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

3 - - - - -X

4 SENATOR MITCHELL McCONNELL, et al., :
5 Plaintiffs, : CIVIL ACTION
6 v. : NO.02-CV-582
7 FEDERAL ELECTION COMMISSION, et al., : CKK, KLH, RJL
8 Defendants : Consolidated
9 - and - : Action

10 SENATOR JOHN McCain, SENATOR :
11 RUSSELL FEINGOLD, REPRESENTATIVE :
12 CHRISTOPHER SHAYS, REPRESENTATIVE :
13 MARTIN MEEHAN, SENATOR OLYMPIA SNOWE, :
14 SENATOR JAMES JEFFORDS, :
15 Intervenor. :

16 - - - - -X

17 CONTAINS COUNSEL ONLY INFORMATION

18 Washington, D.C.

19 Monday, September 9, 2002

20 Deposition of SENATOR RUSSELL FEINGOLD, a
21 Defendant Intervenor herein, called for examination
22 by counsel for Plaintiffs in the above-entitled
23 matter, pursuant to notice, the witness being duly
24 sworn by SUSAN L. CIMINELLI, a Notary Public in and
25 for the District of Columbia, taken at the offices of

Page 2

1 Senate Dirksen Room 562, Washington, D.C., at 9:00
 2 a.m., Monday, September 9, 2002, and the proceedings
 3 being taken down by Stenotype by SUSAN L. CIMINELLI,
 4 CRR, RPR, and transcribed under her direction.
 5
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<p>1 EXHIBITS (Continued)</p> <p>2 FEINGOLD EXHIBIT NO. PAGE NO.</p> <p>3 9 Intervenor-Defendants' Objections and</p> <p>4 Responses to Plaintiff McConnell's First</p> <p>5 Set of Interrogatories 81</p> <p>6 10 Letter w/attachment, 4/10/02 135</p> <p>7 11 Public Law 107-155 - Mar. 27, 2002 139</p> <p>8 12 Letter, 10/8/97 164</p> <p>9 13 "The Hill" article 184</p> <p>10 14 Vote Democratic ad 192</p> <p>11 15 "Mean Spirited" ad 199</p> <p>12 16 Web printout, 9/6/02 220</p> <p>13 17 Associated Press article, 7/19/02 231</p> <p>14 18 Daily News Web printout, 9/5/02 231</p> <p>15 19 Complaint 240</p> <p>16 20 Opensecrets.org printout 240</p> <p>17 21 The Progressive article 247</p> <p>18 22 Report on Individual Congressional</p> <p>19 Campaign Contributors 255</p> <p>20 23 Excerpt from Congressional</p> <p>21 Record, 3/19/01 261</p> <p>22 24 Associated Press article 268</p> <p>23 25 Public Perspective article</p> <p>24 May/June 2002 270</p> <p>25 26 Article, The Color of Money 287</p>	<p>1 PROCEEDINGS</p> <p>2 Whereupon,</p> <p>3 SENATOR RUSSELL FEINGOLD,</p> <p>4 was called as a witness by counsel for Plaintiffs,</p> <p>5 and having been duly sworn by the Notary Public, was</p> <p>6 examined and testified as follows:</p> <p>7 EXAMINATION BY COUNSEL</p> <p>8 FOR PLAINTIFF McCONNELL</p> <p>9 BY MR. ABRAMS:</p> <p>10 Q. Good morning, Senator Feingold. I'm Floyd</p> <p>11 Abrams. I represent Senator McConnell. You used to</p> <p>12 practice law at one point in your life, did you not?</p> <p>13 A. I did.</p> <p>14 Q. Did you take depositions?</p> <p>15 A. I did take some depositions. Yes. Did a</p> <p>16 whole lot of them, as a matter of fact.</p> <p>17 Q. Let me introduce as Feingold Exhibit 1</p> <p>18 Senate Resolution 323, which was adopted on September</p> <p>19 5. I guess I should say it's the only document I do</p> <p>20 not have copies of.</p> <p>21 (Feingold Exhibit No. 1 was</p> <p>22 marked for identification.)</p> <p>23 BY MR. ABRAMS:</p> <p>24 Q. This resolution was adopted by the Senate</p> <p>25 on September 5th, was it not?</p>

