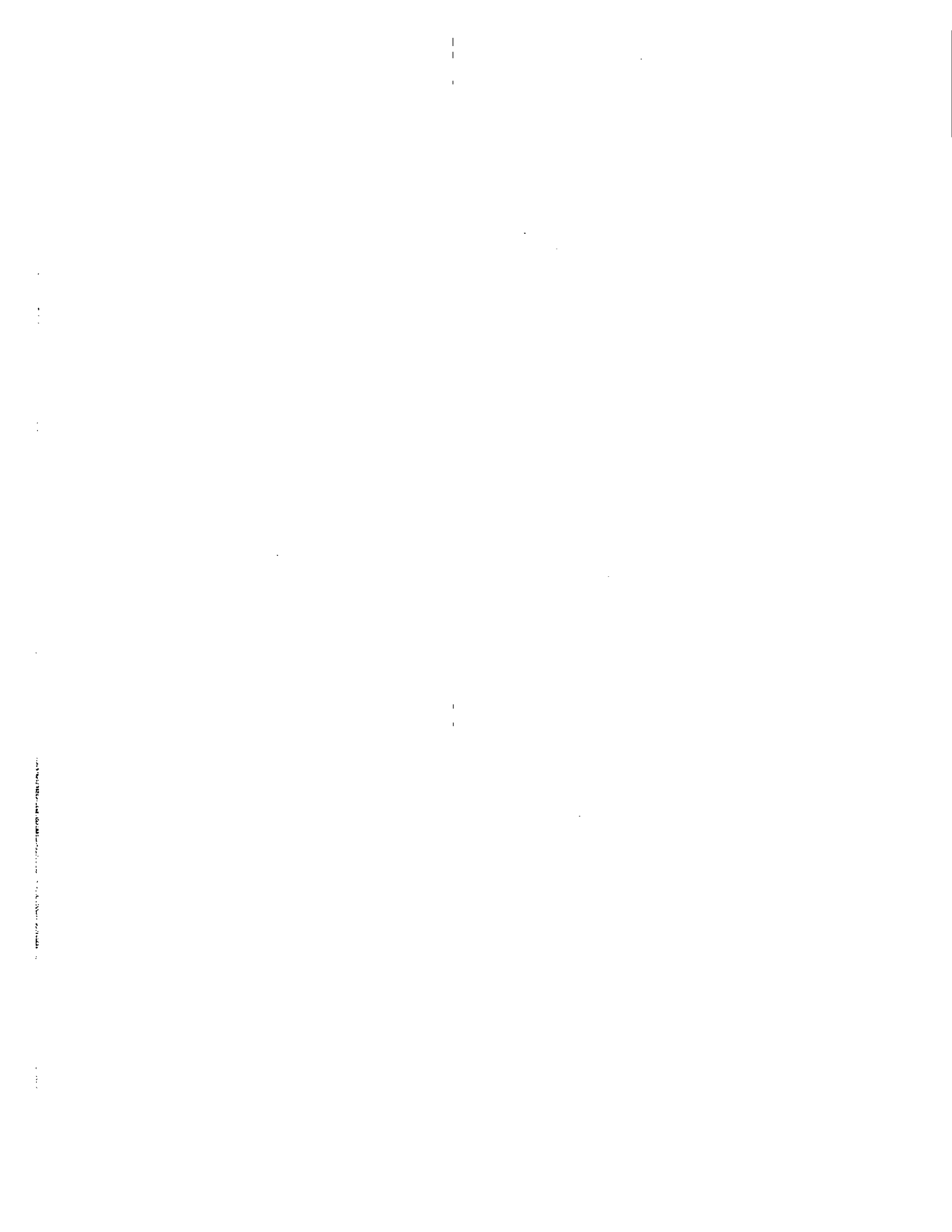
September 26, 2002

Washington, D.C.

DEPOSITION OF:

MATT KELLER

was called for examination by counsel for the
National Right to Life, et al., pursuant to notice,
taken at Sonosky, Chambers, Sachse, Endreson & Perry,



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1	1250 Eye Street, N.W., Washington, D.C., commencing at	1	
2	9:16 a.m., before Misty Klapper, a Notary Public in	2	EXHIBITS
3	and for the District of Columbia, when were present on	3	NO.: PAGE:
4	behalf of the respective parties:	4	1 10
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1	APPEARANCES:	1	EXHIBITS (continued)
2	JAMES BOFF, ESQ.	2	NO.: PAGE:
3	Bopp, Coleson & Bostron	3	21 107
4	1 South 6th Street	4	22 111
5	Terre Haute, Indiana 47807	5	23 113
6	COUNSEL FOR THE NATIONAL RIGHT TO LIFE, ET	6	24 117
7	AL.	7	25 120
8	MICHAEL LEFFEL, ESQ.	8	26 126
9	JENNIFER MUELLER, ESQ.	9	27 121
10	Wilmer, Cutler & Pickering	10	28 129
11	2445 M Street, N.W.	11	29 132
12	Washington, D.C. 20037	12	30 133
13	COUNSEL FOR THE INTERVENORS AND COMMON	13	31 136
14	CAUSE	14	32 139
15	DONALD SIMON, ESQ.	15	33 142
16	Sonosky, Chambers, Sachse, Andreson & Perr	16	34 143
17	1250 Eye Street, N.W.	17	35 145
18	Washington, D.C. 20005	18	36 147
19	COUNSEL FOR COMMON CAUSE	19	37 148
20	ALSO PRESENT: Eric Swanson	20	38 148
21	Layth Elbassani, In-House	21	39 148
22	Counsel for Common Cause	22	40 148
23		23	41 151
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20	Mr. Leffel 155		

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2 **NO.:** **PAGE:**
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4 43 151
5 44 152
6 45 130
7 **Note:** Exhibits marked and attached to original.
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1 confusing about when I say you --
2 A. Right.
3 Q. -- I mean Common Cause.
4 A. That's correct.
5 Q. And you as their designated witness and
6 deponent under 30(b)6.
7 And who is that? Who is here
8 representing you?
9 A. It's Don Simon, Michael and Jennifer and
10 Layth Elhassani.
11 Q. Yes. Thank you.
12 What's your position with Common Cause?
13 A. I work as legislator director.
14 Q. And how long have you been so employed?
15 A. For -- since May of '96.
16 Q. Prior to that time were you employed with
17 Common Cause?
18 A. I was not.
19 Q. And what was your employment then?
20 A. I was a legal services attorney in a
21 migrant farm worker program in Arizona.
22 Q. What's your area of responsibility as
23 legislative director?

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1 **PROCEEDINGS**
2 **Whereupon:**
3 **MATT KELLER,**
4 was called for examination, and, after
5 being duly sworn, was examined and testified as
6 follows:
7 **EXAMINATION BY COUNSEL FOR THE NATIONAL**
8 **RIGHT TO LIFE, ET AL.**
9 **BY MR. BOPP:**
10 Q. Please state your full name.
11 A. Matt Keller.
12 Q. Can you spell your name for us?
13 A. M-A-T-T, K-E-L-L-E-R.
14 Q. With whom are you employed?
15 A. Common Cause.
16 Q. Are you the -- one of the designated
17 witnesses with respect to the 30(b)6 deposition we've
18 noticed here today?
19 A. I am.
20 Q. Okay. Are there counsel here
21 representing you?
22 A. There are.
23 Q. Meaning -- and I don't want to be

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1 A. Overseeing the legislative Department of
2 Common Cause.
3 Q. Now, are you aware that there was a
4 Subpoena to produce documents issued by National Right
5 to Life and other clients that I represent?
6 A. I am.
7 Q. And that Common Cause made available
8 documents for my inspection --
9 A. Yes.
10 Q. -- that were responsive to that Subpoena?
11 A. Yes.
12 Q. Is that correct?
13 A. That's correct.
14 Q. And have you familiarized yourself with
15 any of those documents that were either made available
16 to me or that were copied at my request and provided
17 to me?
18 A. I have.
19 Q. Which? Which group did you familiarize
20 yourself with?
21 A. The ones that were copied by you to be
22 made available here today.
23 Q. Okay.

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1 (Thereupon, CC Deposition Exhibit Number
2 1 was marked for identification.)
3 BY MR. BOPP:
4 Q. I show you what's been marked as CC1.
5 Are you familiar with this document?
6 A. I am.
7 Q. This is the Subpoena – actually, the
8 second Subpoena that was served upon Common Cause
9 noticing the deposition that we are conducting today.
10 A. Correct.
11 Q. And have you familiarized yourself with
12 the topics of the testimony that this Subpoena
13 contains?
14 A. I have.
15 Q. And with respect to those subjects that
16 we have agreed with your lawyers for you to be
17 prepared to answer, are you prepared to answer with
18 respect to those?
19 A. I am.
20 MR. LEFFEL: Jim, can I just interject
21 here? Just so we know, Eric is probably in the best
22 position to answer question 6 about the search. Matt
23 can talk about the meaning of the documents; but as

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1 far as the, sort of, mechanics of the search, Eric is
2 going to be prepared to talk about that. I just
3 wanted to put that out there for you.
4 MR. BOPP: Yes, thank you.
5 (Thereupon, CC Deposition Exhibit Number
6 2 was marked for identification.)
7 BY MR. BOPP:
8 Q. I show you what's been marked as CC
9 Exhibit 2, which I represent to be a letter from my
10 office, the first – that is the first two pages from
11 my office, and the last page is a letter from your
12 counsel, Don Simon –
13 MR. SIMON: Excuse me, this is only a
14 two-page exhibit that you gave us.
15 MR. BOPP: Okay. For some reason this
16 was – you just have two pages?
17 THE WITNESS: Yeah, just two.
18 MR. BOPP: Mine had three. We'll get to
19 that. Thank you.
20 BY MR. BOPP:
21 Q. Let me start again. With respect to CC
22 Exhibit 2, I'll represent that this is a letter from
23 my office regarding the proposed scope of the

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1 deposition today.
2 Are you familiar with this?
3 A. I am.
4 Q. Now let me show you what's been marked as
5 Exhibit 3.
6 (Thereupon, CC Deposition Exhibit Number
7 3 was marked for identification.)
8 BY MR. BOPP:
9 Q. Are you familiar – this is, I represent,
10 a letter from your counsel agreeing to the terms and
11 conditions of this deposition contained in CC
12 Exhibit 2.
13 Are you familiar with this as well?
14 A. Yes.
15 Q. And do these letters establish the basis,
16 as you understand it, for the subjects of your
17 testimony today?
18 A. They do.
19 Q. Thank you.
20 Is Common Cause a corporation?
21 A. It's incorporated, yes.
22 Q. And what tax status does it have?
23 A. 501(c)(4) and 501(c)(3), both.

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1 Q. What's the purpose of Common Cause?
2 A. The purpose of Common Cause is to
3 represent the concerns of our members and the concerns
4 of our – we think our – the average American
5 citizen, on Capitol Hill and in the White House and
6 state capitols around the country.
7 Q. How is Common Cause structured?
8 A. We have a Washington office with a
9 president, CEO and staff numbering approximately full
10 time around 50, I would guess. We have approximately
11 anywhere between 30 and 50 university and postgraduate
12 interns every year, roughly between 50 and 80
13 volunteers that come into the office in Washington.
14 And we have approximately 38 offices in the states
15 around the country.
16 Q. Now, you said –
17 A. Some with staff, some with volunteers.
18 Q. You said Christian -- Common Cause has --
19 is a (c)(3) and a (c)(4).
20 What do you mean by that?
21 A. We were originally started as a 501(c)4
22 under the IRS provisions. And in 1999, I believe, or
23 2000, we began a 501(c)(3) Common Cause Education

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1 Fund.
 2 Q. Okay.
 3 A. Which --
 4 Q. Is that a separate segregated fund within
 5 Common Cause?
 6 A. That's correct.
 7 Q. Okay. So it's called the Common Cause
 8 Education Fund?
 9 A. That's right.
 10 Q. Does the Common Cause Education Fund have
 11 any full-time employees?
 12 A. It does. It does.
 13 Q. How many?
 14 A. Actually, the one full-time employee I
 15 know has -- has left. And we're currently seeking to
 16 fill that vacancy. I don't know the answer to that.
 17 Q. Are the other employees employed by the
 18 (c)(4), Common Cause Corp?
 19 A. That's correct.
 20 Q. Now, with respect to Common Cause, could
 21 we say Corp, just to have a denominator?
 22 A. (Nodding in the Affirmative.)
 23 Q. What activities or categories of

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1 activities does Common Cause engage in, the national
 2 office?
 3 A. National office. We engage in lobbying
 4 activities on Capitol Hill. We engage in public
 5 education. And all the things that go into lobbying,
 6 all the offshoots that you would normally associate
 7 with lobbying efforts in Washington.
 8 Q. Now, other than the Common Cause
 9 Education Fund, are there any other segregated funds
 10 in Common Cause Corp?
 11 A. Not -- not to my knowledge, no.
 12 Q. Are there any other entities that are
 13 affiliated with Common Cause Corp?
 14 A. You mean working with other organizations
 15 or --
 16 Q. Well, that has some legal relationship.
 17 A. Not to my knowledge, no.
 18 Q. Okay. What -- the state groups, how are
 19 they organized in relationship to Common Cause Corp?
 20 A. Each of the state groups is -- has an
 21 independent board that oversees the day-to-day
 22 activity of the state organization. But Common Cause
 23 Washington is the -- kind of the parent organization

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1 that is ultimately responsible for what occurs at the
 2 state level.
 3 Q. Are the state groups or any of them
 4 separately incorporated?
 5 A. I don't know the answer to that.
 6 Q. Are they -- do you consider them to be
 7 part of Common Cause Corp?
 8 A. Yes.
 9 Q. Do they maintain separate bank accounts
 10 for their activities?
 11 A. I -- you know, again, I don't know the
 12 answer to that.
 13 MR. LEFFEL: Can I just take a second,
 14 Jim? I don't mind you asking the background
 15 questions. I don't know that Matt is here or even
 16 knows sort of all the ins and outs of some of these
 17 technical structural things.
 18 MR. BOPP: I understand.
 19 MR. LEFFEL: I just want to put that on.
 20 MR. BOPP: Thank you.
 21 BY MR. BOPP:
 22 Q. Now, when I ask questions, I'll be
 23 talking about the national group --

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1 A. Okay.
 2 Q. -- unless I specify otherwise.
 3 A. Okay.
 4 Q. Okay. Does any of the activities of
 5 Common Cause Corp constitute intervention in a
 6 political campaign?
 7 A. No, I don't believe they do. No.
 8 Q. How about Common Cause Education Fund?
 9 A. No.
 10 Q. Did Common Cause take a position on the
 11 passage of the Bipartisan Campaign Reform Act?
 12 A. We did.
 13 Q. And what was that?
 14 A. We were in favor of it.
 15 Q. How long has Common Cause been in favor
 16 of what has been known as Campaign Finance Reform of
 17 the type that is incorporated in the BCRA?
 18 MR. LEFFEL: I'm going to object on
 19 vagueness.
 20 THE WITNESS: Campaign Finance Reform has
 21 been at the heart of what Common Cause does since its
 22 inception.
 23 BY MR. BOPP:

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1 Q. Okay. And its inception was?
2 A. 1970.
3 Q. Does Common Cause engage in any
4 communications with the general public regarding
5 legislation or public policy issues?
6 A. Yes.
7 Q. And what type of communications does
8 Common Cause engage in with respect to, let's just
9 say, issues?
10 A. Letters, via the Internet, lectures to
11 universities and to other organizations around the
12 country on issues itself, on legislation, sometimes
13 advertisements.
14 Q. Okay. With respect to communications
15 involving Campaign Finance Reform --
16 A. Right.
17 Q. -- let's narrow it to that as opposed --
18 I assume you have positions on other issues?
19 A. Right. That's correct.
20 Q. Can you give us some examples?
21 A. Election reform, for example.
22 Q. And issues on -- do you take positions on
23 any other issues, like, you know, the death penalty or

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1 whatever?
2 A. On whistle blower protection, on lobby
3 disclosure. In the past we've lobbied on things like
4 the Gift Ban, amendments to the Freedom of Information
5 Act.
6 Q. For purposes of this deposition, let's
7 talk about Campaign Finance Reform unless I indicate
8 otherwise. All right?
9 A. Sure.
10 Q. What is the purpose of the communications
11 that Common Cause makes with the general public
12 regarding campaign finance?
13 A. To educate the public about the issue of
14 Campaign Finance Reform itself and to urge them to
15 organize around the issue of Campaign Finance Reform.
16 Q. Do you seek support for legislation as
17 part of the purposes of your communications?
18 A. We do.
19 Q. And on occasion is that specific bills
20 that are pending in Congress?
21 A. Yes, that's correct.
22 Q. Are any of the purposes of your
23 communications with the general public to influence

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1 elections?
2 A. To influence elections, no, they're not.
3 Q. Do you -- does Common Cause believe that
4 any of its communications with the general public
5 affects the outcome of elections?
6 A. Does Common Cause believe that the -- no.
7 No.
8 Q. Now, do any of your communications name
9 candidates for federal office within 30 days of a
10 primary or 60 days with a general election?
11 A. That are broadcast or that are --
12 Q. Any communications.
13 A. Yes. Yes.
14 Q. Including broadcast advertising?
15 A. Within 30 days of a primary and 60 days
16 of a general, broadcast advertising mentioning a
17 federal candidate?
18 Q. Right.
19 A. It's -- it's possible that may have
20 occurred. I would say it's unlikely that that has
21 occurred.
22 Q. Does Common Cause believe that any of its
23 advertising promotes or supports candidates for

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1 federal office?
2 A. No.
3 Q. Does Common Cause believe that any of its
4 communications attack or oppose a candidate for
5 federal office?
6 A. No.
7 Q. Does Common Cause believe that any of its
8 communications expressly advocate the election or
9 defeat of a clearly identified candidate?
10 MR. LEFFEL: Objection. I think you're
11 asking him what you mean by expressly advocate.
12 Obviously, that's part of the subject of the -- a
13 number of court cases. And I don't know if you're
14 asking him to sort of make that legal conclusion as to
15 what he thinks express advocacy means or --
16 MR. BOPP: Well, I can -- I'll give him a
17 definition.
18 BY MR. BOPP:
19 Q. Let's -- on the assumption that the
20 phrase expressly advocates the election or defeat of a
21 clearly identified candidate means explicit words such
22 as vote for, vote against; on that assumption, does
23 any -- do -- does Common Cause regard any of its

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1 communications as expressly advocating the election or
2 defeat of a clearly identified candidate?
3 A. No.
4 Q. Does Common Cause regard any of its
5 communications as suggestive of no other meaning than
6 an exhortation to vote for or against a specific
7 candidate?
8 A. Does -- can you repeat that?
9 MR. BOPP: Could you read that?
10 (The record was read as requested.)
11 MR. BOPP: For federal office.
12 THE WITNESS: Do we believe that what we
13 say is aimed toward the defeat or election of a
14 candidate?
15 BY MR. BOPP:
16 Q. Or suggestive of no other meaning than an
17 exhortation to vote for or against a specific
18 candidate?
19 A. We believe that what we say is not
20 intended to defeat or elect the specific candidate.
21 Q. Okay.
22 (Thereupon, CC Deposition Exhibit Number
23 4 was marked for identification.)

