
Depo of: MARTIN T. MEEHAN RNC v. FEC September 25, 2002

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Phone: 800-336-6646

FAX: 202-737-3638

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[1] IN THE UNITED STATES DISTRICT COURT
[2] FOR THE DISTRICT OF COLUMBIA
[3] -----x
[4] REPUBLICAN NATIONAL COMMITTEE, :
[5] et al., :
[6] Plaintiffs, : Civil Number
[7] vs. : 02-874
[8] FEDERAL ELECTION COMMISSION, :
consolidated
[9] et al., : with Civil
[10] Defendants, : Number 02-582
[11] and :
[12] SENATOR JOHN MCCAIN, SENATOR :
[13] RUSSELL FEINGOLD, et al., :
[14] Intervenors. :
[15] -----x
[16]
[17] CONFIDENTIAL DEPOSITION OF MARTIN T. MEEHAN
[18]
[19] Washington D.C.
[20] Wednesday, September 25, 2002
[21] REPORTED BY:
[22] BRENDA SMONSKEY

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[1] Deposition of MARTIN T. MEEHAN, called for
[2] examination pursuant to agreement of counsel, on
[3] Wednesday, September 25, 2002, in Washington, D.C.,
[4] at the United States House of Representatives,
[5] Rayburn House Office Building, Room 2456, at 8:40
[6] a.m., before BRENDA SMONSKEY, a Notary Public within
[7] and for the District of Columbia, when were present
[8] on behalf of the respective parties:
[9]
[10] DAVID H. THOMPSON, ESQ.
[11] CHARLES J. COOPER, ESQ.
[12] DEREK SHAFFER, ESQ.
[13] Cooper & Kirk
[14] 1500 K Street, Northwest
[15] Washington, D.C. 20005
[16] On behalf of Plaintiff National
[17] Rifle Association
[18]
[19]
[20] - continued -
[21]
[22]

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[1] APPEARANCES (CONTINUED):
[2]
[3] MICHAEL CARVIN, ESQ.
[4] JACK CHANEY, ESQ.
[5] Jones, Day, Reavis & Pogue
[6] 51 Louisiana Avenue, Northwest
[7] Washington, D.C. 20001
[8] On behalf of Plaintiff Republican

[9] National Committee
[10]
[11] ERIC J. MOGILNICKI, ESQ.
[12] JERROD PATTERSON, ESQ.
[13] Wilmer, Cutler & Pickering
[14] 2445 M Street, Northwest
[15] Washington, D.C. 20037
[16] On behalf of Intervenors
[17]
[18] ALSO PRESENT: Kerry W. Kircher, Esq.;
[19] Alex Hortis, Esq.; Glen Shor, Esq.
[20]
[21]
[22]

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[1] PROCEEDINGS
[2] Whereupon,
[3] MARTIN T. MEEHAN
[4] was called as a witness and, having first been duly
[5] sworn, was examined and testified as follows:
[6] EXAMINATION
[7] BY MR. THOMPSON:
[8] Q Please state your name for the record.
[9] A My name is Martin Thomas Meehan.
[10] Q Good morning, Representative Meehan. My
[11] name is David Thompson. I'm with the law firm of
[12] Cooper & Kirk. I'm joined today by my colleagues,
[13] Charles Cooper and Derek Shaffer. We represent the
[14] National Rifle Association in this matter.
[15] I would just like to clarify for the
[16] record - there are a lot of lawyers here - who
[17] today will be representing you in this deposition?
[18] MR. MOGILNICKI: I will.
[19] MR. THOMPSON: That's, for the record,
[20] Mr. Mogilnicki.
[21] BY MR. THOMPSON:
[22] Q And I take it you are familiar with the

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[1] deposition format?
[2] A I am.
[3] Q So I won't go through all the background
[4] rules, but let's try to speak one at a time for the
[5] court reporter's sake. If I ask a question and you
[6] answer it, I'm going to assume that you have
[7] understood it. If you don't understand a question,
[8] please let me know, and I will try to clarify it, if
[9] possible.
[10] I would like to start today by marking as
[11] Meehan Exhibit 1 the declaration that was filed in
[12] this case by the Congressman.
[13] (Meehan Exhibit 1 identified.)
[14] BY MR. THOMPSON:
[15] Q Sir, is that your signature on page 2 of
[16] this document?
[17] A It appears to be, yes.
[18] Q And would you please identify this
[19] document for the record.
[20] A This is my declaration. How do you want
[21] me to identify it?

[22] Q That's fine. This is the declaration that

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[1] was filed on your behalf in support of your motion
 [2] to intervene; is that right?
 [3] A That's correct.
 [4] Q And paragraph 4 of this document reads,
 [5] "If any of the campaign finance reforms embodied in
 [6] the Act is struck down, I will be forced once again
 [7] to raise money, campaign, and attempt to discharge
 [8] my important responsibilities in a system that is
 [9] widely perceived to be, and I believe in many
 [10] respects is, significantly corrupted by the
 [11] influence of special-interest money."
 [12] I would like to begin by asking you to
 [13] define some of these terms, just so that we have a
 [14] similar terminology and vocabulary for purposes of
 [15] the deposition today. That paragraph uses the term
 [16] "corrupted," and will you please explain what you
 [17] meant by that term.
 [18] A "Corrupted" means when unlimited money is
 [19] contributed by special interests that have a direct
 [20] financial interest in legislation before Congress,
 [21] when those interests contribute unlimited amounts of
 [22] money and then both parties and Representatives and

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[1] Senators vote on those matters, after having raised
 [2] unlimited amounts of money from those special
 [3] interests.
 [4] In addition to that, the term "corrupted"
 [5] to me could mean the appearance of corruption, that
 [6] is, that if an interest, say, the National Rifle
 [7] Association, had contributed millions and millions
 [8] of dollars in unregulated soft money donations to a
 [9] political party, let's say the Republican Party, and
 [10] then there's a vote in Congress that the NRA is
 [11] interested in, there is at least at a minimum the
 [12] appearance of that interest having influenced the
 [13] vote.
 [14] So I take the definition to mean the
 [15] appearance or actual influencing of the vote as a
 [16] result of the unlimited amounts of moneys that are
 [17] contributed by special interests.
 [18] Q I appreciate that. The sentence refers to
 [19] both a perception or perceived to be significantly
 [20] corrupted, and I take it that's where you are
 [21] referring to an appearance of corruption?
 [22] A You asked what my definition of

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[1] "significantly corrupted" is, and I have tried to
 [2] give you a very brief description of it.
 [3] Q Well, it is important that the record be
 [4] full. Is there anything you would like to add to
 [5] the description you did provide?
 [6] A Yes. I think another example would be the
 [7] ability of the Congress to pass Medicare
 [8] prescription drug coverage for seniors. That would
 [9] be another example of how it would fit into this,
 [10] the definition. The pharmaceutical industry
 [11] contributed \$12.8 million in the last election cycle

[12] to the Republican Party. And, again, money is
 [13] contributed to both parties. So I don't view this
 [14] as one party or the other.
 [15] But in this example, even though both
 [16] parties claim to be for Medicare prescription drug
 [17] coverage for seniors, even though in a presidential
 [18] campaign it appeared that both candidates were for
 [19] Medicare prescription drug coverage for seniors, the
 [20] Congress still cannot get a bill passed to provide
 [21] Medicare prescription drug coverage for seniors.
 [22] The seniors that I represent in

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[1] Massachusetts believe that the unlimited soft
 [2] money - in this case, \$12.8 million from the
 [3] pharmaceutical industry - give the appearance or
 [4] actually have influenced the lack of the Congress
 [5] passing a Medicare prescription drug benefit for
 [6] seniors.
 [7] Q When you used the term "corrupted" then,
 [8] are you referring to a quid pro quo corruption of a
 [9] contribution and then influence on the way in which
 [10] a vote is cast or the appearance thereof?
 [11] MR. MOGILNICKI: Object as to form.
 [12] BY MR. THOMPSON:
 [13] Q Just so it is clear, your attorney has the
 [14] right to object. But once he has stated his
 [15] objection, if you understand the question, you
 [16] should go ahead and answer it.
 [17] A Well -
 [18] Q He is not instructing you not to answer
 [19] the question.
 [20] A I know. I understand that. You want to
 [21] ask the question a different way?
 [22] Q Well, I think it was clear. If you would

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[1] read the question back.
 [2] (The reporter read the record as requested.)
 [3] THE WITNESS: I'm referring generally to
 [4] the inability of the Congress to pass and the
 [5] President to sign a Medicare prescription drug
 [6] benefit for seniors.
 [7] I believe and the people that I represent
 [8] believe that when there are interests in the country
 [9] opposed to such legislation, even though the public
 [10] is for it and they are able to contribute unlimited
 [11] amounts of money, then that money is part of the
 [12] reason why Congress cannot get such legislation
 [13] passed.
 [14] Now, I would generally say that the fourth
 [15] item in this declaration refers in general terms to
 [16] the inability of the Congress of the United States
 [17] to get public interest legislation passed and the
 [18] incredible increase in the amount of unlimited
 [19] special interest money that is contributed to both
 [20] political parties. I believe it gums up the works.
 [21] I believe that it makes it more difficult to get
 [22] public interest legislation passed. And that's what

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[1] I generally believe.

[2] BY MR. THOMPSON:

[3] Q Is the example you have provided of the
[4] prescription drug benefit legislation and the
[5] gridlock on that, is that a quintessential example
[6] of the type of corruption you are identifying in
[7] this declaration?

[8] A I didn't identify it as corruption. I
[9] didn't identify it as corruption. You asked me to
[10] describe what I mean by item 4, and I'm generally
[11] describing it. Now, you are taking corruption and
[12] asking if that's an example of it.
[13] Under our laws, if there is actual
[14] corruption, there are law enforcement agencies that
[15] have that responsibility.
[16] I'm talking about the appearance. I'm
[17] talking about a system that basically stinks. I
[18] believe it's a system that sometimes makes good
[19] people do bad things.
[20] So that's a general - I could give you a
[21] lot more examples, if you like. Let's talk about
[22] the inability to get a patients' bill of rights

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[1] passed. Now, both parties say that we need to have
[2] health care decisions made by health care
[3] professionals, rather than bureaucrats. There was
[4] \$3 million that HMOs contributed to one side of the
[5] issue. Trial lawyers contributed the money on the
[6] other side of that issue. Hence, we have gridlock.
[7] I believe that the unlimited amounts of
[8] money that those interests on this legislation have
[9] helped gum up the works, makes it difficult to pass
[10] the legislation.

[11] But I will give you another example. I
[12] believe that our inability to regulate tobacco
[13] products as a drug or to pass any meaningful
[14] protections for children in America to have access
[15] to tobacco products is influenced by the fact that
[16] the tobacco companies have contributed millions of
[17] dollars in unregulated soft money to political
[18] parties.
[19] I believe ultimately that part of the
[20] reason why it is so difficult to get any legislation
[21] passed that the tobacco companies don't want is
[22] because the tobacco companies are a very powerful

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[1] influential interest that has spent millions and
[2] millions of dollars, contributing soft money,
[3] contributing to the parties. So I think it is part
[4] of the reason why we don't get that kind of
[5] legislation passed.
[6] But I will give you another example.
[7] Health care legislation, the ability to get health
[8] care legislation that in many instances HMOs and
[9] insurance companies are against, I think our
[10] inability to get legislation passed is influenced by
[11] the unlimited amounts of money that are collected by
[12] those interests.

[13] Q Are there any other areas of legislation
[14] where you feel that the phenomenon that you have

[15] described this morning obtains?

[16] A The ability to protect our environment,
[17] decisions that are made relative to tax policy.
[18] There's a whole area where there has been an
[19] extraordinary growth of soft money contributions
[20] over the last 12 years or so. Every four years it
[21] seems to grow close to 100 percent.
[22] So those interests, in the view of the

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[1] people that I represent, have a disproportionate say
[2] over what legislation passes and what legislation
[3] doesn't. That's the view of the people that I
[4] represent, and I agree with them.

[5] Q What is the basis for your statement about
[6] environmental legislation? Is it the notion that
[7] the big oil companies are giving soft money
[8] donations to the political parties?

[9] A Well, the unlimited soft money
[10] contributions from oil companies seems to more
[11] directly have an effect over energy policy in
[12] America, and part of energy policy in many instances
[13] may be the ability to drill for oil in some
[14] environmentally protected areas, but generally
[15] energy policy.
[16] I generally think, and most of the people
[17] I represent think, that when you have a system that
[18] allows corporations - that aren't supposed to be
[19] able to contribute anything - unlimited amounts of
[20] money, that it probably has an influence over the
[21] legislation that those companies have an interest
[22] in.

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[1] Q Are there any other companies or
[2] categories of companies that are making soft money
[3] donations -

[4] A I think the record of soft money
[5] contributions is available.

[6] Q Sir, just so that the record is clear, I
[7] will try to let you finish your answers if you will
[8] let me finish my question.

[9] A If you ask me a question, I will give you
[10] an answer.

[11] Q Yes, and I was trying to ask a question
[12] there, sir. It is just for the court reporter's
[13] sake and for the clarity of the record.

[14] My question is, are you aware of any other
[15] categories of corporations that are making soft
[16] money donations on the environment?

[17] A You would have to go to the record of
[18] where both parties got the millions and millions of
[19] dollars in soft money, and my suggestion is that
[20] that record is available.

[21] Go through it yourself and then directly
[22] look at what interest those companies are involved

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[1] in and then check the legislation. I think you will
[2] find most of the corporations that have contributed
[3] unlimited amounts of money in the past few election
[4] cycles usually have an interest in legislation

[5] before the Congress, and I think usually that
 [6] unlimited amounts of money have an influence over
 [7] what happens with that legislation.
 [8] I don't have the list with me. But I'm
 [9] sure you can go to the parties and see who
 [10] contributed how much money. I don't have the
 [11] records, certainly, with me.
 [12] I have mentioned a few of them. But there
 [13] are many, many more. I think in the last election
 [14] cycle, there were \$500 million in soft money. I
 [15] can't tell you off the top of my head where all
 [16] \$500 million came from. But I'm sure you have a
 [17] record of that, and I'm sure that you could find
 [18] that record, if you were interested.
 [19] Q Okay. Now, both in your declaration and
 [20] in at least one of your answers today you have used
 [21] the term "special interest money." What do you mean
 [22] by that?

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[1] A "Special interest money," as I used the
 [2] term this morning, I used the term to describe -
 [3] which term do you want described?
 [4] Q "Special interest money."
 [5] A "Money," not "special interest," but
 [6] "special interest money"?
 [7] Q "Money" I think I understand -
 [8] actually -
 [9] A Which do you want?
 [10] Q Let's do both. Why don't we start with
 [11] "money."
 [12] A Special interest money I define as those
 [13] when you look at - we are talking about soft money
 [14] here - those contributions that come from
 [15] corporations, wealthy individuals that have a
 [16] specific interest in legislation before Congress.
 [17] Q And do you mean something different by the
 [18] term "money," or is that a complete answer to what
 [19] you mean by the term "special interest money"?
 [20] MR. MOGILNICKI: Objection.
 [21] MR. THOMPSON: Strike that.
 [22] BY MR. THOMPSON:

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[1] Q I want to make sure. I have asked you for
 [2] your definition of the term "special interest
 [3] money," and I want to make sure you have had an
 [4] ample opportunity to define it on the record today.
 [5] So if there is anything you would like to add to
 [6] amplify your prior answer, I want to give you that
 [7] opportunity.
 [8] A Look, you could write a book on special
 [9] interest money in America. In fact, a lot of people
 [10] have. I don't have the time nor the inclination to
 [11] spend hours on the subject. But I would refer you
 [12] to some of the books that have been written on it.
 [13] There's a pretty good one I think you
 [14] would like that was written on the subject by a
 [15] Washington Post reporter on Senator McCain that
 [16] you
 [16] would probably enjoy recently that outlined a lot of

[17] this. But a lot of books have been written on that.
 [18] That's a quick answer.
 [19] Q You referenced in your answer money from
 [20] corporations and wealthy individuals. Money from
 [21] ordinary citizens of limited means, is that special
 [22] interest money?

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[1] A Let me correct you. What I said on the,
 [2] record was that one of the things that I would
 [3] describe as special interest money are those
 [4] unlimited contributions that come from corporations
 [5] or wealthy individuals that have an interest before
 [6] the Congress of the United States. So that's what I
 [7] said on the record.
 [8] Could you read what I said on the record?
 [9] Q Sir, we only have seven hours here today.
 [10] I think the record is clear, and I think your
 [11] answers are fully clear.
 [12] A So you can check the record, but I can't
 [13] do that?
 [14] Q I can't check the record until you can.
 [15] A Can I ask the reporter to check the
 [16] record?
 [17] Q If I doesn't count against my seven hours.
 [18] MR. MOGILNICKI: It is a perfectly
 [19] reasonable request for the Congressman to hear back
 [20] his answer. I don't see any good reason -
 [21] THE WITNESS: I just don't want to go
 [22] through the deposition where you asked for the

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[1] record but I can't.
 [2] BY MR. THOMPSON:
 [3] Q Here's the point, which is I asked for
 [4] your definition of special interest money, and you
 [5] said that you have described one type of special
 [6] interest money. And now I want to ask you what the
 [7] other types of special interest money are.
 [8] MR. MOGILNICKI: The problem is that your
 [9] description of his answer was inaccurate. So the
 [10] Congressman, for the sake of the record, would like
 [11] to hear what his answer was to illustrate the
 [12] inaccuracy in the question.
 [13] MR. THOMPSON: That's fine. But this will
 [14] not count towards our seven hours.
 [15] MR. MOGILNICKI: If you want an initial 30
 [16] seconds so we can hear the Congressman's answer
 [17] back, that's fine.
 [18] MR. THOMPSON: By all means, and I don't
 [19] know what question and answer you want to have
 [20] read
 [20] back, but that's fine.
 [21] THE WITNESS: Look, here's my issue. I
 [22] don't want to give you an answer and then have you

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[1] misinterpret or take a portion of that answer and
 [2] claim that was my answer. I don't have the time nor
 [3] the inclination to get into that with you.
 [4] So either you are going to accurately
 [5] describe my answer or if there's a difference of

[6] opinion as to what I just said, perhaps we should
 [7] have it read back.
 [8] BY MR. THOMPSON:
 [9] Q Let me make two points, if I may. With
 [10] respect to time, we have seven hours. So it is a
 [11] finite amount of time. Given that it is the
 [12] plaintiff's deposition, we get to determine how that
 [13] seven hours is allocated. You don't need to worry
 [14] about how the time is spent here today. Second of
 [15] all -
 [16] A Excuse me. I have a right to worry about
 [17] you misrepresenting what I just said.
 [18] Q Yes, absolutely.
 [19] A I have an interest in that, and I will do
 [20] that throughout the seven hours, or if there are 14
 [21] hours or if there are 45 hours. I have an interest
 [22] in doing that.

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[1] I want to make sure that you are careful
 [2] not to misrepresent what - it is going to be
 [3] difficult enough misrepresenting what I said six
 [4] hours ago, but when I said something two minutes
 ago
 [5] and it is misrepresented, I feel that I have a right
 [6] and a responsibility to correct it.
 [7] Q And I want the record to be absolutely
 [8] clear. I'm giving you every opportunity to
 [9] elaborate on your answers, and if I misrepresent one
 [10] of your prior testimonies, it is inadvertent, and
 [11] please take the opportunity just to clarify it. I
 [12] think that's a better way to do it than going back.
 [13] Just clarify "this is what I'm saying," and that's
 [14] fine.
 [15] So let me just perhaps try to ask the
 [16] question this way, and if you want to go back and
 [17] read your prior testimony, you can. But let me ask
 [18] it this way.
 [19] In addition to the type of special
 [20] interest money that you have described thus far, is
 [21] there any other type of money in the system that you
 [22] would describe as special interest?

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[1] A I think any private contributions could be
 [2] interpreted as special interest, any contribution
 [3] can. However, I think that when you have unlimited
 [4] contributions, at least the United States Supreme
 [5] Court has said, and I agree, that unlimited
 [6] contributions for politics have raised the problem
 [7] of appearance of corruption or actual corruption.
 [8] That's why the Supreme Court has said that you can
 [9] limit political contributions.
 [10] So, in essence, any contributions, private
 [11] contributions could be interpreted as a special
 [12] interest. If a woman on Social Security sends \$10
 [13] to a political candidate, one could argue that
 [14] technically that woman on Social Security is a
 [15] special interest, and one could argue technically
 [16] that her \$10 contribution is a special interest
 [17] contribution.

[18] However, I think that where the influence
 [19] of special interest money has caused problems with
 [20] perception has been those unlimited amounts of
 money
 [21] that come specifically from people who have
 [22] interests before the Congress.

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[1] Q When you talk about unlimited amounts of
 [2] money, is there a dollar amount that you have in
 [3] mind above which an appearance of corruption is
 [4] potential?
 [5] A I would say anything above the legal
 [6] limits that have been set for political ,
 [7] contributions in American campaigns. In this
 [8] instance, given the fact that Theodore Roosevelt
 [9] signed a piece of legislation in 1907 making
 [10] corporate contributions illegal and it has been the
 [11] law since then, I would say any corporate
 [12] contribution, given the fact that it is supposed to
 [13] be illegal and, in fact, people have gone to jail
 [14] who have taken corporate money and try to funnel it
 [15] into personal contributions. I think any amount of
 [16] corporate money.
 [17] Now, in terms of individual limits, I
 [18] think whatever the individual limits are, anything
 [19] above that should be unacceptable. I think this
 [20] soft money loophole should be closed.
 [21] Q Today we are going to be talking at some
 [22] length about the term "electioneering

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[1] communication." I want to make sure we are using
 [2] that term in the same way. Would you state for the
 [3] record what your understanding of the term
 [4] "electioneering communications" is.
 [5] MR. MOGILNICKI: I'm going to object on
 [6] speech and debate clause grounds and instruct the
 [7] witness not to answer.
 [8] MR. THOMPSON: This lawsuit is challenging
 [9] the Constitutionality of BCRA, and he has intervened
 [10] in this lawsuit to defend the Constitutionality of
 [11] the legislation. You are saying that his knowledge
 [12] about what is in the statute is protected by the
 [13] speech and debate clause?
 [14] MR. MOGILNICKI: Yes, I am.
 [15] MR. THOMPSON: You are saying he hasn't
 [16] waived that right by intervening voluntarily?
 [17] MR. MOGILNICKI: He has absolutely not
 [18] waived the right. I will refer you to the Helstoski
 [19] case, which says that a waiver must be unequivocal
 [20] and explicit. There has been no such waiver here.
 [21] MR. THOMPSON: In the first clause of
 [22] paragraph 4, he says, "if any of the campaign

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[1] finance reforms embodied in the Act is struck down."
 [2] And so maybe I need to ask it this what.
 [3] BY MR. THOMPSON:
 [4] Q Is one of the provisions of the Act that
 [5] you referenced in paragraph 4 electioneering
 [6] communications?

[7] A Would you repeat the question?
 [8] Q Is one of the provisions of BCRA that you
 [9] referenced in the opening clause of paragraph 4 of
 [10] your declaration that has been marked as Meehan
 [11] Exhibit 1, is that the restriction on electioneering
 [12] communications?
 [13] A You are talking about item 4?
 [14] Q Yes, sir.
 [15] A "If any of the campaign finance reforms
 [16] embodied in the Act is struck down," I view that to
 [17] mean any of the provisions that make it illegal to
 [18] raise soft money. That's what I would - that's my
 [19] answer.
 [20] Q That's fine.
 [21] Now, let me then state for purposes of
 [22] this deposition I'm going to use the term

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[1] "electioneering communications," and I'm going to
 [2] use that term in the sense that it is used in the
 [3] primary definition of BCRA, which is to say, for
 [4] broadcast advertisements paid for by a union or a
 [5] general treasury of a corporation 30 days prior to a
 [6] primary or 60 days prior to a general election that
 [7] reference a specifically identifiable candidate.
 [8] So that's the way I'm going to use the
 [9] term today. If it is unclear at some point to you,
 [10] please let me know.
 [11] Are you aware of any instances of speech
 [12] which would qualify as an electioneering
 [13] communication led to an instance of actual
 [14] corruption, not the perception of corruption but
 [15] actual corruption?
 [16] A Am I aware of an instance where a
 [17] television ad led to corruption?
 [18] Q Yes, sir.
 [19] A That mentioned a federal candidate?
 [20] Q Yes, sir.
 [21] A The instances where I have seen television
 [22] ads 30 days or 60 days before an election usually

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[1] influenced that election so that one candidate
 [2] either won or one candidate lost.
 [3] Q And I understand that, and my question is
 [4] are you aware of any instance -
 [5] A Where the ads themselves corrupted
 [6] someone?
 [7] Q Yes, sir.
 [8] A Well, some ads misinform. Some ads are
 [9] paid for with moneys that ordinarily wouldn't be
 [10] legal in a political setting.
 [11] So while an advertisement itself may be
 [12] accurate or not accurate, I would say an
 [13] advertisement funded illegally or an advertisement
 [14] funded - you are not asking about how an
 [15] advertisement is funded. Would an advertisement
 [16] corrupt? It could mislead. I'm not sure that an
 [17] advertisement would corrupt.
 [18] Q Now, moving on to something that I think
 [19] you have said in public, do you believe that the

[20] volume of money in the political system today gives
 [21] rise to an appearance of corruption?
 [22] A I believe the volume of unlimited soft

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[1] money in American politics gives rise to an
 [2] appearance of corruption. I think there should be
 [3] limits on how much money people can give. In fact,
 [4] we have a whole set of campaign finance laws where
 [5] there are limits.
 [6] But what has happened is a loophole has
 [7] developed over the years where people can get
 around
 [8] the campaign limits by contributing money as long as
 [9] the ads that it used for don't say "vote for/vote
 [10] against."
 [11] So I think when an interest contributes
 [12] millions of dollars, I think that is the appearance
 [13] of corruption. Most people in my district or in
 [14] Massachusetts or in the country, for that matter,
 [15] have a hard time believing that if millions of
 [16] dollars are spent by an interest or a group of
 [17] corporations or wealthy individuals who have an
 [18] interest in a piece of legislation - most Americans
 [19] think that that money probably will have an
 [20] influence over what happens to that legislation when
 [21] there is unlimited money.
 [22] Q Is it your hope that BCRA will reduce the

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[1] amount of money in the political system?
 [2] MR. MOGILNICKI: I'm going to object to
 [3] that. The purposes for which the legislation was
 [4] passed are plainly speech and debate.
 [5] MR. THOMPSON: Mr. Mogilnicki, this
 [6] lawsuit, as you well know - the legal test is
 [7] pretty clear - does this infringement on the First
 [8] Amendment advance the compelling governmental
 [9] interests and is it narrowly tailored to do so.
 [10] Obviously, when the Representative
 [11] intervened in this case, he realized he would have
 [12] to speak to the governmental interests that the
 [13] statute reflects. You agree with that, don't you?
 [14] MR. MOGILNICKI: My point is simple. The
 [15] speech and debate clause of the United States
 [16] Constitution immunizes Congressmen and Senators -
 [17] like Senator McConnell, who testified yesterday and
 [18] also invoked the immunity - from having to testify
 [19] about their legislative actions.
 [20] Asking a Congressman about what he
 [21] intended when he passed a piece of legislation goes
 [22] to the very heart of that immunity. We are not

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[1] waiving it. I instruct the witness not to answer.
 [2] MR. THOMPSON: We propounded
 contention
 [3] interrogatories, and you declined to answer them.
 [4] We filed a motion to compel, and the court held that
 [5] you had to answer the following contention
 [6] interrogatory, "State and describe in detail each
 [7] governmental interest that justifies BCRA or any

[8] portion thereof."
 [9] That's flatly inconsistent with the
 [10] position of the speech and debate clause.
 [11] MR. MOGILNICKI: Why don't you read our
 [12] response.
 [13] MR. THOMPSON: Yes, we are going to get
 [14] into it. "The governmental interests that justify
 [15] the BCRA include," and you list them.
 [16] MR. MOGILNICKI: As set forth in the
 [17] legislative history.
 [18] MR. THOMPSON: And you have answered
 [19] the
 [20] question there. It is your position that when the
 [21] Court ordered you to answer the contention
 [22] interrogatories, it confined it to the legislative
 [23] history?

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[1] MR. MOGILNICKI: It is my position it was
 [2] perfectly appropriate for all of the parties who are
 [3] also members of Congress to respond to discovery in
 [4] this case by reference to the legislative history.
 [5] They do not, however, have to make new legislative
 [6] history in response to your questions in the
 [7] deposition.
 [8] MR. THOMPSON: I want to state for the
 [9] record that you are foreclosing a line of argument
 [10] and questioning that we have intended to pursue
 [11] today. We reserve the right to file a motion to
 [12] compel. If we do file a motion to compel and we are
 [13] successful in that, we will have to reconvene this
 [14] deposition.
 [15] MR. CARVIN: This affects me as well. I
 [16] want to make sure we are clear on the ground rules
 [17] here. To the extent I understand your position,
 [18] Eric, it is that if the Congressman's answers are
 [19] confined to the legislative history and the face of
 [20] the statute, as an intervenor and as a party, he can
 [21] express his understanding of the effect of the law
 [22] and the purpose of it, so long as the question is

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[1] not asking for any conversations or actions leading
 [2] up to that. Then you invoke speech and debate. Do
 [3] I have that straight?
 [4] MR. MOGILNICKI: I'm not sure I followed
 [5] you in that. My response would be to the specific
 [6] questions when they are asked.
 [7] MR. CARVIN: Let me make two procedural
 [8] points. He did file and sign interrogatories giving
 [9] his understanding of the purposes, with whatever
 [10] caveats you just attached to it about it being based
 [11] on the legislative history. If it is your assertion
 [12] that he cannot be questioned about discovery he has
 [13] propounded in this case, we would strenuously
 [14] object.
 [15] I'm just trying to figure out right now
 [16] whether or not it is your position that we can't ask
 [17] him questions about discovery he has produced in
 [18] this case and signed to. I would point out that was
 [19] not the rule at Senator Feingold's deposition, and

[20] it was not the rule in the prior deposition
 [21] Mr. Meehan gave in the RNC versus FEC case.
 [22] So I would just like to have the ground

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[1] rules clear now so that I can understand what line
 [2] of questioning is going to be permissible.
 [3] MR. MOGILNICKI: Why don't we take a
 [4] short
 [5] break. I will confer with my client. House counsel
 [6] is here now. We will confer and discuss it.
 [7] MR. CARVIN: I would like to point out
 [8] that Helstoski notwithstanding, I can produce a
 [9] legion of cases that make it quite clear that the
 [10] notion that there is no waiver when a Congressman
 [11] sits and gives direct testimony and refuses to
 [12] answer questions on cross about statements he has
 [13] given on direct is utterly impermissible, and you
 [14] can't use speech and debate as both a sword and a
 [15] shield. I would like to factor that into whatever
 [16] considerations go into your discussion.
 [17] MR. MOGILNICKI: Sure. I wonder where
 [18] that point was during Senator McConnell's testimony
 [19] yesterday.
 [20] MR. CARVIN: I took Senator Feingold's
 [21] deposition. I asked him about the interrogatories.
 [22] I believe you were there. There was no objection or
 [23] instruction not to answer questions going to what he

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[1] understood the law did and what Constitutionally
 [2] permissible purpose the law served. That's all I
 [3] understand is the scope of the question, perfectly
 [4] appropriate.
 [5] MR. THOMPSON: The other thing is,
 [6] obviously, along the lines of what Mr. Carvin has
 [7] said, if you all intend to introduce Representative
 [8] Meehan as a fact witness to speak to anything that's
 [9] not in the legislative history, having blocked us
 [10] from asking questions beyond that, we will again
 [11] strenuously object in the alternative.
 [12] MR. MOGILNICKI: Is it your position that
 [13] if the Congressman wishes to explain the law and its
 [14] purposes in ways that are not set forth in the
 [15] legislative record, that that would be an acceptable
 [16] sort of evidence to put before the Court?
 [17] MR. THOMPSON: We don't think any post
 [18] hoc
 [19] evidence is reasonable and should be excluded on
 [20] that basis, as Judge Leon has averted to. There is
 [21] plenty of case law for that.
 [22] MR. MOGILNICKI: Then why are we doing
 [23] this? Why are we asking for new legislative

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[1] history?
 [2] MR. THOMPSON: Because you all are
 [3] tendering your clients as fact witnesses. So we are
 [4] entitled to take a deposition to see what sort of
 [5] factual evidence may be sprung upon us on October
 [6] 4th.
 [7] Be that as it may, you understand our

[8] position. You have asked to confer with your client
[9] and counsel. We encourage you to do so. We will
[10] get this straightened out.