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1 A. I cannot speak to that. It's my
 2 understanding that a resolution was passed in the
 3 last few days. I can't speak to it.
 4 Q. You have written and spoken off the floor
 5 and in this case, have you not, about what you
 6 referred to as sham issue advocacy?
 7 A. I think I typically refer to them as phony
 8 issue ads, but I believe I understand what you are
 9 talking about. Yes.
 10 Q. Let me introduce as Feingold Exhibit 2
 11 answers to interrogatories in this case submitted by
 12 the intervenors to the Madison Center plaintiffs'
 13 first set of interrogatories.
 14 (Feingold Exhibit No. 2 was
 15 marked for identification.)
 16 BY MR. ABRAMS:
 17 Q. You have intervened in this case to defend
 18 the constitutionality of the Campaign Reform Act,
 19 have you not?
 20 A. I am one of the group of members of the
 21 Congress that have sought to intervene as a defendant
 22 or defend the law of the land. Yes.
 23 Q. And was this document that I just marked
 24 as Feingold Exhibit 2 submitted on your behalf in
 25 this case? I think you'll find, Senator --

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1 A. I was just looking for my signature. Yes,
 2 sir.
 3 Q. Could you direct your attention to page 20
 4 of these interrogatory answers.
 5 A. Yes, sir.
 6 Q. And there you stated, did you not, that on
 7 certain occasions, you had appeared in sham issue
 8 advertisements. I refer to line 4.
 9 A. Line 4. Of my response?
 10 Q. Line 2 of your response.
 11 A. It certainly says that, but obviously what
 12 I'm referring to here is ads that I did not want to
 13 be a part of and that were intended to be critical of
 14 me. These were not something that I volunteered to
 15 participate in. It was against my will, if you will.
 16 Q. I really want to simply start out and tell
 17 us what you mean by sham issue advertisements?
 18 A. What I mean is that I believe that the
 19 history of recent years involves a distortion of the
 20 Supreme Court's distinction made years ago between
 21 true issue ads and express advocacy. I understand
 22 the purpose of express advocacy provisions to provide
 23 that laws relating to campaigns apply to express
 24 advocacy ads, but that they cannot apply to true
 25 issue ads.

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1 A hybrid has developed in recent years
 2 that under some people's interpretations would appear
 3 to be issue ads, but my constituents, and almost
 4 anybody I have ever talked to understand them and
 5 believe them to be campaign ads. In Wisconsin, we
 6 say if it looks like a duck and it talks like a duck
 7 and walks like a duck, it probably is a duck, even
 8 though technically if you believe the only
 9 interpretation of the Supreme Court's rulings is that
 10 you have to explicitly say vote for or vote against
 11 somebody, then it arguably under the current
 12 interpretations falls under the category of issue
 13 ads.
 14 So my concern is that these are really
 15 campaign ads that everyone understands as campaign
 16 ads and that they should have to in some reasonable
 17 way follow the same rules that other campaign ads do.
 18 That is why this is one of the issues that
 19 was addressed in the legislation.
 20 Q. Is it your understanding that the Buckley
 21 case distinguished between what you call issue ads
 22 and express advocacy?
 23 A. Could you repeat your question?
 24 Q. Is it your understanding that the Buckley
 25 case made a distinction between true issue ads and

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1 what you refer to as express advocacy?
 2 A. It's my understanding of the law since
 3 Buckley in general that the courts have attempted to
 4 distinguish between those ads that would be
 5 considered express advocacy, as opposed to issue ads,
 6 and that that is where the discussion about as long
 7 as you don't use the magic words, you don't have to
 8 follow the express advocacy rules comes from. That's
 9 my understanding of the general state of the law.
 10 Q. What is your understanding of what the
 11 words that you have used, "express advocacy," means?
 12 A. My understanding is that the courts have
 13 identified words such as vote for or vote against as
 14 being an example of express advocacy, but that the
 15 courts have never said that as necessarily the way in
 16 which only express advocacy could be expressed.
 17 But I think what was happened in the
 18 campaign process is that people have felt fairly
 19 secure under the current court rulings to be able to
 20 do anything they want with a candidate's name as long
 21 as they don't say vote for or vote against. That's
 22 sort of the way it's ended up in the political
 23 process, and again one of the reasons why we felt
 24 that this needed to be addressed.
 25 Q. And when you use the words "magic words,"

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1 what do you mean by that?