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1 BY MR. BOPP:
2 Q. Let me show you what's been marked as
3 Common Cause Exhibit 4.
4 Are you familiar with this document?
5 A. I am.
6 Q. This purports to be, I think, a press
7 release or at least the first pages, 1 and 2, released
8 by Common Cause in October of 1997; is that right?
9 A. Yes.
10 Q. Did Common Cause release this press
11 release in fact?
12 A. We did.
13 Q. Now, attached thereto are six radio ads;
14 is that correct?
15 A. That's right.
16 Q. That were purportedly to be run or were
17 run in various states as identified in the document --
18 A. Um-hmm (affirmative).
19 Q. -- is that right?
20 A. That's right.
21 Q. Were these ads, radio ads, in fact run in
22 the states indicated?
23 A. They were.

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1 Q. Did Common Cause help pay for these ads?
2 A. Yes, we did.
3 Q. And it also mentions Campaign for
4 America.
5 What is Campaign for America?
6 A. Campaign for America is, I believe --
7 it's -- well, it's a nonprofit organization. It's
8 either -- I believe it's a 501(c)(4) organization
9 dedicated to bringing about Campaign Finance Reform.
10 Q. Is it incorporated?
11 A. I believe so, yeah.
12 Q. I already deviated from my own
13 terminology.
14 A. Right.
15 Q. Did Common Cause Corp pay for this --
16 portions of this ad?
17 A. Portions of this advertisement, that's
18 correct.
19 Q. All right. Do you know the portion
20 that -- of the total expense of these -- the running
21 of these six ads were paid for by Common Cause Corp or
22 Campaign for America?
23 A. No, I don't.

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1 Q. What was the purpose of these ads?
2 A. The purpose of these ads was to try to
3 urge Senators Allard, Campbell, Hagel, I believe
4 probably Brownback, and Lugar, I would guess, to vote
5 for the McCain-Feingold Bill, which was then pending
6 on the floor of the Senate.
7 Q. Were any of these ads run within 30 days
8 of a primary regarding the federal candidate
9 mentioned -- any of the federal candidates mentioned?
10 A. I don't believe so.
11 Q. Were any of these ads run within 60 days
12 of a general election in which any one of these
13 candidates were a candidate?
14 A. No, I don't believe so.
15 Q. Was it the purpose of this ad to
16 influence any federal election?
17 A. No.
18 Q. Do you believe these -- does Common Cause
19 believe these ads would have -- would have the effect
20 of influencing any federal election?
21 A. No.
22 Q. Do any of these ads promote or support a
23 candidate for federal office or attack or oppose a

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1 candidate for federal office?
2 A. No.
3 Q. Do you know if any of the candidates
4 mentioned in these ads were a candidate for federal
5 office in November of 1998?
6 A. In November of '98?
7 Q. I would say -- let me re -- were
8 ultimately a candidate.
9 A. Ultimately, right. I don't know.
10 Q. Do you know whether any of the federal
11 office holders mentioned in these ads were at that
12 time a candidate for federal office?
13 A. In October '97?
14 Q. Yes.
15 A. They were not. I believe they were not
16 candidates in October of '97.
17 Q. When is it that you understand that a
18 person becomes a, quote, candidate for federal office,
19 unquote?
20 A. Upon filing a declaration for candidacy.
21 Q. Do you know whether any of these federal
22 office holders mentioned in these ads had filed a
23 declaration with the Federal Election Committee?

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1 A. I don't know the answer to that.
2 Q. I'm sorry, I paused, but I needed to
3 complete the question.
4 A. Sorry.
5 Q. And that is when these ads were run. I
6 think you understood that to be the question.
7 A. Right. Right.
8 Q. This ad -- the ads and the press release
9 also refer to, quote, McCain-Feingold, end of quote.
10 What does that mean? What does
11 McCain-Feingold mean, as you understand it, as used in
12 this press release and the ads?
13 A. McCain-Feingold refers to legislation
14 sponsored by Senators John McCain, a Republican from
15 Arizona, and Russ Feingold, a Democrat from Wisconsin.
16 Q. Were either of them a candidate for
17 federal office at the time these ads were run?
18 A. I don't believe so.
19 MR. LEFFEL: Jim, can we just clarify? I
20 take it -- and I just want to make sure Matt is clear.
21 I take it when you say a candidate for federal office,
22 you mean after the -- they filed their declaration
23 or --

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1 MR. BOPP: Taking whatever legal steps
2 are necessary to trigger that. And that's why we
3 covered originally, previously, what was his
4 understanding.
5 THE WITNESS: Right.
6 MR. LEFFEL: Right.
7 BY MR. BOPP:
8 Q. How extensive was the buy for these radio
9 ads? Do you know?
10 A. Very limited. I believe very limited.
11 They were radio ads and I'm not certain how often they
12 ran, but I don't think they ran very much.
13 Q. Okay. Could you estimate, let's say, the
14 duration of the buy? Was it in days, weeks or --
15 A. I think it was in days.
16 Q. Were they run in the -- and they were run
17 in the states indicated?
18 A. That's right.
19 Q. And as you understand it, each of the
20 senators identified in the ads were, in fact, at that
21 time senators in the state indicated?
22 A. That's right.
23 (Thereupon, CC Deposition Exhibit Number

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1 5 was marked for identification.)
2 BY MR. BOPP:
3 Q. Also with respect to Common Cause
4 Exhibit 4, were the ads in question, that is the ads
5 that you've testified were run in these respective
6 states, were they run in coordination with any
7 candidate for federal office?
8 A. No.
9 MR. LEFFEL: Objection.
10 THE WITNESS: Sorry.
11 MR. LEFFEL: I don't know what you mean
12 by coordination.
13 BY MR. BOPP:
14 Q. Well, if I -- if I use the word
15 coordination, what would you understand that to mean,
16 Matt?
17 A. I would understand it to mean
18 coordinating with the candidate for office or the
19 senator in question or the Member of Congress in
20 question on the text of the ad, on the market, on the
21 buy, et cetera.
22 BY MR. BOPP:
23 Q. When you say coordinate regarding the

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1 text, the market or the buy, what do you mean?
 2 A. Working in consultation with -- for
 3 example, Senator Hagel is mentioned in this ad. If we
 4 were to run advertisements in Nebraska, meeting with
 5 Senator Hagel's staff or meeting with his campaign
 6 staff or meeting with Senator Hagel himself, just as
 7 an example, obviously.
 8 Q. Sure.
 9 A. And working out the most efficient model
 10 that we could use on behalf of legislation acts,
 11 whatever it might be.
 12 Q. Do I understand you to mean negotiating
 13 the content of the ad, where it would be placed and
 14 that sort of thing? Is that what you mean?
 15 A. Well, I suppose. I mean, I think --
 16 yeah, I suppose so. It could mean that. It could
 17 mean other things, but, yeah, I would guess in this
 18 case on advertisements that's probably what it would
 19 mean.
 20 Q. Do you understand coordination to mean
 21 simply communicating about an activity that is going
 22 to take place when you use the word coordination?
 23 A. In the context of advertisements?

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1 Q. Yes.
 2 A. It could be any number of things, but
 3 certainly communication about what is to take place
 4 and the context and the substance, I think, all would
 5 point toward coordination.
 6 Q. Would that constitute -- in your view,
 7 and I am just trying to understand how you would be
 8 responding to my questions --
 9 A. Right.
 10 Q. -- is -- does coordination, in your
 11 understanding of the term, encompass mere
 12 communication without negotiations as we discussed?
 13 A. I think it could, yes.
 14 Q. Okay. All right. Using that definition,
 15 all right, was -- were these ads coordinated with any
 16 candidate for federal office?
 17 A. They were not.
 18 Q. Okay. Now, when I -- when I ask that
 19 question, let me be more specific.
 20 First, with any of the senators mentioned
 21 in the ad -- in the ads -- were they coordinated with
 22 any of the senators mentioned in the ads?
 23 A. No, they weren't.

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1 Q. Were they coordinated with McCain or
 2 Feingold?
 3 A. No, they weren't.
 4 Q. Were they coordinated with any other
 5 candidate for federal office?
 6 A. No, they weren't.
 7 Q. Now, when I say McCain or Feingold or a
 8 senator mentioned in this ad, I mean not only them,
 9 but, of course, anybody that you know to be an agent
 10 for them.
 11 A. Right.
 12 Q. Okay? Is that fair?
 13 A. That is, yeah.
 14 Q. Okay. So with that understanding, were
 15 they coordinated with any -- with any of the senators
 16 mentioned?
 17 A. They were not.
 18 Q. Let me show you what's been marked as
 19 Common Cause Exhibit 5.
 20 Are you familiar with this document?
 21 A. I am.
 22 Q. And what is it?
 23 A. It is the text of the -- a radio ad that

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1 ran in Colorado. I think it was in '97. I think it
 2 was -- refers to the previous document. I think it
 3 was '97.
 4 Q. Okay. So pulling back Exhibit 4 in front
 5 of you, you think this ad is -- was part of the
 6 project that Exhibit 4 is about?
 7 A. I believe so, yeah. I think that's
 8 right.
 9 Q. So were the other ads broadcast as part
 10 of the project discussed in Exhibit 4 then those ads
 11 attached or -- and contained in Exhibit 4 then?
 12 A. I don't believe so.
 13 Q. Okay. Then --
 14 A. This may have been a trial text or a
 15 draft or something. I'm not certain what the exact
 16 final ad run was, but -- I'm looking for the Colorado.
 17 Q. It's the first one.
 18 A. Yeah, there may have been a draft text.
 19 I -- I guess I don't know.
 20 Q. Do you know whether or not Exhibit 5 was,
 21 in fact, broadcast?
 22 A. I don't know.
 23 Q. Now. The fax transmissions at the top

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1 both used the dates in February 1998.
2 Why do you think they're part of the --
3 or may have been part of at least a draft of ads for
4 the radio campaign indicated in Exhibit 4?
5 A. I don't know the answer to that.
6 Q. So you don't know whether this ad was run
7 or not?
8 A. Right. I don't know whether this -- the
9 Exhibit 5 was run or not.
10 Q. Okay. Now, in preparation for this
11 deposition, who did you consult regarding the subject
12 matters which we've agreed that you would testify to?
13 A. I consulted with the people -- attorneys
14 present here.
15 Q. Did you consult anyone else in -- who is
16 employed by Common Cause?
17 A. I did not.
18 Q. Did you consult any of Common Cause's
19 agents or vendors?
20 A. I did not.
21 MR. LEFFEL: I just want to take one
22 second. Sorry.
23 (Thereupon, the witness and his

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1 counsel conferred.)
2 THE WITNESS: I'm sorry, I should have
3 included all present here, including Eric, who is not
4 an attorney, but a colleague of Common Cause.
5 BY MR. BOPP:
6 Q. Could you identify Eric, please?
7 A. Eric Swanson.
8 Q. And what is his position with Common
9 Cause?
10 A. He's Chief Operating Officer of Common
11 Cause.
12 Q. And how long has he been so employed?
13 A. I believe for two years.
14 Q. So he -- was he employed with Common
15 Cause prior to that time?
16 A. He was not.
17 Q. So he would not have been employed in '97
18 or '98 with Common Cause; is that correct?
19 A. That's correct.
20 Q. Did you make any inquiries with anyone
21 specifically about Common Cause Exhibit 5, its origins
22 and whether it actually ran, et cetera?
23 A. I did not.

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1 Q. So you can only testify about your own
2 personal knowledge, rather than the knowledge that
3 anyone else in the corporation may have about this ad?
4 A. Well, this advertisement was -- it looks
5 like it was paid for and run, if it was run at all, by
6 Campaign for America. So -- and this is not a -- it
7 doesn't appear to be a Common Cause advertising.
8 Q. Okay. You are aware of the fact that
9 Common Cause produced this document for us, so it was
10 at least in your files.
11 A. Right. Right.
12 Q. And you're also aware that as indicated
13 on Exhibit 4, Campaign for America was working with
14 you on an advertising campaign?
15 A. That's right.
16 Q. But back to my question, your only
17 knowledge base with respect to this ad is what you
18 personally know as opposed to consultation with anyone
19 else, other than your lawyers?
20 A. That's correct.
21 Q. Were you aware of the fact that as a
22 30(b)6 witness it was your -- it would be your
23 obligation to consult with other people in the

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1 organization to -- in order to answer questions that
2 we may pose?
3 A. Yes, I was aware -- I am aware of that.
4 Q. But you did not do so with respect to
5 Exhibit 5?
6 A. Not to Exhibit 5, no.
7 (Thereupon, CC Deposition Exhibit Number
8 6 was marked for identification.)
9 BY MR. BOPP:
10 Q. One more question on Exhibit 4. The
11 first two pages is a press release?
12 A. Right.
13 Q. Do you know to whom the press release was
14 sent?
15 A. I would -- press offices in -- in the
16 mentioned states in the press release or the senators
17 representing those states, Indiana, Colorado, Nebraska
18 and --
19 Q. Press offices, what do you mean by that?
20 A. Sorry. Newspapers, editorial boards of
21 newspapers, reporters representing those papers,
22 various papers in the Washington Bureau and back in
23 the states themselves and Kansas.

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1 Q. Now, also, as the document indicates, it
2 appears to indicate it was posted on your website
3 also?
4 A. That's correct.
5 Q. Do you know whether or not there were any
6 news stories about these ads in the respective states?
7 A. I don't -- I do not know.
8 Q. Okay. Let's look at Common Cause
9 Exhibit 6.
10 Are you familiar with this document?
11 A. I am.
12 Q. What is it?
13 A. It's an announcement stating that the
14 Americans for Reform coalition will be showing --
15 would be showing an advertisement on Capitol Hill
16 regarding the McCain-Feingold Bill.
17 Q. What is Americans for Reform?
18 A. Americans for Reform is kind of an
19 umbrella group, an umbrella coalition or the name that
20 encompasses many different organizations under the
21 umbrella of Americans for Reform.
22 Q. And I think your counsel has indicated --
23 in the letters that we have attached as exhibits, has

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1 represented that Americans for Reform is a project of
2 Common Cause?
3 A. That's correct.
4 Q. Was this Exhibit 6 -- was this published
5 by Common Cause?
6 A. Yes, it was.
7 Q. And to whom did it go?
8 A. This would have gone, obviously, on our
9 website, so -- for public viewing. And it would have
10 gone to press offices around -- the offices of
11 newspapers and television stations and radio stations
12 in Washington informing them of this event.
13 Q. Now, it indicates the unveiling of a new
14 TV ad.
15 What was the TV ad? What was the content
16 of it?
17 A. It was an advertisement talking about the
18 need to pass what we call comprehensive campaign
19 finance reform, namely the McCain-Feingold Bill, and
20 calling on members of the United States Senate to vote
21 accordingly.
22 Q. Now, I did not -- I'm just saying I
23 didn't find in the documents the text for this ad.