[11] MR. CARVIN: My final point is if this is
[12] a violation of speech and debate, so is Congressman
[13] Meehan's submission of comments to the FEC
speaking

[14] to the purposes and understanding of this Act, which
[15] is yet another waiver.

[16] MR. MOGILNICKI: Now, that's a
fundamental

[17] misunderstanding of immunity, which can be invoked
[18] when the Congressman considers it appropriate, just
[19] like an attorney-client privilege.

[20] MR. CARVIN: But it can't be, either an
[21] attorney-client or speech and debate, selectively
[22] waived to offer your version of events in an

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[1] adversarial contest when your question about those
[2] versions invokes speech and debate. That is
[3] fundamental.

[4] THE WITNESS: What is the question?

[5] MR. MOGILNICKI: Do you want to take a
[6] minute?

[7] THE WITNESS: I want to hear the question.

[8] MR. THOMPSON: The question was one of
the

[9] purposes behind BCRA was to mitigate the amount
of

[10] money in the American political system today.

[11] (Recess.)

[12] MR. MOGILNICKI: The Congressman has
[13] decided to answer this question, and I want to be
[14] clear on the record it is not a waiver of his speech
[15] and debate clause immunity.

[16] We will continue to monitor the questions
[17] to decide where the line shall be properly drawn in
[18] light not only of the law but the Congressman's
[19] interest in being as forthcoming as possible.

[20] THE WITNESS: Could you ask the question
[21] again?

[22] BY MR. THOMPSON:

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[1] Q Yes. Is it your hope that one of the
[2] effects of BCRA will be to lessen the amount of
[3] money in the American political system?

[4] A I would hope that that would be a result,
[5] but clearly what the result would be is the end to
[6] big money in American politics, the end to unlimited
[7] contributions for American politics. That was the
[8] primary goal.

[9] Now, whether or not both political parties
[10] will be able to raise \$500 million in hard money to
[11] make up for losing \$500 million in soft money I
[12] don't know. But I do know this. If there isn't
[13] less money in American politics as a result of this
[14] law, then I think it is better for the American
[15] political system if the money that is raised to
[16] replace the \$500 million in hard dollars comes from

[17] small contributions rather than unlimited
[18] contributions.

[19] Q Thank you, sir.

[20] At this point I would like to mark as

[21] Meehan Exhibit 2 a document that is entitled

[22] "Intervenors' Responses to Contention

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[1] Interrogatories."

[2] (Meehan Exhibit 2 identified.)

[3] BY MR. THOMPSON:

[4] Q Sir, take a moment, if you would. I have
[5] a couple of questions for you about the response to
[6] McConnell interrogatory number 1. The response
[7] appears on page 2, 3 and 4.

[8] My first question to you is really just
[9] going to relate to subpart 3, which reads "restoring
[10] Americans' faith in the electoral process and
[11] decreasing public cynicism about our system of
[12] government."

[13] MR. MOGILNICKI: So the record is clear,
[14] should he read the whole thing or just that
[15] subsection?

[16] BY MR. THOMPSON:

[17] Q I want to make it clear I'm not trying to
[18] confine you to what you can read. But my question
[19] is going to be limited to that subpart.

[20] A Page 2?

[21] Q I'm sorry. It is page 3, and then it has
[22] a 3 next to it. And the question, just for the

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[1] context, that had been posed was, "State and
[2] describe in detail each governmental interest that
[3] justifies the BCRA or any portion thereof, including
[4] in the description a specification of the provisions
[5] of the BCRA that each such interest justifies."

[6] So that's in the italics portion on page
[7] 2. And then flipping to page 3, one of the
[8] interests that was identified was "Restoring
[9] Americans' faith in the electoral process and
[10] decreasing public cynicism about our system of
[11] government."

[12] My question ties back to the declaration
[13] you proffered in this case. When you referred to
[14] the perception of significant corruption in your
[15] declaration, were you referring to the public
[16] cynicism that's identified in this response to the
[17] contention interrogatories?

[18] A That was one of maybe hundreds of things
[19] that I was referring to. This item 3, "restoring
[20] Americans' faith in the electoral process and
[21] decreasing public cynicism for our system of
[22] government," I believe that people would feel better

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[1] about our electoral process if people weren't
[2] contributing unlimited amounts of money to the
[3] parties.

[4] I believe that people would feel better
[5] about the electoral process if members of Congress,
[6] presidents, vice presidents, members of the cabinets

[7] weren't caught picking up the phone and calling and
 [8] asking companies, wealthy individuals that have an
 [9] interest in legislation for a million dollars or
 [10] \$2 million or \$5 million. So I believe that the law
 [11] would help restore Americans' faith.

[12] Now, item number 4, is item number 3 part
 [13] of what is in 4? Sure, that's part of it. It is
 [14] part of it, but not the only factor.

[15] Q Now, in item number 4 of your declaration,
 [16] when you talk about that the system is widely
 [17] perceived to be significantly corrupt, who has that
 [18] perception? First of all let me ask you, do members
 [19] of Congress have that perception?

[20] A I believe that many members of Congress
 [21] believe that the system that we presently operate
 [22] under stinks. I think many of them think that it

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[1] gives good people a bad name. Most members of
 [2] Congress don't like the present system where they
 [3] need to raise soft money for the parties, nor do
 [4] they like a system that, because of the amount of
 [5] money that's raised in soft money, makes people so
 [6] cynical about the votes of members of Congress
 [7] today.

[8] So I don't know if members of Congress
 [9] like it, but I think the public doesn't like it even
 [10] more. In some instances, the public is angry about
 [11] it.

[12] I talk to people who literally have
 [13] prescription drugs that cost them 2- and 3- and \$400
 [14] a month and they live on Social Security. They
 [15] can't afford to take the drugs that are prescribed
 [16] to them, literally can't afford. They turn on the
 [17] television set and see that there is an inability in
 [18] Congress to pass a Medicare prescription drug
 [19] benefit, and then they read that many of the
 [20] pharmaceutical interests who oppose this bill have
 [21] contributed \$12.8 million in the last cycle.
 [22] I can tell you that a woman living in

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[1] Lawrence, Massachusetts who connects the dots by
 [2] simply reading the newspaper and watching television
 [3] is really angry about this. She is bitter about it
 [4] because she can't take the drugs that she needs and
 [5] she sees that the people that are making decisions
 [6] about getting the Medicare prescription drug benefit
 [7] are raising millions of dollars from people who are
 [8] against the bill.
 [9] Now, I talk to people that are angry about
 [10] it. They are really angry.

[11] Q And I do want to have fully on the record
 [12] the basis for your statement in paragraph 4 of your
 [13] declaration, and if I understand you correctly, you
 [14] are saying one of the bases for your statement about
 [15] there being this widely held perception of
 [16] corruption is conversations you have had with your
 [17] constituents; is that correct?

[18] A That's one of the bases, sure.

[19] Q And tell me what your constituents tell

[20] you. Is it just what you said or is there more?

[21] A No. There's a lot more. I had a town
 [22] meeting in Lowell, Massachusetts at the Smith Baker

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[1] Center, and I had a gentleman come in and lay out
 [2] all the prescription drugs that he had to take and
 [3] describe how he couldn't afford to take them. He
 [4] asked why Congress hasn't been able to pass a bill
 [5] even though it appears that the need for this
 [6] legislation is clear, and he asked about the amount
 [7] of money that special interests who opposed the bill
 [8] have contributed.

[9] He and many other people in my district
 [10] believe that that has influenced the inability. You
 [11] know what? I believe it has had an influence.
 [12] There's just not a justification for not passing a
 [13] Medicare prescription drug benefit for seniors. And
 [14] I'm cynical about it. I mean, the people I
 [15] represent are, but I am too. I think it has had an
 [16] influence over whether we can get it passed or not.

[17] Q Are you aware of any polls that reflect
 [18] the phenomenon that you have described of cynicism,
 [19] perceptions of corruption?

[20] A No. I basically have my perception from
 [21] talking to people in the community, Methuen and
 [22] Lawrence and Lowell, throughout my district. I do a

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[1] lot of town meetings and have a lot of meetings with
 [2] people. All I have to do is go home and listen to
 [3] my mother talk about her prescription drug coverage.
 [4] People are cynical about a process where
 [5] there has been so much talk about passing a bill and
 [6] the inability to pass it.

[7] Q Do your constituents think that you are
 [8] corrupt?

[9] A No, they don't. But they think the system
 [10] in which I work is a system that is tainted by
 [11] unlimited amounts of money contributed by special
 [12] interests in the political process. They believe
 [13] that the whole system is tainted.
 [14] By the way, I agree with them. I think
 [15] they are right. I think that as long as we allow
 [16] federal officials to raise million dollar
 [17] contributions from interests before Congress, I
 [18] think the system is going to be tainted. I think it
 [19] turns more Americans off. I think there are fewer
 [20] Americans voting because they don't think their
 [21] voice matters.
 [22] I think we need to do something about it.

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[1] And this bill represents something we can do that I
 [2] believe, as I say in item 3, will help restore
 [3] America's faith in the electoral process and
 [4] decrease public cynicism about our system of
 [5] government. It won't eliminate it, but it will
 [6] restore it, help restore it. I think it will bring
 [7] some faith back.

[8] Q During the last two months of a general
 [9] election or the two months prior to a general

[10] election, how much time do you spend, approximately,
 [11] campaigning?
 [12] A Me personally?
 [13] Q Yes, sir.
 [14] A It depends upon whether the Congress is in
 [15] session. It depends upon whether I have an
 [16] opponent, how active my opponent is, whether I'm
 [17] working on other campaigns. It depends on the
 [18] circumstances.
 [19] Q During the two months prior to a general
 [20] election, how much time on a weekly basis do you
 [21] spend watching TV, approximately?
 [22] A Well, that would be during football

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[1] season. So certainly on Sundays, if it is an away
 [2] game. I don't know. How much do I spend? I don't
 [3] know. Maybe four or five hours a week. I don't
 [4] know.
 [5] Q And do you watch most of that TV on the
 [6] weekends or during the weekdays?
 [7] A Like I said, if the Patriots are in an
 [8] away game, I usually watch the game, and I sometimes
 [9] will watch an early or late game. I watch news
 [10] programs. I am more than likely to watch them on a
 [11] weekend. Every Sunday morning I usually watch the
 [12] news programs.
 [13] Q And do you typically spend your weekends
 [14] in the Washington, D.C. area or up back in your
 [15] district?
 [16] A Back in my district. My wife and two sons
 [17] live in Lowell. So I usually spend it back with
 [18] them. Not "usually." Pretty much every weekend I'm
 [19] back in Massachusetts.
 [20] Q Beyond your own personal viewing of
 [21] television, what knowledge do you have of the types
 [22] of speech that would qualify as electioneering

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[1] communications as I have defined that earlier in the
 [2] deposition?
 [3] A Well, I would say an advertisement 60 days
 [4] before an election that mentions a federal candidate
 [5] that is shown in his or her home state or home
 [6] district would likely be engineering, very likely -
 [7] electioneering. It might be somewhat "engineering
 [8] electioneering."
 [9] Q What do you mean by electioneering?
 [10] A I would refer to the definition that you
 [11] earlier stated.
 [12] Q Right. Let's step back for a minute.
 [13] What I'm specifically asking you now is what
 [14] knowledge you have of the ads themselves that would
 [15] fall within this category, and I understand that you
 [16] watch some television.
 [17] A The news programs I watch on Sunday
 [18] morning.
 [19] Q The news programs and the other items you
 [20] described. I'm wondering, have you reviewed any
 [21] other ads that were run, for example, during the

[22] 2000 cycle beyond those which you saw on your

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[1] television?
 [2] A Those that I saw on television, I observed
 [3] those.
 [4] Q Did you observe any others?
 [5] A You mean going someplace and watching
 [6] ads?
 [7] Q Yes, exactly.
 [8] A No. I don't recall going to watch ads.
 [9] Q Okay. You are familiar with the Brennan
 [10] Center study?
 [11] A I am familiar with the study.
 [12] Q Did you review the 2700-odd ads or any of
 [13] those ads that are attached to the plaintiffs'
 [14] answer?
 [15] A I can't say I never saw any of the ads,
 [16] but I certainly didn't go to the Brennan Center and
 [17] look to see which ads that they looked at, no.
 [18] But if I see it - I believe that the
 [19] reality is if there is an advertisement placed 60
 [20] days before an election and it mentions a federal
 [21] candidate and the ad is run in his or her district,
 [22] there's a very, very good chance it is meant to
 influence the election.

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[1] Q Is that what you meant by electioneering
 [2] when you used the term "electioneering"?
 [3] A Well, in this instance, if an ad is run
 [4] with the intention of electing or defeating a
 [5] candidate or helping to elect or defeat a candidate.
 [6] Q Is that what you mean by the term
 [7] "electioneering"?
 [8] A No.
 [9] MR. MOGILNICKI: I will object. Your
 [10] questions say "use the term the way I defined it,"
 [11] and now you are asking him "how do you use the
 [12] term?" I'm afraid that will be unclear on the
 [13] record.
 [14] MR. THOMPSON: I defined the term
 [15] "electioneering communications" but you objected on
 [16] the speech and debate clause, and you let me have
 [17] him state his knowledge of it now. Now what I'm
 [18] asking is, though - the representative made the
 [19] statement that the advertisement mentions a
 [20] candidate is likely to be electioneering.
 [21] BY MR. THOMPSON:
 [22] Q Do you have a different understanding of

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[1] that term than the one that I provided?
 [2] A No, I don't.
 [3] Q Are you using that term to mean ads that
 [4] are intended to influence the outcome of a federal
 [5] election?
 [6] A As a definition of "electioneering?"
 [7] Q Yes.
 [8] A I'm not trying to redefine your definition
 [9] of "electioneering" at the beginning of this
 [10] deposition. I'm simply stating that an

[11] advertisement on television 60 days before an
 [12] election that mentions a federal candidate that is
 [13] run in his or her district or home state is probably
 [14] meant to influence the election.
 [15] Q Will you explain for the record how speech
 [16] that qualifies as an electioneering communication
 [17] could give rise to an appearance of corruption, if
 [18] at all?
 [19] A Ask the question one more time. The
 [20] buzzer was ringing.
 [21] Q Can you tell me, sir, how an ad that is
 [22] intended to influence the outcome of a federal

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[1] election gives rise to an appearance of corruption,
 [2] if it does?
 [3] A Well, it could. It could if you had a
 [4] member of Congress who was running for reelection
 in
 [5] his or her district and special interests opposed to
 [6] Medicare prescription drug benefit for seniors
 [7] started running advertisements that were negative
 [8] advertisements, some of which are ads I have read,
 [9] and the federal officeholder knew that they were
 [10] funded by interests against a Medicare prescription
 [11] drug benefit for seniors and also knew that the ads
 [12] were probably going to raise the candidate's
 [13] negatives and potentially defeat that person and
 [14] knew that the interests would take the ads off the
 [15] air if they would vote or would somehow try to
 [16] either within committee delay or try to gum up the
 [17] works for passing a Medicare prescription drug
 [18] benefit.
 [19] I would say in that instance that the
 [20] advertisement could have a corrupting influence
 [21] because in that instance, you would have a member of
 [22] Congress, member of the Senate concerned about a

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[1] negative ad being run and taking an action to try to
 [2] prevent the negative ad from airing.
 [3] That would be an instance where I would
 [4] think that the advertisement, while the content –
 [5] when you asked this question earlier, I was trying
 [6] to specifically answer the question relative to is
 [7] an ad corrupting, which – not per se, any more than
 [8] a Diet Coke is corrupting.
 [9] But when an ad is having the effect of
 [10] defeating a federal officeholder and the federal
 [11] officeholder knows that the ads are being run by a
 [12] certain interest and then that federal officeholder
 [13] gives in to those interests, I think that would be
 [14] an instance where an ad could have a corrupting
 [15] influence in the sense that you got a member of
 [16] Congress to go against his or her constituents.
 [17] Q Let me ask you about that last piece,
 [18] because the candidate in this example that you have
 [19] provided would only have to fear the ads if the
 [20] voters found them persuasive; right? I think –
 [21] A In my experience over 10 years, 99 percent
 [22] of the federal officeholders who have an ad being

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[1] run by any interest against them in their district
 [2] are concerned about it.
 [3] Q I didn't mean to cut you off.
 [4] A An ad that's designed to throw mud at a
 [5] candidate is of concern to anyone who is a federal
 [6] officeholder.
 [7] Q But is the reason they are concerned is
 [8] that their constituents may find the message of the
 [9] ad persuasive?
 [10] A In some instances, yes, the constituents
 [11] may believe the information that's contained in the
 [12] ad. Oftentimes, in a 30-second ad it is very
 [13] difficult to get across any substance. It is very
 [14] easy to take bits and pieces of information, say
 [15] something negative about anyone. So yes, 30-second
 [16] advertisements paid for by either special interest
 [17] groups or paid for by the political parties can have
 [18] a negative impact on a federal officeholder.
 [19] Q And just so that the record is clear, is
 [20] your concern with the 30-second spot the
 [21] inaccuracies that you believe are in those
 [22] advertisements?

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[1] A Well, that's a separate issue. In this
 [2] instance, my concern is that the money raised for
 [3] those spots didn't come under the federal election
 [4] law. There was soft money coming from unlimited
 [5] sources, in some instances, where the federal
 [6] officeholder has no idea where the money would
 come
 [7] from, and that it should be regulated, like other
 [8] political speech, as the Supreme Court has said in
 [9] Buckley versus Vallejo.
 [10] So my concern – I think the public is
 [11] always concerned about the honesty and content of
 [12] political advertisement in America. But in the end,
 [13] they make those judgments. What I'm concerned
 about
 [14] in this instance would be an advertisement that's
 [15] funded through unlimited amounts of money.
 [16] Q Would you have that concern if it were
 [17] funded by unlimited amounts of money from an
 [18] individual?
 [19] A Any time there's political advertisement
 [20] that isn't accurate, it is of concern to political
 [21] discourse in America, sure.
 [22] Q Let's say that the speech were accurate

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[1] and that it was funded by a very wealthy individual.
 [2] Will you be concerned about the appearance of
 [3] corruption that might emanate from that?
 [4] A Well, I think under the Constitution, you
 [5] could not regulate that. I think an individual
 [6] could spend an unlimited amount of money in that
 [7] example. I don't think the Supreme Court has said
 [8] that you can limit if an individual decided they
 [9] wanted to put money up. Would I be concerned
 [10] about – I think under the Constitution, someone

[11] would have a right to do that.
 [12] Q I'm not asking for that legal judgment. I
 [13] just wanted to know as a candidate, in your capacity
 [14] as a candidate, whether you would be concerned
 about

[15] an individual spending large sums of their own
 [16] personal wealth to influence an election.

[17] A Every federal candidate in America is
 [18] concerned about a wealthy individual spending money
 [19] on television ads against them in a race. I never
 [20] met one that wasn't.

[21] Q And you gave an example of the way in
 [22] which an electioneering communication could give

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[1] rise to an appearance of corruption, and the
 [2] hypothetical you posited was a member trying to take
 [3] some action to get the ad off the air. My question
 [4] is are you aware of any actual example where a
 [5] member of the House or Senate has taken an action

to
 [6] get an ad off the air?

[7] A I can't give you a specific instance, but
 [8] when ads are on the air 60 days before the election,
 [9] paid for by either soft money or independent groups,
 [10] I think any member, Democrat or Republican, would
 be

[11] concerned and see if there is any way they could get
 [12] it off the air. But I don't follow the races
 [13] closely enough. I can't give you a specific
 [14] example.

[15] But I do know this. I do know that those
 [16] interests that spend the most money on these ads,
 [17] that federal officeholders are concerned about any
 [18] group that would spend money against them.
 [19] I served with a Congressman Mike Synar
 [20] from Oklahoma, who was somebody who I really
 thought

[21] a lot of when I first got here. Mike was from
 [22] Oklahoma and oftentimes would vote for some

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[1] reasonable gun safety measures, and the NRA spent
 an

[2] awful lot of money and ultimately defeated him.
 [3] Now, nothing would stop Mike Synar from
 [4] doing what he thought was right. But I think there
 [5] are instances where the pressure of an interest
 [6] coming in and spending millions of dollars would
 [7] influence some members of the House and the Senate
 [8] who were not probably as tough as Mike Synar or not
 [9] as willing to give up their seat as Mike Synar was.

[10] Q Are there any other ways that you can
 [11] think of in which speech that qualifies as an
 [12] electioneering communication could give rise to an
 [13] appearance of corruption, other than those that you
 [14] have already identified?

[15] A Where an advertisement could?

[16] Q Yes, sir.

[17] A I have given you a couple of examples.

[18] Q I just want to make sure that the

[19] record - I want to give you every opportunity to
 [20] make the record as replete as possible on this
 [21] point. And you have given several examples. I want
 [22] to make sure there aren't any other examples.

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[1] A I'm sure there are other examples. I
 [2] think I have provided a couple. Again, in seven
 [3] hours, it is difficult to give every example. I
 [4] have given examples, and I think those are pretty
 [5] good examples.

[6] Q And I'm not disputing that, sir. If there
 [7] are any other examples that you can think of, I
 [8] would like you to state them for the record.

[9] A I'm sure there are. But, you know, right
 [10] now those are the only ones that I would offer.

[11] Q That you can think of now?

[12] A Correct. If I think of others during the
 [13] course of the seven hours, I will get back to them.

[14] Q Have you ever met with representatives of
 [15] special interest groups, like the Sierra Club or
 [16] NARAL or NOW?

[17] A I'm sure I have. Groups come in to
 [18] members' offices all the time. So I'm sure that I
 [19] have, although I can't specifically - the Sierra
 [20] Club I have certainly met with.

[21] Q When you have met with the Sierra Club,
 [22] was that because a number of your constituents are

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[1] members of the Sierra Club?

[2] A A number of my constituents are members
 of

[3] the Sierra Club, and I hear from them a lot, either
 [4] through e-mail or through writing letters. I think
 [5] if you have a lot of people who are members of a
 [6] group in your district, then you are likely to meet
 [7] with them.

[8] Q Do you know of any member of Congress
 that

[9] has met with a representative of a corporation
 [10] solely because of an electioneering communication
 [11] that that corporation has sponsored?

[12] A I don't know. I wouldn't know that.

[13] Q And do you know of any member of
 Congress

[14] that has met with a representative of a corporation
 [15] in part because of an electioneering communication
 [16] that that corporation has sponsored?

[17] MR. MOGILNICKI: I just want to object on
 [18] foundation grounds.

[19] THE WITNESS: A lot of members of
 Congress

[20] meet with a lot of corporations who contribute
 [21] millions of dollars to both political parties. I
 [22] don't know whether they discuss electioneering in

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[1] those meetings or not. But certainly there are a
 [2] lot of members of Congress who have had a lot of
 [3] communication with corporations and wealthy
 [4] individuals in order to persuade them to contribute

[5] soft money.
 [6] Now, whether in those discussions they
 [7] discuss electioneering, my guess is that there's
 [8] some discussion about what will happen with all of
 [9] the \$500 million that was raised in the last
 [10] election cycle. I'm sure that there were
 [11] discussions about the advertisements, electioneering
 [12] and the rest of it.
 [13] I don't know of someone who met with a
 [14] corporation to only talk about the electioneering
 [15] part; I don't have specific knowledge of that. But
 [16] I do believe that when federal officeholders and
 [17] federal officials raise \$500 million, my guess is
 [18] that discussions take place about what the
 [19] \$500 million is going to be used for.
 [20] Q My question is a little bit different than
 [21] that. It doesn't relate to the subject matters that
 [22] were discussed during any meetings between
 members

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[1] and representatives of corporations. It relates to
 [2] whether the member of Congress would meet with a
 [3] representative of a corporation in part because of
 [4] an issue ad that that corporation sponsored.
 [5] MR. MOGILNICKI: Same objection; lack of
 [6] foundation.
 [7] THE WITNESS: There are so many different
 [8] meetings that take place between members of
 Congress
 [9] and corporate leaders. Both parties have had these
 [10] golf meetings, these seminars in different parts of
 [11] the country where all the soft money contributors
 [12] show up and then there have been reports on
 [13] television of people playing golf.
 [14] I have seen the reports on television. In
 [15] viewing those reports, I have been unable to read
 [16] the lips of the participants to know specifically
 [17] what they are talking about. But my guess is that
 [18] they are talking about advertisements and what will
 [19] happen in the electioneering for either party.
 [20] BY MR. THOMPSON:
 [21] Q I'm not being clear enough, and I
 [22] apologize for that. But my questions don't go to

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[1] the specifics of what's being discussed. They just
 [2] go to a member's decisionmaking process in deciding
 [3] whether to take a meeting with a representative of a
 [4] corporation.
 [5] I'm asking whether you are aware of any
 [6] instance in which a member in making that decision
 [7] has based the decision to take a meeting with a
 [8] representative of a corporation in part on the basis
 [9] of that corporation having sponsored an
 [10] electioneering communication.
 [11] MR. MOGILNICKI: Why don't I just have a
 [12] continuing objection to questions on the grounds of
 [13] lack of foundation, calls for speculation.
 [14] THE WITNESS: Basically, you are asking me
 [15] with the \$500 million that was contributed, much of

[16] it by corporations and having been solicited, you
 [17] are asking me if I know of an individual who after
 [18] soliciting a million dollars from a corporate
 [19] executive then met with them afterwards?
 [20] BY MR. THOMPSON:
 [21] Q No, that's not what I'm asking. First of
 [22] all, put soft money to the side. I'm really talking

Page 64

[1] about a corporation that airs an issue ad, say, the
 [2] Sierra Club airs an issue ad, and then it goes to a
 [3] member. Are you aware of any situations in which -
 [4] A I'm not really privy.
 [5] MR. MOGILNICKI: Let him finish the
 [6] question.
 [7] BY MR. THOMPSON:
 [8] Q Are you aware of any situations in which,
 [9] subsequent to such an airing of an issue ad, a
 [10] member of Congress meets with the outside sponsor
 of
 [11] the ad, the corporation, in part because of the fact
 [12] that the ad was run?
 [13] A No, I'm not privy to who individual
 [14] members are meeting with and when.
 [15] Q Do you know if you have ever been the
 [16] target of speech that would qualify as an
 [17] electioneering communication?
 [18] A I don't believe so.
 [19] MR. THOMPSON: At this point I would like
 [20] to have marked as Meehan Exhibit 3 a document that
 [21] bears the Bates number BRE 001223.
 [22] (Meehan Exhibit 3 identified.)

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[1] THE WITNESS: Can I go back to that last
 [2] question? I may have, but I have never seen such an
 [3] ad. There are some that say that labor unions may
 [4] have ran ads regarding some trade agreements, but I
 [5] have never seen them. So I don't really know.
 [6] So I'm not saying - I just want to be
 [7] clear on that answer. I can't recall, but that is
 [8] not to say that an interest group has never. I
 [9] don't really recall. I don't know. I have never
 [10] seen one aired in my district.
 [11] BY MR. THOMPSON:
 [12] Q Just so you understand what you are
 [13] looking at, sir, this is a so-called story board
 [14] that the Brennan Center contracted with an outside
 [15] organization known as CMR. You will see their
 [16] initials up on the top left-hand corner.
 [17] It captured electronically the text of
 [18] television ads run in the last couple of election
 [19] cycles, and it takes a snapshot of the TV screen, I
 [20] think it is every four seconds.
 [21] This is an ad, and I would like you to
 [22] assume that this ad was run in the 60 days prior to

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[1] a general election. It reads: "It is almost too
 [2] much to swallow. Year after year the federal
 [3] government takes a bigger piece of the pie. In
 [4] fact, in 1998 we'll pay more in federal taxes than

[5] at any time in American history except for World War
 [6] II. And now with the budget surplus, in 30 years
 [7] all the Washington politicians can talk about is
 [8] getting their hands on more of your dough. Call
 [9] Harry Reid and John Ensign. Tell them no matter
 who

[10] goes to Washington, you want them to cut your taxes.

[11] Otherwise they'll be nothing left but the crumbs."

[12] My question is, does this ad support or
 [13] promote a candidate for federal office?

[14] A Well, it could, depending upon - would
 [15] this ad be run in a year when the two individuals
 [16] that are mentioned -

[17] Q Yes, sir. For the purposes of this
 [18] question, assume that it was run within the 60 days
 [19] prior to the election between Senator Reid and
 [20] then-challenger Ensign.

[21] A Then it would qualify as electioneering.

[22] Q I understand it would. I'm not asking,

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[1] though, for that legal determination. I wanted to
 [2] know whether you think it would support or whether
 [3] it did support or promote a particular candidate.

[4] A Yes. It could promote one of the
 [5] candidates, sure.

[6] Q Which one?

[7] A It depends on the circumstances of the
 [8] race. I don't have enough information here. But it
 [9] seems to me that - first of all, someone could run
 [10] this ad and use hard money and disclose it.

[11] Q I understand that. But that's, obviously,
 [12] not my question. My question is whether it supports
 [13] or promotes one of these two candidates, and you say
 [14] it could but you would need more information. What
 [15] other types of information will you need?

[16] A Well, for example, if one of the
 [17] candidates was basically an unknown candidate and if
 [18] that unknown candidate had as a centerpiece to their
 [19] campaign cutting federal taxes and was attacking the
 [20] other candidate for, let's say, raising federal
 [21] taxes, then this ad certainly could be in line with
 [22] what that challenger would be running.

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[1] So there are circumstances under which I
 [2] would say this would be persuading voters in favor
 [3] of one candidate over the other.

[4] Q But you would need to have that additional
 [5] context to really know?

[6] A Well, I don't want to make assumptions
 [7] about this particular race and this particular ad
 [8] without knowing a little more about it. If this
 [9] were to run - I don't live in the area where this
 [10] race was. So I wouldn't say that it would persuade
 [11] me.

[12] But, then again, electioneering is really
 [13] meant for advertisements in a particular state or a
 [14] particular district. So in fact, this would have to
 [15] run in an advertisement where one of the two
 [16] candidates were running, and it could well be meant

[17] to influence for one candidate over the other in
 [18] that person's home district or home state.

[19] Q Do you have an opinion as to whether this
 [20] ad gave rise to an appearance of corruption?

[21] A Well, if the money was funded by unlimited
 [22] contributions of soft money and the money was raised

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[1] by federal officials and those federal officials had
 [2] legislation before them that would have an impact on
 [3] who they raised the money from, I would say that the
 [4] money raised from this certainly would have the
 [5] appearance of corruption.