2 A. I understand that when people talk about

3 the magic words they are typically talking about an

4 ad including some advocacy that somebody vote for or

5 vote against a candidate. That is, I mean supposing

6 it could take a number of forms, but it does not

7 include call somebody's office, which of course is

8 the heart of the phony issue ads, the attack on a

9 candidate or the discussion of a specific issue or

10 even the personal life of a candidate followed by,

11 call their office.

12 That to me is a direct attempt to get

13 around the rather narrow definition of magic words

14 that I think most people consider to be the current

15 state of the law.

16 Q. And how about an ad which deals with an

17 issue and then says call their office. Is that the

18 sort of thing you have in mind also?

19 A. Under the bill?

20 Q. Yes.

21 A. Under the law that is passed that's now

22 the law of the land?

23 Q. Yes.

24 A. I understand that the name of a candidate

25 or their likeness has to be included in the text of

Page 15

1 the ad. If the ad simply says vote pro-choice, I

2 hope you'll vote pro-choice, call your Congressman,

3 my sense is it does not follow.

4 Q. Going back before the bill itself, and in

5 terms of what led you to your views about what you

6 call sham issue advocacy or phony ads and the like,

7 is it your view that ads that speak directly about an

8 issue and then speak directly about a candidate for

9 Federal office and his position or her position on

10 that issue are they "phony ads" in the way that you

11 have talked to us about?

12 A. Would you repeat the question?

13 Q. Let me give you an example instead which I

14 think would be better. I'm going to mark now a

15 document which is called a story board which is

16 prepared by your lawyers at the Brennan Center for

17 purposes of a study that they were doing. Have you

18 seen any of these so-called story boards?

19 A. I think for a couple of minutes once I

20 looked at it. I apologized to the Brennan Center for

21 never seeing it in detail. I didn't have time to

22 look at it in as much detail as I would like.

23 Q. These purport to be taken from satellites

24 in the sky of all the political ads that ran in the

25 top 75 markets in the 2000 and the 1998 campaigns,

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1 and my understanding is that pictures were taken

2 every three or three and a half seconds so it picks

3 up all of the words and it probably picks up all of

4 the pictures in any particular ad.

5 I can't represent any more than that, but

6 that's what's been represented to me, but I want to

7 show you a particular ad in which your name is in and

8 then ask you some questions about it. Could you mark

9 as Exhibit 3, a document under the heading National

10 Pro-Life Alliance that's a two-page document.

11 (Feingold Exhibit No. 3 was

12 marked for identification.)

13 BY MR. ABRAMS:

14 Q. And could you take your time and have a

15 look at this. I will represent to you that this is

16 an advertisement which took 60 seconds to broadcast.

17 A. Is there a date of this ad?

18 Q. It's not up here. I can represent to you

19 that the Brennan Center has advised on their

20 computations that this ran in the last 60 days in

21 both the 1998 and 2000 campaigns, in Wisconsin.

22 A. Did it run any other times?

23 Q. I can't tell you. First, do you recall

24 this ad at all?

25 A. Vaguely. I have got to tell you there

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1 were so many ads on this subject over the years that

2 I don't remember necessarily exactly this ad, but I

3 vaguely remember it is all I can tell you.

4 Q. I want to ask you a deliberately broad

5 question, open-ended question about this ad. Is this

6 ad part of the problem? Is this ad, as you look at

7 it today, a phony issue ad?

8 MR. HARTH: You are asking for his

9 personal opinion?

10 BY MR. ABRAMS:

11 Q. Yes.

12 A. Depending on the context, it could be a

13 part of the problem.

14 Q. Talk to me a little more if you would

15 about that. Assuming that this ad ran within 60 days

16 of your 1998 election. What contextual information

17 would you need in order to answer the question of

18 whether --

19 A. I think you --

20 Q. -- of whether this is the sort of ad

21 that's "phony" or "sham"?