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1 A. Right.
2 Q. In your review of the documents, was
3 there a text for this ad in the documents?
4 A. I don't believe so, no. No, there was
5 not.
6 Q. Could you tell us with -- you know,
7 obviously with as much specificity as you can recall,
8 what did the ad say?
9 A. I -- if I remember correctly, the ad was
10 kind of quick shots, I think, featuring -- what did it
11 say? I remember Fox News was featured. What did it
12 say? I can see some of the images and, in general, it
13 was, you know, support the McCain-Feingold
14 legislation.
15 Q. Was the McCain and Feingold names used in
16 the ad?
17 A. I believe so, yes.
18 Q. Were any other federal office holders'
19 names used in the ad?
20 A. I don't believe so, although I -- I could
21 be wrong, but I don't think so.
22 Q. Was either Senator McCain or Senator
23 Feingold a candidate for federal office at the time

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1 that this ad was unveiled?
2 A. They were not.
3 Q. Now, you -- now, in the year 2002 are
4 either Senators McCain or Feingold candidates for
5 federal office in November of 2002?
6 A. No, they're not.
7 MR. LEFFEL: Again, I just want to make
8 sure we're clear that when you're using candidate, you
9 mean they've already filed their intention to run or
10 formed a committee? Is that -- I just want to be
11 clear. When he's answering, it seems that he's got
12 one view of what it means to be a candidate and I take
13 it you're talking about the legal requirements for
14 being a candidate.
15 BY MR. BOPP:
16 Q. What do you view -- how do you view what
17 I say is a federal candidate?
18 A. I guess the legal filing for office, for
19 the running for office technically, but I would -- you
20 know, I would say my personal opinion would be a press
21 conference announcing the candidacy of that candidate.
22 The technical filing is oftentimes not relevant.
23 Q. Now, where were these -- this TV or these

<p style="text-align: right;">Page 42</p> <p>1 TV ads -- let's establish that. 2 Was there one or more? 3 A. This is -- there was one television ad. 4 Q. And where were they run? 5 A. They were run on cable stations in 6 Washington -- in the Washington area or on a cable 7 station in the Washington area. 8 Q. D.C. that is? 9 A. That's right. 10 Q. Were they run anywhere else? 11 A. I don't -- I don't believe so, no. 12 Q. Do either Senator McCain or Senator 13 Feingold appear in these ads -- this ad, I mean? 14 A. I don't -- I don't recall. Again, the 15 only person I remember in the ad was Brit Hume. 16 Q. Did they attend the press conference that 17 you indicate in Exhibit 6? 18 A. They did. 19 Q. Were -- was this ad coordinated with 20 either Senator McCain or Senator Feingold? 21 A. It was not. 22 Q. Well, did they have knowledge of the ad 23 prior to it running?</p>	<p style="text-align: right;">Page 44</p> <p>1 consider the ad, an ad -- a discussion about an ad to 2 be encompassed within 2, but in 1, that is -- 3 MR. LEFFEL: Well, 2 specifically says 4 promotion of the legislation. And I think if you take 5 a look at the letter -- we can go back to your 6 Exhibit 2 -- paragraph two reads -- and this is the 7 agreement in the letter to Don Simon from -- well, I 8 guess it's signed -- I don't know if this is signed by 9 you or signed by Mr. Barr, both of your names are on 10 the signature page. 11 It says -- and I'm just quoting the 12 relevant portion -- the selected individual will 13 be expected to provide, subject to any objections 14 that may arise during the deposition, responsive 15 answers to the subject matters topics 1, 4, 5 and 16 6 and then in parens, unless otherwise within the 17 scope of topics 2 and 3 listed in our deposition 18 Subpoena. 19 I see the promotion of the legislation in 20 number 2 as a limitation, as your letter clearly 21 indicates, to any topics identified in 1, 4, 5 and 6. 22 MR. BOPP: Okay. Now, if you look at 23 number 4, doesn't -- which is a subject -- you know, a</p>
<p style="text-align: right;">Page 43</p> <p>1 A. March 2001. I assume that they did. 2 Q. Was the potential running of the -- or 3 development or running of an ad, this ad, discussed 4 with Senator McCain or Senator Feingold or even -- 5 MR. LEFFEL: I'm just going to insert an 6 objection here, only because the topic of 7 conversations with Members of Congress was 8 specifically withdrawn as one of the topics for 9 discussion in your letters. I believe that falls into 10 category 2 -- 2 and 3. 11 MR. BOPP: I think that -- isn't 2 and 12 3 -- 13 MR. LEFFEL: Two reads all communications 14 from one or more of the Defendant Intervenors to 15 Common Cause relating to the development, language or 16 promotion of the legislation. 17 Senators McCain and Feingold are 18 Defendant Intervenors. And to the extent that 19 this is asking about any sort of communication 20 between the two, I think that that's been limited 21 by the letter from your -- your colleague, 22 Mr. Barr. 23 MR. BOPP: Well, I don't -- I don't</p>	<p style="text-align: right;">Page 45</p> <p>1 proper subject of questioning here -- 2 MR. LEFFEL: Except to the extent it is 3 covered by topics 2 and 3. 4 MR. BOPP: Okay. Well, yeah, but 4 is 5 specific, that is public communications that mentioned 6 legislation and discussion with federal office holders 7 about it. So it's very -- so -- 8 MR. LEFFEL: That's -- 9 MR. BOPP: Can I just make my point? 10 MR. LEFFEL: Sure. Sorry. 11 MR. BOPP: You just have to choose what 12 you're going to do, of course, but that -- number 4 is 13 very specific. And -- and I would agree that number 14 2, the word promotion is broad and general, but I 15 think that we have agreed I can ask about number 4. 16 You know, the specific would, I think, clearly govern 17 over the general. 18 And -- because otherwise, your 19 interpretation would be that number 4 as to -- 20 certainly as to D is nullified. And that's very 21 specific and we didn't agree to nullify that. So 22 my view is this is a proper subject of questioning 23 and you'll decide whether or not you want to</p>

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1 instruct your person not to answer.
 2 MR. LEFFEL: Well, I'll just be clear
 3 that your letter dated September 20th, Common Cause
 4 Exhibit 2 in this deposition, says that you can cover
 5 topic 4. And it very clearly says unless otherwise
 6 within the scope of topics 2 and 3.
 7 And so, yes, I do read 4-D as being
 8 limited by topic 2. Now, I'm not going to
 9 instruct him -- I mean, if you're trying to get at
 10 whether McCain and Feingold were informed that
 11 they should come to this press conference and that
 12 there was going to be an ad run, you know, I'm
 13 fine with him answering that question if he -- if
 14 he knows.
 15 But I'm just saying I don't want to
 16 get into a big discussion about, you know, what
 17 were the conversations about how the legislation
 18 was being promoted, et cetera. That's clearly
 19 covered by 2 and, therefore, a limitation on topic
 20 4.
 21 MR. BOPP: Okay.
 22 BY MR. BOPP:
 23 Q. You may answer.

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1 A. What was the question again? Sorry.
 2 Q. I knew that was coming.
 3 MR. BOPP: Can you find it?
 4 (The record was read as requested.)
 5 BY MR. BOPP:
 6 Q. Or any of their agents is the completion
 7 of the question.
 8 A. They were -- the thing I can answer
 9 definitively or with some certainty is they were
 10 informed of the advertisement that would be unveiled
 11 at the press conference on March 22nd.
 12 Q. Were they -- was the content of the ad
 13 discussed with them prior to it being shot or put
 14 together, if you will?
 15 A. No, I don't believe that it was.
 16 Q. Was the idea of doing an ad discussed
 17 with them, this ad in exhibit --
 18 A. This particular ad? This particular ad I
 19 don't -- I don't know the answer to that question. I
 20 know that we talked about the press conference; but
 21 the content of the ad prior to its shooting or as it
 22 was being shot, I -- I don't think that we did.
 23 Q. Does Common Cause view the ad which is --

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1 was unveiled in exhibit -- in the press conference
 2 indicated in Exhibit 6 as promoting or supporting any
 3 candidate for federal office?
 4 A. No, we don't.
 5 (Thereupon, CC Deposition Exhibit Number
 6 7 was marked for identification.)
 7 BY MR. BOPP:
 8 Q. Let me show you what's been marked as
 9 Exhibit 7.
 10 Are you familiar with this document?
 11 A. 2002. Yes.
 12 Q. And what is it?
 13 A. This is -- it looks -- it's a radio ad
 14 that ran in February -- January/February 2002. I
 15 think this was the discharge petition, if I --
 16 Q. Was this press release published by
 17 Common Cause?
 18 A. It was, yes.
 19 Q. And the -- where was the radio ad
 20 broadcast?
 21 A. I believe -- if this was the discharge --
 22 if this was a -- if this was the discharge petition
 23 fight, it would have been run in, I believe, South

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1 Dakota, possibly South Florida, possibly Wisconsin.
 2 Again, if that is in fact -- if this is the discharge
 3 petition. I think it was the discharge petition
 4 fight.
 5 Q. Now, in the ad Shays-Meehan is mentioned.
 6 What does that refer to?
 7 A. Shays-Meehan refers to legislation which
 8 was the companion legislation in the House to the
 9 McCain-Feingold Bill on Campaign Finance Reform.
 10 Q. And are Shays and Meehan Members of
 11 Congress?
 12 A. They are.
 13 Q. And what are their names, full names?
 14 A. Chris Shays, a Republican from
 15 Connecticut; and Marty Meehan, a Democrat from
 16 Massachusetts.
 17 Q. Now, assuming that the Members of
 18 Congress that -- let's just say this:
 19 Yeah, assuming that the Members of
 20 Congress in this ad were candidates for federal
 21 office, does Common Cause view this ad as attacking or
 22 opposing any candidate or promoting or supporting any
 23 candidate?

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1 A. No, we don't. We wouldn't.
2 Q. What was the purpose of this ad?
3 A. The purpose of this ad was to -- again,
4 if this was -- if it was the discharge petition, it
5 was to get Members of the House to sign a discharge
6 petition. If it was just an on the floor battle on
7 Shays-Meehan, it was to get Members of Congress to
8 support the Shays-Meehan legislation on the floor,
9 Members of the House on the floor.
10 Q. Was the purpose to influence any federal
11 election?
12 A. No, it was not.
13 Q. Were Congressman Shays and Congressman
14 Meehan candidates in November of 2002 for Congress?
15 A. Yes, they were.
16 Q. Do you know when their primaries occurred
17 in 2002?
18 A. I do not. I have -- I do not know.
19 Q. Do you believe that Congressman Shays and
20 Congressman Meehan were, in fact, candidates for
21 federal office when this radio ad ran?
22 A. I do. I believe that, yes.
23 Q. Was Senator John McCain?

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1 A. No, McCain was not.
2 Q. Do you know whether any of the incumbent
3 Members of Congress that are mentioned in the ad in
4 Exhibit 7 had any knowledge about the running of these
5 ads -- of this ad -- prior to their being broadcast?
6 A. Senator McCain clearly.
7 Q. What role did Senator McCain play in the
8 development of this ad?
9 A. He used his name and his voice to talk
10 about the need to pass the Shays-Meehan Bill in the
11 advertisement itself.
12 Q. Did he review the text of the ad prior to
13 it being finalized?
14 A. I don't know the answer to that question,
15 but I would -- I don't know the answer to that
16 question.
17 Q. Now, is -- was his voice in this ad?
18 A. Yes, it was.
19 Q. And what portion of the ad was his voice?
20 A. It was I'm John McCain, tell your Member
21 of Congress we need to pass real reform now, pass
22 Shays-Meehan.
23 Q. And the rest of the ad was in whose

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1 voice?
2 A. In Scott Harshbarger's, who is the
3 president of Common Cause.
4 Q. Before Senator McCain recorded the
5 portion of this ad that is in his voice, did he see
6 the text of the entire ad?
7 A. I don't know. I was not there when this
8 was recorded.
9 Q. Now, did you inquire of anyone at Common
10 Cause about the development of this ad beyond what is
11 your own personal knowledge?
12 A. I did not. I did not.
13 Q. Let me show you what's been marked as
14 Exhibit 8.
15 (Thereupon, CC Deposition Exhibit Number
16 8 was marked for identification.)
17 BY MR. BOPP:
18 Q. Are you familiar with this document?
19 A. I am.
20 Q. And what is it?
21 A. This is a flier urging Senator Spencer
22 Abraham, then of Michigan, then a Senator of Michigan,
23 to support the McCain-Feingold Bill.

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1 Q. When was it distributed?
2 A. I believe this was distributed in -- it
3 have been any -- two different years, 1997 or
4 subsequent years, depending on the timing of the
5 legislation on the floor. This was -- this would have
6 been distributed at any time the McCain-Feingold Bill
7 would have been on the floor.
8 Q. Okay. When you say subsequent years,
9 what additional years are you referring to other
10 than --
11 A. '97, '99, perhaps, and -- '97 or '99,
12 possibly 2000. I don't think it was on the floor in
13 '98.
14 Q. Was -- when was Senator Abraham a
15 candidate for reelection for the Senate?
16 A. For reelection he was a candidate in
17 2000.
18 Q. Do you know when he became a candidate
19 for reelection?
20 A. I don't.
21 Q. Where was this, this flier, distributed?
22 A. This probably would have been mailed to
23 our members in Michigan, to, you know, be distributed

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1 as a form of public communication to other members,
 2 other people interested in the issue of Campaign
 3 Finance Reform.
 4 Q. So was it -- was it distributed, in fact
 5 distributed, in Michigan, to your knowledge, to Common
 6 Cause's knowledge?
 7 A. I believe it was, yes.
 8 Q. Was this flier distributed within 30 days
 9 of a primary or 60 days of a general election in which
 10 Senator Abraham was a federal candidate?
 11 A. It's possible, particularly if it was the
 12 year 2000 when it was distributed, but I -- I don't
 13 know definitively the answer to that.
 14 Q. On the lower left-hand corner the ad
 15 says -- well, first -- not ad.
 16 What's the purpose of the flier?
 17 A. The purpose of the flier is to educate
 18 people in Michigan about Senator Abraham's position on
 19 the McCain-Feingold legislation and to encourage him
 20 to vote -- to vote for the legislation.
 21 Q. Was it intended to influence an election?
 22 A. No, it was not.
 23 Q. Does Common Cause believe that this flier

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1 would have the effect of influencing an election?
 2 A. No, I don't believe that.
 3 Q. Now, this flier says, quote, Senator
 4 Abraham -- on the lower left-hand corner --
 5 A. Right.
 6 Q. -- voted to block the U.S. Senate from
 7 even voting on a soft money ban. This year he has a
 8 chance to make amends.
 9 What does the flier mean when it says a
 10 chance to make amends? That is, what did Common Cause
 11 intend for that to mean?
 12 A. We intended for him to vote for the
 13 McCain-Feingold Bill in terms of making amends for his
 14 past votes against, even in this case, cloture.
 15 Q. When you say amends, I assume that Common
 16 Cause believed that his vote to block the U.S. Senate
 17 from even voting on soft money was wrong?
 18 A. That's correct.
 19 Q. And when you say amends, it means to
 20 correct something he did wrong?
 21 A. That's correct. Wrong, you know, you can
 22 use wrong. I don't really know what that means.
 23 Q. I don't mean morally.

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1 A. Right.
 2 Q. But in your opinion on what should -- is
 3 good public policy?
 4 A. That's correct.
 5 Q. Now, does Common Cause view this flier to
 6 attack a candidate for federal office, i.e. Senator
 7 Abraham?
 8 A. No, we don't.
 9 Q. Do you view it to oppose Senator Abraham
 10 for election?
 11 A. No, we don't.
 12 Q. Did any -- was this -- the distribution
 13 of this flier coordinated with any federal candidate?
 14 A. No, it was not.
 15 Q. Did any federal candidate have knowledge
 16 of this flier prior to its actual distribution, as far
 17 as Common Cause knows?
 18 A. No.
 19 (Thereupon, CC Deposition Exhibit Number
 20 9 was marked for identification.)
 21 (Thereupon, a brief recess was taken.)
 22 BY MR. BOPP:
 23 Q. Exhibit 9 is before you.

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1 Are you familiar with that document?
 2 A. I am.
 3 Q. And what is it?
 4 A. Again --
 5 Q. Or what are they?
 6 A. Right. It's like the previous document.
 7 It's a flier that we either send to our members or
 8 hand out. It could be at rallies or other public
 9 events that call on various senators to support the
 10 McCain-Feingold Bill.
 11 Q. Were these documents, in fact, published
 12 by Common Cause?
 13 A. They were.
 14 Q. And were they distributed in the states
 15 in which these respective senators are -- represent?
 16 A. They were.
 17 Q. When were they distributed?
 18 A. I believe they were distributed in -- I
 19 would guess 2000. That's -- again, that's a --
 20 Q. During what period of time in 2000?
 21 A. This was probably March/April/May 2000.
 22 Q. And the purpose of these ads or -- I
 23 mean, these fliers, I'm sorry, was what?

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1 A. The purpose was to call on the senators
2 named to vote for the McCain-Feingold Bill.
3 Q. Were any of the federal office holders
4 mentioned in any of these fliers candidates for
5 federal office at the time these fliers were
6 distributed?
7 A. I think so, yes. Some of them were.
8 Q. Okay. Of those that you know, which
9 ones?
10 A. If -- again, if this -- if this was 2000,
11 Senator Abraham, Senator Ashcroft, Senator Alfonse
12 D'Amato, Senator Faircloth, Senator Roth -- maybe it
13 was 1999. Senator Coats retired. To my knowledge,
14 there -- there could be a couple more, but I think
15 that's it.
16 Q. Were Senators McCain or Feingold
17 candidates for federal office?
18 A. In 2000 Senator McCain was a candidate
19 for the Presidency, but not as a candidate for Senate
20 in Arizona.
21 Q. Senator Feingold?
22 A. He was not.
23 Q. Now, when you say in 2000 Senator McCain

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1 was a candidate for President, wasn't he also a
2 candidate for President in 1999?
3 A. I -- when -- when do you file? Do you
4 file in the year before the presidential year? I
5 suppose so. If that's the case, yes, he was. I don't
6 know the answer to that.
7 Q. Were any of these fliers distributed
8 within 30 days of a primary in which any of the
9 identified federal office holders were candidates for
10 federal office?
11 A. It's possible. Again, it's possible. I
12 don't know definitively all the primaries of all the
13 candidates that were up in 2000, but it's possible
14 certainly.
15 Q. Was the purpose or was one of the
16 purposes of these fliers to influence any federal
17 election?
18 A. No.
19 Q. Does Common Cause believe that these
20 fliers would have the effect of influencing any
21 federal election?
22 A. Not at the time that we distributed them;
23 but if on the very off chance that somebody were to

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1 get this, you know, the day before a primary election
2 or a general election, you know, it's possible that it
3 could affect the outcome of the campaign.
4 Q. When --
5 A. But it's -- it's hugely unlikely that we
6 would have mailed these or distributed these
7 immediately prior to a general or a primary. But,
8 again, if that -- it's possible, but it's highly
9 unlikely.
10 Q. Okay. What is it about any of these
11 fliers that Common Cause believes would have the
12 potential of affecting a federal election, if you
13 believe that? I mean, it may be my assumption is
14 wrong, but if you believe that.
15 A. Actually, in this set of fliers nothing
16 in here would. If you look at the text, for example,
17 Senator Judd Gregg is one of a handful of senators who
18 will determine whether opponents of reform are able to
19 protect, blah, blah, blah. It doesn't reference his
20 past votes.
21 So, no, actually these would not. These
22 would -- these are truly -- you know, these are not.
23 These would not have any effect, I believe.