[6] See, I think the appearance of corruption
 [7] is when unlimited amounts of money are raised by
 [8] federal officeholders from wealthy individuals and
 [9] corporations that have interests before Congress.
 [10] So I think any advertisement that is funded this way
 [11] helps pollute the system and helps contribute to the
 [12] appearance of corruption because the ad comes from
 [13] unlimited financial contributions.

[14] Q Okay. Let's move on to the next ad.

[15] I would like to have this one marked as
 [16] Meehan Exhibit 4.

[17] Before I do that, have you ever appeared
 [18] in a public service announcement?

[19] A Yes.

[20] Q What is the Harriman Center?

[21] A The Harriman Center has a video studio
 [22] where members can go and tape public service

Page 70

[1] announcements. I think it is paid for as part of
 [2] the Democratic Congressional Campaign Committee,
 I
 [3] believe.

[4] Q Do you know whether it is set up as a
 [5] corporation?

[6] A I don't.

[7] Q Do you know who funds the Harriman
 Center?

[8] A I don't. You must, though.

[9] Q Do you recall the circumstances of your
 [10] becoming involved in or airing public service
 [11] announcements in the last two years?

[12] A I was at a Democratic caucus, and somebody
 [13] had mentioned that after September 11th, some
 public

[14] service announcements were being aired relative to
 [15] tolerance and supporting our troops that were being
 [16] sent to Afghanistan. So there were public service
 [17] announcements that were available if members
 wanted

[18] to tape them. So I went over to the Harriman Center
 [19] and taped a couple of public service announcements.

[20] Q Do you think if those public service
 [21] announcements had run in the 60 days prior to a
 [22] general election that there would be an appearance

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[1] of corruption attributable to those ads?

[2] A I think that there would be an appearance

[3] that it was meant to influence the election, which
 [4] is why most media entities won't run public service
 [5] announcements 60 days before an election. I think
 [6] it could influence the election, certainly.

[7] Q Do you know if you have ever appeared in a
 [8] public service announcement within 30 days of a
 [9] primary that you were a candidate in or 60 days
 [10] before an election?

[11] A I don't believe so, because most groups –
 [12] we had a benefit concert up in my district at the
 [13] Tsongas Arena for children who had lost mothers or
 [14] fathers on September 11th. I taped a public service
 [15] announcement, but it didn't run 60 days before an
 [16] election.
 [17] I don't believe that the television
 [18] stations or the cable stations would run such an ad.
 [19] Now, I can't say with complete certainty that it has
 [20] never happened, but I believe it is a policy of at
 [21] least the television stations and the cable stations
 [22] in Massachusetts that they wouldn't run such a

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[1] public service announcement. I don't think any of
 [2] them would.
 [3] But as I mentioned to you earlier, I don't
 [4] watch television 24 hours a day seven days a week.
 [5] So I couldn't say it absolutely didn't appear, that
 [6] it never has appeared where I have been in the PSA.
 [7] But I would be surprised if it had, and probably it
 [8] would have been a mistake by the stations.

[9] Q Going back, actually, for a moment to what
 [10] has been marked as Meehan Exhibit 3 and bears the
 [11] title "No matter who goes to D.C.," do you believe
 [12] that that ad was urging voters to vote for one of
 [13] those two candidates?

[14] A The quality obviously is not – I can
 [15] barely make out the pie. The quality is a little
 [16] difficult. I am just reading the text of it. So I
 [17] don't have the complete – it is hard to get a feel
 [18] for an advertisement from looking at this. Would
 [19] you have this ad?

[20] Q We may. We will check to see. We have a
 [21] number of ads on video.

[22] A My sense would be that this is an ad that

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[1] is probably meant to help John Ensign.

[2] Q What do you base that on?

[3] A Well, again, because I don't live in that
 [4] state, my guess is that he was probably running ads
 [5] against – he was probably campaigning against Harry
 [6] Reid, saying that we should cut taxes. But, again,
 [7] like I said earlier, I don't have all the
 [8] information.
 [9] But my guess is, my instincts tell me that
 [10] probably one of the issues in the campaign was
 [11] cutting federal taxes. And if in fact it was, and
 [12] the message of this ad is consistent with the
 [13] campaign that Mr. Ensign was running against
 [14] Mr. Reid, it probably was meant to influence the
 [15] election against Mr. Reid and for the other

[16] candidate.

[17] MR. THOMPSON: Okay. Let's at this time
 [18] mark as Meehan Exhibit 4 a document that bears the
 [19] Bates number NRA 09579.

[20] (Meehan Exhibit 4 identified.)

[21] BY MR. THOMPSON:

[22] Q This document is entitled "CEI," which

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[1] stands for Clean Elections Institute, Inc.,
 [2] "CEI/Arizona, McCain Special Interests," and it
 [3] reads: "John McCain: 'For years special interests
 [4] and big money have had a negative influence on our
 [5] local, state and national elections. Arizona's
 [6] clean election law changes that. In 1998, you voted
 [7] for the Clean Elections Act and restored voter
 [8] confidence in the electoral process. Clean
 [9] Elections works well to overcome the influence of
 [10] special interests. It gives Arizonans the power to
 [11] create good government. Keep supporting Clean
 [12] Elections.' Paid for by the Clean Elections
 [13] Institute, Inc."
 [14] Do you believe the airing of this ad –
 [15] and assume for the moment that it falls within the
 [16] 60-day period prior to a general election or a
 [17] primary in which Senator McCain was running –
 would

[18] give rise to an appearance of corruption?

[19] A Well, I think that it would be
 [20] electioneering.

[21] Q Well, I understand that it falls within
 [22] the statute's definition of electioneering

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[1] communication if it falls within that time frame.
 [2] But that is not my question. My question is whether
 [3] it would give rise to an appearance of corruption.

[4] A The ad itself?

[5] Q Yes, sir.

[6] A No, I don't think the ad itself does. But
 [7] I think that this ad should be paid for through hard
 [8] dollars under the FEC. I think this is a political
 [9] ad. If in fact John McCain is a candidate, I think
 [10] the system would be better served, rather than have
 [11] the Clean Elections Institute, Inc. pay for it, that
 [12] it should be paid for with hard dollars.

[13] Q And why is that, sir?

[14] A Because I don't know where Clean Elections
 [15] Institute, Inc. got their money, and probably the
 [16] Federal Election Commission doesn't know. I think
 [17] the system is better served if hard money is used
 [18] for this ad.

[19] Q Any other reasons than the ones you have
 [20] just identified for funding this with hard money
 [21] rather than soft money?

[22] A I think I have probably stated the best

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[1] reasons.

[2] Q But are there any other reasons you can
 [3] think of?

[4] A Why it should be funded with – well,

[5] because it could influence the election. It is a
 [6] positive ad. It is not a negative ad. It is a
 [7] positive ad. But I think that the system would be
 [8] better served if the ad were paid for in hard
 [9] dollars.

[10] Q Right. You have stated that.

[11] A Plus, I don't know who Clean Elections
 [12] Institute, Inc. are. But they might try to pressure
 [13] Senator McCain to be for clean elections and for
 [14] campaign finance reform.

[15] Q Well, I mean, he is well known as a
 [16] champion of that cause. Would there be -

[17] A That's probably why they used him in the
 [18] ad.

[19] Q So would there be an appearance of
 [20] corruption, in your opinion, if the citizenry might
 [21] think that John McCain was being for campaign
 [22] finance just because he appears in this ad paid for

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[1] by Clean Elections, Inc.?

[2] A I think that the system is better served
 [3] by 60 days before an election, when a candidate's
 [4] name is mentioned or his picture is in an ad, that
 [5] those ads be paid for through hard dollars and not
 [6] soft dollars. I don't know where the dollars came
 [7] from the Clean Elections Institute. They may well
 [8] be all small contributions that could be listed.
 [9] There's a way to run that ad that's
 [10] consistent with what my general beliefs are about
 [11] ads that run 60 days before an election. I would
 [12] like to see ads like that paid for with hard
 [13] dollars.

[14] Q Beyond the reasons that you have already
 [15] stated on the record, are there any other reasons
 [16] that you think this ad should be paid for with hard
 [17] money rather than soft money?

[18] A None that come to me right this second.

[19] Q And do you think this ad was urging voters
 [20] to vote for a particular candidate?

[21] A If John McCain was running in a federal
 [22] election in Arizona and this ad ran in Arizona, I

Page 78

[1] believe that it would be advocating his election.

[2] MR. THOMPSON: Off the record for a
 [3] minute.

[4] (Discussion off the record.)

[5] MR. THOMPSON: At this point, I would like
 [6] to have marked as Meehan Exhibit 5 a document that
 [7] bears the Bates number BRE 023404.

[8] (Meehan Exhibit 5 identified.)

[9] BY MR. THOMPSON:

[10] Q This ad is entitled "Michigan Proposition
 [11] 1, Yes McCain Common Sense Reform," and it reads:
 [12] "McCain: 'Michigan knows me as a fighter for
 common

[13] sense reform. Education reform that results in
 [14] improved performance of our children is at the top
 [15] of my list, which is why I support Proposal 1.
 [16] Proposal 1 will initiate regular teacher testing and

[17] protect public school funding. And it gives choice
 [18] to parents of kids trapped in failing schools.
 [19] Proposal 1 is vital reform for our kids. You are
 [20] the one who can put kids first. Vote yes on
 [21] Proposal 1."

[22] Assume for the moment, sir, that this ad

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[1] was run within 30 days prior to Senator McCain's run
 [2] for president in 2000 and the primary in Michigan
 [3] that occurred in that year. Do you believe that
 [4] this ad was intended to urge voters to vote on Prop
 [5] 1 or to vote John McCain?

[6] A Well, I can tell you that if John McCain
 [7] was running 30 days before this ad ran, this ad
 [8] would clearly help John McCain in the election. But
 [9] I would also say that it is also urging a yes vote
 [10] on Proposal 1. So I would say that it would do
 [11] both, it would advocate both, vote yes for John
 [12] McCain and a yes vote on Proposal 1.

[13] Q Do you think this ad, if it was run within
 [14] the 30 days prior to the Michigan primary, would
 [15] give rise to an appearance of corruption?

[16] A The ad itself?

[17] Q Yes, sir.

[18] A I don't know what Proposal 1 is all about.
 [19] But my guess would be no. However, I don't know
 [20] where the money came from to run this ad. I don't
 [21] know whether there are unlimited amounts of money
 [22] that were used, and I don't know who raised the

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[1] money to run this ad. And as a voter in Michigan, I
 [2] think the people in Michigan would have a right to
 [3] know who paid for the ad.

[4] Q Why does it matter whether the source of
 [5] funding is disclosed?

[6] A Because I think the public has a right to
 [7] know who funds advertisements that are run 60 days
 [8] before an election. I also believe that the money
 [9] that's used to fund those advertisements shouldn't
 [10] be unregulated, unlimited soft money donations but,
 [11] rather, should be hard dollar limited contributions
 [12] that are less likely to create the appearance of
 [13] corruption.

[14] MR. HORTIS: Excuse me. The Congressman
 [15] has a vote.

[16] (Discussion off the record.)

[17] BY MR. THOMPSON:

[18] Q Congressman, I would like to ask you a
 [19] hypothetical question. Let's say the Sierra Club
 [20] sets out to raise two pots of money. For one pot of
 [21] money, they go and they get an additional million
 [22] members and they charge them each \$10 a piece to

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[1] join the Sierra Club. So they have a pot of
 [2] \$10 million that the Sierra Club, Inc. has raised.
 [3] And then a second pot of money, their PAC goes out
 [4] to their members and raises a million contributions
 [5] each of \$10 a piece.
 [6] So they have two pools or pots of

[7] \$10 million. The PAC has 10 million and the
 [8] corporate treasury has 10 million. Let's say they
 [9] run the identical ad campaign, same ads, same
 [10] timing, same words.
 [11] Is it your opinion that there is a
 [12] difference in the appearance of corruption
 [13] attributable to these two forms of speech?
 [14] A Well, the \$10 million that they have
 [15] raised that they incorporated, that is, the
 [16] corporation were to spend, it is illegal for
 [17] corporations to spend money on political
 [18] advertising.
 [19] Now, granted, there's a loophole that has
 [20] grown in the law over the last decade or more, where
 [21] corporations spend millions of dollars on ads that
 [22] don't have the magic words "vote for/vote against."

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[1] But I believe that the system is better served if
 [2] the ads that are run, in this hypothetical, if the
 [3] ads are paid for by hard money, which would be the
 [4] PAC money, 60 days before an election.
 [5] Now, if the ads didn't mention a federal
 [6] candidate, they could use the corporate money.
 [7] Q Let's say they run one ad, spend
 [8] \$20 million on it, they run it within 60 days of the
 [9] 2004 election cycle or general election and George
 [10] W. Bush, let's say for purposes of the hypothetical,
 [11] is the Republican nominee, and the ad says "George
 [12] W. Bush has had a terrible record on the
 [13] environment, he tried to rape the Alaska National
 [14] Forest."
 [15] Let's say that's the ad, and they run it
 [16] out of these two pots of money. They spend all
 [17] \$20 million on that one ad. Is it your opinion that
 [18] there would be a difference in the appearance of
 [19] corruption attributable to those ad campaigns?
 [20] A It is my opinion that your hypothetical
 [21] could and would never happen, absolutely never
 [22] happen.

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[1] Q I understand.
 [2] A So this is not a real world hypothetical
 [3] because there is just no way that any organization
 [4] would raise \$10 million through their corporate
 [5] money all at - what was the hypothetical, \$10?
 [6] Q Yes, sir.
 [7] A Can you name one example of any entity
 [8] that has done that?
 [9] Q Let's say the NRA. I want to stick to my
 [10] hypothetical. But the NRA obviously gets the vast
 [11] sum of its money from \$35 and \$25-a-year
 [12] membership
 [13] contributions.
 [14] A That's great to hear because they will
 [15] have no problem making that into hard dollar
 [16] contributions and will be able to run the same ads
 [17] they are running now. Only the dollars will be hard
 [18] dollars that will be disclosed and the process will
 [19] be better served.

[19] Q We will get to that in a minute. But
 [20] focusing back on this question and the hypothetical,
 [21] whether it is real world or not, do you have an
 [22] opinion as to whether there's a difference in the

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[1] appearance of corruption as to the speech that's
 [2] funded through the corporate pot of money as
 [3] opposed
 [4] to the PAC pot of money?
 [5] A In the non-real world hypothetical that
 [6] you have given me, I believe that the corporate
 [7] money, the \$10 million in corporate money,
 [8] regardless of how it is raised, would taint the
 [9] election system and the election laws that we have
 [10] in America, because corporate money for politics is
 [11] supposed to be, number one, illegal. Secondly, I
 [12] believe that corporations that expend money, their
 [13] money should be totally disclosed.
 [14] In this hypothetical, I assume the
 [15] corporate money wouldn't be disclosed, would it?
 [16] Q Well, we can do it both ways. Let's say
 [17] it were disclosed, that they disclosed the identity
 [18] of the million new members. Would that then
 [19] eliminate any appearance of corruption, in your
 [20] opinion?
 [21] A I think it would be in the public interest
 [22] to have it disclosed. However, corporations
 [23] spending \$10 million for political advertising, I

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[1] believe that in total when that happens, it does
 [2] have a corrupting influence, and I believe that
 [3] there should be a set of rules for political
 [4] electioneering. I believe there should be a set of
 [5] rules for those ads to be electioneering.
 [6] Q Do you believe that most average viewers
 [7] of TV draw a distinction between ads that are
 [8] identical in every respect except one was paid for
 [9] by a PAC and the other was paid out of corporate
 [10] treasuries?
 [11] MR. MOGILNICKI: Objection; foundation.
 [12] You may answer, if you can.
 [13] THE WITNESS: Well, I think in most
 [14] instances the person watching an ad doesn't have any
 [15] idea of who has paid for it, which is part of the
 [16] problem. Corporations can spend money
 [17] electioneering, and there is no distinction between
 [18] that and the legitimate hard dollars that have been
 [19] raised by candidates in campaigns.
 [20] I believe that that's why so many
 [21] corporations and wealthy individuals have begun over
 [22] the last decade spending more and more money,

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[1] raising more and more money in elections, because it
 [2] is obviously easier to raise million dollar
 [3] contributions than it is to raise thousand dollar
 [4] contributions.
 [5] BY MR. THOMPSON:
 [6] Q Are you finished?
 [7] A Yes.

[8] Q I didn't mean to cut you off.
 [9] Can you explain to me why, in my
 [10] hypothetical of the Sierra Club, if the Sierra Club
 [11] completely discloses the identity of the million
 [12] members who contributed to their general corporate
 [13] funds which are used for these ads, why there would
 [14] be an appearance of corruption then if you have
 [15] complete disclosure?
 [16] A Actually, if it is disclosed, where the
 [17] money comes from, I think that would serve the
 [18] system much better.
 [19] Q If there were such complete and full
 [20] disclosure, would that eliminate any appearance of
 [21] corruption attributable to the speech in that
 [22] hypothetical?

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[1] A Well, you still would have corporate money
 [2] being used, which opens up a huge opportunity, it
 [3] seems to me, for abuse. But I'm for disclosure.
 [4] I'm for disclosure of groups who spend money on
 [5] politics. And I think to the extent that there is
 [6] disclosure, that the system is better served. Does
 [7] it eliminate any possibility of the appearance of
 [8] corruption? I don't know that you ever eliminate
 [9] any possibility of the appearance of corruption, but
 [10] I think the system is better served with that
 [11] disclosure.

[12] Q Now, why do you think it is necessary for
 [13] - let's take the NRA as an example. Let's say it
 [14] funds its ads that it uses corporate moneys for
 [15] overwhelmingly with membership contributions from
 [16] average citizens of limited means. Why do you think
 [17] it is important that those citizens' identity be
 [18] disclosed?

[19] A Well, number one, the person may join the
 [20] NRA not because they want to make a political
 [21] contribution in a campaign but, rather, because they
 [22] want to enjoy the benefits of membership, the

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[1] benefits of knowing where the sports clubs are in
 [2] their area, the benefits of getting publications,
 [3] magazines, other benefits other than the desire to
 [4] have their membership dues go for politics.
 [5] If in fact the NRA has members,
 [6] small-dollar contributors who want their money to go
 [7] for politics, then they could ask them if they want
 [8] their money to go for politics.
 [9] It is similar to a labor union and union
 [10] treasury dues money. I don't think that union
 [11] treasury dues money that isn't intended for politics
 [12] should be used for politics. I think that there
 [13] should be a system by which people would make
 [14] contributions to a PAC for politics.

[15] Q But that, with all respect, doesn't answer
 [16] the question as to why you should disclose the
 [17] identity of those NRA members who do want their
 [18] membership contributions to go to fund political
 [19] speech.

[20] A So this is a hypothetical where the people

[21] who are making the contributions to the NRA want
 [22] those contributions to go to influence an election

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[1] for pro-NRA members? Is that what your
 hypothetical

[2] is?
 [3] Q The hypothetical would include that, would
 [4] basically be that the members want to promote the
 [5] Second Amendment, and they are giving their
 [6] discretion to the leadership of the NRA to spend the
 [7] money in whatever way is necessary to promote the
 [8] Second Amendment. If that's gun safety, that's
 [9] fine. If it is political speech to stop an
 [10] anti-Second Amendment candidate, that's fine too.

[11] A Well, there's a distinction between
 [12] political speech, political electioneering and
 [13] talking about gun safety or, for that matter,
 [14] talking about the Second Amendment rights.
 [15] Certainly the NRA could use any of their
 [16] moneys from membership to run advertisements
 [17] promoting Second Amendment rights, and they
 [18] would be
 [19] able to do that. They can do it now. They could do
 [20] it after the bill passed.
 [21] It is only when advertisements are 60 days
 [22] before an election that specifically mention a
 federal candidate in his or her home district or

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[1] home state when disclosure then becomes necessary.
 [2] It becomes necessary, in my view, because I believe
 [3] the public has a right to know who is paying for
 [4] political advertisements meant to influence an
 [5] election.
 [6] But, again, if the NRA wants to run
 [7] advertisements promoting gun safety or promoting
 the
 [8] Second Amendment rights, they have a right to do
 [9] that in advertisements or in any other form that
 [10] they want 365 days a year.

[11] MR. THOMPSON: I would like at this point
 [12] to mark as the next exhibit, Meehan 6, a CD-ROM
 that

[13] bears the Bates number NRA 11365.
 [14] (Meehan Exhibit 6 identified.)

[15] MR. MOGILNICKI: Is this a document that
 [16] was produced to Defendants in this case?

[17] MR. THOMPSON: I believe it has been. A
 [18] CD was produced to you all. I think it was on
 [19] September 16th. I think there were 83 ads on that
 [20] CD. There may have been three or four ads - we
 [21] gave you an index of those ads too. The index was
 [22] correct.

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[1] There may have been three or four ads from
 [2] the list of 83 that was on our index of September
 [3] 16th that were burned improperly on here. I think
 [4] that's been amended. This CD either was produced
 on
 [5] September 16th or an amended version of it was

(6) produced today or was produced yesterday.
 (7) But the bottom line is we have given you
 (8) an index of all the ads on the CD that we intend to
 (9) produce, and there were three or four ads, it is my
 (10) understanding, that were improperly burned. We
 have

(11) tried to correct that and get all the ads instead of
 (12) just the 80.

(13) MR. MOGILNICKI: Why don't I just reserve
 (14) our right to object to this exhibit to the extent it
 (15) is not a document that has been previously produced
 (16) to us.

(17) BY MR. THOMPSON:

(18) Q Okay. I'm going to try to do this. I
 (19) apologize for my technical limitations here. Let me
 (20) try to queue this ad up. I will bring it around to
 (21) you, Congressman, here.

(22) A Is this going to be a political ad?

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(1) Q That may be one of the questions that we
 (2) ask you.

(3) I will represent to you that this was an
 (4) ad that was run within 30 days prior to a primary
 (5) that was recently held in the state.

(6) A Does it mention a federal candidate?

(7) Q Yes, sir.

(8) A It is a political ad then. But I will
 (9) look at it, just the same.

(10) (Whereupon, the video was replayed.)

(11) MR. MOGILNICKI: I will have to object to
 (12) questions about this ad. Counsel had an
 (13) understanding that the present election, the 2002
 (14) election, was not going to be discussed in these
 (15) depositions, and discovery has been cut off so as to
 (16) eliminate any discussion of the 2002 election. To
 (17) the extent this is from the 2002 election, I think
 (18) it is on the wrong side of the line that counsel has
 (19) agreed to.

(20) MR. THOMPSON: We identified this ad on
 (21) September 16th. We made you aware of it at that
 (22) time. We have agreed not to put into evidence any

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(1) NRA ads from 2002, but I'm not aware of any
 (2) agreement of any sort where the NRA has agreed not
 (3) to use 2002 ads run by others, let alone 2002 ads
 (4) attacking the NRA. What is the source of your
 (5) understanding that there is such an agreement by the
 (6) NRA?

(7) MR. MOGILNICKI: It is my understanding
 (8) that all the parties had agreed that it made sense
 (9) to exclude the current election cycle from the
 (10) depositions and from the requirements of the
 (11) production of evidence.

(12) MR. THOMPSON: That's not our
 (13) understanding.

(14) BY MR. THOMPSON:

(15) Q Now that you have heard this objection,
 (16) would you like to see it again? Actually, let me
 (17) give you what is a printout of the ad so you can see

(18) the text again.

(19) We will mark this as Meehan Exhibit 7.

(20) (Meehan Exhibit 7 identified.)

(21) BY MR. THOMPSON:

(22) Q It is the second page, sir, of what has

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(1) been marked as Meehan Exhibit 7. For the record, it
 (2) is a Mark Shriver ad run 30 days before the 2002
 (3) primary.

(4) It says: "I stood up on the floor of the
 (5) House of Delegates this year and defeated a piece of
 (6) legislation backed by the NRA that would have
 (7) allowed convicted felons to own handguns. That's
 (8) bad public policy. We shouldn't allow people who
 (9) are convicted of domestic violence to own a handgun.
 (10) We need trigger locks on our handguns, we need to
 (11) eliminate the gun show loophole, we need to make
 gun

(12) licensing the law of the land. So I welcome the
 (13) fight from the NRA because nothing would give me
 (14) more pleasure than defeating the NRA."

(15) A "Audience applauds."

(16) Q "Audience applauds."

(17) I would also like to mark for you at this
 (18) time as Meehan Exhibit 8 a document that bears the
 (19) Bates number NRA 09577.

(20) (Meehan Exhibit 8 identified.)

(21) BY MR. THOMPSON:

(22) Q This ad was sponsored by Mr. Shriver's

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(1) opponent, Chris Van Hollen, and it says, "The
 (2) Washington Post called Chris Van Hollen 'one of
 (3) Maryland's best legislator's.' The Baltimore Sun
 (4) called him a 'rising star, one of the Senate's most
 (5) effective advocates.' Time Magazine called him 'a
 (6) hero to environmentalists, education groups, and gun
 (7) control advocates.' He wrote the plan that will
 (8) bring an additional 130 million per year to our
 (9) schools, authored laws that protect the Chesapeake
 (10) Bay and took on the NRA and passed the nation's
 (11) first trigger lock law. Chris Van Hollen, a
 (12) Congressman for people who care about issues."
 (13) As to these two, I'm going to represent to
 (14) you, sir, that the NRA did not have a preference as
 (15) to which of these two candidates won that election.
 (16) But do you think there would have been an
 appearance

(17) of corruption if the NRA had aired an ad that had
 (18) clarified its position on the issue identified in
 (19) the Shriver ad and if it just said something like
 (20) "why is Mark Shriver lying about the NRA's record
 (21) and position on violent felons having firearms?"
 (22) What would be corrupt about the NRA or

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(1) would have the appearance of corruption if the NRA
 (2) were to respond in such a fashion to the Shriver ad?

(3) A Well, first of all, I think we can assume
 (4) the NRA would probably be opposed to the election
 of

[5] either candidate.
 [6] Q Right.
 [7] A Number one. Secondly, we also, I think,
 [8] could agree that the NRA was not a federal candidate
 [9] or is not a federal candidate in the election that
 [10] is to be held in 2002.
 [11] That having been said, the NRA would
 [12] certainly be free to run an ad and use hard dollars
 [13] and disclose hard dollars to the public to respond
 [14] to this in any way, shape or manner that they would
 [15] want to even though they are not a federal candidate
 [16] in the 2002 election.
 [17] Q The NRA doesn't get hard money. It is its
 [18] Political Victory Fund PAC. I will represent to you
 [19] that the name of its PAC is the Political Victory
 [20] Fund. Is it your understanding that corporations
 [21] don't have hard money; their PACs do. Is that
 [22] right?

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[1] MR. MOGILNICKI: Objection; calls for a
 [2] legal conclusion.
 [3] THE WITNESS: I'm not sure how the NRA
 [4] pays for their advertisements, nor am I sure how
 [5] much corporate money, if any, that they take from
 [6] people. I certainly can't - I don't know how much
 [7] money the NRA takes and from whom they take it
 from.
 [8] BY MR. THOMPSON:
 [9] Q I thought I had understood your response
 [10] to be that the NRA could use hard money to respond
 [11] to this Shriver ad. But isn't it true that the NRA
 [12] as a corporation, as distinct from its PAC, doesn't
 [13] get hard money?
 [14] MR. MOGILNICKI: Objection; foundation,
 [15] calls for speculation.
 [16] THE WITNESS: I don't know how I could
 [17] respond to that. I'm simply stating that it appears
 [18] from your line of questioning that the NRA is upset
 [19] with these two ads. And if the NRA wanted to
 [20] respond - this was a primary campaign?
 [21] BY MR. THOMPSON:
 [22] Q That's right. It was 30 days before the

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[1] primary.
 [2] A Is the NRA going to spend any money in the
 [3] general?
 [4] Q I don't have to answer the questions here
 [5] today.
 [6] A But my guess is the NRA will have their
 [7] opportunity in the general election to support the
 [8] candidate who they want to support and will get back
 [9] at either one of these two candidates in the form of
 [10] advertisements, and it is my position that when they
 [11] do, with seven weeks away now from the election, but
 [12] when they do, that when they attack, in this case, I
 [13] guess the Democratic candidate, that the public
 [14] interest is served if they disclose if they use hard
 [15] money and have their PAC run the ads.
 [16] Q Well, I'm going to represent to you that

[17] the NRA as a corporation, as I understand it, does
 [18] not take in hard money. It is its PAC, the NRA
 [19] Political Victory Fund, that takes in the hard
 [20] money.
 [21] This ad by Mr. Shriver doesn't mention the
 [22] Political Victory Fund. It mentions the NRA. Why

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[1] should the Political Victory Fund have to spend
 [2] money defending the NRA, especially when the
 money
 [3] has been given to the PAC to influence a federal
 [4] election and the NRA doesn't care which of these two
 [5] candidates wins?
 [6] MR. MOGILNICKI: Objection; foundation,
 [7] compound, calls for speculation.
 [8] THE WITNESS: As I understand your
 [9] question, your question is why should the NRA
 [10] Victory PAC have to spend money defending the
 NRA?
 [11] BY MR. THOMPSON:
 [12] Q Yes.
 [13] A Is that -
 [14] Q Yes, especially -
 [15] A The NRA isn't a candidate in a federal
 [16] election, number one. Secondly, the primary
 [17] motivation for the NRA running their ads over the
 [18] next seven weeks will be to influence the election
 [19] taking place in that particular district, because
 [20] they are going to mention a federal candidate and
 [21] presumably there will be attack ads against a
 [22] federal candidate. Those ads should be paid for by

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[1] the PAC, in my view. I don't think corporate money
 [2] should be used.
 [3] The primary motivation for the NRA to be
 [4] running these ads will be the election of a federal
 [5] candidate for office or the defeat of a federal
 [6] candidate for office.
 [7] Q Let's say the ad that the NRA runs in
 [8] response to this reads or states simply, "the NRA
 [9] wishes to clarify the record. In contrast to the
 [10] statements made by Mr. Shriver, the NRA has not
 [11] supported the right of domestic abusers to own a
 [12] handgun." How does that give rise to an appearance
 [13] of corruption, that sort of response?
 [14] A Well, they could run that because
 [15] Mr. Shriver will not be a candidate in a federal
 [16] election. So the NRA would be free to do that.
 [17] My guess is that the NRA will not be
 [18] running an ad to clear the record vis-a-vis what
 [19] Mr. Shriver said, though they would be free to do
 [20] that and use any money that they wanted to. So I
 [21] would urge the NRA to spend as much money as they
 [22] want saying that Mr. Shriver was wrong in this

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[1] advertisement.
 [2] The problem, however, comes in if they
 [3] decide to run ads with this corporate money against
 [4] Mr. Van Hollen, who, in fact, it is my understanding

[5] is on the ballot. But I think if the NRA decided to
 [6] spend money mentioning Mr. Shriver, they would be
 [7] free to do it at any time that they want.
 [8] My guess is that the NRA wouldn't spend
 [9] money correcting the record vis-a-vis what
 [10] Mr. Shriver said because they are not interested in
 [11] correcting the record with Mr. Shriver. They are
 [12] interested in influencing who gets elected at
 [13] Congress from that particular district.

[14] Q Let's say the NRA had wanted to respond to
 [15] this prior to the primary and in a contemporaneous
 [16] fashion. Why would there be an appearance of
 [17] corruption with respect to such a communication by
 [18] the NRA in that instance?

[19] A Because the money wouldn't have come
 from
 [20] the Political Victory Fund that the NRA had set up
 [21] to influence political elections.

[22] Q Is that the only reason?

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[1] A Oh, that's a primary reason.

[2] Q Any other reasons you can think of?

[3] A Right now that's the primary reason I can
 [4] think of.