22 A. I think you just gave me one of the

23 contextual points, which is the timing, the fact that

24 it occurred within 60 days. The text of it certainly

25 falls within the type of category that can raise the

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1 problem of phony issue ads, as long as all the other
 2 factors that are necessary for that to occur actually
 3 exist in this case.
 4 But the text and the way it is done does
 5 fall within the type of communication that can be
 6 part of the problem and that led to the decision, at
 7 least my feelings any way, that this is something
 8 that can be abused in a way that's unfair in terms of
 9 the process and that Congress needed to address.
 10 Q. And that's what I would like to explore
 11 with you a little more. You don't doubt, do you,
 12 that National Pro-Life Alliance or other groups with
 13 similar views care deeply about partial birth
 14 abortion?
 15 A. Not at all.
 16 Q. And you don't doubt, do you, that the sort
 17 of people that put on this sort of ad mean, that is
 18 to say sincerely mean, that they think partial birth
 19 abortions kill thousands of people every year and
 20 that it's a terrible thing?
 21 A. I don't question their sincerity on that
 22 point.
 23 Q. And do you, do you question their good
 24 faith in putting out an ad that says contact Senator
 25 Feingold and Kohl today and insist that they change

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1 their vote on partial birth abortion?
 2 A. I think that depending on the timing of
 3 the ad, that it is possible to question whether the
 4 ad is simply being used for purposes of advancing the
 5 issue or whether it's being used for electoral
 6 purposes.
 7 I note, Mr. Abrams, I'm not seeing this ad
 8 now. This issue is very much alive. This issue is
 9 at the heart of Congressional debate at this time,
 10 and constituents are talking to me about it, but
 11 oddly enough, there is no such ad now. That makes me
 12 question whether this ad is used for political
 13 manipulation or whether this ad is truly an effort to
 14 pass a bill.
 15 In fact, what I would add to this is that
 16 I question the good faith of those who only bring up
 17 this issue very late in a Congressional period on
 18 purpose, in my view, so they get the maximum
 19 electoral benefit of bringing up this issue late. We
 20 have had a Republican President who supports this
 21 bill for over a year and a half. We have a House of
 22 Representatives that supports this bill
 23 overwhelmingly and somehow they couldn't get to this
 24 issue until just before the election.
 25 So I do question whether an ad like this

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1 as it was used in this context is really about
 2 banning late term abortion or whether it is simply a
 3 way to try to win an election.
 4 Q. Do you think it might be about both?
 5 A. I think it's possible it could be about
 6 both, but I would suggest because of the timing that
 7 is very suspect. If it was truly about both, it
 8 would be running at many other times consistently and
 9 it is obvious that these ads are used to manipulate
 10 the political process. They are not used to
 11 generally conduct a public education of the American
 12 public and to influence legislators. It is used for
 13 campaigns.
 14 Q. Senator, I don't say this to flatter you,
 15 but it's my deposition so I will say I don't know of
 16 another Senator who has more consistently supported
 17 the First Amendment than you, and with that as
 18 background --
 19 A. I want that on the record. I hope it's
 20 there. I'm proud to hear that.
 21 Q. When you voted against the flag burning
 22 amendments, you did not do it to protect flag
 23 burners, but to protect the First Amendment, didn't
 24 you?
 25 MR. HARTH: I'm going to object to that

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1 question as calling for an answer that is protected
 2 by the speech and debate clause. The Senator's
 3 reasons for voting for particular legislation are a
 4 privileged matter and I'm going to instruct the
 5 Senator not to answer that question.
 6 BY MR. ABRAMS:
 7 Q. Well, I won't press that question. I just
 8 said it by way of introduction. Do you believe that
 9 groups that care deeply about issues, as you have
 10 said this one does, should need Congressional
 11 authorization to criticize a Senator for his vote and
 12 to urge him to change his position on a significant
 13 publication?
 14 A. No. They should not. And that's why I
 15 would never have supported a provision in this bill
 16 to ban the kinds of ads that you are talking about.
 17 That is one of the worst distortions of this entire
 18 issue, the false claim that this bill in any way bans
 19 this ad or any other ad. It does not. I believe it
 20 would be unconstitutional to prohibit such an ad and
 21 of course our bill does not do that.
 22 Q. And if the National Pro-Life Alliance is
 23 organized in corporate form, would this ad in your
 24 view be subject to the ban that the statute does
 25 have?