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1 Q. Does Common Cause believe that any of
2 these fliers promote or support any candidate for
3 federal office?
4 A. No, we don't believe that.
5 Q. Do you believe that these fliers attack
6 or oppose any candidate for federal office?
7 A. No, we don't believe that.
8 (Thereupon, CC Deposition Exhibit Number
9 10 was marked for identification.)
10 BY MR. BOPP:
11 Q. I show you what's been marked as Common
12 Cause Exhibit 10.
13 Are you familiar with these documents?
14 A. I am.
15 Q. And what are they?
16 A. These are documents that were distributed
17 prior to the McCain-Feingold vote, which was just the
18 ban on soft money that year, which was 1999, October
19 of 1999.
20 Q. And where were they distributed?
21 A. Again, these were distributed in the
22 states of -- in Minnesota, Nebraska and Michigan.
23 Q. Okay. Minnesota, Nebraska and Michigan.

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1 All right.
 2 MR. LEFFEL: Just to be clear, because
 3 we're talking about a collection of these fliers, I
 4 take it -- you know, you're asking him whether they
 5 were distributed or not. I just want to be clear that
 6 we're agreeing that the ones with Grams' name were
 7 sent to Minnesota and -- that Grams -- the ones
 8 with -- wherever the senator -- the senator who is
 9 identified at the top, wherever he is from, that's, I
 10 think, what we're talking about, that's where the
 11 fliers were sent, not to suggest that all three of
 12 these, because there are three different documents,
 13 really, were sent to all three states.
 14 BY MR. BOPP:
 15 Q. That was my next question.
 16 Were the documents which indicate --
 17 which identify a senator from a particular state
 18 distributed in that state?
 19 A. That's right. That's correct.
 20 MR. LEFFEL: Just to be clear, I'm sorry.
 21 Once again, Jim, you say identify. You mean identify
 22 at the top? Because, I believe, you know, there's
 23 some discussion of McCain-Feingold in the text.

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1 MR. BOPP: Yes.
 2 MR. LEFFEL: You're talking about
 3 identified at the top.
 4 BY MR. BOPP:
 5 Q. Is that what you understood me to say?
 6 A. That's right.
 7 Q. Now, were any of the federal office
 8 holders identified in these fliers candidates for
 9 federal office at the time that they were distributed?
 10 A. I don't believe so. This was -- this
 11 would have been October of '99.
 12 Q. Were any of them candidates for federal
 13 office in November of 2000?
 14 A. Yes, Senator Grams and Senator Abraham
 15 were.
 16 Q. Were any of these fliers distributed
 17 within 30 days of a primary or 60 days of a general
 18 election?
 19 A. I don't believe they were, no.
 20 Q. What was the purpose of these fliers?
 21 A. Again, the purpose of the fliers was to
 22 educate the people of those particular states as to
 23 the -- the issue of soft money and what we called the

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1 problem of soft money in the political system; and to
 2 urge the people in those states to call their senators
 3 to support the McCain-Feingold Bill.
 4 Q. Was the intent to influence any federal
 5 election?
 6 A. No.
 7 Q. Does Common Cause believe that these
 8 fliers could affect any federal election?
 9 A. No. I mean, even in the context of --
 10 even if this were -- again, which is hugely
 11 unlikely -- given out the day before an election, this
 12 flier, you know -- no, I don't -- I really don't think
 13 so.
 14 Q. Does Common Cause believe that any of
 15 these fliers promote or support a candidate for
 16 federal office?
 17 A. No.
 18 Q. Does Common Cause believe that any of
 19 these fliers attack or oppose a candidate for federal
 20 office?
 21 A. No.
 22 (Thereupon, CC Deposition Exhibit Number
 23 11 was marked for identification.)

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1 BY MR. BOPP:
 2 Q. I show you what's been marked as CC
 3 Exhibit 11.
 4 Are you familiar with these documents?
 5 A. I am.
 6 Q. And what are they?
 7 A. These are -- these would have been
 8 postcards that we sent to our members in -- are these
 9 all Senator Roth -- in Delaware and other states,
 10 Delaware and Indiana and Kansas and Michigan and
 11 Minnesota and Nebraska and Ohio and Oregon.
 12 Q. And they were -- and they were
 13 distributed in the states in which these senators are
 14 the incumbent senator?
 15 A. That's right.
 16 Q. And when were these postcards or -- you
 17 said postcards.
 18 When were they distributed?
 19 A. These would have been sent probably in
 20 September of 1999, I believe.
 21 Q. Were any of the federal office holders
 22 identified in these fliers candidates for federal
 23 office at the time the fliers were distributed?

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1 A. I don't believe so.
2 Q. Were any candidates for federal office in
3 November of 2000?
4 A. Senator Roth was; Senator Abraham;
5 Senator Grams. I think that's it.
6 Q. What was the purpose of these fliers?
7 A. Again, the purpose of these fliers, like
8 the previous fliers -- actually, these are postcards.
9 Q. Postcards, sorry.
10 A. -- was to get our members to call the
11 named senator and ask him or her to support the
12 McCain-Feingold Bill.
13 Q. Was the purpose to influence a federal
14 election?
15 A. No, it was not.
16 Q. Does Common Cause believe that these
17 postcards could affect a federal election?
18 A. You know, it's unlikely. But, again, if
19 this were in the days leading up to an election and
20 somebody were to read for years Senator Roth has
21 resisted supporting campaign finance reform
22 legislation, it's possible.
23 Q. Does Common Cause consider any of these

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1 postcards to promote or support a candidate for
2 federal office, assuming that the office holders
3 identified here were a federal candidate?
4 A. No.
5 Q. Do they -- does Common Cause view any of
6 these postcards to attack or oppose a federal
7 candidate, assuming the office holders were federal
8 candidates at the time?
9 A. No.
10 Q. Now, you just quoted a portion of, I
11 think, senator -- the one referring to Senator Roth --
12 A. Right.
13 Q. -- where he has resisted supporting
14 campaign finance reform.
15 Why does that not attack him for -- for
16 resisting something which you consider to be -- that
17 Common Cause considers to be good?
18 A. Well, it's designed to put pressure on
19 Senator Roth to vote a certain way. It's not designed
20 to put -- you know, it's not designed to -- to
21 influence the outcome of an election.
22 This is timed specifically to legislation
23 that was then pending on the floor of the United

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1 States Senate. And the text of the ad is
2 informational and it urges our members to make
3 telephone calls to the offices asking for support.
4 Q. Doesn't this statement in context attack
5 Senator Roth for his actions and position?
6 A. In the context of October '99?
7 Q. In the context of this postcard. Doesn't
8 it attack him for his -- for, quote, resisting, that
9 he has resisted supporting campaign finance reform?
10 A. I wouldn't say it attacks Senator Roth.
11 And I would -- you know, Senator Roth subsequently
12 voted for that -- for the McCain-Feingold Bill, which
13 probably -- well, never mind. I should say Senator
14 Roth supported cloture on the McCain-Feingold Bill.
15 (Thereupon, CC Deposition Exhibit Number
16 12 was marked for identification.)
17 BY MR. BOPP:
18 Q. I show you what's been marked as CC
19 Exhibit 12.
20 Can you identify these documents?
21 A. I can.
22 Q. And what are they?
23 A. These are -- again, these are postcards

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1 that were mailed to our members, timed to a vote on
2 the McCain-Feingold Bill that -- at this time -- I
3 guess it was on the floor in mid July.
4 Q. Of what year?
5 A. I don't know.
6 MR. LEFFEL: Jim, do we have the whole
7 document here? This thing seems to end in mid
8 sentence at the bottom and that may be one of the
9 reasons that we're having difficulty determining the
10 date of this particular piece.
11 MR. BOPP: Well, you have the whole
12 document that I have.
13 MR. LEFFEL: Yeah. My understanding --
14 MR. BOPP: You have everything I have.
15 MR. LEFFEL: My understanding is you
16 designated certain materials from the entire
17 production for photocopying. I don't know where this
18 left off or if this is something you pulled the first
19 page and not the second page of these. I don't know.
20 MR. BOPP: Well, Common Cause assumed the
21 responsibility to accurately copy these. And all I
22 have done is copied what I received from Common Cause.
23 So I have -- this document has what I have that Common

1 Cause provided me.
 2 MR. LEFFEL: Okay.
 3 MR. BOPP: If there was something on the
 4 back side and that was not copied by Common Cause,
 5 maybe he can tell us that that is so. I don't know.
 6 THE WITNESS: I certainly hope we didn't
 7 send it out to our members in this form.
 8 BY MR. BOPP:
 9 Q. Do you know what else there was of this
 10 document? I mean, I agree that it ends with circum
 11 dash. And there could be, I suppose, something in
 12 that black box that was not reproduced by the copy
 13 machine or there may be another page to it.
 14 Do you know?
 15 A. You know, I -- I don't know specifically,
 16 but I -- I would guess that there's probably text on
 17 the back of the postcard.
 18 Q. Okay. Well, isn't --
 19 A. Or it may have gone down just to the end
 20 of that black box there and there's some reason the
 21 copier didn't get it.
 22 Q. Each of these are a postcard. Isn't the
 23 front page the back of the postcard? I mean, if it's

1 just a single piece --
 2 A. Right.
 3 Q. -- one side would be the mailer, I
 4 assume, and the other side would be the text.
 5 Isn't page 1 the back side?
 6 MR. LEFFEL: I'm going to object on
 7 foundation.
 8 THE WITNESS: You know, I don't know. I
 9 don't know.
 10 BY MR. BOPP:
 11 Q. Okay. The question that was pending
 12 was -- I don't remember.
 13 Did Common Cause publish these postcards?
 14 A. We sent them to our members, yes.
 15 Q. Okay. And the members in the states in
 16 which the public officials are identified and
 17 represent?
 18 A. That's right.
 19 Q. When you say sent to your members, who
 20 does Common Cause consider to be their members? How
 21 do you become a member?
 22 A. You, if you so choose, could send, I
 23 think it's, \$50, \$25 -- it's a sliding scale, I think.

1 I think for a university student it's a little less --
 2 to Common Cause and you become a member and that gets
 3 you a membership in Common Cause for a year.
 4 Q. Now, was the information contained in
 5 these postcards intended to be distributed beyond your
 6 membership or only to your members?
 7 A. In the case of postcards, it's most
 8 likely just -- they were intended just for our
 9 members. You know, our members may take those and --
 10 and, you know, give them to somebody else, but it's a
 11 postcard that goes to individual households.
 12 Q. Were any of these postcards distributed
 13 within 30 days of a primary or 60 days of a general
 14 election in which the federal office holder was a
 15 candidate, the federal officer identified on the
 16 postcard was a candidate?
 17 A. I don't know the answer to that.
 18 Q. Oh, I remember what was pending. You
 19 weren't sure what year.
 20 A. Right. It could have been '99 or 2000 or
 21 even -- I know it's mid July. You probably know this
 22 as well as I do what the years were. It was not '99,
 23 because October of '99 was just the Soft Money Ban.

1 It was probably '98 or 2000.
 2 Q. Assuming they were distributed in 2000,
 3 would any of them have been distributed within 30 days
 4 of a primary in which the senator identified was a
 5 candidate for federal office?
 6 A. It's possible, but it's -- I think at
 7 this time period it's probably unlikely, given that
 8 most primaries are held in the spring immediately
 9 after Labor Day, but I don't know.
 10 Q. What was the purpose of these postcards?
 11 A. To inform our members that a vote was
 12 pending or was imminent on the floor of the United
 13 States Senate and that we would like them to call
 14 their senator and ask him or her to support the
 15 McCain-Feingold Bill.
 16 Q. Was the purpose to influence a federal
 17 election?
 18 A. No.
 19 Q. Does Common Cause believe these postcards
 20 would affect a federal election?
 21 A. No, we don't.
 22 Q. Does Common Cause believe that any of
 23 these postcards promote or support a candidate for

<p style="text-align: right;">Page 74</p> <p>1 federal office? 2 A. No, we do not. 3 Q. Does Common Cause believe that any of 4 these postcards attack or oppose a candidate for 5 federal office? 6 A. No, we don't. 7 (Thereupon, CC Deposition Exhibit Number 8 13 was marked for identification.) 9 BY MR. BOPP: 10 Q. I show you what's been marked as CC 11 Exhibit 13. 12 Are you familiar with, I guess, these 13 documents? 14 A. I am. 15 Q. And what are they? 16 A. These are -- I guess they're more -- 17 they're not postcards. They're letters or they're 18 fliers sent to probably our members -- or maybe, I 19 guess, they're large postcards. This is the front and 20 this would be the back text. The second page would be 21 the front -- sent to our members in various districts. 22 I guess in this case it was Speaker Hastert's 23 district.</p>	<p style="text-align: right;">Page 76</p> <p>1 postcard to go to districts other than Senator 2 Hastert? 3 A. Speaker Hastert. 4 Q. Speaker Hastert. 5 A. Yes, it was. 6 Q. Were postcards of this type distributed 7 in other districts? 8 A. Well, they would have been distributed in 9 the district where that member, that particular 10 member, signed that -- signed our, what we call, 11 pledge for reform. 12 Q. And approximately how many had signed a 13 pledge for reform? 14 A. Actual Members of Congress or candidates 15 for office? 16 Q. You tell me if I'm wrong, but I think the 17 context of this postcard is had signed in the '98 18 campaign, so it would be now incumbent Members of 19 Congress. 20 A. Oh, man, probably of the 435 House 21 members, somewhere between 150 and 200, I would guess. 22 Q. So some or more of those received a 23 version tailored to them of this postcard?</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. And when was it that these postcards were 2 distributed? 3 A. I believe it was 1999. 4 Q. All right. The first page under the 5 Contact Speaker Hastert now, says as a constituent of 6 House Speaker Dennis Hastert. 7 A. Um-hmm (affirmative). 8 Q. So it's your testimony that this postcard 9 was distributed in Speaker Hastert's district; is that 10 right? 11 A. It is, yeah. 12 Q. If you look at the next one, it's the 13 third page, that text is a little bit different. It 14 says under contact your representative, your 15 representative signed a pledge. 16 A. I'm sorry, where does it say that? 17 Q. Well, in the -- under the bold contact 18 your representative today. 19 A. Right. Okay. 20 Q. It says your representative signed a 21 pledge. 22 A. Right. 23 Q. Okay. Was this at least a draft of a</p>	<p style="text-align: right;">Page 77</p> <p>1 A. That's right. 2 Q. And I'm sorry if I asked you this, when 3 do you think these postcards were distributed? 4 A. These were distributed in '99. 5 Q. What was the purpose of these postcards? 6 MR. LEFFEL: I just want to object. 7 There are several different postcards. Are you 8 talking about -- I mean, do you want to identify these 9 by Bates numbers or are you just talking about in 10 general? 11 MR. BOPP: Well, I guess let me clarify 12 my question. 13 BY MR. BOPP: 14 Q. I'm asking in general, but if the purpose 15 was varied, please -- from postcard to postcard -- 16 please let me know. 17 A. Well, the overall intent was to get 18 Speaker Hastert to schedule the Shays-Meehan Bill for 19 a vote. Some went directly to the Speaker for his 20 constituents in his district in Illinois and some were 21 sent to candidates who signed a pledge, asking them to 22 ask Hastert to schedule a vote. 23 And then some were sent to the republican</p>

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1 cosponsors of the legislation, urging them to ask
 2 Speaker Hastert to schedule the legislation for a
 3 vote.
 4 Q. You mean constituents of the pledge
 5 signers?
 6 A. That's right.
 7 Q. And republicans?
 8 A. That's right.
 9 Q. Was the purpose of any of these postcards
 10 to influence a federal election?
 11 A. No.
 12 Q. Does Common Cause believe that they would
 13 affect any federal election?
 14 A. No. No.
 15 Q. Were any distributed within 30 days of a
 16 primary?
 17 A. These would have been distributed in
 18 1999, so it's very unlikely.
 19 Q. Assuming any of the candidates -- excuse
 20 me -- any of the incumbent Members of Congress either
 21 identified or, as you've described, were pledge
 22 signers?
 23 A. Right.