[5] Q That's the only reason you can think of
 [6] right now?

[7] A Well, give me a few minutes. What was the
 [8] question again?

[9] Q I was asking why there would be an
 [10] appearance of corruption if the NRA spent its
 [11] corporate dollars to respond to the Shriver ad in
 [12] the manner I outlined prior to the holding of the
 [13] primary.

[14] A Because when corporate money is used by
 [15] the NRA and other groups in elections across the
 [16] country, the public doesn't know who paid for the
 [17] ads, who funded the ads. The ads are really meant
 [18] to be political discourse or they are meant to
 [19] influence an election, and the public ought to be
 [20] able to know who funds those ads.

[21] When you have a system where groups can
 [22] spend unlimited amounts of money, corporate groups

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[1] can spend unlimited amounts of money to influence
 an

[2] election and not have the public know where the
 [3] money comes from, I think that that opens itself up
 [4] for at least the appearance of corruption.

[5] Q If Mr. Shriver could use his personal
 [6] wealth – and let's say hypothetically he has
 [7] substantial personal wealth to attack the NRA – why
 [8] can't the NRA respond with unregulated soft money
 as
 [9] well?

[10] A I don't think we have established in any
 [11] way, shape or manner where the money for this ad
 [12] came from.

[13] Q I'm saying hypothetically. Why shouldn't
 [14] the same rules apply to the NRA? If it is being

[15] attacked by a wealthy candidate who is using
 [16] unlimited personal resources to attack the NRA, why
 [17] shouldn't it be able to use soft money to fight
 [18] back?

[19] A Because corporate money since 1906 has
 [20] been illegal to be spent on politics. I believe
 [21] that the system is better if there is full
 [22] disclosure. A wealthy individual who spends money,

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[1] I still believe that should be disclosed. But under
 [2] the Constitution, there is a right of an individual
 [3] to spend money, an unlimited amount.

[4] Q Let's say there is full disclosure by the
 [5] NRA of where it is getting its soft money from. Why
 [6] shouldn't it be permitted to respond to the attacks
 [7] by a wealthy candidate using his own unlimited soft
 [8] money resources? Is there any reason other than the
 [9] historical fact that you have referenced?

[10] MR. MOGILNICKI: Objection. That's a
 [11] compound question, no foundation, calls for
 [12] speculation. You asked two questions. Why don't we
 [13] start with one.

[14] MR. THOMPSON: Fine. Let's start with the
 [15] first one.

[16] BY MR. THOMPSON:

[17] Q Is there any reason why the NRA should not
 [18] be permitted to respond to an attack funded by a
 [19] candidate's unlimited resources with soft money of
 [20] its own, other than disclosure?

[21] A I don't believe that corporate money
 [22] should be used for electioneering either, because I

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[1] don't believe that the NRA has any interest in
 [2] responding to this ad. The NRA does have an
 [3] interest in who is elected to Congress from this
 [4] particular district, and the NRA presumably will
 [5] spend a significant amount of money to defeat the
 [6] candidate who won the primary.

[7] Now, I believe that the system is better
 [8] served – the reason why it has the appearance of
 [9] corruption is because of the enormous influence that
 [10] the NRA has in passing legislation not only in the
 [11] Congress but in many legislatures throughout the
 [12] country.

[13] What I think should happen is I think the
 [14] NRA should use money that people intend when they
 [15] contribute to have the money go for politics. And
 [16] that's an important component, that people intend
 [17] the money to go for politics if they are making a
 [18] contribution and not for membership in the NRA.
 [19] I know many members of the NRA who want
 [20] their membership dues to go to their membership.
 [21] But I think it is their right, if the NRA is going
 [22] to engage in electioneering, I think those

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[1] individuals have a right to have that be separate.

[2] Q Any other reasons why corporate money
 [3] shouldn't be used to respond to an ad like the
 [4] Shriver one other than the ones you have already

[5] identified?

[6] A Well, because when unlimited corporate
[7] money continues to grow in American politics, it
[8] has, in my view, a corrupting influence over
[9] legislation before the Congress. To the extent that
[10] we can eliminate corporate money in American
[11] politics and have contributions, hard dollar
[12] contributions where people intend for the money to
[13] go to politics, I think that better serves the
[14] system.

[15] I don't know how many more examples you
[16] need of millions of dollars going from corporations
[17] to politics where it has had a corrupting influence,
[18] but let me give you another one. Enron contributed
[19] \$4 million since 1995 to the political parties. And
[20] it seemed that every time there was - well, in the
[21] House tax bill, Enron got a proposed tax cut of
[22] about \$250 million.

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[1] There are all kinds of examples where I
[2] don't think it is good for the system to have
[3] unlimited corporate money being spent on politics.
[4] And I don't believe that the NRA is really
[5] interested in defending themselves as an
[6] organization 60 days before this election. I think
[7] 60 days before the election, they are interested in
[8] determining who the member of Congress is from
[9] that district.

[10] Q You said that the NRA has enormous
[11] influence. Do you believe that that influence is
[12] attributable to its ability to mobilize millions of
[13] like-minded voters or is it because of its issue
[14] ads?

[15] A Both.

[16] Q And what is your basis for that statement?

[17] A My basis is because I think a lot of
[18] people that are members of the NRA, while they
[19] don't agree with every position, political position the
[20] NRA takes, that NRA membership is influential, and,
[21] secondly, the sham issue ads that the NRA runs 60
[22] days before an election influence elections all

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[1] across this country.
[2] I would offer the defeat of former
[3] Congressman Mike Synar from Oklahoma as an
[4] example,
[5] where I think the NRA was successful at defeating a
[6] very good member of Congress, and the public had no
[7] right to know where that money came from, the
[8] public
[9] had no right to know whether it was large dollar
[10] contributions or small dollar contributions.
[11] At the end of the day, I think the public
[12] is better served when they have that disclosure and
[13] when the contributions are small dollar
[14] contributions.

[15] Q Just returning to the Shriver ad for

[14] another moment. Let's say hypothetically that the
[15] NRA did actually want to clear its name. Let's say
[16] hypothetically, sir, that the NRA did want to clear
[17] its name with regard to that. Why shouldn't it be
[18] permitted to use corporate dollars to respond?

[19] MR. MOGILNICKI: Objection; asked and
[20] answered.

[21] THE WITNESS: Haven't I answered that
[22] already?

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[1] BY MR. THOMPSON:

[2] Q Is there anything you want to add to your
[3] prior testimony on your answer?

[4] A Yes. Let me add this. The NRA today
[5] could be running an ad saying that Mark Shriver -
[6] if in fact they feel he misrepresented the NRA's
[7] position, they could be spending as much corporate
[8] money as they wanted in this Congressional district
[9] today laying out the NRA's position vis-a-vis Mark
[10] Shriver's position.

[11] They could spend that money today. There
[12] would be nothing wrong with it. I wouldn't have a
[13] problem with it. They could do it even if the
[14] campaign finance law that we passed was in effect
[15] because Mark Shriver is not a federal candidate.
[16] And I don't believe there is any way the NRA would
[17] waste corporate dollars or any dollars responding to
[18] Mark Shriver, given the fact that he is not a
[19] candidate for federal election. But they certainly
[20] could if they wanted to.

[21] I think the fact that they won't respond
[22] by spending corporate money to respond to Mark

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[1] Shriver's ad is evidence that they don't really have
[2] an interest in responding to what Mark Shriver said.
[3] They only have an interest in who is going to
[4] eventually get elected to Congress from that
[5] district.

[6] MR. THOMPSON: How much time do you
[7] have

[8] as having expired?

[9] MR. PATTERSON: This session?

[10] MR. THOMPSON: Since we have been going
[11] today.

[12] MR. PATTERSON: Two hours and 20
[13] minutes.

[14] THE WITNESS: I have no objection if you
[15] want to cut it off earlier.

[16] MR. THOMPSON: I didn't think you would.
[17] I would like at this point to show you
[18] another ad that comes from the CD-ROM that has
[19] been

[20] marked as Meehan Exhibit 6. This is an ad that was
[21] run by U.S. Term Limits.

[22] (Whereupon, the video was replayed.)

[1] BY MR. THOMPSON:

[2] Q Do you remember this ad having been run?

[3] A I don't remember it having been run,

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[1] although I have seen the ad before.

[2] Q Did any of your constituents mention the
[3] ad to you?

[4] A There was a newspaper account where there
[5] was a press conference held and they said they were
[6] going to run the ad, and people mentioned the
[7] newspaper article, not the ad itself.

[8] Q And do you wish the ad had not been run?

[9] A No. I was fine that the ad was run.

[10] Q Would it have been fine that the ad was
[11] run if it had been run in the 60 days prior to an
[12] election?

[13] A It would be fine if the ad was run, but
[14] the ad then should have been paid for through hard
[15] dollars.

[16] Q Do you believe that U.S. Term Limits was
[17] attempting to influence your reelection chances by
[18] running that ad?

[19] A Well, they were attempting to get a
[20] candidate to run against me by running that ad. But
[21] 60 days before an election they would be attempting
[22] to influence the election. However, I don't believe

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[1] the ad ran very much, if it did.

[2] Q Is the ad accurate in saying that you had
[3] taken a pledge to serve four terms?

[4] A I don't think the ad accurately reflects
[5] what happened. But it is true that when I first ran
[6] for Congress, I said that I would only serve four
[7] terms. That was my intention, yes.

[8] Q How is the ad inaccurate?

[9] A Why don't you play it for me again.

[10] Q Let me ask you, while I'm queueing this
[11] up, have any other ads been run by a corporation
[12] that mentioned your name that you are aware of?

[13] A Not that I'm aware of. I'm not aware, by
[14] the way, that this ad actually ran in my district.
[15] It may or may not have run. I believe it ran in
[16] Washington, D.C.

[17] Q And then let me ask you, have any ads been
[18] run by corporations mentioning a name of one of
[19] your

[19] opponents? Are you aware of any such ads?

[20] A There may have, but I'm not aware of ads.

[21] Q You are just not sure?

[22] A I'm just not sure.

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[1] (Whereupon, the video was replayed.)

[2] BY MR. THOMPSON:

[3] Q How was that ad inaccurate, if at all?

[4] A It was inaccurate in the sense that as I
[5] entered my fourth term in the Congress, I didn't
[6] unilaterally decide to run again. There were
[7] editorials in newspapers urging me to reconsider.
[8] The Metro West Daily News ran an editorial that said
[9] that Meehan made a mistake and he should
[10] reconsider
[10] because he has been an effective member of
Congress,

[11] and then the Boston Globe ran an editorial saying
[12] that Meehan should reconsider, he has been an
[13] effective member of Congress, and then the Westford
[14] Eagle newspaper and the Chelmsford Independent
[15] newspaper. The Pepperell Times Free Press ran
[16] editorials saying that I should reconsider. And
[17] then the Lowell Sun ran an editorial saying the
[18] people should decide whether I should run or not.
[19] And then I had a series of town meetings
[20] in every section of my district where people came to
[21] the town meetings and overwhelmingly suggested that
[22] the people should decide whether I should run again.

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[1] So I decided to let the people decide. So
[2] I don't think the ad accurately portrays the process
[3] by which the people of my district made it clear
[4] that they thought they should decide who represents
[5] the district and that they should have that
[6] opportunity. So I don't think it accurately
[7] reflects the process by which I decided to run
[8] again. It certainly doesn't accurately represent
[9] the widespread support all over my district from
[10] people saying that they should make that decision.

[11] MR. THOMPSON: At this point I would like
[12] to mark as the next exhibit, Meehan 9, a document
[13] that has the title "Hatch Greatest Generation."

[14] (Meehan Exhibit 9 identified.)

[15] BY MR. THOMPSON:

[16] Q For the record, it reads, "America's
[17] greatest generation. They gave us peace,
[18] prosperity, and a better world. Senator Orrin Hatch
[19] knows they sacrificed for us and he's always
[20] supported them time and again. Now, Medicare
[21] spending for nursing homes is \$15 billion less than
[22] Congress budgeted. America's greatest generation

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[1] needs Orrin Hatch's help again. Senator Hatch is a
[2] leader. Call. Ask him to restore Medicare funding
[3] for nursing home care. Keep the promise."
[4] You should assume for purposes of these
[5] questions that this ad was run in the 60 days prior
[6] to an election in which Senator Hatch was up for
[7] reelection. Do you believe this ad would give rise
[8] to an appearance of corruption?

[9] A I believe this ad is electioneering.

[10] Q Let me ask it this way. Do you think this
[11] ad promotes or supports a candidate?

[12] A I believe it is electioneering because it
[13] mentions a federal candidate 60 days before an
[14] election.

[15] Q It certainly qualifies as an
[16] electioneering communication for that reason. But
[17] my question is a little bit different. Does it
[18] support or promote a candidate, in your opinion?

[19] A If it is run 60 days before an election,
[20] it is meant to influence the election.

[21] Q Does this ad in your opinion urge a voter
[22] to vote for or against Senator Hatch?

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[1] A It calls attention – first of all,
 [2] electioneering doesn't have to call in an ad to vote
 [3] for or against another candidate.
 [4] Q I understand.
 [5] A None of these ads that you are showing me
 [6] urge the public to vote yes or no on a candidate.
 [7] But this is an ad designed to bring attention to
 [8] cuts in Medicare funding for nursing homes, and
 [9] presumably it is meant to bring attention to cuts
 [10] that Senator Hatch voted for.
 [11] Q So you think this is an ad that is
 [12] negative vis-a-vis Senator Hatch? Is that your
 [13] position?
 [14] A Well, again, this didn't run in the
 [15] district where I live or the state that I live.
 [16] Q Yes.
 [17] A So if it ran in Massachusetts and I saw
 [18] the ad, it would be different than running it during
 [19] the middle of a campaign in Senator Hatch's home
 [20] state. But I believe that the ad is meant to
 [21] influence the election.
 [22] Q Let's look at another one, and this one we

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[1] will mark as Exhibit 10, Meehan 10.
 [2] Excuse me. There should not be any
 [3] communication.
 [4] MR. MOGILNICKI: The Congressman may
 [5] confer with counsel.
 [6] MR. THOMPSON: Is this gentleman counsel?
 [7] MR. MOGILNICKI: Yes.
 [8] MR. THOMPSON: If there are going to be
 [9] breaks off the record, there should be breaks off
 [10] the record. But there shouldn't be conversations
 [11] while we are on the record.
 [12] MR. MOGILNICKI: There is no question
 [13] pending.
 [14] MR. THOMPSON: If there are going to be
 [15] conversations between counsel and Mr. Meehan, we
 [16] should go off the record, and that's all I'm saying.
 [17] MR. MOGILNICKI: I don't agree. We are
 [18] not conferring while a question is pending. Counsel
 [19] can have communications with the Congressman
 [20] whenever a question is not pending.
 [21] MR. THOMPSON: You also haven't identified
 [22] for the record here who is a lawyer and who is not.

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[1] THE WITNESS: Do you want us to do that?
 [2] MR. THOMPSON: I think it would be useful,
 [3] as a matter of fact. You are an attorney. You,
 [4] sir, are an attorney?
 [5] MR. SHOR: Yes.
 [6] MR. MOGILNICKI: Everyone here is a
 [7] lawyer.
 [8] THE WITNESS: Did someone look like they
 [9] weren't attorneys here?
 [10] MR. THOMPSON: He is a very precocious
 [11] young man, obviously, to have made it through law
 [12] school.
 [13] THE WITNESS: Harvard Law School.

[14] MR. THOMPSON: Exactly. My alma mater.
 [15] THE WITNESS: What year are these ads? I
 [16] don't know what year they ran. To ask who –
 [17] MR. THOMPSON: Let me show you this next
 [18] one. It was run in the 2000 cycle.
 [19] THE WITNESS: What year was this Hatch ad?
 [20] MR. THOMPSON: I believe it was 2000.
 [21] This next ad was run in 2000. It will be marked as
 [22] Meehan 10.

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[1] (Meehan Exhibit 10 identified.)
 [2] BY MR. THOMPSON:
 [3] Q It states –
 [4] A Could I go back to the Hatch ad?
 [5] Q Yes.
 [6] A This was run in 2000?
 [7] Q I'm not certain of that. I have asked you
 [8] for purposes of these questions to assume that the
 [9] ad was run in the 60 days prior to his standing
 [10] for election.
 [11] A That's the problem with the way you ask
 [12] the questions. To determine whether an
 [13] advertisement, a television advertisement is meant
 [14] to influence the election and who it is meant to
 [15] influence, without seeing a copy of the ad, without
 [16] knowing what year the ad ran, without being from the
 [17] state of the candidate is difficult.
 [18] Just for the record, Exhibit 9, I see that
 [19] there are different photographs here, which I assume
 [20] are part of the 30-second television ad. I can't
 [21] make out what is in any of these photographs. I can
 [22] barely read the text. I don't know what year this

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[1] was in. So it is very difficult to make a judgment
 [2] about the ad based on how difficult it is to read
 [3] it.
 [4] Q For the record, this is the state in which
 [5] it was produced by your counsel to us. So we
 [6] regret –
 [7] A It doesn't matter to me who produced this.
 [8] What I'm saying, for the record, that to try to
 [9] decipher and read and get a feel for what this ad is
 [10] meant to influence is difficult without knowing the
 [11] year of the election, without knowing, for example,
 [12] whether Senator Hatch was restoring Medicare
 [13] funding
 [14] for nursing homes. He may have been able to get
 [15] some funding for nursing homes. This could easily
 [16] be a pro-Hatch ad meant to influence the election.
 [17] It is very difficult for somebody who
 [18] lives in Massachusetts to be given a piece of paper
 [19] that you can barely read what the intent of the ad
 [20] is and then to ask who it is meant to influence.
 [21] We can continue to do this. It is fine.
 [22] I want the record to note that I can't make out any
 of the photographs in any of these ads, and you are

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[1] asking me to make a judgment of what the ad is
 [2] intending to influence.

[3] Q Assume for all of my questions that these
[4] are radio ads, so you just have the text. And the
[5] text is clear on all of them. I have read them into
[6] the record.

[7] A But the reality is they are not radio ads.

[8] Q I'm allowed to ask hypothetical questions,
[9] sir. So -

[10] A But I want the record to show that you are
[11] now saying ignore all of the photographs that are in
[12] these ads that have been run, apparently, in
[13] elections over the last 10 years, and you are asking
[14] me to determine who they were meant for, what the
[15] intent of the ads were.
[16] But you are basically now changing the
[17] hypothetical and saying even though they are
[18] television advertisements, pretend that they are
[19] radio advertisements, and then tell me who you think
[20] they were intended to influence.
[21] So I want the record to reflect that
[22] that's now what you are asking me to do.

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[1] Q We will do it both ways with Meehan 10.

[2] MR. MOGILNICKI: Before there's a question
[3] pending, there is a vote. I didn't want him to have
[4] to leave while there is a question pending. Would
[5] it be all right to break now?

[6] MR. THOMPSON: Fine.

[7] MR. CARVIN: I have a procedural question
[8] on this, and I just didn't know what your plans were
[9] for lunch. We can go off the record.

[10] (Discussion off the record.)

[11] (Recess.)

[12] BY MR. THOMPSON:

[13] Q Congressman, just to follow up on the last
[14] exchange we had, is it your opinion that in order to
[15] answer the types of questions I have asked you about
[16] the ads today, you would need to see the actual
[17] video itself as well as have the other information
[18] that you identified?

[19] A I was simply pointing out that when one
[20] asks one's opinion of a political advertisement that
[21] is actually a television video and then I get seven
[22] black screens with some words underneath it,

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[1] sometimes it doesn't have the same effect as it
[2] would if I were sitting at home at halftime of the
[3] Patriots and Chargers game watching television. It
[4] doesn't have quite the same impact.
[5] It would be highly unlikely someone would
[6] run such an ad for a Senate race in Utah in
[7] Massachusetts. So I was simply pointing out that it
[8] is difficult to make those types of judgments
[9] without actually seeing the ad, knowing what year
[10] the ad ran, knowing what state the race was in and
[11] what the issues were at the time.
[12] However, I do have my reading glasses with
[13] me, and hopefully I will be able to see some of
[14] these very difficult-to-read faxed copies. At least
[15] I can read the words.

[16] Q Okay. Let's pick up with what has been
[17] marked as Meehan Exhibit 10, which reads, "There's a
[18] nursing home crisis in America. Despite record
[19] budget surpluses, Medicare has been cut by billions.
[20] Seniors' access to quality nursing home care
[21] threatened. 'Caring for the elderly, it becomes
[22] your life. But with Medicare cuts my job is much

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[1] harder.' Call. Tell Al Gore to fight to restore
[2] the Medicare cuts. Keep the promise. 'Help me help
[3] those who need it the most.'"

[4] This was run in 2000, and assume that it
[5] was run in the 60 days prior to the general
[6] election. And my question to you is do you believe
[7] that this ad was intended to promote the candidacy
[8] of Al Gore?

[9] (Witness examined the document.)

[10] A Probably.

[11] Q Now, let me just move on, because my time
[12] is growing short. Have any of your constituents
[13] complained to you about the volume of political ads
[14] that is visited upon them?

[15] A Some, yes.

[16] Q And do you share the concern that there is
[17] such a cacophony of negative political ads that it
[18] is hard sometimes for candidates to get their
[19] message out?

[20] A I'm of the opinion that 30-second
[21] television spots are not the best way to make
[22] substantive decisions about policy, about candidates

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[1] we elect, candidates for federal office. I don't
[2] think it is the best way to have a substantive
[3] intelligent dialogue about a campaign, anyway.
[4] However, the trend over the last two
[5] decades has been that television ads determine who
[6] wins and loses elections. So what I would like in
[7] terms of a dialogue and what the reality is I
[8] suppose are two different things.

[9] Q Let me ask you, do you -

[10] A I would like to see fewer negative ads,
[11] certainly.

[12] Q Do you think BCRA will help ameliorate
[13] that situation?

[14] A I believe that -

[15] MR. MOGILNICKI: I will object. I don't
[16] understand what you mean by "that situation." Would
[17] you clarify?

[18] MR. THOMPSON: Yes.

[19] Read the last answer back.

[20] (The reporter read the record as requested.)

[21] BY MR. THOMPSON:

[22] Q Do you think BCRA will result in fewer

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[1] negative ads?

[2] A I have no idea. My guess would be there
[3] may be fewer advertisements, but that is not the
[4] primary focus of the Campaign Finance Reform Act
[5] that we passed. The primary focus of the campaign

[6] finance reform that we passed was to try to get the
[7] soft money, the \$500 million in 2000 election soft
[8] money out of the system, because it is raised by
[9] federal officials and the amounts of money that can
[10] be contributed are unlimited.

[11] For me to guess about whether there would
[12] be more or less negative ads, whether people would
[13] run black or white ads or color ads, whether people
[14] would run more radio ads, more 60-second ads is a
[15] guess. I don't really know what kind of ads people
[16] will run as a result of campaign finance reform
[17] passing.

[18] I do know this. There won't be any soft
[19] money ads. The \$500 million that was contributed in
[20] unlimited amounts by corporations, wealthy
[21] individuals, labor unions, those ads wouldn't appear
[22] unless they were paid for with hard dollar

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[1] contributions.

[2] MR. THOMPSON: At this point, I would like
[3] to ask the court reporter to mark as Meehan
[4] Exhibit 11 a document that bears the Bates number
[5] NRA 11324.

[6] (Meehan Exhibit 11 identified.)

[7] BY MR. THOMPSON:

[8] Q Sir, I will represent to you that this is
[9] a page from the Detroit Free Press from October 4,
[10] 2000. Senator Abraham, as I'm sure you are aware,
[11] was locked in a tight re-election campaign against
[12] then-Representative Stabenou.
[13] This ad, as you can see from the bottom,
[14] is sponsored by the U.S. Chamber of Commerce, The
[15] Business Roundtable and various other business
[16] interests that are identified. It starts by
[17] reading, "Thanks, Senator Abraham, for supporting a
[18] patients' bill of rights that's right for Michigan."
[19] And then it has some other text, and at the bottom
[20] it says, "Thanks, Senator Abraham, for working for
[21] the right health care reforms."
[22] Do you think this type of newspaper

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[1] advertisement gives rise to an appearance of
[2] corruption?

[3] A Who paid for the ad?

[4] Q The Chamber of Commerce, The Business
[5] Roundtable and the other business entities listed on
[6] the bottom, out of corporate funds.

[7] A Well, I think it is certainly meant to
[8] influence - it appears to be meant to influence the
[9] election.

[10] Q Right, and my question is is there an
[11] appearance of corruption that arises out of this ad,
[12] in your opinion?

[13] A You keep referring to the appearance of
[14] corruption arising out of the ads. My view is that
[15] the appearance of corruption comes from the totality
[16] of the system that allows federal officials to raise
[17] unlimited amounts of money and that allows
[18] increasingly elections in America to be more about

[19] third-party interests and soft money than the
[20] individual moneys the candidates raise to spend on
[21] elections.

[22] So I object to the way you ask the

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[1] question, is this ad corrupting.

[2] Q Let me ask you, do you think there's any
[3] functional difference between this ad appearing in
[4] the Detroit Free Press and the same words that
[5] appear in this ad being read in a radio station in
[6] Detroit at the same time?

[7] A Well, I think if it ran on a radio station
[8] or television station in an electronic media form,
[9] it would be a more effective advertisement and would
[10] be more consistent with advertisements that are used
[11] in Senate races all across America.

[12] Q What is the basis for the first part of
[13] your statement there, that this ad would be more
[14] effective if it were to run on radio as opposed to
[15] print?

[16] A Well, you would have to take the totality
[17] of my statement. In campaigns across America,
[18] increasingly the vast majority of advertising
[19] budgets go to electronic media, television and radio
[20] because there is a sense by those people who run
[21] political campaigns in America that electronic media
[22] is the most effective way to communicate a message

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[1] to voters. That's my opinion.

[2] You must know how much money is spent on
[3] television and radio vis-a-vis how much money is
[4] spent on newspaper advertisement. But my guess
[5] would be, not having any research handy, my guess
[6] would be that the overwhelming majority of campaign
[7] dollars are spent on television and radio rather
[8] than newspaper. I believe the reason for that is
[9] most of the people who have run these campaigns
[10] believe that medium is much more effective.
[11] If you look at the communication budgets
[12] of independent groups that spend money, corporate
[13] money on politics or if you look at the budgets of
[14] the soft money campaigns of either the Democrat or
[15] Republican Party, I think you will find the
[16] overwhelming majority of dollars are spent on
[17] electronic media. In fact, my guess is the NRA
[18] probably spends most of its corporate money or any
[19] money it spends communicating for an election on
[20] television and radio.

[21] Q Do you have any other groups in mind,
[22] outside groups?

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[1] A Any group that spends money trying to
[2] influence an election, my guess would be that those
[3] groups probably spend the money on electronic
[4] media.

[5] Q Since the advent of the Internet over the
[6] last several years, has the way in which information
[7] is disseminated changed, in your opinion?

[7] A It is my opinion that most people are on

[8] the Internet and get information from the Internet.
 [9] Q And so are Web sites an important source
 [10] of information, in your opinion?

[11] A Sure. Many people are reading newspapers
 [12] on the Internet. Some people are watching news
 [13] programs on the Internet today.

[14] Q So you are aware of the fact that some Web
 [15] sites have streaming video?

[16] A Yes.

[17] Q Are you concerned that there might be an
 [18] appearance of corruption to the extent a corporation
 [19] uses corporate funds and puts a streaming video on
 [20] its Web site that references a federal candidate 60
 [21] days prior to a general election?

[22] A Well, obviously the Internet is a

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[1] relatively new information tool in political
 [2] campaigns and is not being used right now
 [3] necessarily to advertise a message to voters. But I
 [4] think as the years go on, we will see development of
 [5] the Internet as a viable, effective means for people
 [6] to communicate. In many respects, people are
 [7] communicating today on the Internet more effectively
 [8] than they did five years ago.

[9] Q If you wanted to learn about, let's say,
 [10] an important cutting-edge environmental issue, would
 [11] you be more likely to go to the Sierra Club Web site
 [12] or to ABCNews.com?

[13] A Well, it depends if ABCNews.com had just
 [14] done a special environmental report, which is why
 [15] someone would probably get on ABC.com if they had
 [16] heard about a special piece.

[17] Q Let's say you didn't know about a special
 [18] piece but you just wanted to know about drilling in
 [19] ANWR, you know that is an important subject and
 [20] you
 [21] just want to learn what you can about what the
 [22] environmental impact might be of the
 [23] administration's proposal for drilling up there.

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[1] I'm just saying, hypothetically, will you be more
 [2] likely to go look at the Sierra Club Web site or one
 [3] of the TV broadcast Web sites?

[4] A I hope people in my district would call my
 [5] office and get the information. But I don't know.
 [6] That's -- I don't know. I'm not going to guess what
 [7] source would be more likely. You mean if I
 [8] personally want to find out information?

[9] Q Yes, sir.

[10] A I would probably call CRS.

[11] Q The Congressional Research Service?

[12] A Yes.

[13] Q And let's say they --

[14] A Very substantive reports, accurate.

[15] Q Let's say they didn't have something on
 [16] the subject that you were interested in. Then what
 [17] would you personally do?

[18] A It's pretty difficult to find a subject
 [19] CRS doesn't have information on. I haven't been to

[20] the Sierra Club's Web page. So it is difficult for
 [21] me to say I would go to that Web site. This is
 [22] guessing. I don't know.

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[1] Q Are you aware of the fact that major TV
 [2] networks are now owned by large conglomerates?

[3] MR. MOGILNICKI: Objection; foundation.

[4] BY MR. THOMPSON:

[5] Q That ABC is owned by Disney? Were you
 [6] aware of that fact?

[7] A Yes. I read that.

[8] Q And you are aware of the fact that NBC is
 [9] owned by GE?

[10] MR. MOGILNICKI: Same objection.

[11] THE WITNESS: I'm aware that there has
 [12] been significant consolidation in media across the
 [13] country with the major networks, yes.

[14] BY MR. THOMPSON:

[15] Q And do you know whether news divisions are
 [16] under increasing pressure to produce profits?

[17] MR. MOGILNICKI: Objection; foundation,
 [18] calls for speculation.

[19] BY MR. THOMPSON:

[20] Q I'm asking if you happen to know.

[21] A No, not to my -- I have no idea.

[22] Q Do you have an opinion as to whether TV

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[1] newscasts in the last 10 years have become more
 [2] concerned about ratings?

[3] MR. MOGILNICKI: Same objections.

[4] THE WITNESS: Gee, somebody told me up in
 [5] Massachusetts they are not rating the television
 [6] news shows anymore. I'm sure ratings might be
 [7] important.

[8] BY MR. THOMPSON:

[9] Q Do you have an opinion as to whether news
 [10] coverage on TV in the last 10 years has become more
 [11] sensational?

[12] MR. MOGILNICKI: Same objections.

[13] THE WITNESS: That would be a subjective
 [14] opinion. I don't know.

[15] BY MR. THOMPSON:

[16] Q That's what I'm asking for.

[17] A There are certainly many more outlets
 [18] available on cable, so that one can get all kinds of
 [19] different views by utilizing cable news stations.

[20] Q Right. But my question is do you think
 [21] that the TV newscasts that you have observed have
 [22] become more sensational over, let's say, the last 10

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[1] years?

[2] A I don't know what you mean by
 [3] "sensational." The graphics are certainly more
 [4] modern. The technology certainly has changed.
 [5] Therefore, there's an ability to present statistics
 [6] and news in a more exciting format. But this isn't
 [7] my area of expertise. I think that most newscasts
 [8] in America reflect the modern technology that's
 [9] available.