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1 A. The statute has no ban, Mr. Abrams. You
 2 cannot answer a question about something that is
 3 simply not the case. There is no ban in the bill
 4 whatsoever.
 5 Q. Does the bill ban advertisements from
 6 labor unions to any degree?
 7 A. It does not ban advertisements, it simply
 8 requires labor unions and corporations and certain
 9 other groups that you have mentioned to play by the
 10 rules that everyone has to play by, but there is no
 11 limit on the number of ads or type of ads or
 12 frequency of ads that anyplace can run anywhere in
 13 this bill. There is simply no such limitation.
 14 Q. So labor unions would be free to put on
 15 unlimited advertisements?
 16 A. If they raise the money for that through
 17 their political action committee, which is the way
 18 that the law has been understood for at least 25
 19 years. There is no limitation on how many ads that
 20 he could run, as long as the financing of it is done
 21 in a way that has been understood to be appropriate
 22 through a political action committee. We would not
 23 permit financing of those ads by unlimited
 24 contributions from the treasury of the labor union.
 25 Q. In fact, it's criminal, is it not, for a

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1 labor union to use its non-PAC funds, but its
 2 treasury funds as it were to put on an ad supporting
 3 some position that the AFL favors if it's with your
 4 name within 60 days of an election?
 5 A. Repeat the question, please.
 6 Q. Is it not criminal for a labor union to
 7 spend its own money, as opposed to PAC money, on an
 8 advertisement supporting you or denouncing you?
 9 A. They would not be allowed to spend over a
 10 certain amount of money in order to run those ads
 11 outside of their PAC.
 12 Q. They are not allowed to spend any money,
 13 are they?
 14 A. The labor union itself, from its own
 15 resources, from its actual treasury or the standard
 16 union dues, as opposed to the dues that are used for
 17 political activity. I believe that is correct, but
 18 you know, I want to be cautious about that.
 19 Q. Then let us come back to this
 20 organization. I don't know this organization. If
 21 this organization, National Pro-Life Alliance is
 22 organized in corporate form, if it is a corporation,
 23 what is your understanding as to whether it is
 24 permitted to spend its money in putting ads like this
 25 on television?

Page 24

1 MR. HARTH: Mr. Abrams, I want to enter a
 2 continuing objection to this or any other question
 3 that seeks statements from Senator Feingold that --
 4 for use as evidence about the meaning and
 5 interpretation of the Act. Senator Feingold has
 6 intervened as a party to defend the Reform Act by
 7 using the same means available to any other citizen,
 8 statute's language, publicly available legislative
 9 history in case law, properly discoverable facts
 10 about nonlegislative matters such as campaign
 11 finance.
 12 Senator Feingold is not appearing as a
 13 fact witness or an expert witness with respect to the
 14 legislative history of the Reform Act or its
 15 meanings. And any questioning that seeks to create
 16 evidence beyond what is already in the public record
 17 about these matters, we believe to be improper.
 18 I will allow the Senator to answer the
 19 pending question subject to my continuing objection,
 20 unless and until your questioning reaches manners
 21 shielded by the speech and debate clause. But my
 22 main point is Senator Feingold is not being proffered
 23 as an expert on the interpretation of every provision
 24 in this Act.
 25 MR. ABRAMS: Could you repeat the

Page 25

1 question, please.
 2 THE REPORTER: "Question: Then let's come
 3 back to this organization. I don't know this
 4 organization. If this organization, National
 5 Pro-Life Alliance is organized in corporate form, if
 6 it is a corporation, what is your understanding as to
 7 whether it is permitted to spend its money in putting
 8 ads like this on television?"
 9 THE WITNESS: Well, it would depend on
 10 which side of the so-called Wellstone Amendment this
 11 organization would fall. There are other provisions
 12 in the bill that relate to some other types of
 13 organizations that this may be. I simply don't know
 14 which kind of organization this is. I really cannot
 15 speculate about it without knowing all the details.
 16 BY MR. ABRAMS:
 17 Q. Senator Feingold, don't you think it is
 18 important as a matter of public policy that
 19 organizations such as this be able to speak out and
 20 attack you if they wish within the last 60 days of a
 21 campaign?
 22 A. Oh, I think organizations should be able
 23 to speak at all times and that's why I would oppose a
 24 ban on these ads.
 25 Q. And you think it's important, do you not,