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1 Q. -- were federal candidates, do you --
 2 does Common Cause believe that any of these fliers
 3 promote or support a candidate for federal office?
 4 A. Well, again, if these were, you know,
 5 handed out in the days immediately prior to a primary
 6 or general election and, you know, you read that one
 7 of your representatives is a cosponsor of the
 8 Shays-Meehan Bill, it's possible that that would make
 9 it more likely for one of our members to vote for that
 10 Member of Congress, but, again, it's context
 11 dependent.
 12 Q. Well, what I'm asking -- and let's say
 13 that it's not in the immediate days. Let's say that
 14 it's when you say they were distributed.
 15 A. In '99?
 16 Q. Yes.
 17 A. All right.
 18 Q. Do any of these promote or support a
 19 candidate?
 20 A. No, they don't.
 21 Q. Do any attack or oppose a candidate?
 22 A. They don't.
 23 Q. Now, back to page 3 of the exhibit, this,

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1 I guess, generic draft of one that went, as you -- if
 2 I understood your testimony correctly, to constituents
 3 of pledge signers, wasn't it -- the middle portion of
 4 the postcard under the words contact your
 5 representative today says your representative signed a
 6 pledge during the '98 campaign to support a Soft Money
 7 Ban like the one in the Bipartisan Shays-Meehan
 8 Campaign Finance Reform Bill. He can make good on
 9 this pledge by becoming a sponsor of Shays-Meehan and
 10 urging Speaker Hastert to schedule it for a vote this
 11 spring.
 12 Now, isn't it true that the first
 13 sentence is promoting or supporting a candidate; I
 14 mean, the -- I mean supporting -- promoting or
 15 supporting the Congressman referred to in the
 16 postcard?
 17 MR. LEFFEL: I just want to object on
 18 vagueness. I mean, it's not clear whether you're
 19 asking him whether that was the intent or whether it
 20 could be interpreted by anybody to be promoting or
 21 defending.
 22 MR. BOPP: Let's do both.
 23 BY MR. BOPP:

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1 Q. Was it the intent for that phrase to
 2 promote or support?
 3 A. No, it was not the intent.
 4 Q. Could it be interpreted by other people
 5 receiving that message as promoting or supporting?
 6 A. I mean, it's possible, but it -- again,
 7 it's -- you know, it's -- it's possible, depending on
 8 the timing and the context, but -- you know, I'll just
 9 say that. I mean, anything is possible.
 10 Q. Well, we have the context and we have the
 11 timing.
 12 A. Right. So this is --
 13 Q. So my question is --
 14 A. Spring of '99.
 15 MR. LEFFEL: I object on speculation.
 16 You're asking how other people will interpret it?
 17 MR. BOPP: Yes, I am.
 18 MR. LEFFEL: You can answer, but I'm just
 19 objecting on speculation.
 20 THE WITNESS: I have no idea what --
 21 if -- what somebody would interpret that as -- as
 22 meaning. You know, I just don't. I don't know.
 23 BY MR. BOPP:

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1 Q. So to be clear, you don't know whether
2 some -- someone else would consider that sentence to
3 promote or support a candidate?
4 A. That's right, I -- that's correct.
5 Q. Some could and some may not; is that what
6 you mean?
7 MR. LEFFEL: I think he's answered that.
8 THE WITNESS: It's possible.
9 (Thereupon, CC Deposition Exhibit Number
10 14 was marked for identification.)
11 BY MR. BOPP:
12 Q. Let me show you what's been marked as
13 Exhibit 14.
14 Are you familiar with this document?
15 A. You know, I don't know what this is. I
16 did not review this document. I don't know what this
17 is.
18 Q. Well, this is one of the documents
19 produced by Common Cause.
20 Did you -- in reviewing these documents,
21 did you ask anyone about what this document is?
22 A. I did not, no. I don't recall seeing
23 this document in preparing for this deposition.

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1 Q. So when you say you don't know what it
2 is, it's just based upon your own personal knowledge
3 and recollection?
4 A. That's right.
5 (Thereupon, CC Deposition Exhibit Number
6 15 was marked for identification.)
7 BY MR. BOPP:
8 Q. You mentioned a couple of times postcards
9 or other -- possibly other documents going to your
10 members.
11 A. Right.
12 Q. Does Common Cause maintain a data base of
13 people in the general public?
14 A. In the --
15 Q. In addition to members, let's say it that
16 way. In addition to members, does Common Cause
17 maintain lists of people in the general public?
18 A. I don't -- I'm sorry, I don't know what
19 that means.
20 Q. Let's turn it around and let's say this:
21 Does Common Cause maintain a list of
22 individuals in the United States?
23 A. No.

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1 MR. LEFFEL: I would object on vagueness.
2 I don't know -- we've clearly talked earlier they have
3 lists of press contacts and things like that. I don't
4 know where your question is going, but --
5 MR. BOPP: Well, that's what I'm asking.
6 Let's use the word people.
7 BY MR. BOPP:
8 Q. Does Common Cause maintain a list or a
9 data base of people with their name and -- names and
10 addresses?
11 MR. LEFFEL: Objection, vague.
12 THE WITNESS: Just generally, like, you
13 know, walking down the street and getting somebody's
14 name? I don't know -- I just don't know what the
15 question is. I don't understand it.
16 BY MR. BOPP:
17 Q. Okay. You said that some of these
18 documents have been mailed to members.
19 A. Right.
20 Q. Where do you get the names of members,
21 like if you -- if you were in your responsibility --
22 A. A member of Common Cause?
23 Q. Yes.

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1 A. We have a data base of our members,
2 that's correct.
3 Q. Okay. Very good. Now --
4 A. Which is different than people.
5 Q. I'm sure they're all people.
6 A. Right.
7 Q. Anyway, the -- all right. So there's a
8 data base of what you -- Common Cause considers to be
9 their members?
10 A. Right.
11 Q. Okay. Is there a data base that contains
12 individuals other than members? Are there people on
13 the data base that are not members?
14 MR. LEFFEL: Objection, foundation.
15 THE WITNESS: A data base of people other
16 than Common Cause members? I don't -- I don't believe
17 so. I don't know the answer to that question.
18 BY MR. BOPP:
19 Q. Okay. So when someone's membership
20 lapses after a year --
21 A. Right.
22 Q. -- are they deleted from the data base?
23 A. I don't know the answer to that question.

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1 Q. If you were to order, say, a list to send
2 a press release, where would you obtain those names?
3 A. Of our members or of --
4 Q. Of whoever you want to send this press
5 release to, other than your members.
6 A. We have -- well, okay. It's becoming
7 clear. We have lists of -- for example, if we were to
8 send these out, which are press releases, we would
9 something called blast fax them to members of the
10 press.
11 Q. So you maintain a list of fax numbers for
12 the press?
13 A. That's correct.
14 Q. Okay. Does Common Cause maintain lists
15 of anyone who is -- who has never been a member?
16 A. We have a -- something called an
17 action -- an E-mail action alert network. Now, some
18 of those people are members and some are -- for
19 example, if I speak to a class or something and people
20 want to sign up to get information about legislation
21 that's important to Common Cause, they'll sign up
22 as -- give their E-mail address and they'll go into
23 this Common Cause action alert network.

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1 Q. Okay. And is that -- is that list
2 maintained by Common Cause in some form?
3 A. It is.
4 Q. Okay. In what form is that?
5 A. Well, it's -- it's a list of names of
6 people who are interested in the issues that we
7 follow.
8 Q. Is it computer maintained?
9 A. That's right.
10 Q. I mean, many organizations have a
11 computer program and they put in names, they -- and
12 then they identify them by category, you know, they're
13 a member, they're this, they're a press person or
14 whatever.
15 A. Right.
16 Q. Is that the general way in which Common
17 Cause maintains a list?
18 A. I don't think it's that ordered. I think
19 the press department has a list of press contacts and,
20 you know, our membership department has a list of our
21 member contacts and our web guy has a list of the
22 Causenet alert contacts.
23 Q. Now, you've testified that several of

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1 these postcards went to members.
2 A. Um-hmm (affirmative).
3 Q. Are you testifying that they only went to
4 members or did they also -- would they -- could they
5 have also gone to the action network names or other
6 names of people, lapsed members or whatever?
7 A. I believe they would have only gone to
8 members. It's unlikely they would have gone to
9 nonmembers.
10 Q. I'm showing you what's been marked as
11 Exhibit 15.
12 And are you familiar with these
13 documents?
14 A. I am.
15 Q. And what are they?
16 A. These are documents that essentially
17 serve as thank yous to people who cosponsored the
18 Shays-Meehan Bipartisan Campaign Reform Bill in 1999.
19 Q. And in what form were they distributed or
20 published?
21 A. These would have been E-mailed or faxed
22 to members of the press, representing papers in those
23 particular districts.

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1 Q. Just newspapers or broadcast outlets as
2 well?
3 A. Probably both, I would guess. Most
4 likely newspapers, but there's a possibility that it
5 was both.
6 Q. And they would have been -- each of these
7 are what one would call a press release?
8 A. That's correct.
9 Q. Okay. And they would have been
10 distributed -- well, let's start with the first one.
11 It's representative Tom Allen. He
12 represents Maine, one of the districts in Maine,
13 right?
14 A. Right.
15 Q. Would this have been distributed in his
16 district or in the state of Maine or beyond that?
17 MR. LEFFEL: I believe he's already
18 answered that, but you can go ahead.
19 MR. BOPP: Okay.
20 THE WITNESS: This would have been
21 distributed to, for example, the Washington
22 correspondent of the Portland Press Herald in
23 Washington. It would have been distributed to, you

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1 know, whatever other publications exist in his
2 district that we have a contact for.
3 BY MR. BOPP:
4 Q. So it would have been directed at press
5 outlets in his district?
6 A. That's right.
7 Q. Okay. And that would be true of all the
8 rest of these?
9 A. That's right.
10 Q. Now, were any of the federal office
11 holders identified in Exhibit 15 candidates for
12 federal office at the time this press release was
13 distributed?
14 A. I don't believe so. This is February of
15 '99, so an election in '98 would have just taken
16 place.
17 Q. Were many of these -- without -- I don't
18 think we need to identify them.
19 Were many of these candidates for federal
20 office in November of 2000?
21 A. Yes.
22 MR. LEFFEL: Jim, I'm sorry, I just want
23 to say, so there's no confusion later, you know, to

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1 the extent when we have dates like are on these press
2 releases, the series of press releases contained in
3 Exhibit 15, from February of 1999, I mean, I know
4 there's been lots of back and forth about whether
5 somebody is a candidate or not. It appears, you know,
6 you're talking about whether they have filed or not.
7 And, obviously, as I believe Matt
8 said before, he doesn't know when they filed. And
9 he seems to be commenting on whether they're up
10 for election that year.
11 I mean, we'll stipulate if they filed
12 and met all the requirements to be a candidate,
13 they're a candidate. I guess the question is
14 whether they're actually -- their election is, you
15 know, coming up soon or in the year when the
16 particular document was sent out.
17 BY MR. BOPP:
18 Q. Was the purpose of the distribution of
19 these press releases to influence any federal
20 election?
21 A. No.
22 Q. Does Common Cause believe that the -- any
23 of these -- the distribution of any of these press

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1 releases would affect a federal election, any federal
2 election?
3 A. I don't believe that, no.
4 Q. Does Common Cause believe that any of
5 these press --
6 A. But --
7 Q. Sorry.
8 A. But, again, it's possible that people
9 could, you know, read this and be influenced in one
10 way or another. But, again, it's possible, just
11 possible.
12 Q. Does Common Cause --
13 A. That was not our intent.
14 Q. Thank you.
15 Does Common Cause believe that any of
16 these press releases promote or support a candidate
17 for federal office, assuming that the federal office
18 holder identified in the press release was, in fact, a
19 candidate?
20 A. It's possible that -- that this could
21 be -- you know, I don't know. I'm thinking of a
22 situation where somebody reads in the paper, you know,
23 Common Cause thanks Tom Allen in February of 1999, is

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1 it possible that that may affect the outcome of an
2 election in November of 2000, yeah. I mean, it's
3 remotely possible.
4 Q. Okay. I was asking you about promote or
5 support.
6 Is -- do you view -- does Common Cause
7 view any of these to promote or support a candidate,
8 assuming they were a candidate?
9 A. I don't view this as promoting the
10 candidacy of someone for office. I view this as
11 thanking somebody for taking a courageous stand on an
12 issue. I think there's a fundamental difference
13 between the two.
14 (Thereupon, CC Deposition Exhibit Number
15 16 was marked for identification.)
16 BY MR. BOPP:
17 Q. With respect to 15, was the distribution
18 of any of the press releases contained in Exhibit 15
19 coordinated with any candidate, assuming any of these
20 identified office holders were candidates?
21 A. No, they were not.
22 Q. Was it communicated with any candidate or
23 any of the -- let me say this:

1 Was it communicated with any of the
2 office holders identified prior to the distribution of
3 the press release?

4 A. I -- no, I doubt it. It's possible, but
5 I -- I'd strongly doubt it, since I probably would
6 have done the communicating. And I don't recall doing
7 any communicating.

8 Q. With respect to Exhibit 16, do you
9 recognize these documents?

10 A. Yes.

11 Q. And what are these?

12 A. These are -- again, these are press
13 releases.

14 Q. Were these published by Common Cause?

15 A. They were.

16 Q. And to whom were they directed?

17 A. These were directed to members of the
18 press from the states represented by the named
19 Congressman.

20 Q. For instance, the first one,
21 representative Dennis Moore of Kansas, was this
22 directed at press outlets throughout the state or in
23 his district or both?

1 A. In the case -- it depends. I don't know
2 for certain, but in the case of Kansas, since it's --
3 and maybe there aren't as many news outlets as there
4 are in other states. It may well have gone to the
5 entire state, but it's mainly to the districts where
6 they're represented.

7 Q. At a minimum, it would be to the
8 district, people in the district?

9 A. That's right.

10 Q. But it may be broader?

11 A. That's right.

12 Q. And what was the purpose of these press
13 releases?

14 A. The purpose of the press releases was to
15 thank -- the purpose of the press releases was to
16 encourage Members of Congress to continue to take
17 courageous stands on an issue that is extraordinarily
18 unpopular with many of their colleagues.

19 Q. Was the purpose to influence a federal
20 election?

21 A. That is not the purpose.

22 Q. Was the -- does Common Cause believe that
23 these press releases could affect a federal election

1 or any federal election?

2 A. Common Cause doesn't believe generally
3 that these would influence the outcome of a federal
4 election, but it stipulates that it's possible that it
5 could.

6 Q. Do -- does Common Cause believe that
7 these press releases promote or support a candidate
8 for federal office, assuming that the members of
9 Congress identified herein were, in fact, candidates
10 for federal election?

11 A. Common Cause does not believe that this
12 press release promotes or supports the candidacy of a
13 federal office holder, but believes that it's possible
14 that it could be somehow interpreted that way.

15 Q. By who?

16 MR. LEFFEL: I think he answered that.
17 He said it could be interpreted by someone.

18 MR. BOPP: I'm asking who.

19 THE WITNESS: It could be anybody. I
20 mean, five of us sitting around this table.

21 BY MR. BOPP:

22 Q. Does the anyone include voters?

23 A. It's possible, yeah. Sure. When I mean

1 anyone, I truly mean anyone.

2 Q. Okay.

3 (Thereupon, CC Deposition Exhibit Number
4 17 was marked for identification.)

5 BY MR. BOPP:

6 Q. I show you what's been marked as
7 Exhibit 17.

8 And are you familiar with these
9 documents?

10 A. I am.

11 Q. And what are they?

12 A. These are press releases.

13 Q. Published by Common Cause?

14 A. That's correct.

15 Q. What was the purpose of these press
16 releases?

17 A. The purpose of these press releases was
18 to thank Members of Congress for taking a courageous
19 stand on an issue that is very unpopular with Members
20 of Congress in general, in order to support them and
21 encourage them to continue to take that stand in the
22 future --

23 Q. And where were they distributed?

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1 A. -- in the face of fierce opposition.
2 Q. Excuse me. And where were they
3 distributed?
4 A. These were distributed to members of the
5 press in the district or the state from where the
6 member -- where the member represents.
7 Q. Was the purpose of the distribution of
8 these press releases in Exhibit 17 to influence a
9 federal election?
10 A. That was not the purpose.
11 Q. Does Common Cause believe that they
12 could -- could affect a federal election?
13 A. It's possible that they could affect --
14 we believe that it's possible that it could affect a
15 federal election. We personally -- I personally don't
16 hold that view myself, but I think it's possible that
17 people could read these and --
18 Q. What is Common Cause's view?
19 A. -- two years later pull --
20 Q. Sorry. I really apologize for
21 interrupting you.
22 A. That's all right.
23 Q. What is Common Cause's view? Could these

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1 press releases affect a federal election?
2 A. Our view, in general, is no, that we
3 don't believe that they will affect a federal
4 election.
5 Q. Do -- is -- does Common Cause believe --
6 MR. LEFFEL: I'm sorry, Jim, I heard him
7 start to say something and I --
8 THE WITNESS: But, again, I just want to
9 say that, again, it's possible that -- well, we don't
10 believe it will affect a federal election. We believe
11 that it's possible that people could -- may be
12 affected by these.
13 BY MR. BOPP:
14 Q. And affected in what way?
15 A. To either oppose or support a particular
16 candidate.
17 Q. Does Common Cause believe that these
18 press releases promote or support a candidate for
19 federal office, assuming the representative or --
20 representative identified in the press release was, in
21 fact, such a candidate?
22 A. You know, we believe that it's -- it's
23 possible.