[10] Q That's a useful clarification. I'm not
[11] talking sensational in terms of graphics. I'm
[12] talking in terms of the content and subject matter
[13] and whether you think the news organizations now, as
[14] compared to 10 years ago, are more interested in
[15] stories like Gary Condit and Monica Lewinsky than
[16] drug benefits for seniors and how to spend the
[17] surplus.

[18] MR. MOGILNICKI: Objection; compound.

[19] BY MR. THOMPSON:

[20] Q You don't have an opinion?

[21] A I think all of the subjects you just
[22] mentioned have gotten a lot of attention on

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[1] television news shows.

[2] Q Right. My question is, though, do you
[3] think the softer news, the news that is less
[4] oriented on hard issues, like Representative
[5] Condit's situation, are getting increasing
[6] prominence in the news as compared to 10 years ago?

[7] MR. MOGILNICKI: Objection.

[8] THE WITNESS: I don't know.

[9] MR. THOMPSON: We would like to take a
[10] two-minute break. We are getting close to the
[11] conclusion of my questioning.

[12] (Recess.)

[13] MR. THOMPSON: Sir, at this point we are
[14] prepared to turn it over to Mr. Carvin.

[15] MR. CARVIN: We have discussed this with
[16] counsel. We will take 35 minutes for lunch.

[17] THE WITNESS: How about 40?

[18] MR. CARVIN: Sure.

[19] (Whereupon, at 1:00 p.m., the deposition
[20] was recessed, to be reconvened at 1:55 p.m. this
[21] same day.)
[22]

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[1] AFTERNOON SESSION (1:55 p.m.)

[2] Whereupon,

[3] MARTIN T. MEEHAN

[4] resumed the stand and, having been previously duly
[5] sworn, was examined and testified further as
[6] follows:

[7] EXAMINATION

[8] BY MR. CARVIN:

[9] Q Good afternoon, Congressman. My name is
[10] Mike Carvin. I represent the Republican National
[11] Committee and some GOP state parties in this
[12] litigation.

[13] A Do you represent the Massachusetts –

[14] Q No, I do not.

[15] A – Republican Party?

[16] Q No.

[17] A Then welcome.

[18] Q I know you had some discussion with
[19] Mr. Thompson this morning about the appearance or
[20] perception of corruption created by, I think your
[21] phrase was, contributions of unlimited special
[22] interest dollars, soft money.

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[1] I don't want to rehash that discussion,
[2] but I did have a couple of specific follow-ups to
[3] that.
[4] Would you include unions as also being one
[5] of the special interests whose unlimited
[6] contributions from their own treasuries would create
[7] the appearance or perception of corruption?

[8] A Yes.

[9] Q And how about national political parties?

[10] Would you view them as a special interest in the
[11] manner in which you have used that phrase?

[12] A Yes.

[13] Q And why is that?

[14] A Well, I believe that when the national
[15] parties raise unlimited amounts of money, first of
[16] all, they use federal officials to do it. Second of
[17] all, oftentimes the parties provide access to top
[18] law makers, both in the House and in the Senate, to
[19] these people that make contributions, and I think
[20] that that access and those unlimited contributions
[21] create the appearance of corruption.

[22] Q I am just trying to be as precise as I can

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[1] here. Providing access to federal officeholders –
[2] providing access to special interests by national
[3] political parties is one aspect of the appearance of
[4] corruption?

[5] A Yes, it is. The Democratic National
[6] Committee and the Republican National Committee
[7] oftentimes have issue seminars where they invite
[8] people that have contributed a million dollars,
[9] \$2 million, \$5 million. At those seminars, access
[10] is granted to those committee chairs and those
[11] people who have an influence over the legislative
[12] process in Washington. And both political parties
[13] have done that. I believe that when they do that,
[14] it creates an appearance problem.

[15] Q So if I have it right, facilitating access
[16] to special interests and channeling money from
[17] special interests is the problem with the national
[18] political parties. Is there any other –

[19] A Well, the first major problem is the fact
[20] that they raise unlimited amounts of soft money from
[21] special interests. It is the utilizing federal
[22] officeholders, making telephone calls and asking

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[1] people that have an interest before Congress for a
[2] million dollars or \$2 million or \$5 million, and
[3] that's been a major focus of both political parties
[4] over the last decade.

[5] I believe that that focus, not only does
[6] it have a terrible appearance, but I also think that
[7] both parties have lost their commitment to
[8] grassroots because of that obsession with raising
[9] soft money. I believe that one of the reasons why
[10] fewer people vote is because both political parties
[11] are so obsessed and so addicted to soft money.

[12] Q I'm trying to straighten out whether you

[13] think the parties themselves are a special interest
 [14] or whether they provide access to special interests
 [15] in return for these unlimited soft money
 [16] contributions.
 [17] A They provide access. They facilitate the
 [18] raising of the money and ultimately make decisions
 [19] about how much soft money will be spent in which
 [20] districts around the country.
 [21] Q So one of the goals, as you saw it, was to
 [22] reduce the influence of political parties in the

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[1] political process?
 [2] A Oh, no. As a matter of fact, I hope that
 [3] this legislation increases the viability of
 [4] political parties, the grassroots activities of
 [5] political parties. I hope that more people get
 [6] involved in the grassroots of both the Democrat and
 [7] Republican Party as a result of this legislation.
 [8] MR. MOGILNICKI: I did not want to
 [9] interrupt. I will interrupt now to tell you there
 [10] is a vote.

[11] MR. HORTIS: There are two votes starting
 [12] in about seven minutes.

[13] THE WITNESS: Seven minutes left to go?
 [14] (Discussion off the record.)

[15] BY MR. CARVIN:

[16] Q I think you may have answered this, but
 [17] just so I'm clear, you don't view political parties
 [18] as an entity whose power and effectiveness you think
 [19] should be reduced in terms of the political process?

[20] A I do, to the extent that raising unlimited
 [21] soft money creates political power. I'm in favor of
 [22] the political parties playing an active role in

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[1] elections in America. But I would like to see the
 [2] political parties, rather than both obsessing with
 [3] raising unlimited big contributions from
 [4] corporations, labor unions and wealthy individuals,
 [5] I would like to see more emphasis on grassroots, on
 [6] small donors, on get out the vote, on activities
 [7] that promote broader, fuller participation in the
 [8] electoral process, rather than, as I say, an
 [9] obsession with raising unlimited big dollar
 [10] contributions.

[11] I think in the long run, the grassroots
 [12] membership of both the Democratic and Republican
 [13] Party have been negatively impacted by both parties'
 [14] obsession with unlimited big dollar contributions.

[15] Q So you would view -

[16] MR. MOGILNICKI: You really need to go.
 [17] (Recess.)

[18] BY MR. CARVIN:

[19] Q Congressman, before the break, we were
 [20] talking about party efforts to get out the vote or
 [21] general voter mobilization efforts, and I take it
 [22] from your prior comments that you think that that's

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[1] beneficial activity that the party should be
 [2] focusing on?

[3] A I believe that get out the vote and
 [4] grassroots party-building activity should be more of
 [5] a priority than raising soft money, and I hope that
 [6] as a result of our legislation passing and being
 [7] signed by President Bush into law that the result
 [8] will be that the parties will put more time, effort
 [9] and energy into issues, ideas and grassroots
 [10] political organizing by both political parties.

[11] Q If the soft money ban would reduce the
 [12] funds available to the parties and, therefore, the
 [13] parties' efforts at get out the vote or grassroots
 [14] activities, would that be an unfortunate
 [15] consequence, in your mind?

[16] A Well, I believe that the reality - I
 [17] don't believe that that's the reality. I believe
 [18] the reality is that the parties have not put the
 [19] majority of soft money into voter registration,
 [20] voter grassroots activities. I believe most of that
 [21] money has gone into either raising the money to
 [22] begin with and television and radio ads.

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[1] Q Do you know what percentage of soft money
 [2] raised by the national party committees goes to
 [3] television ads?

[4] A I don't. But it was my understanding that
 [5] if you took the amount of money that goes for
 [6] television and radio in raising the money to begin
 [7] with and the amount of money that goes for get out
 [8] the vote and voter registration, it is significantly
 [9] lower.

[10] Q Are get out the vote efforts lower than
 [11] television ads alone, forget the money that was used
 [12] to raise the money?

[13] A I don't have the statistics in front of
 [14] me, so I don't know.

[15] Q Do you have a general sense of what
 [16] proportion of national political party soft money
 [17] efforts goes to get out the vote or voter
 [18] registration?

[19] A I have on occasion read statistics that
 [20] indicate that more money is spent on radio and
 [21] television than get out the vote. But then again,
 [22] the parties could count television ads as get out

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[1] the vote. So those figures would be skewed.
 [2] But my experience in being around at least
 [3] the Democratic Party is that the parties have become
 [4] obsessed with raising soft money, and because of
 [5] that obsession, there has been a lack of attention
 [6] to grassroots party activity. I hear that from
 [7] grassroots party activists all the time in my
 [8] district, including Republican activists.

[9] Q I was about to ask you are you aware of
 [10] how much soft money is devoted by state political
 [11] parties to get out the vote voter mobilization
 [12] efforts.

[13] A Well, I know in Massachusetts there's no
 [14] soft money that goes to the state for get out the
 [15] vote because it is all hard money. In

[16] Massachusetts, both the Democrat and Republican
 [17] Party run what I think are fairly effective get out
 [18] the vote activities.
 [19] Q So in Massachusetts there is no soft money
 [20] at the state level under state law?
 [21] A That's right. Right.
 [22] Q Are you aware of states where soft money

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[1] is permissible, the proportion of that which goes to
 [2] get out the vote or voter mobilization efforts?
 [3] A No, I don't.
 [4] Q Are you aware of the percentage of soft
 [5] money in state parties where soft money is
 [6] permissible that goes to television or radio ads?
 [7] A No, I'm not aware.
 [8] Q Do party efforts using soft money to
 [9] register voters and get out the vote in a federal
 [10] election create the appearance of corruption for
 [11] federal officeholders or candidates?
 [12] A I believe that raising unlimited sums of
 [13] money, regardless of what it goes to, even if a
 [14] percentage of the unlimited money goes to a
 [15] worthwhile party endeavor, like registering people
 [16] to vote, I believe that the raising of the unlimited
 [17] money by federal officials has a corrupting
 [18] influence.
 [19] Q And what if it is not raised by federal
 [20] officials?
 [21] A Well, I think that money that's raised -
 [22] you mean by state officials?

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[1] Q State officials or people at the DNC or
 [2] RNC who are not federal officeholders.
 [3] A Well, people at the DNC and RNC obviously
 [4] represent the national parties. So if the head of
 [5] the RNC or the DNC were to raise unlimited
 amounts
 [6] of money for any political campaign, that influence
 [7] that they have as party leaders, there would be at
 [8] least the appearance that they could use that
 [9] influence to raise the unlimited amounts of money
 [10] and have influence on the national party and on the
 [11] legislative process nationally.
 [12] Q Let me ask you about state officials.
 [13] What if state officials raised money without the aid
 [14] of federal candidates or officeholders and then
 [15] devoted that money to voter mobilization or get out
 [16] the vote, would that create the appearance of
 [17] corruption for federal officeholders or candidates?
 [18] A Well, would the get out the vote effort be
 [19] for federal elections?
 [20] Q Yes. To be precise, an election where a
 [21] federal official appears on the ballot.
 [22] A Well, it could be an attempt to influence

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[1] a federal election through unlimited amounts of
 [2] money, yes, and it could have the appearance of
 [3] corruption.
 [4] Q Does it raise a substantial danger of the

[5] appearance of corruption to you?
 [6] A I think it raises a danger of the
 [7] appearance of corruption.
 [8] Q How about in an off-year election, where
 [9] there is no federal candidate involved? Same
 [10] question.
 [11] A See, I believe all states should make soft
 [12] money illegal. I think all states should - that's
 [13] my personal view. My experience is in
 [14] Massachusetts, and Massachusetts would have made
 [15] soft money illegal.
 [16] Q But BCRA does not prohibit state parties
 [17] from raising soft money; correct?
 [18] A Right.
 [19] Q And it doesn't prohibit them from using
 [20] soft money in off-year elections?
 [21] A Right. No, it doesn't.
 [22] Q And, therefore, I take it, at least with

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[1] respect to federal candidates and officeholders,
 [2] that activity does not create the appearance of
 [3] corruption?
 [4] A With regard to a federal election, no. If
 [5] there is no federal election, no federal
 [6] officeholders or party officials are raising money.
 [7] Q And the distinction, obviously, is that in
 [8] a federal election, one of the beneficiaries of the
 [9] get out the vote or voter mobilization through soft
 [10] money would be a federal candidate?
 [11] A If there are get out the vote activities
 [12] in a year where there was a federal election, then
 [13] obviously it would have an influence over the
 [14] federal election.
 [15] Q And for that reason, I think you were
 [16] saying that the potential appearance of corruption
 [17] does obtain when state parties do it.
 [18] Now I'm going to ask you a slightly
 [19] different question. Would any effort to mobilize
 [20] voters or get out the vote with unlimited money
 [21] raise the appearance of corruption or is it only
 [22] with state parties in a federal election?

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[1] MR. MOGILNICKI: I'm sorry. I will object
 [2] to the form of the question. I don't think it is
 [3] what you meant. For example -
 [4] MR. CARVIN: Can I clarify?
 [5] BY MR. THOMPSON:
 [6] Q All I'm thinking about is a nonparty
 [7] organization, an AFL-CIO, NAACP, NRA, uses
 unlimited
 [8] moneys for voter mobilization efforts in an election
 [9] where a federal candidate appears. Does that create
 [10] the appearance of corruption?
 [11] A No.
 [12] Q And why is there no appearance of
 [13] corruption in those circumstances but there is the
 [14] appearance of corruption when state parties engage
 [15] in the same activity?
 [16] A I assume that in your hypothetical that

[17] federal officials haven't raised this unlimited
[18] money specifically to get out the vote in a federal
[19] election.

[20] Q And in those circumstances, I think your
[21] answer is there's no appearance of corruption?

[22] A That's correct.

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[1] Q Now let me change it slightly. Let's
[2] assume a federal candidate or officeholder has
[3] engaged in fundraising efforts for the organization
[4] that does engage in these voter mobilization
[5] efforts. In those circumstances, is there an
[6] appearance of corruption of federal candidates and
[7] officeholders?

[8] A Not if the fundraising by the federal
[9] candidate was general fundraising not intended
[10] specifically for electioneering or getting out the
[11] vote specifically in a federal election.

[12] Q Even if the money is used for this voter
[13] mobilization, that could influence a federal
[14] election?

[15] A If it goes to a general fund in such an
[16] organization that when the federal official is
[17] raising it, it isn't designated specifically for any
[18] specific purpose, like electioneering or getting out
[19] the vote, then that would be okay.

[20] Q What if a federal officeholder raised
[21] money for a state party that was not subsequently
[22] used for either issue ads or get out the vote

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[1] activities but some general building fund, would
[2] that raise the appearance of corruption?

[3] A Yes, it could. If a federal officeholder
[4] is raising unlimited amounts of money, there's
[5] always the possibility. For what purpose under this
[6] hypothetical?

[7] Q Any purpose other than federal election
[8] activity. I take it your answer – go ahead.

[9] A Well, it is difficult to say that there
[10] wouldn't be the appearance of anything improper if
[11] somebody raises unlimited amounts of money,
[12] regardless of what it's for. I can't make a general
[13] statement that there's no way any federal
[14] officeholder could raise an unlimited amount of
[15] money for anything that wouldn't have – it depends
[16] on the individual circumstances, individual cases.
[17] What we have tried to do relative to
[18] federal elections is try to limit how much money
[19] federal officials and party officials can raise for
[20] federal elections.

[21] Q But you haven't sought to limit, have you,
[22] the amount that federal officials can raise for

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[1] organizations that could use that money for federal
[2] election activity, such as voter mobilization or get
[3] out the vote?

[4] A Well, it is limited in the sense that if
[5] an organization is specifically going to use the
[6] money raised by a federal official for

[7] electioneering, there are limits that will come into
[8] play under the Levin amendment.

[9] Q Fair enough. But I'm trying to figure out
[10] for a nonparty organization, does a federal
[11] officeholder's raising of money that could be used
[12] for voter mobilization, even though it is not
[13] specifically designated for that purpose, raise the
[14] appearance of corruption of federal officeholders
[15] and candidates?

[16] A Not necessarily, no.

[17] Q And then I'm now going to switch to state
[18] parties. If a federal officeholder raised money
[19] that could be used for either voter mobilization or
[20] issue ads but didn't necessarily have to be used for
[21] that purpose, would that create an appearance of
[22] corruption for federal officeholders and candidates?

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[1] A Potentially it could.

[2] Q And why is there a distinction between the
[3] nonparty organizations and the state parties, if
[4] there is, in your mind?

[5] A Well, there is all kinds of coordination
[6] that takes place between federal and state parties
[7] relative to electioneering. The laws are complex.
[8] But activities between the state and the federal
[9] parties are pretty coordinated.

[10] Q And without getting into the details,
[11] that's regulated in the Act, the amount of
[12] coordination?

[13] A There is an attempt in the Act, I think,
[14] to tighten up those coordination rules.

[15] Q Within the purview of those organizational
[16] rules, I take it it's possible that, say, the
[17] AFL-CIO and the DNC could also coordinate their
[18] activities in the same way that a state Democratic
[19] Party and a DNC could do; is that true?

[20] MR. MOGILNICKI: I'm going to object. We
[21] have been on this road for a while, but this
[22] question in particular strikes me as simply asking

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[1] the Congressman to explain the intricacies of law,
[2] calls for a legal conclusion.

[3] When you ask him about his view on
[4] appearances of corruption, that's one thing. When
[5] you are asking him how the law treats different
[6] organizations, it seems to me it is calling for a
[7] legal conclusion and it is purely speech and debate
[8] material.

[9] MR. CARVIN: It is certainly not speech
[10] and debate.

[11] THE WITNESS: Let me put it this way,
[12] then. I don't want to get into a dialogue about
[13] what is or isn't in the Act. You know the
[14] legislative history and have a copy of the law, as
[15] well as I have one in my office. I can give you my
[16] impressions of what type of activities we are
[17] looking to, what specifically we are looking to –
[18] we are trying to limit the unlimited amounts of
[19] money being raised by federal officeholders is a

[20] point I have made.

[21] BY MR. CARVIN:

[22] Q Let me give you a press release - we can

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[1] leave it at that - that I think your office issued

[2] on March 22nd. This will be Meehan 12.

[3] (Meehan Exhibit 12 identified.)

[4] BY MR. CARVIN:

[5] Q Just to take this to a higher level of

[6] generality than the intricacies of the ad, this is a

[7] press release I believe from your office on March

[8] 22, 2002 entitled "Opportunities and Benefits of a

[9] Better Campaign Finance System," by you.

[10] Feel free to read whatever you want. My

[11] questions will be about the fourth and fifth

[12] paragraphs, if you could review those for me,

[13] please.

[14] (Witness examined the document.)

[15] A Okay.

[16] Q You had a chance to review it?

[17] A Yes.

[18] Q I take it the gist of the fourth and fifth

[19] paragraphs is the point you were making somewhat

[20] earlier, that by banning soft money on the national

[21] level and banning any party soft money expenditures

[22] on attack ads, the Act would redirect hundreds of

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[1] millions of dollars to voter mobilization projects.

[2] Is that your expectation?

[3] A That would be my hope.

[4] Q You say that "These efforts will be

[5] undertaken by both nonprofit organizations like the

[6] NAACP and state parties." Is that also your hope or

[7] expectation?

[8] A It would be my hope and expectation that

[9] with a banning of soft money, that the national

[10] parties would make a greater commitment to voter

[11] mobilization, because I believe with a reduction in

[12] the energies and time and effort that goes into

[13] raising soft money, that the parties would spend

[14] more time and more effort raising money to register

[15] people to vote and get people out to vote.

[16] Q But - I'm sorry.

[17] A The second part of this is a separate

[18] statement that says these voter mobilization

[19] efforts, voter registration efforts are going to be

[20] undertaken by a wide range of people in addition to

[21] state and federal parties.

[22] Q Such as the NAACP?

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[1] A NAACP is the one mentioned here. It would

[2] be my hope, given the fact that in many communities,

[3] the NAACP has undertaken efforts to try to register

[4] people to vote where there has been declining

[5] numbers of people registered.

[6] Q And do you have a view as to whether the

[7] voters who are registered or turned out by the

NAACP

[8] would tend to vote Democratic as opposed to

[9] Republican?

[10] A In this particular example that you have

[11] given me, I would say that NAACP voters are more

[12] likely to be Democratic voters. But there are many

[13] other groups that were more likely to turn out

[14] Republican voters.

[15] I believe that many of the companies and

[16] many of the organizations that spend all their time

[17] raising soft money would turn to grassroots getting

[18] people out to vote. My hope would be that there's

[19] more of an emphasis on turnout.

[20] Q These would be companies that are

[21] currently soft money donors?

[22] A These are organizations that may or may

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[1] not be soft money donors. See, I think the

[2] political process, I think getting out the vote and

[3] registering people to vote would be more important

[4] in a process that did not include soft money,

[5] because I think that many activists in the local

[6] level of both political parties feel that what they

[7] say or do doesn't matter because party politics is

[8] dominated by raising soft money.

[9] So it is not that specific amounts of soft

[10] money are going to go from area A to area B but,

[11] rather, that the emphasis and work of the parties

[12] that is now put into raising unlimited soft money

[13] will go into things like voter turnout. I don't

[14] think voter turnout, voter registration has been a

[15] priority for either political party the way they

[16] ought to be.

[17] My hope is not that soft money will go, as

[18] I say, from point A to point B but, rather, that

[19] there is a renewed interest and a rejuvenation of

[20] party politics on a grassroots level.

[21] Q Would that be true of the nonparty

[22] organizations as well?

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[1] A I would hope so, because it would be my

[2] hope that with a lack of emphasis on these 30-second

[3] soft money television ads back and forth, that more

[4] people would become interested. I think all these

[5] negative ads turn people off.

[6] Q Are you aware of whether the AFL-CIO

[7] engages in voter mobilization efforts?

[8] A I'm aware that they do.

[9] Q Would the people mobilized by the

AFL-CIO

[10] tend to be more Democratic than Republican?

[11] A I think that depends on the election, it

[12] depends on the circumstances.

[13] Q What about in Massachusetts?

[14] A We have had a Republican governor for 12

[15] years and many of the unions in Massachusetts have

[16] endorsed in the past both Governor Salucci in the

[17] last election and Governor Weld in the election

[18] before that. So I wouldn't want to generalize, but

[19] certainly many of the unions try to get their vote

[20] out.

[21] I will say this, though, while we are on
[22] the subject, that I think unions as well will be

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[1] more likely to concentrate on voter registration and
[2] get out the vote rather than raising and getting
[3] unlimited amounts of money if the soft money is
[4] taken out of the system.

[5] Q In your view, is it desirable public
[6] policy for the government, the federal government to
[7] favor voter mobilization efforts by nonparty
[8] organizations such as unions and the NAACP over
[9] voter mobilization efforts by state parties?

[10] MR. MOGILNICKI: I need to consult.

[11] (Counsel conferred with the witness.)

[12] THE WITNESS: Could you repeat the
[13] question?

[14] MR. CARVIN: You can read it back for him.

[15] (The reporter read the record as requested.)

[16] THE WITNESS: I don't think it is favoring
[17] either one by saying that they have to raise the
[18] money through soft money. I think state parties
[19] should put a higher percentage of money into voter
[20] mobilization, voter registration by raising hard
[21] money.

[22] It would be my hope that the state

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[1] parties - the state parties are not being penalized
[2] by encouraging them if there is a federal election
[3] to be raising hard dollars. I think the system is
[4] better served by raising hard dollars.

[5] BY MR. CARVIN:

[6] Q But under the Act, these nonparty
[7] organizations remain free to use soft money for
[8] voter mobilization and get out the vote activities
[9] in federal elections; correct?

[10] A Can I have a minute to talk?

[11] (Witness conferred with counsel.)

[12] THE WITNESS: Can I hear the question?

[13] (The reporter read the record as requested.)

[14] MR. MOGILNICKI: I want to register an
[15] objection as calling for speculation and legal
[16] conclusions.

[17] THE WITNESS: Organizations would be able
[18] to use union treasury dues money to do voter
[19] mobilization.

[20] I think there is a distinction between
[21] voter mobilization and electioneering, and I think
[22] that when parties raise unlimited soft money, my

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[1] belief is that - at least I think the evidence
[2] suggests that when these loopholes are created, it
[3] gets out of control so that it becomes an
[4] unquenchable thirst to raise more soft money. I
[5] think that has a negative impact on the parties.

[6] BY MR. CARVIN:

[7] Q And, therefore, is it reasonable to expect
[8] that these nonparty organizations will also develop
[9] an unquenchable thirst for nonfederal money to be
[10] used in voter mobilization or other efforts?

[11] A No, I don't think so. These

[12] organizations, the primary purpose of these
[13] organizations is not voter mobilization. They do a
[14] number of other things, and these organizations are
[15] not organizations that are organized primarily to
[16] influence an election. They are organizations that
[17] have other primary focuses.

[18] MR. CARVIN: I'm going to register an
[19] objection at this point. It is quite improper for
[20] counsel to talk to the witness when a question is
[21] pending. I allowed it twice because I assumed there
[22] was some speech and debate issue or some question

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[1] about the propriety.

[2] I want the record to reflect that there
[3] were two extended colloquies in the questions I
[4] asked, and I'm going to object to any further
[5] discussions along those lines.

[6] If you have speech and debate issues, you
[7] can talk to Mr. Kircher or take a break. It is
[8] really quite improper to talk to the witness when
[9] there is a question pending.

[10] MR. MOGILNICKI: Let me respond briefly,
[11] which is to say it is perfectly appropriate, when it
[12] is necessary to analyze whether or not a privilege
[13] exists, for us to confer while a question is
[14] pending, and we plan to continue to do so. If you
[15] want us to do that during a break rather than take
[16] up a lot of time, I understand that, and we can do
[17] that.

[18] MR. CARVIN: As I say, I did give some
[19] leeway in terms of figuring out whether there was
[20] some speech and debate privilege.
[21] The two questions were whether or not
[22] there was any public policy which endorsed favoring

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[1] voter mobilization by nonprofit groups over voter
[2] mobilization by state parties. That didn't
[3] implicate any potential privilege.

[4] MR. MOGILNICKI: I disagree with you
[5] there.

[6] THE WITNESS: I would disagree with you
[7] too.

[8] MR. CARVIN: Maybe you can tell me the
[9] privilege that you think was potentially implicated
[10] by that.

[11] MR. MOGILNICKI: I think asking a sitting
[12] Congressman or Senator their views about public
[13] policy when those views are informed by their
[14] legislative duties and are formed in conjunction
[15] with their legislative actions, there's a very live
[16] speech or debate clause issue there, and I have
[17] every right to talk to my client before he answers a
[18] question that may be objectionable on privilege
[19] grounds.

[20] MR. CARVIN: Either the question is
[21] objectionable or it is not. Nothing he can tell you
[22] in your colloquy is going to resolve that one way or

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[1] another. Neither the record nor I will know what
 [2] the basis for any privilege is if it is a private
 [3] conversation with the deponent.
 [4] If you have an objection, you need to
 [5] state it for the record. Congressman Meehan, for
 [6] all his virtues, presumably is not giving you legal
 [7] advice on the scope of the speech and debate clause.
 [8] So there is really no reason to discuss with him
 [9] what the scope of the speech and debate clause is
 [10] with a question pending.

[11] MR. MOGILNICKI: You are just wrong about
 [12] that, for this reason, because the privilege and the
 [13] immunity belongs to the Congressman.

[14] MR. CARVIN: That's true.

[15] MR. MOGILNICKI: So counsel sometimes
 [16] likes to ask the client whether or not he wishes to
 [17] interpose his immunity from questioning before
 [18] interposing that objection. It is perfectly
 [19] appropriate for me to do so.

[20] MR. CARVIN: And that's only true if it
 [21] raises a speech and debate clause issue, which this
 [22] question nor the follow-up question did.

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[1] MR. MOGILNICKI: I think it is plain that
 [2] we disagree on what questions raise speech or debate
 [3] clause issues.

[4] THE WITNESS: And there have been
 [5] occasions when questions have been asked when
 [6] counsel has advised that it would raise speech and
 [7] debate clause issues, and I have decided to answer
 [8] the question notwithstanding the speech and debate
 [9] clause issues that have been raised.

[10] MR. CARVIN: Let me leave it at this, so
 [11] we don't take up any more time. I take it, when you
 [12] are talking to the Congressman, it is solely with
 [13] respect to privilege issues?

[14] MR. MOGILNICKI: While a question is
 [15] pending, yes.

[16] BY MR. CARVIN:

[17] Q I'm going to hand you this declaration
 [18] that you filed in the litigation in the District of
 [19] Columbia District Court.

[20] A Which litigation is that?

[21] Q I will show you the caption in a second.
 [22] The first caption is Ohio Democratic Party versus

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[1] FEC. You may know it better as the Republican
 [2] National Committee versus the FEC.
 [3] Let's mark that.

[4] (Meehan Exhibit 13 identified.)

[5] THE WITNESS: On Exhibit 12 that I was
 [6] just looking at, you asked me a series of questions.
 [7] I would just say for the record this isn't a press
 [8] release. This is an op-ed article written for the
 [9] Boston Globe, March 22nd. It is not a press
 [10] release.

[11] MR. CARVIN: Thank you.

[12] BY MR. CARVIN:

[13] Q Do you recall, Congressman, my question

[14] is, filing this declaration in connection with this
 [15] litigation, Meehan 13?

[16] A Do I recall filing it?

[17] Q Yes.

[18] A I recall an interview with members of the
 [19] Federal Election Commission, and certainly this
 [20] appears to be my signature.

[21] Q On page 7, for the record?

[22] A On page 7, executed on the 6th day of

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[1] November 1998.

[2] Q Do you recall having your deposition taken
 [3] in that case?

[4] A I recall a discussion somewhere around
 [5] 1998.

[6] Q I would like to direct your attention, if
 [7] I could, to paragraph 4 on page 2 of this document.
 [8] It states, does it not, "In my experience, political
 [9] parties do not have economic interests apart from
 [10] their ultimate goal of electing their candidates to
 [11] office"? Do you see that?

[12] A I do see that.

[13] Q Do you still think that's true?

[14] A Given the continued explosion of soft
 [15] money, it depends on how you define "economic
 [16] interest." Political parties don't have the same
 [17] economic interest as companies.
 [18] For example, I don't think a political
 [19] party has the same direct economic interest in
 [20] legislation to create a Medicare prescription drug
 [21] benefit for seniors that, say, the pharmaceutical
 [22] industry might have. However, if the pharmaceutical

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[1] industry contributes \$12.7 million to, let's say,
 [2] the Republican National Committee, I suppose one
 [3] could say there might be an economic interest in the
 [4] sense that the party will have \$12.7 million more in
 [5] their campaign coffers to use to elect candidates.

[6] Q And if they did use it for that purpose,
 [7] then that would be an interest in achieving their
 [8] ultimate goal of electing their candidates to
 [9] office?

[10] A That's right.

[11] Q And then paragraph 5 states, does it not,
 [12] "I am not aware of any occasions on which the
 [13] Democratic Party, at the federal or state level, has
 [14] sought to lobby members of Congress." Is that still
 [15] true?

[16] A It is true in the sense that the parties
 [17] have never - I have never had the Democratic
 [18] National Committee lobby me on an issue.

[19] Q And how about the Massachusetts
 [20] Democratic

[21] Party?
 [22] A Not that I can recall on a specific issue
 before the Congress, no.