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1 that all such organizations be able to take positions
 2 on public issues, don't you?
 3 A. I think organizations should be able to
 4 take positions on public issues. I don't think they
 5 should be able to get a multimillion dollar
 6 contribution and funnel them through an organization,
 7 then run phony issue ads pretending that they are not
 8 campaign ads. But they certainly should be able to
 9 run any ad they want as often as they want, as long
 10 as they do not receive contributions in the amount
 11 that tends to corrupt.
 12 Q. And focusing again on this ad. If this ad
 13 had run 61 days before your election, in 1998, would
 14 you have viewed it then as a campaign ad?
 15 A. Well, I believe it would have been 30 days
 16 before the primary, so under the law --
 17 Q. Prior to the adoption of this law, simply
 18 in terms of the way you use the language about what's
 19 in a campaign and what's not in a campaign, if this
 20 were more than 60 days prior to the election in 1998,
 21 would you have viewed this as a campaign ad?
 22 A. I probably would have viewed it as a
 23 campaign ad, but that doesn't necessarily mean we
 24 shouldn't have reasonable limits on when it is that
 25 such ads can be financed in a certain way and when it

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1 is that they cannot be financed in a certain way.
 2 I'm sure as a candidate I would have
 3 perceived it as a campaign ad, but that's just one
 4 person's view. Certainly there are legitimate issue
 5 ads that just talked about issues, in my mind, apart
 6 from the campaign, period, certainly are legitimate
 7 expressions of groups' views that they simply want to
 8 persuade Congress to pass a bill.
 9 So my view of exactly when it's a campaign
 10 ad or it's an ad is not my view. My question is at
 11 what point should groups like this have to play by
 12 the rules everyone else has to play by.
 13 Q. But there are ads, are there not, which
 14 reflect both criticism of someone running for office
 15 and a position on a public policy issue?
 16 A. I don't understand the question.
 17 Q. Aren't there advertisements which run near
 18 elections which at one and the same time criticize
 19 the candidate that's running and support some public
 20 policy position?
 21 A. Certainly there are such advertisements.
 22 Q. And is it your view of someone who cares
 23 about the First Amendment that such advertisements
 24 and the funding of such advertisements should be
 25 subjected to Congressional limitation?

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1 A. I think it's entirely appropriate for
 2 Congress to prevent a corrupting influence of the
 3 funding of those ads. I do not think Congress could
 4 expressly prohibit the content of any ad or the
 5 running of any ad, but they certainly can get into
 6 the question of inappropriate funding of an ad close
 7 to an election. Otherwise, I don't see how the
 8 Supreme Court could have come down with the rulings
 9 in Buckley and other cases that provide these rules.
 10 I mean, we have had these fears about
 11 express advocacy ads for 25 years. I haven't heard
 12 people say -- perhaps there are some groups -- but
 13 generally speaking everyone accepts that you got to
 14 follow some rules if you say vote for or vote against
 15 somebody. How can that be constitutional under the
 16 rationale that you are giving, because those are ads
 17 where we limit the funding and it's perfectly good
 18 law.
 19 Q. Do you understand the ad that I just
 20 showed you as containing express advocacy?
 21 A. As the courts have interpreted express
 22 advocacy in my view, this probably does not contain
 23 express advocacy under the law prior to
 24 McCain-Feingold and as I understand it, given the way
 25 the bill reads, that actually instead of creating

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1 another category of express advocacy, the law creates
 2 the new category of electioneering communications
 3 that this would fall within. So I don't believe this
 4 would fall under express advocacy, even under new
 5 law, I believe this would fall under the category of
 6 election advertising.
 7 Q. Have you ever been in any public service
 8 announcements that have been shown on television?
 9 A. I have very rarely, but I believe I have.
 10 Q. In your responses to the Madison Center
 11 plaintiffs' interrogatories, you referred to one
 12 public service advertisement. It's on page 4 of the
 13 document that I have already given you. And the
 14 third full paragraph down, it refers to a single
 15 public service announcement produced by Marcus Cable
 16 in October 1997 providing information on the
 17 availability of Federal services. Do you recall
 18 that?
 19 A. Very vaguely, but I think I do recall it.
 20 Q. And is it your understanding that if that
 21 had been shown within 60 days of your 1998 campaign,
 22 that that would have been a sham issue ad?
 23 A. I don't know how I can answer that without
 24 seeing the text of the ad.
 25 Q. Suppose that this was an absolutely