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1 Q. Was that the intent of Common Cause?
2 A. No, that is in no way, shape or form the
3 intent, nor did it ever enter my individual
4 consciousness.
5 Q. Were you -- did you play some role in
6 the -- in the preparation and distribution of the
7 press releases in Exhibit 17?
8 A. I did.
9 Q. Okay. Were they -- were they issued at
10 your direction?
11 A. In consultation with other members of
12 Common Cause staff.
13 Q. Okay.
14 (Thereupon, CC Deposition Exhibit Number
15 18 was marked for identification.)
16 BY MR. BOPP:
17 Q. I show you what's been marked as
18 Exhibit 18 and ask you if you can identify the
19 documents contained therein.
20 A. Yes. These are press releases, published
21 by Common Cause, directed to members of the press in
22 states and districts that had representatives who
23 voted in favor of the Shays-Meehan Campaign Finance

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1 Reform Bill.
2 Q. Was the -- what was the purpose of the
3 press release?
4 A. The purpose of the press release was to
5 thank Members of Congress for voting for the
6 Bipartisan Shays-Meehan Campaign Reform Bill.
7 Q. When you issue a press release, do you
8 intend that the information contained therein to be
9 more widely distributed than just through the press
10 release itself?
11 A. Well, we -- our intention is to obviously
12 get it printed in the press, so, yeah.
13 Q. Was the purpose of the press releases in
14 Exhibit 18 to influence a federal election?
15 A. No, that was not the purpose.
16 Q. Was the purpose to affect a federal
17 election?
18 A. No, that was not the purpose.
19 Q. Does Common Cause believe that these
20 press releases could affect a federal election?
21 A. It's -- Common Cause believes that it's
22 remotely possible.
23 Q. Does Common Cause believe that these

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1 press releases promote or support candidates for
 2 federal office, assuming the Members of Congress
 3 identified in these press releases were, in fact,
 4 candidates for federal office?
 5 A. Again, Common Cause believes that it's --
 6 it's possible.
 7 (Thereupon, CC Deposition Exhibit Number
 8 19 was marked for identification.)
 9 BY MR. BOPP:
 10 Q. I show you what's been marked as
 11 Exhibit 19.
 12 And could you identify these documents?
 13 A. Yes. These are press releases published
 14 by Common Cause, distributed to members of the press
 15 in various states in October of '99.
 16 Q. In which states were they distributed? I
 17 mean, were they distributed in the states where you
 18 have identified senators in the heading?
 19 A. That's correct.
 20 Q. Were any of the senators identified in
 21 the headings of these press releases candidates for
 22 federal office --
 23 A. No.

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1 Q. -- at the time?
 2 A. No.
 3 Q. Were they -- were any of them candidates
 4 for federal office in November 2000?
 5 A. Yes.
 6 Q. What was the purpose of the press
 7 release -- press releases in Exhibit 19?
 8 A. The purpose of the press releases was to
 9 encourage members of the Senate to vote for the
 10 McCain-Feingold Soft Money Ban that was on the floor
 11 in October of 1999.
 12 Q. Was the purpose to influence any federal
 13 election?
 14 A. No.
 15 Q. Was the purpose to -- does Common Cause
 16 believe that these press releases and their further
 17 communication could affect any federal election?
 18 A. Not -- in this particular circumstance
 19 it's possible.
 20 Q. And why is that?
 21 MR. LEFFEL: I object on speculation.
 22 Are you asking him to comment on how other people
 23 might interpret this?

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1 MR. BOPP: No, I'm asking him what he
 2 meant by what he said.
 3 MR. LEFFEL: Same objection.
 4 MR. BOPP: Okay.
 5 THE WITNESS: Again, I can only say that
 6 it's possible; unlikely, but possible.
 7 BY MR. BOPP:
 8 Q. Well, possible in what way?
 9 A. I can't even think. I'm trying to think
 10 of a scenario and I can't do it.
 11 Q. Okay. Does Common Cause believe that any
 12 of these press releases promote or support a candidate
 13 for federal office or attack or oppose a candidate for
 14 federal office, assuming that the senators identified
 15 in the headings were, in fact, candidates for federal
 16 office at the time?
 17 A. No, we don't.
 18 (Thereupon, CC Deposition Exhibit Number
 19 20 was marked for identification.)
 20 (Thereupon, a brief recess was taken.)
 21 BY MR. BOPP:
 22 Q. I show you what's been marked as
 23 Exhibit 20.

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1 Are you familiar with this document?
 2 A. Yes.
 3 Q. And what is it?
 4 A. This is -- I think this was in 2000,
 5 January or February of 2000, or it could have been --
 6 maybe late '99. Senators McCain and -- Senator McCain
 7 and former Senator Bradley were both competing for
 8 their party's respective nominations for the
 9 presidency.
 10 And we staged an event with both Senator
 11 McCain and former Senator Bradley around the issue of
 12 Campaign Finance Reform generally. And specifically,
 13 there was a -- I don't know if you remember there was
 14 a pledge made by then Speaker Gingrich and President
 15 Clinton in 1995 to work together to pass Campaign
 16 Finance Reform. So this was, essentially, a
 17 reenactment of that pledge.
 18 Q. What is this piece of paper? Is this --
 19 what is it, an op. ed., a letter or what?
 20 A. Yeah, this could have been -- I think --
 21 you know, we send out -- this was an op. ed.
 22 Q. And where was it published?
 23 A. This was published on our website, but I

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1 also -- I believe it was published in -- in Claremont
2 as well.
3 Q. And did this meeting that you -- that
4 Common Cause sponsored in Claremont, New Hampshire,
5 did that occur prior to the New Hampshire primary in
6 2000?
7 A. It did.
8 Q. And how many days, months or weeks prior?
9 A. I don't know the answer to that. I think
10 it was -- I think it was early on in the -- in the
11 campaign, but I don't know specifically.
12 Q. And what was the purpose of the op. ed.
13 and the events in Claremont that you described?
14 A. The purpose was to raise the visibility
15 of the issue of Campaign Finance Reform.
16 Q. Now, Senator McCain and former Senator
17 Bradley were candidates for President of the United
18 States at that time?
19 A. Correct.
20 Q. Was the intent of this op. ed. or the
21 event that you have described to influence a federal
22 election?
23 A. That was not the intent.

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1 Q. Do you believe that it -- does Common
2 Cause believe that it could have the effect of
3 influencing a federal election?
4 A. Again, it's possible, but that was not
5 our intent.
6 Q. Does this -- does Common Cause believe
7 that this op. ed. promotes or supports either
8 candidate, then Candidate McCain or Bradley?
9 A. We -- we believe that it supports the
10 issue. A possible effect of the support of the issue
11 could be interpreted as support of the candidate, but
12 we certainly -- it was not -- it was not our intention
13 to support either of the candidates.
14 (Thereupon, CC Deposition Exhibit Number
15 21 was marked for identification.)
16 BY MR. BOPP:
17 Q. I show you what's been marked as
18 Exhibit 21.
19 What is this?
20 A. This is a press statement immediately
21 subsequent to the New Hampshire primary of 2000, I
22 believe the republican primary of 2000, although --
23 no, it's both, democrat and republican.

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1 Q. And where was it distributed?
2 A. This probably would have been distributed
3 nationwide.
4 Q. Was Senator McCain and Vice President
5 Gore candidates for -- and former Senator Bradley --
6 candidates for President of the United States when
7 this was distributed?
8 A. They were.
9 Q. What was the purpose of this press
10 release?
11 A. The purpose of the press release was to
12 show the dramatic support of the people in New
13 Hampshire for the issue of Campaign Finance Reform,
14 critics of Campaign Finance Reform's comments
15 notwithstanding.
16 Q. Was it intended to influence --
17 A. I mean, the intent was critics of
18 Campaign Finance Reform often say that nobody cares
19 about Campaign Finance Reform, that it's a secondary
20 issue and nobody bases their vote on the issue of
21 Campaign Finance Reform and nobody ever thinks about
22 it.
23 This was intended to show clearly that

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1 people, in fact, do believe that the issue of money in
2 politics is a -- is a major concern. And we wanted to
3 point that out not only to the people of New Hampshire
4 but to the American public in general, which is why it
5 was distributed nationwide.
6 Q. Was this published within 30 days of a
7 presidential primary in which any of the -- any of the
8 three candidates, McCain, Gore or Bradley, were
9 candidates?
10 A. It was.
11 MR. LEFFEL: Objection.
12 THE WITNESS: Sorry.
13 MR. LEFFEL: Do you mean published by
14 Common Cause or --
15 MR. BOPP: Published by Common Cause.
16 THE WITNESS: Okay.
17 BY MR. BOPP:
18 Q. And you said?
19 A. It was.
20 Q. Was the intent to influence an election?
21 A. The intent was not to influence an
22 election. The intent was to influence the way that
23 people responded to the issue of Campaign Finance

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1 Reform at the federal level.
 2 Q. Does Common Cause believe that this press
 3 release and its subsequent re-communication could
 4 affect a federal election?
 5 A. We believe -- we certainly believe it's
 6 possible, although that was not our intent.
 7 Q. Does Common Cause believe that this press
 8 release promotes or supports any candidate for federal
 9 office?
 10 A. Again, we believe that it's possible, but
 11 we don't -- that is not our intent. That was not --
 12 that was not our intent.
 13 Q. In what way would this be -- could this
 14 be viewed as promoting or supporting a candidate for
 15 federal office?
 16 A. Well, if somebody were in favor of
 17 Campaign Finance Reform and they saw that Senators
 18 Bradley and McCain were champions of campaign --
 19 although it also says Vice President Gore, so in that
 20 case it's a little more difficult to say, but, you
 21 know, again, if you identify a candidate with the
 22 issue and people find that issue particularly
 23 compelling, it's possible that that may influence the

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1 outcome of an election.
 2 (Thereupon, CC Deposition Exhibit Number
 3 22 was marked for identification.)
 4 BY MR. BOPP:
 5 Q. Okay. I show you what's been marked as
 6 CC Exhibit 22.
 7 Can you identify this document?
 8 A. Yes. This is a press statement on the --
 9 the, quote, proposal -- the, quote, Campaign Finance
 10 Proposal, unquote, of then Governor George W. Bush.
 11 Q. Was Governor Bush or Senator McCain a
 12 candidate for President of the United States when this
 13 press release was -- the statement was released?
 14 A. They both were, yes.
 15 Q. Okay. What was the distribution of this
 16 statement? To whom was it distributed?
 17 A. Well, it was on our website, obviously,
 18 and I -- I would guess that this was distributed
 19 nationwide as well, like the previous document.
 20 Q. What was the purpose of this statement?
 21 A. The purpose of the statement was to
 22 encourage Governor Bush to propose a Campaign Finance
 23 Reform package that was -- that was truly reform. And

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1 we wanted to -- our intent was to get every candidate
 2 in the race to endorse what we believed to be reform.
 3 Q. Was the purpose to influence a federal
 4 election?
 5 A. No.
 6 Q. Was the purpose -- does Common Cause
 7 believe that this statement could influence -- I mean,
 8 could affect a federal election?
 9 A. Yes, Common Cause believes it's possible
 10 that this could have influenced a federal election.
 11 Q. In what way?
 12 A. Again, the same -- the same -- for the
 13 same reason that somebody who was in favor of --
 14 reform as we define it -- although it's a little more
 15 tenuous, reform as we define it would then question
 16 the validity of then Governor Bush's proposal.
 17 Q. Was this distributed within 30 days of a
 18 primary?
 19 A. It was.
 20 Q. That is for an office -- for a federal
 21 office in which Bush or McCain were candidates?
 22 A. That's right.
 23 Q. Okay. Does Common Cause believe this

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1 statement promotes or supports a candidate for federal
 2 office?
 3 A. No, we don't believe that.
 4 Q. Does --
 5 A. Although, you know, it certainly could be
 6 interpreted that way.
 7 Q. By a voter?
 8 A. Yeah, by -- by anybody.
 9 Q. Does Common Cause believe that this
 10 statement attacks or opposes a candidate for federal
 11 office?
 12 A. We believe that it's possible to read
 13 that as opposing or at least -- we read that as
 14 attacking the proposal put forth by then Governor
 15 Bush. It's not an Ad hominem attack. It's an attack
 16 on the proposal itself.
 17 Q. Is it an attack on the candidate, that is
 18 Governor Bush?
 19 A. No. No, it's not.
 20 (Thereupon, CC Deposition Exhibit Number
 21 23 was marked for identification.)
 22 BY MR. BOPP:
 23 Q. I show you what's been marked as

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1 Exhibit 23.
2 Could you identify this statement?
3 A. Yes. Again, this is a press release
4 issued by Common Cause, published by Common Cause.
5 Q. Now, is the press release and the
6 attached document related to each other?
7 A. Actually, no. I was just looking at
8 that. I don't think they are.
9 Q. Okay. Well, let's look at the first page
10 of Exhibit 23 first.
11 Was Vice President Gore a candidate when
12 this press release was released for President of the
13 United States?
14 A. He was.
15 Q. And to whom was this press release
16 released?
17 A. Again, to members of the National Press
18 Corps.
19 Q. Was it released within 30 days of a
20 primary?
21 A. It was.
22 Q. In which Senator Gore was a candidate?
23 A. It was.

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1 Q. What was the purpose of the press
2 release?
3 A. The purpose of the press release was to
4 highlight the issue that, you know, kind of yet
5 another candidate for President was making Campaign
6 Finance Reform a primary issue in his campaign.
7 Q. Was the purpose to influence a federal
8 election?
9 A. That was not the purpose.
10 Q. Does Common Cause believe that this press
11 release could affect a federal election?
12 A. Yes.
13 Q. In what way?
14 A. Again, in that if somebody were to be
15 passionate about the issue of Campaign Finance Reform
16 and saw that a candidate's name was associated with
17 our -- with approval by Common Cause, it's possible
18 that a voter would take that into account when he or
19 she went to the polls.
20 Q. Does Common Cause view this press release
21 to promote or support a candidate for federal office?
22 A. No, we do not view it that way.
23 Q. The second page is what?

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1 MR. LEFFEL: I just want to comment for
2 the record that Exhibit 23 is stapled together, but
3 the first page does have a Bates number which I
4 believe is consistent with the Bates numbers that
5 Common Cause used. The second page does not.
6 The second page is talking about an
7 event that happened January 12th 2000. The first
8 page is a press release from March 27, 2000. I
9 don't know that these -- I don't know how --
10 whether these were stapled together when you
11 reviewed them at Common Cause or not, but I -- or
12 whether you've stapled them together, but I do
13 want to point out there's no Bates number on the
14 second page and I'm not clear that these two
15 documents are sort of a single item.
16 MR. BOPP: He's already said that they're
17 not related.
18 BY MR. BOPP:
19 Q. So with respect to page two, do you know
20 what this document is?
21 A. Yes. This is a town hall event that we
22 were holding, along with the Committee for Economic
23 Development, in New Hampshire, again, around the issue

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1 of Campaign Finance Reform.
2 Q. This was in January -- this event was
3 January 13th 2000?
4 A. Correct.
5 Q. Did any candidate for federal office
6 appear at this event?
7 A. I don't think so. I know that they were
8 invited.
9 Q. Were the -- were the positions of any
10 candidates for federal office on the issue of Campaign
11 Finance Reform discussed by any presenter or speaker
12 at this event?
13 A. I -- you know, I was not there. I don't
14 know the answer to that.
15 Q. Do you recall seeing this document in
16 your document review?
17 A. I did not see this in the document
18 review, no, but I remember the event.
19 Q. Sure. Sure.
20 (Thereupon, CC Deposition Exhibit Number
21 24 was marked for identification.)
22 BY MR. BOPP:
23 Q. I show you what's been marked as

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1 Exhibit 24.
 2 Can you identify this document?
 3 A. Yes, this also was a press statement
 4 released to the national press, as well as published
 5 on our website.
 6 Q. By Common Cause?
 7 A. By Common Cause, correct.
 8 Q. What was the purpose of this press
 9 release?
 10 A. The purpose of the press release, again,
 11 was to highlight the issue of Campaign Finance Reform
 12 and to show that there was significant grassroots
 13 support for the issue as reflected in the candidacy of
 14 Senator John McCain.
 15 Q. At the time this was published, was
 16 Messrs. Gore and Lieberman candidates for President
 17 and Vice President?
 18 A. Correct.
 19 Q. Was this published after the Democratic
 20 convention or before?
 21 A. I believe that it was published
 22 afterwards, given the fact that we said the national
 23 conventions were distinguished by an unprecedented

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1 orgy of special interest influence and access buying.
 2 Q. Was the purpose of this statement -- you
 3 said it was released to the national press; is that
 4 right?
 5 A. That's right.
 6 Q. Was the purpose of this statement to
 7 influence a federal election?
 8 A. That was not the purpose.
 9 Q. Does Common Cause believe that it could
 10 have influenced or affected a federal election?
 11 A. We believe that it's possible, yes.
 12 Q. Does Common Cause believe that this press
 13 release promotes or supports a candidate or attacks or
 14 opposes a candidate for federal office?
 15 A. We don't believe that it supports or
 16 promotes or attacks a candidate for federal office,
 17 but it's possible that people could read this and draw
 18 their own conclusions.
 19 Q. And what's the feature about this that
 20 leads you to think that some people could read it that
 21 way?
 22 A. Well, I suppose it's the relatively
 23 prominent mention of then Vice President Gore in

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1 connection with Campaign Finance Reform.
 2 (Thereupon, CC Deposition Exhibit Number
 3 25 was marked for identification.)
 4 BY MR. BOPP:
 5 Q. All right. I show you what's been marked
 6 as Exhibit 25.
 7 Are there two there?
 8 A. Yes.
 9 Q. All right. Give one to your counsel.
 10 A. (Witness did as requested.)
 11 Q. Thanks.
 12 Are you familiar with Exhibit 25?
 13 A. I am.
 14 Q. And what is it?
 15 A. This, again, is a press release to
 16 members of the national press published by Common
 17 Cause, also found on our website.
 18 Q. Were the -- were several of the people
 19 identified in the press release candidates for federal
 20 office, such as Shays, Meehan -- such as them, Shays
 21 and Meehan?
 22 A. Yes, they were.
 23 Q. And this was published within 60 days of

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1 a general election?
 2 A. That's correct.
 3 Q. Now, what was the purpose of this
 4 release?
 5 A. The purpose of this release was to notify
 6 members of the press that we were releasing our report
 7 card that scored, I guess for lack of a better word,
 8 the votes of members on the Shays-Meehan Bill.
 9 (Thereupon, CC Deposition Exhibit Number
 10 27 was marked for identification.)
 11 BY MR. BOPP:
 12 Q. I'm showing you what's been marked as
 13 Common Cause Exhibit 27.
 14 Is this the report card referenced by the
 15 press release, Exhibit 25?
 16 A. It is.
 17 Q. And were the federal office -- were some
 18 of the federal office holders identified in Exhibit 27
 19 then candidates for federal office?
 20 A. Yes.
 21 Q. Okay. And this was published within 60
 22 days of an election?
 23 A. That's correct.