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[1] Q And are you aware of whether or not the
 [2] Republican Party at either the federal or state

[3] level has sought to lobby members of Congress?

[4] A They certainly have never lobbied me.

[5] Q Are you aware of any efforts by them to
[6] lobby other members of Congress?

[7] A Not specifically, no.

[8] Q Are you aware of Democratic national party
[9] committees implying or stating that they would
[10] either provide or withhold soft money from a
[11] candidate to induce support for the party
[12] committee's policies?

[13] A I seem to recall reading something about
[14] Bob Franks not getting Republican Party support for
[15] his race to New Jersey for the United States Senate.

[16] Q I'm sorry. My question was the Democratic
[17] national party committees.

[18] A Not that I recall.

[19] Q And your example was a national Republican
[20] Party did what with respect to Mr. Franks? I'm
[21] sorry. I didn't follow that.

[22] A What I said was specifically I recall

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[1] reading that the Republican National Committee did
[2] not provide as much money to Congressman Bob
Franks

[3] in his race in New Jersey as many party officials
[4] believed they should have.

[5] Q According to what you read, what was the
[6] reason for failing to provide?

[7] A Because Mr. Franks had supported
campaign

[8] finance reform in the House.

[9] Q And what office was he running for?

[10] A The United States Senate. He was a member
[11] of the House.

[12] Q That would have been in 2000?

[13] A I think it was in 1998.

[14] Q Other than that, are you aware of any
[15] Republican national party either providing or
[16] withholding soft money to induce a candidate to
[17] support the national party committee policies?

[18] A I don't recall any. Then again, it is not
[19] as if the parties would check with me anyway.

[20] Q To the extent you know -

[21] A To the extent that I have had occasion to
[22] read or hear about such instances, I can't recall.

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[1] Q To the extent you know, does the
[2] Democratic Congressional Committee spend money
on

[3] the races they perceive as the most competitive in
[4] order to enhance their ability to elect a Democratic
[5] majority in the House?

[6] A I hope that's the way they make
[7] determinations.

[8] Q Do you have any knowledge one way or
[9] another on that?

[10] A No.

[11] Q Do you have any reason to believe that's
[12] not the criteria by which they make expenditure

[13] decisions?

[14] A I don't have reason to - I assume that
[15] the decisions are made based on those seats where
[16] members, where Democratic members or Democratic
[17] candidates would likely win. I assume - I have no
[18] reason to believe they wouldn't make decisions on
[19] that basis.

[20] Q Same question, just to make the record
[21] clear, for the DNC or the Democratic Senatorial
[22] Committee.

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[1] A I would have no way of knowing, but I
[2] assume they do it the same way. I certainly hope
[3] they do.

[4] Q I will assume you have even less
[5] information on my next question, but just to make it
[6] clear. Same question for the Republican national
[7] party committees.

[8] A Only in the one instance that I mentioned
[9] where Bob Franks was a candidate for the Senate.

[10] Q In your declaration, I will turn back to
[11] that, paragraph 7. You may want to read through
[12] this quickly. It is on page 3, and then I have a
[13] couple questions for you.

[14] (Witness examined the document.)

[15] A Okay.

[16] Q In the 1998 general election, the DCCC
[17] asked members to contribute specific amounts from
[18] the campaign funds towards the DCCC efforts to
elect

[19] Democrats to the House; is that correct?

[20] A That's correct.

[21] Q Was that the policy in the 2000 electoral
[22] cycle as well?

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[1] A Yes.

[2] Q Is it the policy in the 2002 election
[3] cycle?

[4] A Yes.

[5] Q For all three of those cycles, was the
[6] party leadership asked to give more of their excess
[7] campaign funds than other members?

[8] A Yes.

[9] Q And why was that, do you know?

[10] A Because they were party leadership.

[11] Q So they had a broader stake in the party
[12] or they had more money? Why would being in a
[13] leadership position -

[14] A I don't set those things up. I just know
[15] that those members who were in party leadership
[16] position are asked - those members in a leadership
[17] position have higher dues levels.

[18] Q And how about, again, for all three
[19] election cycles, were members in safe seats or who
[20] were unopposed asked to give more than those in
[21] competitive races?

[22] A Generally speaking, that's true.

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[1] Q Do you know the reason for that?

[2] A Because those members who were unopposed,
[3] the theory is they can afford to give more because
[4] they are not spending money in their own races.

[5] Q And then on paragraph 3 on the first
[6] page -

[7] A Also I noticed in item 7 the basic amount
[8] requested is 5000. Certainly there has been
[9] inflation.

[10] Q I should have asked you that. What was
[11] the basic amount in 2000, if you can recall?

[12] A I don't recall, but I think the basic
[13] amount is 15,000 now. That's the absolute minimum
[14] amount.

[15] Q And have you made such a contribution?

[16] A I have. I have made a \$20,000
[17] contribution.

[18] Q Are you opposed in the general election
[19] this year?

[20] A Yes.

[21] Q Is it a serious contest?

[22] A I take all my races seriously. I take all

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[1] my political races seriously.

[2] Q I won't press any further.

[3] On paragraph 3 of this declaration, again,
[4] if you could read it. I have a couple of questions.

[5] (Witness examined the document.)

[6] A Okay.

[7] Q My general question is does your
[8] description of the goals and operations of political
[9] parties as expressed in paragraph 3 still represent
[10] your views sitting here today of the goals and
[11] operations of political parties?

[12] A Generally.

[13] Q Are you familiar with the term "tallying"?
[14] Have you ever heard that expression before?

[15] A No, I haven't. Tallying the votes?

[16] Q Well, let me give you some context. Are
[17] you aware of any program or policy at the Democratic
[18] Congressional Committee which establishes any kind
[19] of correlation between the amount of soft money
[20] raised by a candidate and the expenditure decisions
[21] of the Democratic Congressional Committee?

[22] A I'm not aware of that. I'm probably one

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[1] of the last people that they would let know about
[2] the tallying process, I guess.

[3] Q Are you aware of the corporations or
[4] entities or individuals who have provided soft money
[5] donations to either the Democratic National
[6] Committee or either of the two other Democratic
[7] national political committees?

[8] A Well, from time to time I read who they
[9] are in the newspaper, sure.

[10] Q Does that influence in any way your
[11] decisions as to entities you will meet with or your
[12] view of legislation?

[13] A No, it doesn't. But on the other hand, I

[14] don't like it when there is an issue before the
[15] Congress, let's say, a trade issue, that there's a
[16] perception that the Democratic Party has taken
[17] millions and millions of dollars from labor unions
[18] and somehow I will be influenced by that. I think
[19] it taints all of us, this process, because I am a
[20] Democrat.

[21] At the same time, if we are working the

[22] Judiciary Committee on a piece of legislation that

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[1] potentially is to limit the liability of people who
[2] are injured as a result of asbestos or exposure to
[3] asbestos, I think that I, like all the members of
[4] the House, are tainted by the perception that trial
[5] lawyers have contributed to the Democratic National
[6] Committee and that whatever my ultimate decision is
[7] on a piece of legislation, that it is tainted or
[8] influenced by the contributions from a particular
[9] group.

[10] So while I haven't been influenced by it,
[11] I think that all of us that serve in this
[12] institution are somewhat tainted by the appearance.

[13] Q At least with respect to you, that
[14] appearance or perception would be inaccurate, that
[15] there is any linkage between soft money
[16] contributions and the way you conduct your
[17] legislative business?

[18] A It would be inaccurate, but it doesn't
[19] change the perception that some may have.

[20] Q And how about contributions to the
[21] Massachusetts Democratic Party, are you aware of the
[22] entities or organizations that have provided

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[1] donations there?

[2] A I know of some individuals that contribute
[3] to the party, the state party. I have contributed
[4] to the state party out of my campaign account.

[5] Q And does that affect in any way how you
[6] conduct your legislative business?

[7] A You mean my contributing to the
Democratic

[8] Congressional Committee.

[9] Q Do you provide preferential treatment or
[10] access to anybody who has made a contribution to the
[11] Massachusetts Democratic Party?

[12] A No. I don't have that good of a working
[13] knowledge of who contributes and who doesn't.

[14] Q And how about Congressman Gephardt, does
he

[15] provide preferential treatment or access to entities
[16] that have provided large soft money contributions to
[17] the Democratic national committees?

[18] MR. MOGILNICKI: Objection; no
foundation,

[19] calls for speculation.

[20] THE WITNESS: I have no idea.

[21] BY MR. CARVIN:

[22] Q Are you aware of any Democratic

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[1] Congressmen who provide preferential treatment or
 [2] access to large soft money contributors to the
 [3] Democratic political committees nationally?
 [4] MR. MOGILNICKI: Same objection.
 [5] THE WITNESS: I'm unaware. But I do know
 [6] that the Democratic Party, like the Republican
 [7] Party, does have these soft money events where
 [8] access is provided to big soft money donors. I
 [9] think both parties have done this on a regular
 [10] basis.

[11] BY MR. CARVIN:

[12] Q And does that access at these fundraising
 [13] events affect the behavior or the conduct of
 [14] legislative business by any Democratic Congressman,
 [15] to your knowledge?
 [16] A I believe that all these soft money
 [17] donations to both parties and the access that is
 [18] provided to those who make the contributions is part
 [19] of the reason why we don't have a patients' bill of
 [20] rights, part of the reason why we don't have
 [21] Medicare prescription drug benefits for seniors,
 [22] part of the reason why it has been so difficult to

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[1] pass legislation protecting children from tobacco
 [2] products, the leading preventable cause of death in
 [3] the country.
 [4] I think generally this obsession that both
 [5] parties have with raising soft money has hurt the
 [6] appearance of what we do day in and day out in the
 [7] Congress.
 [8] Q Which Democratic member of Congress has
 [9] behaved differently with respect to the patients'
 [10] bill of rights legislation because even in part of
 [11] soft money contributions?
 [12] A I'm referring to the way the institution
 [13] has handled the passage of these important pieces of
 [14] legislation as a whole. I don't have - I can't
 [15] name specific members of Congress, only my general
 [16] feeling that soft money has helped gum up the works
 [17] to getting public interest legislation passed.
 [18] Most people in my district and in the
 [19] state of Massachusetts and even in the country
 [20] believe that it has had a negative impact on the
 [21] ability to get public interest legislation passed.
 [22] Q Would you give me the same answer for the

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[1] Medicare legislation and tobacco legislation you
 [2] earlier referenced?
 [3] A Well, I'm giving a general feeling about
 [4] how much money was contributed to the parties and
 [5] the result or the lack of a result that I feel
 [6] creates the appearance of corruption or at least
 [7] taints the work that we do in the Congress of the
 [8] United States.
 [9] Q Do you know of any Senator or
 [10] Representative who has ever changed or altered their
 [11] vote because of soft money donations?
 [12] A I only know that we haven't been able to

[13] get this legislation passed and that I believe that
 [14] money has affected our ability to get such
 [15] legislation passed.
 [16] Q Now I would like to switch my attention.
 [17] My questions thus far have been about national
 [18] parties. So we are clear, I'm going to ask you now
 [19] about soft money contributions to state parties.
 [20] With respect to state political parties,
 [21] are you aware of any informal arrangement where a
 [22] federal candidate raising soft money for a state

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[1] party will benefit from expenditures by that state
 [2] party?
 [3] A No.
 [4] Q Are you aware of any donors who give soft
 [5] money to state parties with the expectation that
 [6] they will receive favorable treatment or access by
 [7] federal officeholders?
 [8] A I have no personal knowledge, no.
 [9] Q A slightly different question. With
 [10] respect to the national party committees giving
 [11] money, are you aware of any expenditure decision
 [12] which has in any way been affected by soft money
 [13] contributions to state parties?
 [14] A I don't have personal knowledge of that.
 [15] Q And are you aware of national party
 [16] committees' expenditure decisions being affected by
 [17] which federal candidate raises money, soft money for
 [18] the state parties?
 [19] A Again, it is an area I don't have personal
 [20] knowledge of.
 [21] Q Are you aware of any evidence where people
 [22] have provided soft money donations to state parties

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[1] in an effort to avoid any restrictions on giving to
 [2] national parties?
 [3] A Well, I have read accounts of how people
 [4] funnel contributions through state parties. And in
 [5] drafting and in putting together the legislation,
 [6] there was an attempt made to tighten up the rules so
 [7] that people wouldn't simply funnel soft money
 [8] contributions through the state parties. But I
 [9] don't have personal knowledge of such an instance.
 [10] Q Fair enough. Just hypothetically, in what
 [11] circumstances would people funnel money through a
 [12] state party? They would give it to the state party
 [13] and the state party would do what with it in these
 [14] accounts you have read about?
 [15] A Well, state parties will take money from
 [16] tobacco companies and then use it in campaigns in
 [17] that state.
 [18] Q But in some states they don't have, for
 [19] example, restrictions on soft money contributions?
 [20] A Right.
 [21] Q So that would be, in these accounts you
 [22] have read, an example of a legal occurrence at the

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[1] state level?
 [2] A You are talking about an illegal

[3] occurrence?

[4] Q No. I'm trying to get a sense of -- when
[5] you used the word "funnel," it confused me a little
[6] bit. That would be a transaction where the state
[7] party would take the money and then spend it. Was
[8] there some indirect effort to influence a federal
[9] candidate or to somehow benefit a national political
[10] party when, for example, the tobacco companies
made

[11] this contribution?

[12] A Well, it would be to influence a federal
[13] election, sure.

[14] Q And that would be because the state
[15] parties would run ads with that? What would they do
[16] with the money in a manner that would influence --

[17] A Run ads, just help run local campaigns in
[18] particular states.

[19] Q That would influence a federal election
[20] because there would be federal candidates --

[21] A Running in the election.

[22] Q -- running in the election. Was there

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[1] anything more direct in terms of this informal
[2] understanding that they were trying to give money to
[3] the state party, say, to avoid or circumvent
[4] contribution limits --

[5] A I don't have personal knowledge of that.

[6] Q This morning you were discussing with
[7] Mr. Thompson this controversy surrounding your
[8] decision to run for your fifth term in light of your
[9] prior term limits pledge.

[10] A Well, you characterize it as a
[11] controversy. That wasn't my characterization.

[12] Q Fair enough. Do you recall sending out a
[13] letter to your constituents to explain why you had
[14] decided to run again, notwithstanding your prior
[15] comments on this issue?

[16] A Yes. I recall sending out a letter that
[17] the Democratic Party paid for.

[18] Q And I can give you an article to refresh
[19] your recollection. It is my understanding from this
[20] article that the state party picked up about \$25,000
[21] of the costs of that?

[22] A I don't --

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[1] Q Why don't I give you the article.

[2] A I don't recall how much. But I would
[3] reject your analysis of the controversial and
[4] explain.

[5] Q I was not trying to make it value laden,
[6] just sticking with the facts here.

[7] (Meehan Exhibit 14 identified.)

[8] BY MR. CARVIN:

[9] Q This is obviously a reprint. It stops at
[10] the top of page 2 of not a Xerox but an article that
[11] ran in the Boston Herald on August 15, 1999.

[12] A Oh, yes. This ran in Pols & Politics, the
[13] political gossip column.

[14] Q Right. Take your time in reviewing that.

[15] I had a couple questions on that.

[16] A Sure.

[17] (Witness examined the document.)

[18] Q Have you had a chance to look at that?

[19] A Yes.

[20] Q It says here that the state party's share
[21] of the mailing explaining the term limits issue
[22] ended up being about \$25,000. Does that square with

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[1] your recollection?

[2] A That's what it says here, but I don't
[3] recall specifically. That's what the Herald
[4] reports, but I'm not sure whether it is accurate or
[5] not.

[6] Q And I take it, from what you told me
[7] before, there is no soft money in the Massachusetts
[8] Democratic Party because of state law?

[9] A That's right.

[10] Q And so after enactment of the Act, the
[11] state party could still pick up a share of a similar
[12] mailing for you in the future?

[13] MR. MOGILNICKI: Objection; calls for a
[14] legal conclusion.

[15] You can try to answer, if you can.

[16] THE WITNESS: Yes, this is hard money.

[17] The parties spend money on behalf of Democratic
and

[18] Republican candidates and can still spend money on
[19] behalf of the Democratic candidate and Republican
[20] candidate.

[21] BY MR. CARVIN:

[22] Q I don't think it is a trick question. It

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[1] is my understanding that after the Act, there won't
[2] be restrictions on either state or federal national
[3] parties' expenditures of hard money.

[4] A Right. That's my understanding as well.

[5] Q And do you recall whether or not the
[6] \$20,000 or so that the Democratic Congressional
[7] Campaign Committee donated to the state party to
[8] help pay for the mailing -- first of all, do you
[9] recall that contribution at all?

[10] A I don't recall it, but why don't you ask
[11] the question.

[12] Q Do you know whether that was soft or hard
[13] money?

[14] A Hard money.

[15] Q It had to have been because of state law,
[16] I take it?

[17] A Yes, it had to be because of state law.

[18] Q And did you do fundraising for the state
[19] party to make up for the cost of the mailing?

[20] A I regularly contribute and do fundraising
[21] for the state party. Whether or not that made up
[22] the amount that was expended for the mailing, I

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[1] don't know for sure. But certainly the amount of
[2] fundraising I have done for the party over the years
[3] since then has made up for it.

[4] Q And, again, these would all be hard
[5] money –
[6] A All hard dollar contributions.
[7] Q And how about for the DCCC, have you
done

[8] any fundraising for them? Just to be clear,
[9] previously you said you had given them some
campaign

[10] funds. Now I'm asking about if you actually
[11] participated in any DCCC fundraising.

[12] A I have participated in hard dollar events,
[13] and this year I contributed \$20,000 from my campaign
[14] committee to the DCCC.

[15] Q And the new contribution under the Act to
[16] the national parties is \$25,000. Do I have that
[17] right?

[18] A No, not from Congressional committees. I
[19] think from – I didn't personally contribute
[20] \$25,000.

[21] Q You are right.

[22] A Did I give you that impression?

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[1] Q No, you didn't. Let me be more clear.
[2] For the DNC or the RNC, the contribution limit
would

[3] be \$25,000?

[4] A Yes, 25,000. But the contribution that I
[5] made to the DCCC was dues from my Congressional
[6] campaign account. I don't foresee any possibility
[7] that I would contribute \$25,000 from any account
[8] other than my Congressional account.

[9] Q And how about the DNC, have you
[10] participated in any fundraising for the Democratic
[11] National Committee?

[12] A I have allowed them to use my name. Any
[13] time the Democratic National Committee or the
DCCC

[14] has a fundraiser, I certainly allow them to have my
[15] name. There have been occasions when I have made
[16] calls and asked people to go to events, buy a
[17] ticket. How much success I have had at that I
[18] couldn't say.

[19] Q In your view, does a \$25,000 contribution
[20] from an individual to the DNC create the appearance
[21] of corruption of federal candidates or
[22] officeholders?

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[1] A Well, a contribution of \$25,000 would be a
[2] hard contribution, meaning that it would be
[3] disclosed and there would be a limit under the law.
[4] So I believe a \$25,000 limit on what an individual
[5] can give the parties is certainly much more
[6] desirable than no limits under the soft money system
[7] that clearly results in the appearance of
[8] corruption.

[9] Q But do you think a \$25,000 contribution,
[10] given the disclosure and limitations that you talked
[11] about, does create an appearance of corruption?

[12] A To the?

[13] Q Federal candidates or officeholders.

[14] A Well, someone couldn't give to a federal
[15] candidate \$25,000.

[16] MR. MOGILNICKI: I think there is some
[17] confusion here. If you just restate the question.

[18] BY MR. CARVIN:

[19] Q Maybe I will ask a preliminary question.

[20] I take it from your prior testimony that you believe
[21] that a \$500,000 contribution to the DNC would
create

[22] the appearance of corruption for federal candidates

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[1] and officeholders; correct?

[2] A That's correct.

[3] Q And now I'm just asking do you think a
[4] \$25,000 contribution to the DNC from an individual
[5] creates the appearance of corruption for federal
[6] candidates or officeholders?

[7] A I think by limiting contributions to
[8] \$25,000, it limits and reduces dramatically the
[9] appearance of corruption.

[10] Q What about a \$25,000 contribution from a
[11] corporate treasury to the DNC, does that create the
[12] appearance of corruption for federal candidates or
[13] officeholders?

[14] A That would be illegal, and it would be
[15] illegal because it has been illegal for a long time
[16] for corporations to make contributions or for union
[17] treasury dues to be used for politics. So that
[18] would be illegal. As I said earlier, people have
[19] gone to jail for making corporate contributions.

[20] Q I take it prior to the Act, nobody went to
[21] jail for making a \$25,000 contribution to the RNC or
[22] DNC out of a corporate treasury or union treasury?

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[1] A Under the soft money rules, right, because
[2] that's the loophole that's been created in the law.

[3] But if they contributed to a candidate –

[4] Q Fair enough. I'm focusing now on parties.
[5] You have closed that loophole.

[6] A We have attempted to close the loophole.
[7] You guys are suing us now, trying to open up the
[8] loophole again. That's why we are here.

[9] Q And I'm just trying to get a sense. Is it
[10] your understanding that a \$25,000 contribution from
[11] a corporate treasury creates the appearance of
[12] corruption?

[13] A Yes, it does. Let me explain why.

[14] Because money that comes from a corporate treasury
[15] wasn't intended by the shareholder to be a
[16] contribution. Corporate money is illegal, number
[17] one. Secondly, there's a difference between
[18] somebody that writes out a personal check or
[19] designates money to be used for politics.

[20] Q I take it, then, the difference is
[21] protecting the shareholder. Do you have any view as
[22] to whether the parties view a \$25,000 corporate

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[1] contribution differently than a \$25,000 individual

[2] contribution in terms of the effect it has on them
 [3] or candidates of their party?
 [4] A Look, it has been illegal since Theodore
 [5] Roosevelt signed the bill making it illegal for
 [6] corporate money to be used in political campaigns.
 [7] There's a long legislative history dating back to
 [8] when President Roosevelt signed that law as to why
 [9] corporate money has been illegal. There was
 [10] corruption around the election before Roosevelt was
 [11] elected, and that's part of the reason why they
 [12] passed the law.
 [13] If you are asking me whether a party would
 [14] rather have soft money from an individual or
 [15] corporate money from a corporation and which one
 [16] would less or more contribute to the appearance of
 [17] corruption, I don't know.
 [18] Q Fair enough.
 [19] MR. MOGILNICKI: If you are starting a new
 [20] section of your outline, we need a break.
 [21] MR. CARVIN: Sure.
 [22] (Recess.)

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[1] BY MR. CARVIN:
 [2] Q Congressman, would a transfer from the
 [3] Republican National Committee of soft money to the
 [4] Virginia Republican Party in an off-year election,
 [5] 2003, where there is no federal candidate, to be
 [6] used for state and local candidates create the
 [7] appearance of corruption of federal officeholders or
 [8] candidates?
 [9] A It depends on who raised the money.
 [10] Q If a federal officeholder –
 [11] A Raised the money?
 [12] Q – raised the money.
 [13] A What we tried to do in our legislation was
 [14] try to get at the notion of federal officeholders
 [15] raising unlimited amounts of money, and that would
 [16] fall into the category.
 [17] Q What if a federal officeholder didn't
 [18] raise the money?
 [19] A Who else would raise money for the
 [20] national party? The national party chairs, I
 [21] suppose. The federal party national chairs have the
 [22] same status in many respects, at least vis-a-vis

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[1] raising money, because of the significant and
 [2] constant contacts between the federal officials and
 [3] the state party chairs.
 [4] Q As you pointed out a moment ago, federal
 [5] officeholders or candidates can't raise money for
 [6] state parties; correct?
 [7] A Under the Act?
 [8] Q Yes.
 [9] A Well, you know the answer to that, right?
 [10] Q The answer is yes? Do you agree with
 [11] that?
 [12] A Right.
 [13] Q So my question is if you impose the same
 [14] limitations on federal officeholders raising money

[15] for the national parties, why would not the
 [16] appearance of corruption be avoided for an RNC
 [17] transfer of soft money to the Virginia GOP for an
 [18] off-year election where no federal candidates are on
 [19] the ballot?
 [20] A Because the soft money would still have
 [21] been raised by the national parties, presumably from
 [22] the interests that have legislation before the

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[1] Congress of the United States, legislation before
 [2] the federal government.
 [3] Q So the difference between the RNC and the
 [4] Virginia GOP in my hypothetical is that the chairman
 [5] of the RNC, unlike the chairman of the Virginia
 GOP,
 [6] is viewed as an agent of federal officeholders? Do
 [7] I have that correctly?
 [8] A I don't know that I would describe it as
 [9] agent. The way I would describe it would be that
 [10] because of the significant contacts between the
 [11] federal parties, the national parties and federal
 [12] officeholders, then the chairs of both political
 [13] parties are in the same category as a federal
 [14] officeholder, member of the Cabinet, the President,
 [15] the Vice President and other federal officeholders.
 [16] You can't – there is no way you can
 [17] legitimately separate the head of the DNC and the
 [18] RNC and say that they can go out and raise soft
 [19] money, it is just the federal officeholders who
 [20] can't. Otherwise, Terry McAuliffe would be out
 [21] raising soft money and funneling it to the state
 [22] parties or any place else.

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[1] Every member of the Congress interacts
 [2] with the national party to varying degrees, granted,
 [3] but in many respects the same principle of not
 [4] having federal officeholders raise money would apply
 [5] to the heads of both parties, in my view.
 [6] Q And that's true even if the soft money
 [7] could not legally be spent in an election that would
 [8] benefit a federal officeholder or candidate?
 [9] A That's correct.
 [10] Q So could you please explain to me, if the
 [11] federal officeholder or candidate couldn't benefit
 [12] from the soft money, where the potential quid pro
 [13] quo or appearance of corruption would arise from?
 [14] A By virtue of the fact that the head of the
 [15] party would be raising money.
 [16] Q And the federal officeholder would feel
 [17] beholden to people who gave money to the national
 [18] party even in circumstances where the federal
 [19] officeholder couldn't benefit from the money so
 [20] raised?
 [21] A The head of the party certainly has the
 [22] ability to provide access to soft money donors on a

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[1] regular basis, whether those soft money
 [2] contributions were sent to the Virginia Republican
 [3] Party or to the Texas Democratic Party.

[4] Being a head of a national party in the
 [5] United States is a very powerful position, and
 [6] generally with that position comes unlimited access
 [7] almost to powerful members of that party.

[8] Q So the distinction between the head of the
 [9] Virginia GOP and the head of the RNC is that the
 [10] head of the RNC is better situated to provide
 [11] significant contacts and access to federal
 [12] officeholders than the head of the Virginia
 [13] Republican Party?

[14] A That would be one of the distinctions,
 [15] yes.

[16] Q Is there any other distinction that you
 [17] can think of?

[18] A Well, the distinction is that the head of
 [19] a national party has a lot more clout nationwide
 [20] than a single party head. There are 50 states, 50
 [21] party heads. There is only one national party head.
 [22] It's a much more powerful, much more visible, much

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[1] more influential position. With that influence and
 [2] power comes the ability to raise money from those
 [3] interests that have an interest in legislation
 [4] before the Congress and before the federal agencies
 [5] and before the President.

[6] Q Any other reason?

[7] A Those are the reasons that come to mind
 [8] right now.

[9] Q We agreed a moment ago, I think, that
 [10] federal officers can only raise federal or hard
 [11] money for state and local candidates; correct?

[12] A Under the Act?

[13] Q Yes, under the Act.

[14] A That's correct. But you know that.

[15] Q And, again, my question is the federal
 [16] officeholder presumably can't benefit from a
 [17] contribution to a state and local candidate; is that
 [18] correct?

[19] A Well, federal candidate - you are saying
 [20] if it was legal?

[21] Q For him to raise -

[22] A If it were legal for a federal

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[1] officeholder -

[2] Q To raise nonfederal money for state and
 [3] local candidates, where would be the appearance of
 [4] corruption since the federal officeholder wouldn't
 [5] benefit from the unlimited moneys given to the state
 [6] and local candidate?

[7] A Well, the federal officeholder would
 [8] benefit in the sense that those special interests
 [9] that the federal officeholder was raising unlimited
 [10] moneys from would likely have an interest in actions
 [11] before the Congress.

[12] But, more importantly, the benefit would
 [13] be that a federal officeholder would essentially be
 [14] billing the foundation of a political organization
 [15] in their home state by getting state and local
 [16] people elected to public office who would be

[17] committed and loyal to them. It is a way to build a
 [18] political organization and structure.

[19] Q And, therefore, he would feel beholden or
 [20] grateful to people who gave money to help him
 [21] develop these additional allies?

[22] A The allies would be grateful to the

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[1] federal officeholder who went to big money
 [2] contributors to raise money for the state and local
 [3] officeholder's campaigns.

[4] Q So the state and local candidates would
 [5] feel beholden to the federal officeholder?

[6] A You are asking me what political benefit
 [7] there is. That certainly would be one. I'm sure
 [8] there are others.

[9] Q I can understand how that would enhance
 [10] the federal officeholder's relationship with state
 [11] and local candidates. How would that make him feel
 [12] beholden to the special interests who gave the money
 [13] to the state and local candidates?

[14] A Under your hypothetical, they would have
 [15] raised the money. They would have asked the special
 [16] interests for the money, and the money would have
 [17] been given because the federal official asked.

[18] Q So if, say, a Democratic candidate asked
 [19] the AFL-CIO to give \$100,000 to state and local
 [20] candidates, then the federal officeholder would feel
 [21] gratitude or beholden to the AFL-CIO when they
 gave

[22] that money to these third parties?

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[1] A That is certainly possible.

[2] Q And the same would be true, I take it, if
 [3] a federal officeholder asked the AFL-CIO to give
 [4] money to a 501(c) organization which was involved in
 [5] voter mobilization. He would feel the same
 [6] gratitude towards them for helping him enhance his
 [7] political base and political power; is that correct?

[8] A Are you talking about unlimited amounts of
 [9] money or would the 501(c) have designated the
 money

[10] to go to get out the vote activities?

[11] Q Let me make it a Republican example. That
 [12] may be easier.

[13] A The reason I ask is because I believe -
 [14] and I don't have a copy of the statute in front of
 [15] me, but I believe that there are limits under the
 [16] Levin amendment to those kinds of contributions.

[17] Q But there is no limit in the Act, is
 [18] there, for federal officeholders soliciting
 [19] donations from, say, Philip Morris for a 501(c)
 [20] organization whose principal purpose is not get out
 [21] the vote or voter registration?

[22] A That's correct. That's true. There may

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[1] be the appearance. It depends on the circumstances,
 [2] I suppose. But we are trying to lessen the
 [3] influence of unlimited contributions in campaigns,
 [4] political campaigns.

[5] Q Even if the recipients of the federal
[6] officeholder's fundraising do get involved in voter
[7] mobilization, like the NAACP –

[8] A Yes, as long as they don't promote a
[9] specific Democratic or Republican candidate and as
[10] long as the general fund – as long as it is not
[11] designated specifically to voter mobilization or
[12] electioneering. If it were, then there would be
[13] limits.

[14] Q And why would not the candidate who
[15] solicited Philip Morris or the AFL-CIO to give to
[16] the 501(c) organization not feel the same gratitude
[17] when they made that unlimited contribution to the
[18] 501(c) as he would if they gave the money to his
[19] designated state or local candidate?

[20] A Because the money wouldn't be directly for
[21] electioneering, for the purposes of electing the
[22] candidate.

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[1] Q And that would be true even if the NAACP
[2] or the other 501(c) did use that money for get out
[3] the vote or voter mobilization efforts?

[4] A Well, they couldn't designate it for get
[5] out the vote activities. It may be if a general
[6] contribution was made by an entity that at some
[7] point in the future they could use a portion of that
[8] for get out the vote activities. But they couldn't
[9] have the money designated for electioneering or get
[10] out the vote activities.

[11] Q In light of that inability to designate,
[12] the connection between the federal officeholder's
[13] fundraising and the get out the vote efforts by the
[14] organization who benefited from that fundraising is
[15] too attenuated to create the appearance of
[16] corruption?

[17] A I wouldn't say that it couldn't possibly
[18] create the appearance. But certainly there's a
[19] difference between raising money to give to a 501 or
[20] a group that were engaged in a lot of different
[21] activities and that that organization only could
[22] independently decide whether to have a portion of

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[1] the money go to electioneering.

[2] There is a sufficient separation there, in
[3] my view, to merit a distinction in the law.

[4] MR. HORTIS: I don't mean to interrupt.
[5] Marty has a vote in seven minutes.

[6] (Discussion off the record.)

[7] (Recess.)

[8] BY MR. CARVIN:

[9] Q I think what we were chatting about was
[10] the distinction between some of these outside groups
[11] and some of the party organizations.

[12] A Can I make a point on that? As I went
[13] over to vote, I was thinking about our last
[14] dialogue.

[15] It makes a difference in the sense that a
[16] member of Congress that raises money for the
NAACP

[17] isn't going to be able to control how the NAACP
[18] spends its money, isn't going to be able to tell the
[19] NAACP anything that they should do with their
money.

[20] So this assumption that soft money is going to go to
[21] the NAACP I don't think is accurate.

[22] Q Let me ask you about that. Has it been

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[1] your experience that you can tell the Massachusetts
[2] Democratic Party what to do with their money?

[3] A Members of Congress can have an influence
[4] over everything the Democratic state committee does
[5] in Massachusetts, absolutely.

[6] Q Do you make expenditure decisions for
[7] them, which districts they are going to spend money
[8] in?

[9] A If members of the delegation spoke up and
[10] said "you ought to be in this district or that
[11] district," I think the party would pay very close
[12] attention to it.

[13] Q But they are offering that advice, I take
[14] it, because they think that's where the money could
[15] be most effectively spent?

[16] A Sure, but all those issues are subjective.
[17] I'm saying that I think members of Congress have
[18] significantly more influence over how money would be

[19] spent by a state party than how a totally
[20] independent group like the NAACP might spend
their

[21] money.

[22] Q Let's talk about the AFL-CIO. Are they a

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[1] totally independent group from the Democratic
[2] National Committee?

[3] A They are in the sense that I don't think
[4] that a member of Congress could tell the AFL-CIO
how
[5] to spend their money.

[6] Q Are officials of the AFL-CIO officers of
[7] the Democratic National Committee?

[8] A I don't know. Candidly, I really don't
[9] know. I haven't had that much experience.

[10] Q Since we are being candid, I will just lay
[11] my confusion out for you.

[12] A Okay.

[13] Q The AFL-CIO gives \$500,000 to the DNC
from

[14] the union treasury unlimited funds, and as you have
[15] repeatedly made clear, if the DNC spends that on
[16] voter mobilization in a federal election, that
[17] raises the appearance of corruption; correct?

[18] A The whole process of taking union treasury
[19] dues and giving it to the parties is a soft money
[20] expenditure and raises the appearance, whether that
[21] money is spent in television ads or whether it is
[22] spent in radio ads.

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[1] Q So here's my confusion. If the AFL-CIO

[2] directly spends that same \$500,000 of union treasury
[3] funds on voter mobilization or get out the vote or
[4] phone bank on Election Day, doesn't that also raise
[5] an appearance of corruption for the federal officer
[6] or candidate who benefits from that effort on that
[7] day?

[8] A No, because they didn't raise the money.

[9] Q Well, they didn't raise the money -

[10] A And the coordination rules are tightened
[11] up under the campaign finance bill.

[12] Q Let me take it a step at a time. In my
[13] first hypothetical, where they gave it to the DNC,
[14] the federal officeholder didn't raise that union
[15] treasury money either.

[16] A Is this before or after the Act passes?

[17] Q Let's start at before. The federal
[18] officeholders are not raising a lot of money for the
[19] AFL-CIO today, union treasury money.

[20] A Right.

[21] Q And, yet, when the AFL-CIO transfers that
[22] money to the DNC and they spend it on a phone
bank,

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[1] the DNC does, that creates an appearance of
[2] corruption; correct?

[3] A Do you have an example where that has
[4] happened?

[5] Q I assume that they are one of the special
[6] interest groups that we agreed before was giving
[7] soft money donations to the Democratic National
[8] Committee or other groups that give to the
[9] Republican National Committee that you were
seeking

[10] to eliminate -

[11] A Here's what -

[12] Q - from giving unlimited money.

[13] A If the Democratic Party gets \$500,000 in
[14] unlimited union treasury dues money and gives it to
[15] the Democratic Party, the Democratic Party is going
[16] to use the majority of that money for 30-second
[17] television ads that technically don't say vote for
[18] or vote against a candidate but are really campaign
[19] ads, and they will have used soft money to run those
[20] campaign ads.

[21] I don't think I would be very surprised if

[22] the AFL-CIO sends money to the Democratic
National

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[1] Committee and then the Democratic National
Committee

[2] does get out the vote. I could be wrong, but my
[3] assumption, my strong assumption would be that the
[4] moneys would be used for ads and not get out the
[5] vote.

[6] Q Congressman, it is getting late and I know
[7] we talked a lot this morning about the 30-second
[8] ads. I think I'm pretty clear on your concerns in
[9] that regard, which is why I'm deliberately trying to
[10] focus now on the voter mobilization efforts.

[11] A But you understand why I would say that
[12] the likelihood that the AFL-CIO would give \$500,000
[13] to the Democratic Party to do get out the vote when
[14] they likely could do their own get out the vote, I
[15] don't think they need to send that kind of money to
[16] the party. It just doesn't strike me as realistic.

[17] Q Because the AFL-CIO could directly spend
[18] that money on get out the vote activities; correct?

[19] A Yes.

[20] Q But nonetheless, the DNC would feel
[21] grateful to the AFL-CIO if they gave them 500,000?

[22] A Yes.

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[1] Q And the DNC under the Act is prohibited
[2] from spending that 500,000, not only on 30-second
[3] radio ads but -

[4] A Is that what you are trying to get at?

[5] Yes, that's true.

[6] Q So my question is, I take it the reason
[7] the DNC is prohibited from spending money not only
[8] on radio ads but also get out the vote is because
[9] using that special interest money for any political
[10] activity that could influence a federal election,
[11] including get out the vote, creates an appearance of
[12] corruption. Do I have that right so far?

[13] A Yes. The unlimited \$500,000, yes.

[14] Q So doesn't it follow that if the AFL-CIO
[15] spent the \$500,000 directly on get out the vote
[16] activities, that that would also influence federal
[17] elections and create an appearance of corruption
[18] from the federal officeholders or candidates who
[19] indirectly benefited from that get out the vote
[20] activity?

[21] A I suppose it could. I can't say it
[22] absolutely wouldn't. But the law draws a

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[1] distinction between using money for electronic
[2] television and radio ads with internally an
[3] organization engaging in get out the vote
[4] activities. There is clearly a distinction there.

[5] Q The distinction between radio ads or TV
[6] ads on the one hand and get out the vote activities
[7] on the other?

[8] A Yes.

[9] Q But why does the Act draw a distinction
[10] between the AFL-CIO's direct get out the vote
[11] activity and the DNC's get out the vote activities
[12] when they use the AFL-CIO's money?

[13] MR. MOGILNICKI: I will object to that
[14] question. A question about why a piece of
[15] legislation does what it does -

[16] BY MR. CARVIN:

[17] Q Why do you see a distinction between the
[18] two?

[19] A Because we are trying to prohibit
[20] unlimited contributions from special interests, like
[21] the labor union, \$500,000. And it undercuts the
[22] intention of the law, which is to make soft money

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[1] contributions of a half a million dollars, take it
 [2] out, away from the parties.
 [3] Q And you are trying to take it away from
 [4] the parties because the parties could use it to
 [5] benefit federal candidates?
 [6] MR. MOGILNICKI: Objection again.
 [7] THE WITNESS: No.
 [8] MR. MOGILNICKI: Again, why the
 [9] legislation does what it does even you would agree
 [10] is speech or debate.
 [11] MR. CARVIN: Not at all.
 [12] BY MR. CARVIN:
 [13] Q Because you are on record already
 [14] identifying the purposes of the Act. I'm trying to
 [15] get a sense of the purposes for making these
 [16] distinctions.
 [17] Let me cut to the chase. If you cut out
 [18] the middle man, you cut out the DNC and the
 [19] AFL-CIO
 [20] doesn't go through the DNC to benefit a Democratic
 [21] candidate but gets out there and spends the union
 [22] treasury funds directly in a manner that would
 [22] benefit in this instance Democratic candidates by

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[1] mobilizing sympathetic voters, I would think that
 [2] that would raise at least the same appearance of
 [3] corruption in your mind as the scenario where they
 [4] funnel it through the DNC.
 [5] A No, it doesn't, because in the first
 [6] hypothetical, the party is taking a half a million
 [7] dollars in soft money. We are trying to limit those
 [8] unlimited dollars. But if organizations, both
 [9] Democrat and Republican, ended up - and I don't
 [10] think they will spend the money that they have
 [11] contributed in soft money.
 [12] But if organizations, both in the
 [13] Democratic and Republican and Independent and
 [14] Libertarian and all sides of the spectrum, ended up
 [15] encouraging their members to get out and vote, to
 [16] register to vote and participate in elections, then
 [17] the result would be the number of people voting in
 [18] America would greatly increase. And I think that
 [19] would be good for the system.
 [20] But what has happened is the soft money
 [21] has been used largely for 30-second television ads.
 [22] I know you don't want to get into a dialogue about

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[1] it, but I make a distinction between get out the
 [2] vote activities, registering people to vote and
 [3] 30-second ads that technically qualify to be soft
 [4] money expenditures because they don't happen to say
 [5] "vote for" or "vote against."
 [6] Q Fair enough. But the truth is the state
 [7] parties are restricted under your Act from spending
 [8] soft money on bread and butter grassroots efforts to
 [9] mobilize their folks to get out and show up on
 [10] Election Day, door hangers, vote Democratic bread
 [11] and butter stuff.
 [12] I'm genuinely puzzled why you think that

[13] kind of what seems to me basic civic participation
 [14] raises an appearance of corruption when state
 [15] parties do it simply because of this indirect
 [16] benefit for federal candidates.
 [17] A Well, in many instances it is a direct
 [18] benefit for federal candidates because if a federal
 [19] candidate is specifically mentioned, whether it be
 [20] door knockers or get out the vote activities, it
 [21] leaves a loophole that smart lawyers for both
 [22] parties figure out how to make that loophole bigger

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[1] and bigger and bigger.
 [2] What you have in the campaign finance act
 [3] that was passed after Watergate is that loophole
 [4] eats the law. So that the idea behind the statute
 [5] and my view is that you try not to create a loophole
 [6] in passing the law.
 [7] Now, if a party is going to say "vote
 [8] Democratic" and there happens to be a federal
 [9] election, then I think you will find in the statute
 [10] there's a mix of hard dollar and soft dollar
 [11] contributions that would be necessary. But I think
 [12] the parties will still be able to do get out the
 [13] vote in a generic form, a vote Democrat.
 [14] Q Do you agree with this statement:
 [15] "Contributors seeking to avoid the effect of
 [16] candidate contribution limits indirectly by
 [17] donations to the national party could spend that
 [18] same amount of money or more themselves by
 [19] making
 [20] their own independent expenditures promoting the
 [21] candidate. If anything, an independent expenditure
 [22] made possible by a \$20,000 donation but controlled
 [22] and directed by a party, rather than the donor,

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[1] would seem less likely to corrupt than the same or a
 [2] much larger independent expenditure made directly
 [3] by
 [4] that donor."
 [5] MR. MOGILNICKI: I will object because it
 [6] is a compound question. Could you go through that
 [7] sentence by sentence? It is an awful lot to ask the
 [8] witness to adopt or reject in toto.
 [9] BY MR. CARVIN:
 [10] Q Again, the gist of it - I will be happy
 [11] to repeat it, if you want me to. The gist of it is
 [12] the common sense notion that funneling money
 [13] through
 [14] the party which acts as some sort of buffer is less
 [15] effective than a direct expenditure. Would you
 [16] agree with that?
 [17] A If you want me to -
 [18] Q Do you want me to read it again?
 [19] A No. If I was going to respond to that
 [20] entire thing, I would have to go through it point by
 [21] point and probably would ask for a copy of it.
 [22] Maybe we can take it - the question is do I believe
 [23] that -
 [24] Q That a donor seeking to maximize influence

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[1] could do it better by spending the money directly,
 [2] in my old hypothetical, on a phone bank that's paid
 [3] for and controlled by themselves rather than handing
 [4] the money to a third party, like the Democratic
 [5] National Committee.

[6] A Yes. Usually when a person would hand
 [7] over the money, it would be because a federal
 [8] officeholder asks them to hand over the money. The
 [9] federal officeholder is asking for the \$500,000 and
 [10] taking the money and then taking control over the
 [11] money and determining how it best should be spent.

[12] Q Do you think that goes on, that kind of
 [13] earmarking of soft money donations at the
 [14] Democratic

[14] National Committee, that a Democratic candidate
 [15] will

[15] tell the donor how much to give and tell the
 [16] committee how to spend it?

[17] A I think in most instances when any entity
 [18] gives 500,000 in soft money, usually a federal
 [19] officeholder asked for that contribution to be made.

[20] Q All right. Do they then tell in this case
 [21] the Democratic National Committee how to spend it?

[22] A The same officeholder who raised it? I

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[1] don't know that that's the case. But I do know
 [2] this. The person giving the money has lost control
 [3] of that money, and party officials are going to make
 [4] a determination as to how it is spent.

[5] Q In light of that, that the donor has now
 [6] lost control of the money, wouldn't he maximize his
 [7] influence and maximize the candidate's gratitude by
 [8] directly spending the money in a way that the
 [9] candidate can see directly benefited him?

[10] A That assumes that the candidate asking for
 [11] the money didn't get - that assumes that the
 [12] candidate didn't get the benefit of the \$500,000.
 [13] Didn't get the benefit, right?
 [14] I think it is more likely that the person
 [15] asking for the \$500,000 is going to get some kind of
 [16] benefit or that there's a targeted race somewhere
 [17] where the person, the federal officeholder knows who
 [18] the money is going to go to.

[19] Q Let's take that hypothetical. Then in
 [20] that circumstance, somebody else would benefit,
 [21] whoever is running in the targeted race, not the
 [22] federal candidate who asked for the donation,

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[1] whereas, in the second hypothetical, where the donor
 [2] spends money for get out the vote activity in the
 [3] candidate's district, the candidate would more
 [4] directly benefit; correct?

[5] A The federal officeholder asking for the
 [6] money could be unopposed. He might not have a
 [7] race,

[7] may be raising money for other candidates who do
 [8] have races. It could be an off year, a Senator with
 [9] an off year raising money for other colleagues that

[10] need it.

[11] Q Let me ask you this question. Do you
 [12] agree with this statement? "There's no reason to
 [13] think that party expenditures of soft or hard money
 [14] will serve or will be seen as instruments of
 [15] corruption more than independent expenditures by
 [16] anyone else."

[17] A You are asking me whether I agree with
 [18] that? Could you read it one more time?

[19] Q "There's no reason to think that party
 [20] expenditures of either hard or soft money will serve
 [21] or be seen as instruments of corruption more than
 [22] independent expenditures by anyone else."

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[1] A No reason to see whether - can I look at
 [2] it? Can I read it.

[3] Q It is my handwriting.

[4] A Do you have good handwriting?

[5] Q No.

[6] (Witness examined the document.)

[7] A That may be true.

[8] Q And this is another quote, and this is
 [9] from a Supreme Court opinion, and this one is typed
 [10] out. So I can either show it to you or read it.

[11] This is from the Colorado Republican I decision. Do
 [12] you agree with this?

[13] "We also recognize that FECA permits
 [14] unregulated soft money contributions to a party for
 [15] certain activities, such as electing candidates for
 [16] state office or for voter registration and get out
 [17] the vote drives, but the opportunity for corruption
 [18] posed by these greater opportunities for
 [19] contributions is at best attenuated." Do you agree?

[20] (6:00 p.m.)

[21] MR. MOGILNICKI: Do you want to see it?

[22] THE WITNESS: Yes.

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[1] BY MR. CARVIN:

[2] Q It is marked up. I will put a red mark on
 [3] there.

[4] (Witness examined the document.)

[5] A No, I don't agree.

[6] Q Could you explain why, please.

[7] A Because I think there is an opportunity
 [8] for corruption as long as federal officials are
 [9] raising unlimited soft money, either for get out the
 [10] vote drives, voter registration drives, or for
 [11] electing candidates to state office.

[12] I think as long as you have federal
 [13] officials raising unlimited amounts of money for
 [14] campaigns, you have the potential for the appearance
 [15] of corruption.

[16] Q And I take it from your answers -
 [17] obviously I'm not trying to put words in your mouth.
 [18] But in light of the discussion you had this morning
 [19] and this afternoon, one of the key problems you see
 [20] as the nexus in this appearance of corruption is the
 [21] federal candidates' direct involvement in the
 [22] fundraising because that provides these

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[1] opportunities for access and the other things you
 [2] have described?
 [3] A Yes. I think fundraising under the
 [4] federal election laws has gotten totally out of
 [5] control by evidence of the dramatic increases in
 [6] unlimited soft money. I think both parties are
 [7] obsessed with raising soft money. I think it has a
 [8] negative impact on what we do day in and day out,
 [9] even if the money goes to state candidates and/or
 [10] Election Day electioneering.

[11] Q I think I can live up to my promise. This
 [12] is my last question about these 501(c)
 [13] organizations. Do you agree with me that under the
 [14] Act, agents of the national political committees
 [15] can't solicit money for 501(c) organizations,
 [16] unlimited soft money?

[17] MR. MOGILNICKI: I will object because
 [18] that calls for a legal conclusion.
 [19] You can try to answer.

[20] THE WITNESS: Federal officials?

[21] BY MR. CARVIN:

[22] Q No. National party committee officials.

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[1] A You would have to look at the law. I
 [2] don't have a copy of the statute.

[3] Q I'm happy to give it to you. 101(a) says,
 [4] "A national committee of a political party may not
 [5] solicit, receive or direct to another person a
 [6] contribution, donation or transfer of funds or
 [7] anything of value or spend any funds that are not
 [8] subject to the limitations, prohibitions and
 [9] reporting requirements of this Act."

[10] MR. MOGILNICKI: I will make the same
 [11] objection. I don't see what purpose is served by
 [12] asking the Congressman if the Act says what the Act
 [13] says.

[14] BY MR. CARVIN:

[15] Q Now that you have heard that, I'm happy to
 [16] have you read it. Doesn't it follow that a national
 [17] committee of a political party can't solicit money
 [18] for a 501(c) organization?

[19] MR. MOGILNICKI: Same objection.

[20] BY MR. CARVIN:

[21] Q I will hand you the Act. It is 101(a)
 [22] there.

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[1] A Can I take a minute?

[2] Q No problem, sure.

[3] (Witness conferred with counsel.)

[4] MR. MOGILNICKI: I don't think there is a
 [5] question pending.

[6] BY MR. CARVIN:

[7] Q My question is under the Act, are agents
 [8] of the national committee of a political party
 [9] prohibited from soliciting moneys for 501(c)
 [10] organizations?

[11] MR. MOGILNICKI: Same objection.

[12] THE WITNESS: I would have to read through

[13] this. I just can't give you an answer right here.

[14] BY MR. CARVIN:

[15] Q Do you not know sitting here whether or
 [16] not that's an accurate statement of the Act?

[17] A It would require me to read the bill in
 [18] its entirety, including looking at the legislative
 [19] history, and that would take a significant amount of
 [20] time. I can't answer it based on reading one
 [21] sentence here.

[22] Q Fair enough. So let me just ask you.

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[1] Wholly apart from the Act, do you see a reason for
 [2] prohibiting national political parties from
 [3] soliciting unlimited soft money for 501(c)
 [4] organizations and simultaneously permitting federal
 [5] officeholders and candidates to solicit unlimited
 [6] soft money for 501(c) organizations?

[7] A I'm not sure.

[8] Q Can you think of a reason sitting here why
 [9] that would make sense?

[10] A Well, a reason why it could make sense is
 [11] that it would get a national party involved in
 [12] raising money for a 501(3)(c), and it was the
 [13] potential that a huge entity, like one of the
 [14] national parties, could engage party apparatus in
 [15] raising money for a 501(3)(c), which has the
 [16] potential to undermine the effort to keep 501(3)(c)s
 [17] from becoming political organizations. That's one
 [18] possible reason.

[19] Q But federal candidate fundraising for
 [20] those same organizations wouldn't potentially
 [21] undermine the effort to keep those organizations
 [22] from becoming political organizations?

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[1] A It could, but it may not be as likely.

[2] Q Can you think of a reason sitting here
 [3] today why it would not be as likely?

[4] A I can't think of one, but there could be
 [5] reasons.

[6] Q Fair enough. Let me switch topics
 [7] slightly. We could get into the detail, but
 [8] basically I'm talking about the kind of get out the
 [9] vote or voter mobilization that I think you
 [10] described earlier either has to be done with hard
 [11] money or some kind of mixture of hard and Levin
 [12] money, generic campaign activities, those kind of
 [13] things.

[14] A That's my understanding.

[15] Q Without getting into the details, would
 [16] you agree with me that that kind of generic campaign
 [17] activity doesn't exclusively benefit the federal
 [18] candidates on the ballot, it also benefits the state
 [19] and local candidates on the ballot?

[20] A I would say all the candidates from that
 [21] particular party, sure.

[22] Q And I'm wondering if you think it makes

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[1] sense sitting here today in terms of whether the
 [2] appearance of corruption could be sufficiently

[3] ameliorated if there was some kind of allocation
 [4] formula where the relative benefit to state
 [5] candidates could be apportioned to the state
 [6] parties' nonfederal account, whereas, the relative
 [7] benefit to the federal candidates on the ballot
 [8] could be allocated to their federal hard money
 [9] account? Wouldn't that go a long way towards
 [10] ameliorating any appearance of corruption?
 [11] A That would be one way of doing it. But I
 [12] don't think there is a problem with separating hard
 [13] versus soft in the way the compromise legislation
 [14] that passed the Congress splits hard and soft money.
 [15] It was an attempt made certainly to try to do it
 [16] fairly between state and federal officeholders.
 [17] Certainly both ways are ways of doing it.
 [18] MR. CARVIN: If I asked him whether he
 [19] considered those two alternatives, would you object?
 [20] MR. MOGILNICKI: Yes, I would.
 [21] BY MR. CARVIN:
 [22] Q Do you want to answer that question?

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[1] MR. MOGILNICKI: I would instruct the
 [2] witness not to answer. I will take a moment to
 [3] confer with him.
 [4] (Counsel conferred with the witness.)
 [5] THE WITNESS: That's clearly in the area
 [6] of speech and debate.
 [7] MR. CARVIN: I'm not going to at 6:00
 [8] argue about it. We disagree. I will reserve. I
 [9] have a running objection to that. But I will not
 [10] argue about it or drag things out at this point. I
 [11] want to make the record clear that we don't agree
 [12] with that characterization.
 [13] BY MR. THOMPSON:
 [14] Q Are you aware of the amount of soft money
 [15] that is transferred from the national parties that
 [16] state parties have in their budgets?
 [17] A No, I'm not.
 [18] Q Either on a percentage or dollar basis?
 [19] A No, I'm not.
 [20] Q Are you aware of the percentage of soft
 [21] money that the state parties raise themselves in
 [22] terms of either the actual dollars or the percentage

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[1] of their budget?
 [2] A No, I'm not. To the extent I have been
 [3] involved at all with state parties has involved the
 [4] Massachusetts Democratic Party. As I indicated,
 [5] they don't raise soft money.
 [6] MR. MOGILNICKI: Mark this, please.
 [7] (Meehan Exhibit 15 identified.)
 [8] BY MR. CARVIN:
 [9] Q Congressman, handing you what has been
 [10] marked as Meehan Exhibit 15. Feel free to read it.
 [11] This is a letter from the chairman of the Republican
 [12] National Committee soliciting funds, contributions
 [13] to a "Coleman for Mayor" campaign to help reelect
 [14] Republican Norm Coleman mayor of St. Paul,
 [15] Minnesota.

[16] Assume with me that there were federal
 [17] candidates on the ballot the same year that Mayor
 [18] Coleman was seeking re-election. Do you know if
 [19] this solicitation letter would violate the Act if it
 [20] had been in effect during that time?
 [21] MR. MOGILNICKI: I will object as calling
 [22] for a legal conclusion.

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[1] You can try to answer.
 [2] (Witness examined the document.)
 [3] THE WITNESS: Who is Mr. Green?
 [4] BY MR. CARVIN:
 [5] Q A person who resides in Rochester,
 [6] Minnesota.
 [7] A And you are asking me to draw a legal
 [8] conclusion as to whether or not this would be legal
 [9] under the Act?
 [10] Q Yes.
 [11] A Is that because you don't know whether it
 [12] is or you want to know whether I know whether it
 [13] is?
 [14] Q I think it is.
 [15] A You think it is legal?
 [16] Q No. I think it is quite illegal.
 [17] A Let me tell you why I think it is illegal,
 [18] because the solicitation is -- there's an unlimited
 [19] amount. It says \$25, \$35, \$50 or more for the
 [20] Coleman for mayor campaign. Would this be on
 [21] Republican National Committee stationery?
 [22] Q Yes. This would be an official

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[1] solicitation, if you will, by the Republican
 [2] National Committee and its then chairman.
 [3] A Well, if Mr. Nicholson is using the
 [4] official, I believe that it would be, whether or not
 [5] there was a federal candidate running in the same
 [6] election.
 [7] Q Do you think that this activity of
 [8] soliciting fund funds for a local mayor's race by
 [9] the chairman of the RNC creates an appearance of
 [10] corruption for federal candidates or officeholders?
 [11] A It certainly does for the chairman of the
 [12] party. The chairman of the party is presumably
 [13] sending this letter out to party contributors. It
 [14] is asking for unlimited amounts of money for a local
 [15] election. Presumably the chairman of the party
 [16] utilizes its national stature almost equivalent to
 [17] and maybe higher than a federal officeholder.
 [18] As I said earlier in the deposition -- I
 [19] don't remember with you or Mr. Thompson -- party
 [20] officials have almost unlimited access to federal
 [21] officeholders. They are in charge of the entire
 [22] national party financing apparatus. They meet with

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[1] all the federal officeholders, provide access to
 [2] donors and fundraisers.
 [3] This solicitation, in my quick reading of
 [4] it -- and, again, it is a quick reading of it -- is
 [5] asking for an unlimited contribution to the Coleman

[6] for mayor campaign using the office of the national
 [7] Republican committee. I would say it would be.
 [8] Q And you focused on two aspects. Because
 [9] it is done by the national political committee, it
 [10] creates an appearance of corruption even though a
 [11] federal candidate didn't solicit the funds and even
 [12] though the beneficiary of the solicitation is not a
 [13] federal candidate or officeholder?

[14] A Yes.

[15] Q And that's for the reasons you have
 [16] previously described?

[17] A Yes.

[18] Q Are you aware of any evidence that a
 [19] federal candidate or officeholder has provided
 [20] preferential access or treatment to someone who has
 [21] contributed to a local race at the behest or
 [22] solicitation of a national political committee?

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[1] A I don't have personal knowledge of that.
 [2] I have never been a party chair.

[3] Q Let me change it slightly. Let's assume
 [4] this solicitation letter was sent by the governor of
 [5] the state of the same party. Would that create in
 [6] your mind an appearance of corruption for a federal
 [7] candidate or officeholder?

[8] A A state governor?

[9] Q Yes.

[10] A It wouldn't come under the jurisdiction of
 [11] the federal government. I mean, it may or may not.
 [12] That would be a state election issue, not a federal
 [13] election issue.

[14] Q Do you think, though, that it would create
 [15] the potential or actual appearance of corruption for
 [16] a federal candidate or officeholder if one state
 [17] official solicited contributions to another local
 [18] official?

[19] MR. MOGILNICKI: I will object. This
 [20] calls for quite a bit of speculation.

[21] THE WITNESS: So if a governor in a state
 [22] solicits a series of contributions for a local

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[1] official, how would that affect a federal
 [2] officeholder?

[3] BY MR. CARVIN:

[4] Q I don't think it would. Do you disagree?

[5] A Well, is the governor the chairman of the
 [6] party?

[7] Q No.

[8] A Does it have anything to do with this
 [9] letter, the question?

[10] Q No.

[11] A I don't think it would come under the
 [12] Federal Campaign Act.

[13] Q Do you think it would create an appearance
 [14] of corruption for federal candidates or
 [15] officeholders?

[16] A Not unless there are other facts that I
 [17] don't know about.

[18] Q You anticipated my next hypothetical.

[19] Let's assume the person doing the solicitation was
 [20] not the chairman of the national committee but the
 [21] state party chairman. Do you think that would
 [22] create an appearance of corruption for federal

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[1] candidates or officeholders?

[2] A It depends on the circumstances.

[3] Q In what circumstances would it create a
 [4] potential or actual appearance of corruption for
 [5] federal candidates or officeholders?

[6] A The relationship between the state party
 [7] apparatus and the federal candidate, whether or not
 [8] money had been raised by each candidate? It depends
 [9] on a series -- it is difficult to answer a
 [10] hypothetical question like this.

[11] Q Let me break it down for you. First of
 [12] all, the hypothetical would be the state party
 [13] chairman soliciting funds for a local race. And
 [14] what I'm asking is --

[15] A I don't think that would necessarily
 [16] create the appearance of corruption for a federal
 [17] officeholder.

[18] Q Let me change it slightly. What if the
 [19] state party chairman was a member of the national
 [20] committee as well by virtue of being the state party
 [21] chairman?

[22] A A member of the national committee?

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[1] Q Yes.

[2] A Would it be on national committee

[3] stationery?

[4] Q Hypothetical number one, no, it would not
 [5] be.

[6] A A member of the national party? How many
 [7] members of the national party would there be?

[8] Q I can't give you an absolute guarantee.

[9] As I understand the way the RNC works, if you are a
 [10] state party chairman, you are also by that very
 [11] reason a member of the Republican National
 [12] Committee

[12] as well.

[13] A And your question is whether or not it
 [14] creates the appearance of corruption. It depends on
 [15] the circumstances. I would have to have more facts
 [16] and information.

[17] Q I can give you some examples. If you
 [18] prefer and if you like, I would be happy to do that.
 [19] There are some RNC solicitations where they solicit
 [20] money for state activities, state and local races,
 [21] state and local redistricting.

[22] I take it from your prior answers that you

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[1] would think that would create an appearance of
 [2] corruption because of the chairman of the national
 [3] committee's involvement in that solicitation?

[4] A Potentially. But again, you are asking me
 [5] to -- at this point it is getting to be guesswork.