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1 Q. And what was the purpose of the report
2 card, Exhibit 27?
3 A. The purpose of the report card was to
4 inform members of Common Cause and others as well
5 of -- on the position that Members of Congress took on
6 not just the Shays-Meehan Bill or the McCain-Feingold
7 Bill, but amendments thereto.
8 Q. Was the purpose to influence a federal
9 election?
10 A. That was not the purpose. That was not
11 the intent or the purpose of Common Cause.
12 Q. Does Common Cause believe -- well,
13 let's -- believe that the publication of the report
14 card and press release could affect a federal
15 election?
16 A. Yes.
17 Q. Now, when you say the purpose was to
18 report on the votes, what would be the purpose in
19 reporting on the votes, other than influencing a
20 federal election?
21 A. Well, the purpose behind everything,
22 really, that we do is to encourage, by any variety of
23 means, Members of Congress to vote for the

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1 Shays-Meehan, McCain-Feingold Bill in the next vote,
2 if you will.
3 So this was released in 2000. I think
4 there was a vote on Shays-Meehan -- I can't remember
5 when that vote was -- and McCain-Feingold that year.
6 And knowing, you know, that we were going to be back
7 in subsequent years, as we did for a long time,
8 everything that we did was designed to put pressure on
9 those members.
10 Q. Well, how does reporting on their votes
11 through this report card affect their future votes on
12 this issue?
13 A. Well, we'd like to think that Members of
14 Congress pay some attention to the thoughts of Common
15 Cause and their members and others that we work with.
16 And certainly this is a way to get information to a
17 wide -- a wide -- as wide a group as possible all over
18 the country.
19 Q. Was the report card published in a way
20 that people -- the constituents of the various members
21 of Congress identified in the report card would have
22 access to it?
23 A. Is this 2000 or is this -- I noticed Dale

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1 Bumpers is on there. He retired in '98.
2 Q. Okay. Well, then, you think Exhibit 27
3 may have been in '98 then?
4 A. 105th was when? This is the 107th, which
5 is 2002, 2001; 106th is 2000; 1999. So, yeah, this is
6 probably 1998.
7 Q. All right.
8 A. So this Exhibit 25, then, does not refer
9 to Exhibit --
10 Q. 27.
11 A. -- 27.
12 Q. So 27 would be the '98 version?
13 A. I believe that's correct, yes.
14 Q. Published in the fall -- in a similar
15 time frame in September or October of '98?
16 A. I don't know. I -- I don't know.
17 Q. Okay. Back to Exhibit 25, was the reform
18 report card published in 2000 similar in content to
19 Exhibit 27?
20 A. Yes.
21 Q. Now, does Common Cause believe that
22 Exhibit 27 or its similar version published in 2000
23 promotes or supports candidates or attacks or supports

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1 (sic) candidates for public office?
2 A. We believe that it could be interpreted
3 that way, yes.
4 Q. Was that the intent?
5 A. That was not the intent, no.
6 Q. And why could it be so interpreted?
7 A. Well, again, if somebody were to have
8 Campaign Finance Reform as an issue that was at the
9 top of their, you know, list of things that would
10 determine their vote and they saw that Sonny Callahan
11 failed the Common Cause test for reform, that, you
12 know, may make it likely that they would then take
13 that into consideration when -- when voting.
14 Q. Do you inform your members and the
15 general public about how Members of Congress vote in
16 office?
17 A. Sometimes, yes.
18 Q. And --
19 A. And this is one of the ways we do that.
20 Q. Do you do it in other ways?
21 A. I think some of the fliers that we looked
22 at earlier indicated votes on reform.
23 Q. Now, Exhibit 27 refers at the end to a --

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1 I think at the end -- well, let me ask.
 2 There's such a thing as a Common Cause
 3 public integrity pledge. Do you know what that is?
 4 A. That is a pledge that we send to
 5 candidates for the United States Congress, asking them
 6 to commit to voting for our issues, whether it's
 7 Campaign Finance Reform or whatever the case -- that's
 8 probably it.
 9 (Thereupon, CC Deposition Exhibit Number
 10 26 was marked for identification.)
 11 BY MR. BOPP:
 12 Q. Is Exhibit 26 an example of that pledge?
 13 A. It is.
 14 Q. I'm sorry to ask you to go back to
 15 Exhibit 27, but at the end, three pages from the end,
 16 there's an honor roll.
 17 A. Right.
 18 Q. What is the honor roll?
 19 A. What is the honor roll?
 20 Q. What does the honor roll refer to, I
 21 mean, this list of --
 22 A. Yeah. The honor roll refers to Members
 23 of Congress who voted -- we designated a list of

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1 amendments that were offered to then Shays-Meehan,
 2 McCain-Feingold as either killer amendments that
 3 should be opposed, as amendments that were neutral or
 4 amendments that were good for the legislation.
 5 And so those members who voted against
 6 all killer amendments and those members who signed the
 7 discharge petition were then given lists on the honor
 8 roll.
 9 Q. Okay. Back to Exhibit 26, do you know
 10 whether or not Common Cause did any communication to
 11 the general public about who signed the public
 12 integrity pledge?
 13 A. I believe we did, but it was -- it was on
 14 a case-by-case basis. For example -- it was on a
 15 case-by-case basis.
 16 Q. Meaning what?
 17 A. For example, if Congresswoman Melissa
 18 Hart signed a pledge, pledging that she would vote for
 19 the Shays-Meehan Bill, and then, you know, she would,
 20 in fact, vote contrary to her written promise to the
 21 constituents or to Common Cause and to others, we
 22 would then, you know, let people know in her district,
 23 our members or members of the press, that she, in

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1 fact, violated the pledge that she signed.
 2 Q. Now, could such communications have been
 3 made when the congressman or senator in question was a
 4 candidate for federal office?
 5 A. It's possible, but it's -- it was
 6 probably more likely around -- well, it was -- I would
 7 say that in almost every instance it was around the
 8 time of a vote. So if that vote were to happen around
 9 the time of an election, then, yes.
 10 Q. Is publishing the integrity -- public
 11 integrity pledge -- what's the purpose of that?
 12 A. Publishing it or sending it to
 13 prospective candidates or Members of Congress?
 14 Q. Publishing it as you just talked about,
 15 you know, to -- communication concerning it to people
 16 in a particular congressman's district.
 17 A. Well, it could be -- you know, for
 18 example, if in the case of Melissa Hart, publishing it
 19 prior to her vote on Shays-Meehan would, you know, we
 20 think, put pressure on her to live up to her word.
 21 Publishing it afterwards we felt we had
 22 an obligation to tell people that she, in fact,
 23 violated her word and that it's our -- it's our

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1 obligation to inform the citizens of her district
 2 that, for example, she said one thing while
 3 campaigning and did another thing while in Congress.
 4 Q. Would the purpose of those -- either of
 5 those communications about the public integrity pledge
 6 be to influence a federal election?
 7 A. No, that -- the purpose was to, again,
 8 try to get somebody's vote.
 9 Q. Could -- does Common Cause believe that
 10 such communications could influence a federal
 11 election?
 12 A. It's possible, yeah.
 13 Q. Do you consider such communications as
 14 either promoting or supporting or attacking or
 15 opposing a candidate for federal office?
 16 A. We don't. We don't believe that, but,
 17 again, it's possible that people could interpret it
 18 that way.
 19 (Thereupon, CC Deposition Exhibit Number
 20 28 was marked for identification.)
 21 BY MR. BOPP:
 22 Q. I show you what's been marked as Exhibit
 23 28 and ask you if you can identify this exhibit.

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1 A. Yeah. I believe this is an op. ed.
2 published in the Florida newspaper by our -- the
3 president of Common Cause, Scott Harshbarger.
4 Q. Was this in 2000?
5 A. Yeah, it looks like it was during the --
6 the contested period in Florida.
7 Q. Was it within 30 days of the Florida
8 primary?
9 A. Of the Florida -- no. No, it was not.
10 Q. When was it?
11 A. I think it was in -- post November 2000.
12 I think this was after the election.
13 Q. Oh, you mean during the --
14 A. Yeah.
15 Q. -- the post-election contest?
16 A. Right.
17 (Thereupon, CC Deposition Exhibit Number
18 45 was marked for identification.)
19 BY MR. BOPP:
20 Q. I show you what's been marked as Exhibit
21 45 and ask you if you can identify that document.
22 A. Yeah, I believe this is, again, an op.
23 ed. or -- written by Scott Harshbarger, the president

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1 of Common Cause, published, obviously, on our website
2 and -- and possibly elsewhere.
3 Q. Do you know when?
4 A. Sometime in 2000. I would guess sometime
5 in March or April of 2000.
6 Q. Was George W. Bush candidate for
7 President at that time?
8 A. He was.
9 Q. Was it within 30 days of any primary?
10 A. I believe it was, yes.
11 Q. Was it --
12 A. Yes, it was.
13 Q. Was it published in a way that voters in
14 that primary would have access to this information,
15 this document?
16 A. I don't know. It depends. It depends
17 where the primary was and where this was published.
18 Q. It was published on your website.
19 A. On our website, correct, that's true.
20 Q. Do people -- voters in various states
21 have access to your website?
22 A. Yes, they do.
23 Q. Was the intent to influence a federal

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1 election?
2 A. No, that was not the intent.
3 Q. Do you believe that this publication
4 could -- does Common Cause believe that this
5 publication could affect a federal election?
6 A. We believe that it's possible.
7 Q. Was the purpose -- does Common Cause
8 believe that this publication promotes or supports a
9 candidate or attacks or opposes a candidate for
10 federal office?
11 A. No, we don't believe that, although we
12 believe it's possible that it could be interpreted
13 that way.
14 (Thereupon, CC Deposition Exhibit Number
15 29 was marked for identification.)
16 BY MR. BOPP:
17 Q. I show you Exhibit 29 and ask you if you
18 can identify this.
19 A. Yes, I believe this is a postcard we sent
20 out to our members in Minnesota, informing them of an
21 event with Scott Harshbarger and Jesse Ventura.
22 Q. Okay.
23 (Thereupon, CC Deposition Exhibit Number

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1 30 was marked for identification.)
2 BY MR. BOPP:
3 Q. Okay. Exhibit -- I show you Exhibit 30.
4 Can you identify the documents that are
5 Exhibit 30?
6 A. I can. This is a postcard sent to our
7 members in Arkansas about an event that we were
8 sponsoring with Senators John McCain and Russ Feingold
9 to talk about the issue of Campaign Finance Reform.
10 Q. Okay. And this Americans4Reform
11 referenced here is the Americans for Reform that's a
12 project of Common Cause that we discussed earlier?
13 A. That's correct.
14 Q. And who provided the money for the
15 expenditure -- any expenses related to this form?
16 A. Well, Americans for Reform was a project
17 of Common Cause, so essentially it's -- you know, it's
18 Common Cause.
19 Q. Okay. Did any federal office holder or
20 person who was eventually a candidate in 2002 appear
21 at this forum?
22 A. Candidate in 2002, yes, Congressman Mike
23 Ross. Was he a candidate? Was he elected in 2000?

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1 No.
 2 Q. 2002.
 3 A. Yeah, I don't -- I -- I don't think so.
 4 Actually, that's not true. I think Congressman Marion
 5 Berry of Arkansas was there, who was a candidate for
 6 office in 2002.
 7 Q. Did he speak?
 8 A. Yes, I believe he did very briefly, if at
 9 all, actually.
 10 Q. What was the purpose of this event?
 11 A. The purpose of this event was to bring
 12 the issue of Campaign Finance Reform in a very public
 13 way to, you know, outside the Beltway.
 14 Q. Was the position of any person who was a
 15 candidate for -- an office holder or candidate for
 16 federal office in 2002 discussed --
 17 A. No.
 18 Q. -- other than those that appeared?
 19 A. No.
 20 Q. How about Senator Tim Hutchinson?
 21 A. I don't believe that Senators McCain or
 22 Feingold -- in fact, I'm certain that Senators McCain
 23 and Feingold did not talk about Senator Hutchinson's

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1 position on this Bill.
 2 Q. Any other speaker?
 3 A. Although Senator Hutchinson was fearful
 4 that that was going to happen at the time.
 5 Q. Did any other speaker?
 6 A. I don't believe so, but it's possible.
 7 It's possible that Scott Harshbarger talked about
 8 Senator Hutchinson's voting record, which was mixed,
 9 actually. He had supported us once in the past. But
 10 I don't recall. It's possible, but I know that
 11 Senator McCain or Feingold did not.
 12 Q. Was the purpose of this forum to
 13 influence a federal election?
 14 A. No, it was not.
 15 Q. Was -- could the communications made at
 16 the forum in the view of Common Cause have the
 17 potential to affect a federal election?
 18 A. You know, it's possible, but the intent,
 19 the clear intent, of this forum was to encourage
 20 Senator Hutchinson to vote for the McCain-Feingold
 21 Bill.
 22 Q. Does Common Cause believe that, for
 23 instance, the discussion of Senator Hutchinson's votes

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1 or prospective votes were -- were to promote or
 2 support or attack or oppose his candidacy?
 3 A. No. No.
 4 Q. Or could it be viewed that way by the
 5 people?
 6 A. In this -- in this particular case I --
 7 I -- I really -- I honestly don't believe so for a
 8 number of reasons. Again, it's -- anything is
 9 possible, but --
 10 Q. Why don't you believe so? For what
 11 reasons?
 12 A. Because he had a mixed voting record on
 13 this issue and we talked about his vote or Scott
 14 Harshbarger would have talked about his vote for the
 15 McCain-Feingold Bill in October of 1999. And we work
 16 very closely with his brother in the House of
 17 Representatives on Campaign Finance Reform.
 18 (Thereupon, CC Deposition Exhibit Number
 19 31 was marked for identification.)
 20 BY MR. BOPP:
 21 Q. Let me show you what's been marked as
 22 Common Cause Exhibit 31.
 23 And are you familiar with this document?

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1 A. I am.
 2 Q. And what is it?
 3 A. It's a flier informing people at
 4 Northwestern University in the Chicago area about an
 5 event, again, on Campaign Finance Reform at
 6 Northwestern.
 7 Q. And this was done by -- this is, again, a
 8 project of Common Cause?
 9 A. That's right.
 10 Q. All right. Funded, at least in part, by
 11 Common Cause?
 12 A. Correct.
 13 Q. Did any candidates -- did any incumbent
 14 Members of Congress, other than those listed, attend
 15 the forum or those that would be candidates in 2002?
 16 A. Yes.
 17 Q. And who are they?
 18 A. Representative Mark Kirk of Illinois,
 19 Republican of Illinois.
 20 Q. And was he an incumbent at the time?
 21 A. He was elected in 2000, yes.
 22 Q. Okay. Was he a candidate in 2002?
 23 A. He was.

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1 Q. Other than him and those listed here,
2 were the positions or votes of any incumbent Members
3 of Congress or those that would be candidates in
4 November of 2002 discussed at the forum?
5 A. It's possible. Again, I -- it's -- not
6 by Senators McCain and Feingold, but Scott Harshbarger
7 could have talked about and probably did talk about
8 the position of Senator Peter Fitzgerald on the issue.
9 Q. And what was his position?
10 A. At the time -- well, at the time he was
11 on record opposing it, but his opposition was -- was
12 not very strong.
13 Q. Does the purpose of this forum and the
14 communications made therein include the purpose of
15 influencing an election?
16 A. No.
17 Q. Does Common Cause believe that the
18 communications made at this forum could affect a
19 federal election?
20 A. We believe that it's possible, but
21 these -- in these forums and in these circumstances
22 and given their context, it's -- you know, again, it's
23 just very unlikely.

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1 Q. Does Common Cause view any of the
2 statements made about any incumbent Member of Congress
3 or candidate in the November 2000 election to promote
4 or support or attack or oppose such candidate?
5 A. In November 2002?
6 Q. Yes.
7 A. No.
8 (Thereupon, CC Deposition Exhibit Number
9 32 was marked for identification.)
10 BY MR. BOPP:
11 Q. I show you what's been marked as
12 Exhibit 32 and ask you if you are familiar with it.
13 A. I am.
14 Q. What year did this forum take place?
15 A. This was September 7th of 2001.
16 Q. Congressman Harold Ford, does he
17 represent some of -- or all of Memphis?
18 A. He does.
19 Q. Was this actually held in his
20 congressional district?
21 A. It was.
22 Q. Did he appear and speak?
23 A. He did.