[6] It would be dependent of facts, be dependent of
 [7] circumstances. I would rather not engage in --

[8] these hypothetical questions are fun for a while,
 [9] but I would need more information and facts. It
 [10] would –
 [11] Q Let me give you some specifics, then.
 [12] A You gave me some specifics, but I haven't
 [13] been able to give you an answer.
 [14] Q Well, Congressman, in all fairness, people
 [15] will have to operate under this Act and they will
 [16] have to be able to figure these things out. People
 [17] are going to have to figure out whether or not these
 [18] things do or do not violate the Act and/or create
 [19] the appearance of corruption.
 [20] A That's why the FEC will promulgate rules
 [21] and regulations. That's why the attorneys who are
 [22] for both parties will go through the Act and look at

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[1] the regulations and make interpretations.
 [2] That's why for you to try to ask a hundred
 [3] hypothetical questions as if I have the potential
 [4] rules and regulations, promulgations or the entire
 [5] legislative history of this bill that, as you know,
 [6] will be an awful lot of documents, it is not a very
 [7] good way to make judgments about interpretations of
 [8] complex not just legislation but of the record of
 [9] this bill and the promulgations of rules and
 [10] regulations.
 [11] Q Even if all the lawyers could figure all
 [12] those things out –
 [13] A I'm sure they can. I'm sure they will.
 [14] But I'm really not going to engage in guesswork
 [15] without – you are asking me to give you a flip,
 [16] quick answer to something that would take a law firm
 [17] or an adjudicatory agency, an election agency a few
 [18] days to analyze and give you an answer. I don't
 [19] think it is productive. I think it is dumb, and I
 [20] don't want to do it. I'm not going to do it.
 [21] You know, I have had positions where I
 [22] used to regulate securities in Massachusetts, and if

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[1] somebody came in and started giving hypotheticals to
 [2] me about whether or not in a prospectus something
 [3] would be legal or not, I would never engage in such
 [4] foolishness. So I don't want to do it here at a
 [5] deposition. It is just –
 [6] Q Frankly, Congressman, whether or not the
 [7] Act breaches these I don't think is a controversial
 [8] issue. I will represent to you that the exhibits
 [9] I'm about to give you, the Act does prohibit
 [10] spending soft money on. And I will also represent
 [11] to you I can't figure out why these examples I'm
 [12] about to give to you create any cognizable
 [13] appearance of corruption for federal candidates and
 [14] officeholders.
 [15] When I show them to you – if we could
 [16] mark this – I will then ask you why or if you think
 [17] they do. So this is not a question as to whether or
 [18] not you figured out every jot and tittle of the Act
 [19] but –
 [20] A It is more than figuring out every jot and

[21] what?
 [22] Q Tittle.

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[1] A – tittle of the Act. It is the question
 [2] of any time laws are passed at the state or federal
 [3] level and rules and regulations are promulgated by
 [4] those agencies that regulate and that are charged
 [5] with the responsibility of enforcing a rule or act,
 [6] there develops precedent case laws.
 [7] To sit in a deposition as long as it has
 [8] been and just give knee-jerk reactions to things is
 [9] from my vantage point something I wouldn't engage
 [10] in. I just don't think it is helpful to engage in
 [11] it. I don't have the legislative history with me.
 [12] I could put a group of attorneys together and if you
 [13] give me something in a couple days, I can give you
 [14] potential rules and regulations that I would think
 [15] would be appropriate. Let's take the next one.
 [16] (Meehan Exhibit 16 identified.)
 [17] BY MR. CARVIN:
 [18] Q Please look at Meehan Exhibit 16. I
 [19] represent to you that this was paid for by the
 [20] California Democratic Party in 1996, when the
 [21] President and other federal candidates were on the
 [22] ballot. It also references, as you will see, Newt

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[1] Gingrich, who at that time was a candidate for
 [2] federal office.
 [3] A What is your question?
 [4] Q Do you think this ad, if paid for with
 [5] soft money, creates the appearance of corruption for
 [6] federal candidates or officeholders?
 [7] A How was it paid for?
 [8] Q With soft money raised by the California
 [9] Democratic Party.
 [10] A To turn out vote in a federal election? My
 [11] opinion is it would be covered under the Act.
 [12] Q Right, and I agree. Do you think that
 [13] this poses the appearance of corruption for federal
 [14] candidates or officeholders?
 [15] A As I have said for most of the deposition
 [16] throughout the day, it is not the ad itself. It is
 [17] how the ad is paid for. This ad could easily be
 [18] paid for through hard dollars, and I think the
 [19] system would be better served using hard dollars.
 [20] Q We have previously agreed that state
 [21] parties are not prohibited from raising soft money
 [22] under the Act.

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[1] A Right.
 [2] Q And the expenditure of soft money is
 [3] prohibited only if it relates to federal election
 [4] activity?
 [5] A That's correct, though many states have
 [6] made soft money legal.
 [7] Q And, again, my question would be why does
 [8] this sort of generic campaign activity which
 [9] encourages African American youths to vote
 [10] Democratic in 1996 potentially corrupt any federal

[11] candidate that was running –
 [12] A The ad doesn't corrupt. I should let you
 [13] finish.
 [14] Q – the ad or the sources of funds for the
 [15] ad, to anticipate your concern, potentially corrupt
 [16] federal candidates who are on the ballot the same
 [17] year?
 [18] A Because what we are trying to do is
 [19] eliminate soft money for federal elections. And in
 [20] attempting to do that, it doesn't do any good to
 [21] eliminate soft money and then start creating
 [22] loopholes. So for purposes of get out the vote,

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[1] there are provisions in the statute if money is to
 [2] be used for get out the vote.
 [3] In this instance, if there is a federal
 [4] election, the federal part of it needs to be hard
 [5] dollars. It doesn't in any way limit the ability to
 [6] get out the vote or that this advertisement or that
 [7] this flyer can be used. It just has to be done with
 [8] hard dollars.
 [9] Q And that would be true again even if the
 [10] soft money raised by the California Democratic Party
 [11] was raised by state officials or state party
 [12] officers and not any federal candidate?
 [13] A That's right. No soft money for federal
 [14] officers.
 [15] (Meehan Exhibit 17 identified.)
 [16] BY MR. CARVIN:
 [17] Q Congressman, this is Exhibit 17, and I
 [18] represent to you that it is a radio ad paid for by
 [19] the California Democratic Party in the same election
 [20] cycle, the 1996 election cycle. If you would, could
 [21] you take a minute to read the text of this radio
 [22] script, please.

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[1] (Witness examined the document.)
 [2] A Okay.
 [3] Q The text of this ad encourages people to
 [4] vote no on Proposition 209, which was a ballot
 [5] initiative in California that would have eliminated
 [6] affirmative action by state agencies. In the course
 [7] of it, it says unkind things about Republicans.
 [8] Do you think that this ad, if paid for
 [9] with soft money, potentially corrupts federal
 [10] candidates who are on the ballot in that year?
 [11] A That would require me to read through the
 [12] statute, look at the rules and regulations. I just
 [13] can't say based on –
 [14] Q Maybe you are answering a slightly
 [15] different question. I will ask that question. Do
 [16] you know sitting here whether or not this ad, if the
 [17] Act was in effect in 1996, could be paid for with
 [18] soft money raised by the California Democratic
 [19] Party?
 [20] MR. MOGILNICKI: Objection; calls for a
 [21] legal conclusion.
 [22] THE WITNESS: Again, this would require a

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[1] full reading of the statute and looking at proposed
 [2] regulations.
 [3] BY MR. CARVIN:
 [4] Q We don't need an answer to whether or not
 [5] it is prohibited by the Act. I'm now going to ask a
 [6] slightly different question, whether or not you
 [7] think this radio ad, if paid for with soft money
 [8] raised by the California Democratic Party, would
 [9] potentially corrupt federal candidates.
 [10] A Look, I think hard money should be used
 [11] for all these ads. So I think the system is better
 [12] served if political parties use hard money.
 [13] Q Does that mean you can't see the potential
 [14] corrupting effect on federal candidates if this
 [15] ad –
 [16] A No, it doesn't mean that. It means that
 [17] generally I think that any attempt to do get out the
 [18] vote that involves a federal election, that the
 [19] system is better having hard money used.
 [20] If I had my druthers, I think every state
 [21] should do what Massachusetts has done, which is
 [22] soft money illegal.

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[1] If your question is whether soft money
 [2] could be used if there was a federal election, that
 [3] is a legal determination you are asking me to make
 [4] that would require significant more legal analysis
 [5] and looking at promulgated rules and regulations.
 [6] Q So you don't have a view one way or
 [7] another as to whether or not this ad, if paid for
 [8] with soft money raised by the California Democratic
 [9] Party, potentially corrupts federal candidates; is
 [10] that correct?
 [11] MR. MOGILNICKI: Objection; asked and
 [12] answered. He has already answered the question
 [13] whether this potentially corrupts.
 [14] BY MR. CARVIN:
 [15] Q And the answer is you don't know one way
 [16] or the other?
 [17] MR. MOGILNICKI: That misstates the prior
 [18] testimony.
 [19] THE WITNESS: You want me to try again?
 [20] BY MR. CARVIN:
 [21] Q I have asked it a number of times.
 [22] A Let me answer it again.

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[1] Q Good.
 [2] A I believe that soft money, that is, the
 [3] money over and above the legal limits, has a
 [4] corrupting influence over federal officeholders if
 [5] federal officeholders raise unlimited amounts of
 [6] money. I think the system is better served if there
 [7] are some limits on how much money should be raised.
 [8] That's true whether the ads are for get out the vote
 [9] in a federal election or whether they are for
 [10] 60-second negative television spots.
 [11] Ideally I would like every state to have
 [12] contribution limits, because I think the public

[13] interest is better served through contribution
 [14] limits. So you are asking me if I think it
 [15] corrupts. I don't want to see ads with soft money.
 [16] I would like to see hard money used because I think
 [17] that the system is better served that way.
 [18] Q I understand your policy preference for
 [19] what state legislatures should do.
 [20] A It is my policy preference for what
 [21] federal officeholders should do and, frankly, I
 [22] would like to see state policy officeholders adopt

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[1] the same.
 [2] Q Is it your policy preference for what the
 [3] federal legislature should prohibit or authorize?
 [4] A Pardon me?
 [5] Q I'm asking you not whether or not you
 [6] prefer hard money or soft money in terms of state
 [7] regulations, state political parties. My question
 [8] is do you think this ad, if paid for with soft money
 [9] raised by the California Democratic Party,
 [10] potentially corrupts federal candidates?
 [11] A I would have to fully read the statute,
 [12] look at rules and regulations as promulgated and
 [13] make a determination after careful analysis of the
 [14] record that has been established by the debate in
 [15] the House of Representatives, both in the House and
 [16] the Senate. So I wouldn't give you a flip knee-jerk
 [17] reaction to it here.
 [18] Q And after that careful analysis, you might
 [19] know whether or not the Act prohibits it. But do
 [20] you need to do that analysis to offer me an opinion
 [21] as to whether or not this ad, if paid for with soft
 [22] money raised by the California Democratic Party, has

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[1] the potential to corrupt federal candidates?
 [2] MR. MOGILNICKI: I will object. That's
 [3] the question he has answered three times now.
 [4] MR. CARVIN: No. It has been asked six
 [5] times.
 [6] MR. MOGILNICKI: I agree with you on that.
 [7] THE WITNESS: Let me correct you on
 [8] something. It is not that the careful analysis is
 [9] going to make me have a legal opinion as to whether
 [10] it is - you may have your legal opinion and someone
 [11] else may come in with a different legal opinion.
 [12] I just can't give you a knee-jerk reaction
 [13] without reading through the statutes, reading
 [14] through the promulgation of the rules and
 [15] regulations and looking at the exhaustive
 [16] legislative history of this bill and then determine
 [17] based on the facts - I can't give you a -
 [18] BY MR. CARVIN:
 [19] Q Since you haven't done that careful
 [20] analysis, sitting here today -
 [21] A I certainly can't do that careful analysis
 [22] now.

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[1] Q No one is asking you to. My question now,
 [2] in light of the fact that you haven't been able to

[3] do that careful analysis, do you have an opinion one
 [4] way or another as to whether or not this ad, if paid
 [5] for by soft money raised by the California
 [6] Democratic Party, has the potential to corrupt
 [7] federal candidates?

[8] MR. MOGILNICKI: Objection.

[9] THE WITNESS: I wouldn't have an opinion
 [10] until I did careful analysis of the specifics in the
 [11] legislative history.

[12] BY MR. CARVIN:

[13] Q What if the NAACP had paid for this ad out
 [14] of its coffers attacking the Republican effort to
 [15] end affirmative action in California? Do you have
 [16] an opinion as to whether or not that has the
 [17] potential to corrupt federal candidates?

[18] A You are giving me another hypothetical?

[19] Q It is the same exact ad. The funding
 [20] source is no longer the California Democratic Party.

[21] A So it is not soft money.

[22] Q It is money that is unregulated by the

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[1] Federal Election Commission because it is money
 [2] possessed by the NAACP.

[3] A Is this money that has been raised by the
 [4] NAACP but not designated to a particular account?

[5] Q Yes.

[6] A To get out the vote? So this is just
 [7] general NAACP money, and then at some point after
 [8] the NAACP has raised certain money to run the
 NAACP,

[9] they decide to run an ad. So presumably, the bottom
 [10] line, it wouldn't be paid for by the Democratic
 [11] Party.

[12] Q It would be paid for by the NAACP.

[13] A No, I don't believe it would.

[14] Q And that's true even though the NAACP is
 [15] not required to disclose its donors or the amounts
 [16] of their contributions to the Federal Election
 [17] Commission?

[18] MR. MOGILNICKI: Objection. He has
 [19] answered the question.

[20] THE WITNESS: I gave my opinion. But,
 [21] again, if we are giving opinion, I would rather do
 [22] an analysis of the law and legislative history.

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[1] BY MR. CARVIN:

[2] Q As you explained this morning, one of your
 [3] concerns about electioneering communications is that
 [4] the groups running their ads before the Act didn't
 [5] have to disclose the source or amounts of their
 [6] contributions; correct?

[7] A Those ads that mention a federal
 [8] candidate?

[9] Q Yes.

[10] A Yes.

[11] Q And you agree with me that the appearance
 [12] of corruption results when groups or individuals
 [13] spend large sums of money to influence the outcome
 [14] of elections without disclosing who they are and how

[15] much they are spending; correct?
 [16] A That's correct.
 [17] Q And at least national political parties
 [18] are required to disclose who their donors are and
 [19] how much they contribute; correct?
 [20] MR. MOGILNICKI: Objection; calls for a
 [21] legal conclusion.
 [22] THE WITNESS: Yes.

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[1] BY MR. CARVIN:
 [2] Q So at least in that respect, they pose
 [3] less a threat of the appearance of corruption than
 [4] 501(c) or similar organizations that do not have to
 [5] disclose their donors or the amounts of the
 [6] contributions?
 [7] A I disagree.
 [8] Q Why is that?
 [9] A I disagree with your characterization.
 [10] Groups that mention federal candidates would have
 [11] to
 [12] declare where the money comes from and use hard
 [13] dollars under the Act.
 [14] Q But sometimes advertisements that don't
 [15] mention federal candidates nonetheless have the
 [16] purpose and effect of influencing federal elections;
 [17] correct?
 [18] A If the question is could an advertisement
 [19] that didn't mention a federal candidate potentially
 [20] influence an election, I suppose that it could.
 [21] I suppose that if there is a race for
 [22] governor in a state and a Democratic candidate is
 doing very, very well or a Republican candidate is

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[1] doing very well, and someone said to the Republican
 [2] or Democrat, whichever is doing the best, other
 [3] candidates would have an easier time of getting more
 [4] votes, would do better.
 [5] Q Well, this ad, the one we are looking at,
 [6] that would have an influence on a federal election,
 [7] wouldn't it, by encouraging people to vote and
 [8] criticizing the Republican Party?
 [9] A Well, again, I would prefer, as I said, to
 [10] give a legal analysis based on a reading of the
 [11] legislative history of the bill, a reading of the
 [12] legislation and rules and regulations as promulgated
 [13] by the appropriate agencies.
 [14] Q Just as a common sense matter, if you run
 [15] an ad shortly before an election, you criticize
 [16] Republicans, you criticize Governor Wilson, the
 [17] Republican governor, you encourage people to get
 [18] out
 [19] and vote on the day when there will be federal
 [20] candidates on the ballot, doesn't that have the
 [21] purpose and effect of influencing a federal
 [22] election?
 MR. MOGILNICKI: Objection;
 argumentative.

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[1] This is becoming an extended argument about what

the

[2] law should be and in the guise of questions. I
 [3] think if you want to ask Congressman Meehan for his
 [4] views, you can do so in a way that isn't
 [5] argumentative. I would appreciate if you do so.
 [6] THE WITNESS: It depends on the
 [7] circumstances.
 [8] BY MR. CARVIN:
 [9] Q Well, in these circumstances, in 1996,
 [10] this ad, do you have enough information to know
 [11] whether or not this ad -
 [12] A I don't have enough information to know
 [13] because I'm not sure what the circumstances were in
 [14] 1996. So it is very difficult for me to give you an
 [15] opinion based on an ad that ran six years ago in a
 [16] state in which I'm not a resident about a
 [17] proposition that, candidly, I haven't read.
 [18] Q So sometimes a radio advertisement shortly
 [19] before an election that mentions a political party
 [20] and encourages people to vote on Election Day may
 [21] not influence federal elections even if there are
 [22] federal candidates on the ballot that day?

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[1] A It is possible. I'm not sure that - it's
 [2] possible. Some ads influence more than other ads.
 [3] Some ads are effective. Some ads aren't. Some ads
 [4] backfire and some ads don't.
 [5] Q Let me see if I can save us both some
 [6] time. Do you have a view as to whether or not
 [7] generic advertisements, nonbroadcast
 [8] advertisements -
 [9] A Nonbroadcast generic advertisements?
 [10] Q - yes, in newspapers or mailings that say
 [11] "vote Democratic" or "vote Republican" on an
 [12] election day when federal candidates appear on the
 [13] ballot paid for by soft money raised by state
 [14] parties poses an appearance of corruption for
 [15] federal candidates or officeholders?
 [16] A I believe that what it does is it opens up
 [17] a loophole in the soft money ban that we are trying
 [18] to put into law. Because of the fact that the huge
 [19] soft money loophole that exists now, \$500 million in
 [20] the last election cycle, started with a little
 [21] loophole that became a huge loophole, we are trying
 [22] to close that loophole.

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[1] I think the system is better served by
 [2] funding federal elections with hard dollars, be they
 [3] generic or if they mention a specific federal
 [4] candidate.
 [5] Q What's the little loophole you were just
 [6] referring to?
 [7] A You asked me whether or not it is okay to
 [8] get out the vote with soft money for a federal
 [9] election.
 [10] Q No. I understand. You said it started
 [11] out as a little loophole and became a big loophole.
 [12] A The present campaign finance system, the
 [13] soft money loophole. We are trying to crack down on

[14] soft money.
 [15] Q And what was the original little loophole
 [16] and what did it grow into?
 [17] A I don't have the statistics in front of
 [18] me. I think in the presidential race in 1988, there
 [19] were certain -- I don't have the statistics in front
 [20] of me. If you chart from the '88 election to the
 [21] 2000 election, you will see it went from very little
 [22] to \$500 million.

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[1] So we are trying to create a system
 [2] whereby both political parties can get off the
 [3] addiction of soft money. And in trying to do that,
 [4] if you go into it trying to look at ways to create
 [5] new loopholes, you have a system where you really
 [6] haven't eliminated soft money.
 [7] Q And the growth, just so I'm clear, is that
 [8] the amount of soft money increased significantly
 [9] between 1988 and today? Is that what you meant?
 [10] A Yes. I don't have the statistics. My
 [11] guess would be 4- to 500 percent.
 [12] THE WITNESS: May I take a short break?
 [13] MR. CARVIN: Yes.
 [14] (Recess.)
 [15] (Meehan Exhibit 18 identified.)
 [16] BY MR. CARVIN:
 [17] Q Congressman, I have handed you an
 [18] Exhibit 18. It is a Boston Herald article from
 [19] September 7, 2000 which details some of the people
 [20] who have contributed to your campaign and some
 [21] fundraising. Feel free to read the article. I know
 [22] we are pressed for time.

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[1] My questions, at least my first principal
 [2] questions will be on the last page, the people who
 [3] have contributed money to you.
 [4] A Is this in the article?
 [5] Q Yes, it is part of the article.
 [6] A Okay.
 [7] Q And they represent in the article that a
 [8] group called Lau Technologies in the '98 and 2000
 [9] election cycle, to be specific, companies and
 [10] executives and officials from that organization gave
 [11] you a total of \$18,500. Do you know if that's
 [12] roughly accurate?
 [13] A I would guess that it would be roughly
 [14] accurate. Those would be employees of Lau
 [15] Technologies, which is a high-technology company, a
 [16] minority-owned business in my district.
 [17] Q And, therefore, those would be all hard
 [18] money contributions?
 [19] A They are all hard dollar contributions.
 [20] They are not corporate contributions but, rather,
 [21] personal contributions.
 [22] Q I take it it is fair to say you have done

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[1] a number of things to help Lau Technologies and be
 [2] supportive of the company?
 [3] A I try to be supportive of all the

[4] high-tech companies in my district, including Lau
 [5] Technologies. The head of Lau Technologies -- it is
 [6] a minority woman business owner -- has been
 [7] nationally recognized as a small business leader. I
 [8] try to do everything I can to help small business in
 [9] my district.
 [10] Q And you would have done that regardless of
 [11] whether or not these various company executives and
 [12] officials have contributed a total of \$18,500 to
 [13] your campaigns?
 [14] A Absolutely.
 [15] Q And your support for them didn't create
 [16] the appearance of corruption of you because you had
 [17] done these efforts to help them even after these
 [18] contributions had been given to you?
 [19] A I made efforts to reach out to companies
 [20] in my district before any of the companies
 [21] contributed anything to my campaign. I continue to
 [22] be supportive of all small business in my district.

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[1] Q Do you have any reason to believe that the
 [2] company executives and officials of Lau Technologies
 [3] gave you this money to purchase access or support
 [4] for their efforts?
 [5] A No. I believe that they contributed these
 [6] limited hard dollar contributions because of my
 [7] effectiveness in fighting for small business in the
 [8] Congress.
 [9] Q On page 15 of this article --
 [10] MR. MOGILNICKI: The second page of the
 [11] printout?
 [12] MR. CARVIN: Yes.
 [13] BY MR. CARVIN:
 [14] Q Just to be clear for the record, the
 [15] number in the upper right-hand column is page 15.
 [16] Again, feel free to read everything. I'm going to
 [17] be asking you about this event at the home of Lynne
 [18] Wasserman that at least the paper represents you
 [19] attended.
 [20] A Where?
 [21] Q I think you probably want to start reading
 [22] "In a brief August 15th speech" to the bottom of the

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[1] page.
 [2] (Witness examined the document.)
 [3] A Yes.
 [4] Q Is it true that Lynne Wasserman hosted a
 [5] dinner reception for you around the time of the
 [6] Democratic National Convention in Los Angeles?
 [7] MR. MOGILNICKI: Objection. That's not
 [8] what the article says happened. I think you are
 [9] mischaracterizing at least two lines of this page.
 [10] THE WITNESS: No, that wouldn't be
 [11] accurate. Lynne Wasserman hosted a reception for
 [12] at her home for the Massachusetts delegates to the
 [13] national convention in my honor, but it wasn't a
 [14] reception for me. It wasn't a political fundraiser.
 [15] People didn't make any contributions. It wasn't a

[16] fundraiser.

[17] BY MR. CARVIN:

[18] Q Approximately 150 people attended this?

[19] A I don't recall how many people attended.

[20] 150 sounds high because not all the delegates

[21] attended. There were several delegate receptions

[22] that evening. So there wasn't 150 people.

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[1] Q Is it true that the Wassermans picked up
[2] the tab for the guests?

[3] A At their home, yes.

[4] Q Do you know how much it cost, roughly?

[5] A No idea.

[6] Q Did it cost more than \$2000?

[7] A I have no idea.

[8] Q Do you think this dinner reception created
[9] the appearance of undue influence of Ms. Wasserman
[10] over you?

[11] A No. It was a reception for delegates to
[12] the national convention. It wasn't a fundraiser,
[13] nor was it -- it wasn't a fundraiser.

[14] Q This type of reception was not outlawed by
[15] BCRA; correct?

[16] A No.

[17] Q It would still be perfectly legal?

[18] A Yes, it would.

[19] Q And there would be no appearance of
[20] corruption even though you as a federal officeholder
[21] attended this dinner in your honor at her home?

[22] MR. MOGILNICKI: Objection;
argumentative,

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[1] asked and answered.

[2] BY MR. CARVIN:

[3] Q Correct?

[4] A It was a reception for delegates.

[5] Q In your honor?

[6] A Honoring me at her home. But I received
[7] no benefit at all in terms of campaign contributions
[8] or anything else. So no, it wouldn't have the
[9] appearance of corruption towards me or even
towards

[10] the delegates who perhaps had an hors oeuvre or
[11] something like that. It wasn't a dinner per se.

[12] Q Did it benefit Ms. Wasserman?

[13] A No, I don't think that it did. I don't
[14] see how it could have.

[15] Q Even though in this reception she had
[16] contact with federal officeholders such as yourself?

[17] MR. MOGILNICKI: Objection again. It is
[18] asked and answered and it is argumentative. You are
[19] asking him one question, he answers it, and then you
[20] add a couple adjectives and ask it again.

[21] THE WITNESS: It was a reception for
[22] delegates. I don't know that there were any other

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[1] federal officeholders there, though she had some
[2] friends that were there, and I don't know who they
[3] were.

[4] BY MR. CARVIN:

[5] Q So my final question is receptions of this
[6] kind, so long as there is not fundraising at them,
[7] in your mind doesn't create an appearance of
[8] corruption; correct?

[9] A This reception doesn't even come close to
[10] being the appearance of corruption or anything else.
[11] It is not even close. It is not even on the radar
[12] screen.

[13] Q Let's assume same reception, all the same
[14] facts, and they charged \$100 to attend and some of
[15] the attendees were representatives of corporations.
[16] In those circumstances, would it create an
[17] appearance of corruption?

[18] A If you are talking about a fundraiser,
[19] this was not a fundraiser. But if someone had a
[20] fundraiser for me and people came and spent \$100 of
[21] personal money, no, that would not be the
appearance
[22] of corruption. That would all be hard dollars.

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[1] I think more members of Congress should
[2] have \$100 fundraisers instead of million dollar
[3] fundraisers, and that would lessen certainly the
[4] appearance of corruption.

[5] Q And, finally, if one of the attendees had
[6] the \$100 paid for out of a corporate treasury, that
[7] would create the appearance of corruption?

[8] A It has been illegal in the United States
[9] for any candidate to take corporate money in their
[10] campaign. It would not only create the appearance
[11] of corruption, I think it would qualify as a corrupt
[12] act under the Federal Election Commission statute.
[13] So it wouldn't be the appearance; that would be a
[14] corrupt act.

[15] Q And what about money out of a union
[16] treasury?

[17] A If someone gave money out of a union
[18] treasury to a candidate? That's illegal. It has
[19] been illegal for many years. It was part of the
[20] Tillman Act. So that would be illegal.
[21] So I wouldn't say it would be the
[22] appearance of corruption. I would say if that

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[1] happened, it would be a corrupt act, punishable
[2] through criminal statutes, criminal penalties under
[3] the statute. Wouldn't you agree?

[4] Q We will find out in a second. If the
[5] beneficiaries of the \$100 was not the candidates but
[6] the California Democratic Party, would it create the
[7] appearance of corruption?

[8] A If somebody had a fundraiser, a \$100
[9] fundraiser, and corporations contributed the money
[10] and it was the California State Republican Party?
[11] That depends upon the state laws in California, and
[12] I'm not familiar with them.

[13] I have indicated that under federal
[14] statute it would not be the appearance of corruption
[15] but a corrupt act because it is illegal.

[16] Q The contribution?

[17] A Contributions from corporations or
[18] directly from union treasury dues. I don't know
[19] what the statute is in New York - in California.
[20] I'm not familiar with what the laws are. So I
[21] couldn't characterize it.

[22] Q Just so we are clear, is it your

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[1] understanding of federal law prior to BCRA that
[2] contributions from corporate treasuries to political
[3] parties, as opposed to candidates, was illegal?

[4] MR. MOGILNICKI: Objection; calls for a
[5] legal conclusion.

[6] THE WITNESS: To political parties? No.
[7] But as I said, I don't know what the statute is in
[8] California. But I do know that if a candidate -
[9] and I think your first or second or third
[10] hypothetical all involved a candidate. I think I
[11] was the hypothetical candidate. Then that would be
[12] illegal, corporate treasury.

[13] BY MR. CARVIN:

[14] Q Okay.

[15] A Right?

[16] Q Right, because there is an obvious
[17] difference between a contribution to a candidate and
[18] a contribution to a party.

[19] A Right. But you asked that anyway. That's
[20] the way you asked the question. I don't know what
[21] the rule is for the California state party. I don't
[22] know what the law is.

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[1] MR. CARVIN: Fair enough. Give me one
[2] minute.

[3] (Pause.)

[4] MR. CARVIN: I have no further questions.

[5] MR. MOGILNICKI: Can I put one thing on
[6] the record?

[7] There has been some conversation among
[8] counsel on this issue. The protective order gives
[9] us 10 days to designate portions of the deposition
[10] as highly confidential and confidential. We want to
[11] be clear it is at least our position, and I think a
[12] position shared by other counsel in the matter, that
[13] during that 10-day period no one should treat the
[14] transcript as being anything but confidential, and
[15] then once designations are made and the 10-day
[16] period elapses, the transcript becomes available for
[17] disclosure, to the extent that is appropriate under
[18] the order relating to this case.

[19] MR. CARVIN: What is the practical effect
[20] of this 10 days? We are not talking highly
[21] confidential?

[22] MR. MOGILNICKI: I don't think so. The

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[1] only concern was - and this was actually expressed
[2] by counsel to a member who is a plaintiff - that
[3] during the period of time between the closing of the
[4] transcript and whatever designation occurs, that no
[5] one interpret the absence of a designation within

[6] the time allotted by the protective order as a

[7] waiver of your right to claim certain parts of the
[8] transcript are confidential or highly confidential.

[9] MR. CARVIN: If I'm understanding you,
[10] that seems fine. I want to make sure that I'm
[11] not - what would that mean in terms of if we got a
[12] transcript 24 hours from now in terms of its
[13] distribution during the nine days after that?

[14] MR. MOGILNICKI: I think it would only
[15] mean that it should be treated as confidential under
[16] the -

[17] MR. CARVIN: Meaning the public -

[18] MR. MOGILNICKI: Yes.

[19] MR. CARVIN: There is confusion about
[20] inside counsel and outside counsel.

[21] MR. MOGILNICKI: All I'm asking is anyone
[22] who reviews the transcript treat it as confidential

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[1] under the protective order until we have a chance to
[2] make our designations.

[3] MR. CARVIN: Fine.

[4] (Whereupon, at 7:05 p.m., the deposition
[5] was concluded.)

[6]

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[1] I HEREBY CERTIFY that I have read this
[2] transcript of my deposition and that this transcript
[3] accurately states the testimony given by me, with
[4] the changes or corrections, if any, as noted.

[5]

[6]

[7] X

[8]

[9]

[10]

[11] Subscribed and sworn to before me this day of
[12] , 20 .

[13]

[14]

[15]

[16] X

[17] Notary Public

[18]

[19] My commission expires: .

[20]

[21]

[22]

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Concordance Report**---
UNIQUE WORDS:

2,749

TOTAL**OCCURRENCES:**

16,286

NOISE WORDS: 388**TOTAL WORDS IN FILE:**

44,018

SINGLE FILE**CONCORDANCE**

CASE SENSITIVE

INCLUDES ALL TEXT**OCCURRENCES**

DATES ON

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