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1 Q. Was the -- did any other candidate for
2 public office in Tennessee -- I mean, federal office
3 in Tennessee or incumbent office holder appear?
4 A. No.
5 Q. Were the positions of any incumbent
6 federal office holders or candidates in the November
7 2002 election discussed at the forum?
8 A. They were not.
9 Q. Neither of the senators?
10 A. No.
11 Q. Was one of the purposes of this town hall
12 meeting to influence a federal election?
13 A. No, that was not the purpose.
14 Q. Does Common Cause believe that it
15 could -- communications made there could have
16 affected -- could have affected a federal election?
17 A. No, they don't.
18 Q. Does Common Cause view any of the
19 statements made at that meeting to promote or support
20 a candidate or attack or oppose a candidate?
21 A. No, we don't. In this particular case
22 it's -- it's not -- it's simply not the case. It was
23 absolutely removed from any even -- almost any

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1 political talk.
2 Q. Is -- Congressman Harold Ford, does he
3 have a position consistent with Common Cause's on
4 Campaign Finance Reform?
5 MR. LEFFEL: Objection.
6 BY MR. BOPP:
7 Q. If you know.
8 A. As far as I know, he does.
9 Q. What's the difference between the
10 Northwestern meeting and the Memphis meeting that
11 makes you so certain or, as I think you testified that
12 Exhibit 32, the Memphis meeting, would not affect a
13 federal election? What's the difference between them?
14 A. Well, I guess maybe I -- maybe I
15 overstated the case. The Memphis event was to focus
16 on the issue of civil rights in connection with
17 Campaign Finance Reform. And it was -- it was -- it
18 was a civil -- in fact, it was a civil rights event
19 held at two locations, the Lorraine Hotel, which is
20 now the National Civil Rights Museum, which is the
21 hotel where Martin Luther King, Junior was killed, and
22 at the University of Memphis.
23 And it featured, really, Congressman John

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1 Lewis as the main -- as the main attraction, as the
 2 main speaker, as really the -- in a way, the host,
 3 even though he's from Georgia, of the event.
 4 Q. But what's the difference between those
 5 two meetings that you testified that you're certain --
 6 A. Well, there was nobody in Tennessee whose
 7 vote we were going after on the issue of Campaign
 8 Finance Reform.
 9 And in Illinois it was -- I'm taking this
 10 in the context of going after somebody voting in the
 11 Senate. And in Illinois we were trying to, obviously,
 12 get people to get interested in Senator Fitzgerald's
 13 position on the issue and to, you know -- it could be
 14 construed more politically than, I think, the event in
 15 Memphis.
 16 I mean, you could argue that both are
 17 political, but -- and maybe I should step back and say
 18 that I guess it could be construed that the Memphis
 19 event was political in some way. I don't know what
 20 way, but I guess it could be.
 21 (Thereupon, CC Deposition Exhibit Number
 22 33 was marked for identification.)
 23 BY MR. BOPP:

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1 Q. I show you what's been marked as Common
 2 Cause Exhibit 33.
 3 Are you familiar with this document or
 4 these documents, sorry?
 5 A. Yes, this is -- the first document comes
 6 off the Americans for Reform website and it talks
 7 about Americans for Reform and why -- what it is and
 8 why it was established and who the participants are.
 9 And the letter that follows that is a
 10 letter to Capitol Hill with -- with members of
 11 Americans for Reform or signed by members of Americans
 12 for Reform.
 13 Q. Thank you.
 14 (Thereupon, CC Deposition Exhibit Number
 15 34 was marked for identification.)
 16 BY MR. BOPP:
 17 Q. I show you what's been marked as 34.
 18 Do you know what this is?
 19 A. Yeah, that's a -- this is a list of
 20 members of Americans for Reform.
 21 Q. Are any of these organizations
 22 incorporated or labor unions?
 23 A. Labor unions?

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1 Q. Either one.
 2 A. No, they're not labor unions.
 3 Q. Okay. Any of them incorporated?
 4 A. I don't know. I assume they are, but I
 5 don't know the answer to that. I know we are.
 6 Q. Are any of them political parties?
 7 A. No. Actually, that's not true. The
 8 American Reform Party is, I believe, a political
 9 party, although that would be a stretch.
 10 Q. Did any of these organizations provide
 11 any funding for any of the activities done in the name
 12 of or under the auspices of Americans for Reform,
 13 other than Common Cause?
 14 A. I believe the Committee for Economic
 15 Development helped put on the town hall meeting that
 16 we talked about earlier in Chicago.
 17 Q. Helped through funding you mean?
 18 A. That's right.
 19 Q. Any others?
 20 MR. LEFFEL: I'm going to object. I
 21 don't mind getting into this a little bit, but, again,
 22 that's beyond the scope of the 30(b)6 notice, sort of
 23 what was funded and how these things were funded. I

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1 mean, as I read it, public communications focus on
 2 what the content was, the dates --
 3 MR. BOPP: Well, this is really the last
 4 question on this.
 5 MR. LEFFEL: Sure.
 6 MR. BOPP: Is that okay?
 7 BY MR. BOPP:
 8 Q. You can answer, if you know.
 9 MR. LEFFEL: If you know.
 10 THE WITNESS: I think Committee for
 11 Economic Development. Campaign for America probably
 12 did, but I can't say with certainty.
 13 BY MR. BOPP:
 14 Q. Is the Committee for Economic Development
 15 incorporated?
 16 A. I don't know. I believe they are.
 17 Q. And is the Campaign for America
 18 incorporated?
 19 A. Again, I believe they are. I assume they
 20 are.
 21 (Thereupon, CC Deposition Exhibit Number
 22 35 was marked for identification.)
 23 BY MR. BOPP:

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1 Q. I show you what's been marked as Exhibit
2 35.
3 Can you identify this document?
4 A. Yes, this is a press release issued to,
5 again, the National Press Corps, published by Common
6 Cause.
7 Q. All right. It doesn't have the heading.
8 So this is a press release published by Common Cause?
9 A. That's right.
10 Q. Okay. Is -- the statement that the
11 Americans for Reform ad campaign is completely legal
12 under the now passed BCRA, is that true?
13 MR. LEFFEL: Objection, calls for a legal
14 conclusion.
15 BY MR. BOPP:
16 Q. You can answer it.
17 A. I'm sorry, say the question again.
18 Repeat the question.
19 MR. BOPP: Could you read it for me?
20 (The record was read as requested.)
21 THE WITNESS: And you're referring to
22 Congressman DeLay's statement; is that correct?
23 BY MR. BOPP:

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1 Q. Well, I'm --
2 A. Or our response?
3 Q. Exactly, the second paragraph.
4 A. Yeah, I would say that's accurate.
5 MR. LEFFEL: I'm sorry, I just want to
6 make sure there's no problem with the record. I heard
7 him say that he believes the second statement is
8 accurate, the second paragraph is accurate. I believe
9 your question was slightly different.
10 MR. BOPP: I'll accept what he
11 answered --
12 MR. LEFFEL: Okay.
13 MR. BOPP: -- as what he answered.
14 (Thereupon, CC Deposition Exhibit Number
15 36 was marked for identification.)
16 BY MR. BOPP:
17 Q. Exhibit 36. I think you made reference
18 previously to an ad campaign by Americans for Reform
19 and a Fox -- and it included a Fox newsclip; is that
20 right?
21 A. Yes, although I would use the term ad
22 campaign very loosely.
23 Q. Okay. But an ad?

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1 A. An ad. An ad is a better way to define
2 that than an ad campaign.
3 Q. Okay. And are the documents contained in
4 Exhibit 36 related to that ad or to some other ad?
5 A. Yes, it's related to that ad.
6 MR. LEFFEL: Jim, I don't have a copy of
7 it. Sorry.
8 MR. BOPP: Sorry, 36.
9 BY MR. BOPP:
10 Q. Are you familiar with the documents
11 contained in 36?
12 A. I am.
13 Q. Were they kept in the regular course of
14 business here at Common Cause?
15 A. They were.
16 Q. And you came into -- and how did Common
17 Cause come into possession of these documents?
18 A. They were mailed to us.
19 Q. Including, I guess, the last letter
20 directly to Scott Harshbarger, right?
21 A. That's right. That's right.
22 (Thereupon, CC Deposition Exhibit Numbers
23 37 through 40, inclusive, were marked for

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1 identification.)
2 BY MR. BOPP:
3 Q. I show you what's been marked as Common
4 Cause Exhibit 37 and ask if you can identify that? In
5 fact, let's maybe show you also Exhibits 38, 39 and
6 40. All right?
7 MR. LEFFEL: Which one is this
8 (Indicating)?
9 MR. BOPP: 39.
10 MR. LEFFEL: Off the record.
11 (Thereupon, a discussion was had off the
12 record.)
13 BY MR. BOPP:
14 Q. You have before you Exhibits 37 through
15 40.
16 Could you identify these documents?
17 A. These are sample letters to the editor
18 that we encourage our members to use as guidelines for
19 submitting to their hometown newspapers.
20 Q. And what's the purpose of the letters?
21 A. The purpose of the letters is to
22 encourage citizens to become involved in the political
23 process and to -- and as a -- and as a way to

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1 influence -- and by participating in the political
 2 process, influence the vote of a particular Member of
 3 Congress on legislation that Common Cause is promoting
 4 at the time.
 5 Q. If your sample was followed, would there
 6 be instances in which federal candidates would be
 7 mentioned?
 8 A. Yeah.
 9 Q. And these are proposed -- the dates,
 10 anyway, on several of them are July 2002.
 11 Did you intend for them to be done in
 12 that time frame or are these just examples that you
 13 published?
 14 A. I don't know.
 15 Q. Was the intent of these, the publication
 16 of these letters, to influence a federal election?
 17 A. No.
 18 Q. Do you think the publication of these
 19 letters, that is does Common Cause think that the
 20 publication of these letters could affect a federal
 21 election?
 22 A. I think it's possible.
 23 (Thereupon, CC Deposition Exhibit Numbers

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1 41 through 43, inclusive, were marked for
 2 identification.)
 3 BY MR. BOPP:
 4 Q. Let me show you Exhibits 41, 42 and 43.
 5 Can you identify these documents?
 6 A. Yes, these are -- these are phone --
 7 these are kind of memos, if you will, to our
 8 volunteers that come in every week. And I think I
 9 mentioned before we have between 50 and 70 volunteers
 10 who come in to Common Cause every week, all of whom
 11 are, you know, retired people, and interns as well.
 12 And I think I said we had about 50 every year.
 13 And these are given to many of the
 14 volunteers and interns to -- to use when they
 15 phonebank our members back in the districts, our
 16 Members of Congress.
 17 Q. Are these examples of phonebank calls
 18 that were made?
 19 A. They are, yes.
 20 Q. Now, Exhibit 42 refers to Mike Castle.
 21 With respect to this one, where were the
 22 calls placed into? I mean to whom?
 23 A. They would have been placed into, you

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1 know, the homes of our members in Delaware. Since
 2 Castle is an at-large member, they would have gone
 3 throughout the state.
 4 Q. Okay. Was he a candidate for federal
 5 office in 1998 in March?
 6 A. He was. I don't know if he was a
 7 candidate in March, but he was a candidate in 1998.
 8 Q. In November, right.
 9 What was the purpose of these calls into
 10 his congressional district?
 11 A. The purpose of the calls was to urge him
 12 to oppose the phony Thomas bill, H.R.3485 and support
 13 a real bipartisan Soft Money Ban.
 14 Q. Was the purpose to influence a federal
 15 election?
 16 A. No.
 17 Q. Does Common Cause believe that such calls
 18 could affect a federal election?
 19 A. We believe it's possible, but not likely.
 20 (Thereupon, CC Deposition Exhibit Number
 21 44 was marked for identification.)
 22 BY MR. BOPP:
 23 Q. Let me show you what's been marked as

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1 Exhibit 44.
 2 Do you recognize this document?
 3 A. Yes, this is -- this is a flier that was
 4 probably passed out in various places in New York
 5 informing members of -- or citizens of New York about
 6 the issue of soft money in particular, Campaign
 7 Finance Reform in general.
 8 Q. And when was this distributed?
 9 A. I don't know, sometime in the last seven
 10 years.
 11 Q. That's broad enough.
 12 A. Although it says -- it references a vote
 13 of 252 to 179 earlier this year. And I think there
 14 were two votes -- '98 was 252 to 177 and '98 (sic) was
 15 252 to 179, so it would have been 1998.
 16 Q. And so it was distributed in New York; is
 17 that right? Is that what you said?
 18 A. That's right, although --
 19 Q. To whom?
 20 A. Again, it could have been -- we could
 21 have had volunteers pass these out, you know, at
 22 public events, members of the public.
 23 Q. Now, at the bottom it says right before

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1 the block, check the Common Cause report card on the
2 reverse side to see whether your senators supported
3 reform or blocked it. And I don't see anything on the
4 reverse side.
5 Would there have been, if this was
6 distributed in New York, a report on New York
7 senators?
8 A. Right. That's correct.
9 Q. Was there a U.S. senator up for election
10 in November of that year?
11 A. In '98, yes, Senator D'Amato was.
12 Q. Was the purpose of this -- what was the
13 purpose of this?
14 A. You know what, it was probably -- it was
15 '99. I'm sorry, '98 was 252 to 177. And '99 was 252
16 to 179. I'm sorry, I misspoke. So this would have
17 been 1999.
18 Q. All right. Now, many of these
19 communications you characterized as trying to get
20 Members of Congress to vote in certain ways regarding
21 Campaign Finance Reform.
22 Does Common Cause believe that if a
23 candidate did so, that it would give rise to an

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1 appearance of corruption?
2 A. If it supported Campaign Finance Reform?
3 Q. Yes.
4 A. If a member supported it, would that give
5 rise to an appearance of corruption?
6 Q. Yes.
7 A. No.
8 Q. If -- does Common Cause believe that if a
9 Member of Congress, as a result of your
10 communications, supported Campaign Finance Reform or
11 whatever you were advocating, would that give rise to
12 an appearance of corruption?
13 A. Only by our opponents. No. The answer
14 to your question is no.
15 Q. Sarcasm doesn't work for the record.
16 A. I understand.
17 MR. BOPP: Okay. I have no further
18 questions. Thank you. Do you?
19 MR. LEFFEL: Why don't we take a quick
20 break and we'll see.
21 (Thereupon, a brief recess was taken.)
22 EXAMINATION BY COUNSEL FOR THE
23 INTERVENORS AND COMMON CAUSE

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1 BY MR. LEFFEL:
2 Q. You've looked at a lot of exhibits today
3 that involved communications by Common Cause, either
4 to the press or to Common Cause members or, in some
5 cases, advertisements that Common Cause helped to put
6 in the air in some form.
7 Is it Common Cause's position with
8 respect to those communications that identified
9 candidates for federal office and sometimes identified
10 their position on particular pieces of legislation,
11 that those communications could have an impact on how
12 certain voters vote?
13 A. Yes, I -- they could have an impact on
14 how people vote.
15 Q. And as a general matter, what are some of
16 the factors Common Cause thinks could impact how a
17 voter votes who -- excuse me, let me rephrase.
18 In general, what is Common Cause's
19 opinion about the kinds of things that could cause a
20 communication to impact how a voter votes?
21 A. I think -- again, as I think I said
22 earlier, the proximity to an election, you know, how
23 close these things are being distributed to either a

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1 primary or general election; the way that a voter may
2 feel about a particular issue, whether it's Campaign
3 Finance Reform or whatever the issue may be, gun
4 control or something, that would have -- that would
5 tend to have a greater impact on that person's
6 decision making process when he or she goes to vote;
7 whether or not, obviously, the -- a person that is up
8 for reelection or election is mentioned prominently in
9 an advertisement or a document.
10 All these factors go into, I think,
11 determining whether or not somebody is going to be
12 affected by it.
13 Q. And also with respect to these same
14 communications or ads that we were just discussing, is
15 it Common Cause's view that some people -- and I'll be
16 specific -- some voters could view them as either
17 attacking or defending or promoting an individual
18 candidacy?
19 A. Yes. It's possible that could be the
20 case, yes.
21 MR. LEFFEL: I don't have any further
22 questions.
23 MR. BOPP: No further questions.

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1 MR. LEFFEL: We'll read and sign.
 2 (Thereupon, signature having not been
 3 waived, at 1:00 p.m. the deposition
 4 concluded.)
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1 CASE: McConnell v. FEC
 DEPOSITION OF: Matt Keller
 2 TAKEN: September 26, 2002
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 4 PAGE LINE ERROR CORRECTION REASON
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Witness

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1 CERTIFICATE OF DEPONENT
 2 I, Matt Keller, do hereby certify that I
 3 have read the foregoing pages, 7 through 158,
 4 inclusive, which contain a correct transcript of the
 5 answers given by me to the questions propounded to me
 6 herein, except for changes, if any, duly noted on the
 7 enclosed errata sheet.
 8
 9
 10 _____
 WITNESS
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 14 Sworn and subscribed to before me this
 15 ____ day of _____, 2002.
 16
 17 My commission expires: Notary Public:
 18 _____
 19
 20
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1 CERTIFICATE OF NOTARY
 2 I, MISTY KLAPPER, the officer before
 3 whom the foregoing deposition was taken, do hereby
 4 certify that the witness whose testimony appears
 5 in the foregoing deposition was duly sworn by me;
 6 that the testimony of said witness was taken by me
 7 in shorthand and thereafter reduced to typewriting
 8 by me; that said deposition is a true record of
 9 the testimony given by said witness; that I am
 10 neither counsel for, related to, nor employed by
 11 any of the parties to the action in which this
 12 deposition was taken; and, further, that I am not
 13 a relative or employee of any attorney or counsel
 14 employed by the parties hereto, nor financially or
 15 otherwise interested in the outcome of this
 16 action.
 17
 18 _____
 Misty Klapper
 Notary Public in and for the
 District of Columbia
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