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1 straightforward public service announcement with you
 2 on it, providing information about the availability
 3 of Federal services, and that it had appeared within
 4 60 days of your 1998 election. Would you view that
 5 as a sham issue ad?
 6 A. I think the question would be whether it
 7 would be electioneering communication under the bill.
 8 The question is not whether I regard it as a phony
 9 issue ad.
 10 Q. That may be your question, but mine for
 11 you today is whether you view that ad as phony simply
 12 because your picture is on it and your voice is on
 13 it?
 14 A. I think the use of a person's image or
 15 name in the last 60 days or the last 30 days before a
 16 primary is so fraught with the potential for reproach
 17 that it would be appropriate, potentially, although I
 18 would like to see the text of this, to have such ads
 19 within the scope of electioneering communications,
 20 but I would reserve the right to look at it and
 21 review all the other factors and see if it really
 22 does fit the test.
 23 But the idea of the electioneering
 24 communication standard is to create an objective test
 25 both as to content and kind within a narrowly

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1 confined period to get the maximum deference to the
 2 First Amendment, while at the same time dealing with
 3 the problems of abuse, and that is the heart of the
 4 electioneering message, electioneering communication
 5 definition.
 6 So I would view it and read it in that
 7 spirit, and I think the idea of the objective test as
 8 opposed to where you take into account all the other
 9 factors is a better test in terms of protecting the
 10 First Amendment and allowing groups clear notice of
 11 what is okay and what isn't okay in terms of how they
 12 fund their ads. I think it's more consistent in my
 13 view and I'm persuaded with protecting free speech
 14 and more consistent with the process.
 15 Q. Is it your understanding that if the --
 16 strike that. Is it your understanding that a public
 17 service announcement in which you appear which simply
 18 provided information on the availability of Federal
 19 services and contained your voice and picture within
 20 60 days of an election, is that the sort of thing
 21 that you believe should be limited by statute?
 22 A. I think there is a potential for abuse.
 23 If a company gave a million dollar contribution for
 24 these PSAs, and incumbents were allowed to appear in
 25 these ads during that 60-day period on an unlimited

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1 basis, that it does raise the problem of infecting
 2 the fairness of the campaign process. So it is
 3 concern within that narrow period that huge
 4 contributions could be funneled into this type of ad
 5 to give unfair advantage to a candidate.
 6 Q. But the statute applies, does it not, even
 7 if there has been no contribution?
 8 MR. HARTH: I'm going to object again to
 9 questions concerning the Senator's construction of
 10 the statute.
 11 THE WITNESS: If I understand your
 12 question, no, that ad can be run as many times as the
 13 cable company would want, as long as there were not
 14 the sources of the contributions that did not violate
 15 the law. I think you get \$25 contributions from
 16 thousands of people to run these PSAs and they can
 17 run them until kingdom come. There is no ban. It's
 18 simply false.
 19 BY MR. ABRAMS:
 20 Q. The particular ad that your interrogatory
 21 answers say that you appeared in related to the
 22 availability of Federal services. Is it your
 23 understanding that after this statute that you could
 24 freely appear within 60 days?
 25 A. Certainly. Certainly in theory, but it

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1 would depend on the way in which the ad was funded.
 2 If the corporate treasury of a cable company spent a
 3 million dollars from their corporate treasury to run
 4 these PSAs over a certain amount during the campaign
 5 period, I believe that it could run afoul of the
 6 bill.
 7 On the other hand, if it's simply modest
 8 expenditure done within the limits of the bill or
 9 even enormous expenditure obtained under the limits
 10 of the law for campaign expenditures, campaign
 11 contributions, then there is no limit, but I don't
 12 think there is anything about the content of the ad
 13 itself that the bill prohibits.
 14 Q. Is it your understanding that the mere
 15 reference to the name of the McCain-Feingold bill in
 16 Arizona when Senator McCain runs or in Wisconsin when
 17 you run would bring into play the limitations imposed
 18 by the statute?
 19 A. That would be my sense. Yes.
 20 Q. I'd like to mark the comments that you and
 21 the other sponsors of the Act made to the Federal
 22 Election Commission on August 23, 2002 as Exhibit 4.
 23 (Feingold Exhibit No. 4 was
 24 marked for identification.)
 25 BY MR. ABRAMS:

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1 Q. Can you tell me, are these comments that
 2 were submitted on your behalf? I'm sorry the
 3 signature pages are not here. I'm sorry. The
 4 signature is on page 2.
 5 A. I'm reviewing it.
 6 Q. Are these comments which you, among
 7 others, submitted?
 8 A. Yes.
 9 Q. I'd like to direct your attention to page
 10 7, the last paragraph. I will read the first four
 11 lines. "The alternative exemptions contained in
 12 proposed 11 CFR Section marked 100.29(c)(6) are
 13 described as permitting issue advertising that truly
 14 has a legislative rather than electoral purpose to be
 15 run during the 30-day and 60-day windows. Empirical
 16 studies suggest that the number of 'true issue ads'
 17 that actually run during the 30 and 60-day periods
 18 prior to an election is exceedingly small."
 19 My question is with respect to the second
 20 line. Do you as you sit here today know what
 21 empirical studies were referred to?
 22 A. I assume that it's referring to at least
 23 one study from the Brennan Center.
 24 Q. What's your recollection, if you have one,
 25 as to the finding of that study?

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1 A. I have not recently reviewed the study and
 2 I'm not prepared to discuss it in any detail at this
 3 point.
 4 Q. In your campaigns, you have put ads on
 5 television, have you not, which referred to your
 6 opponent either by name or generically?
 7 A. Yes.
 8 Q. Do you recall if you received the lowest
 9 unit charge when you did so?
 10 A. I know that sometimes we were able to and
 11 sometimes we were not able to. It depends on when
 12 you run the ad. Those rules only apply to a certain
 13 size. I don't think politicians can get lowest unit
 14 rates in the end of an election.
 15 Q. Does your ability to get the lowest unit
 16 rate depend at all on whether you made any direct
 17 reference to your opponent?
 18 A. I'm not certain.
 19 Q. And do you know as you sit here today, and
 20 I know you don't have the statute in front of you,
 21 whether the law that just passed limits the
 22 availability of lowest unit rate in circumstances in
 23 which you make direct reference to another candidate?
 24 A. Could you say it again?
 25 Q. Sure. Do you know if the law that you

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1 sponsored makes it impossible to get the lowest unit
 2 rate in circumstances in which you do refer directly
 3 to another candidate for the same office?
 4 A. I would have to read the statute.
 5 Q. I want to return now to the topic I
 6 started a few minutes ago by showing you a particular
 7 story board and show you a few more and explore with
 8 you the same sort of things I did with respect to the
 9 ad that mentioned you.
 10 I will mark as Feingold Exhibit 5 another
 11 story board turned over to us by the Brennan Center.
 12 (Feingold Exhibit No. 5 was
 13 marked for identification.)
 14 BY MR. ABRAMS:
 15 Q. First, the Brennan Center are among your
 16 lawyers in this case, are they not?
 17 A. I believe they are among the group of
 18 lawyers representing the intervenor defendants. I
 19 wouldn't refer to them as my lawyers, but a group.
 20 Q. You are one of the intervenor defendants?
 21 A. I am one of the intervenor defendants.
 22 Q. Could you have a look at what I have
 23 marked as Feingold Exhibit 5. For your information,
 24 this is attached to the Brennan Center report called
 25 Buying Time 2000 as an example of the sort of ads

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1 that were viewed by the people that offered their
 2 judgment as to whether the ads were "issue ads" or
 3 electoral ads.
 4 My question is this. Is this the sort of
 5 ad which you view as essentially phony as you look at
 6 it on the assumption that it ran within 60 days of a
 7 general election?
 8 MR. HARTH: Again, Mr. Abrams, you are
 9 asking for his personal opinion as a party to this
 10 lawsuit?
 11 BY MR. ABRAMS:
 12 Q. Yes.
 13 A. Okay.
 14 Q. My question is, is this the sort of ads
 15 that you view as "phony" or "sham" if it appears
 16 close to an election?
 17 A. That would depend if it met all the tests
 18 of the electioneering communications.
 19 Q. What is it that you need to know to answer
 20 my question?
 21 A. The timing of the ad.
 22 Q. I asked you to assume that it ran within
 23 60 days of the 2000 election.
 24 A. I believe based on what I see here that
 25 this would be an electioneering communication.

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1 Q. I wasn't asking you if it violated the new
 2 law. I was asking you if it's troublesome to you.
 3 My question is, is this the sort of ad which when you
 4 look at it you view it as phony or sham in nature?
 5 A. Well, you know, I question how relevant
 6 whether I think it's phony or not is to the
 7 constitutionality of the statute. I will say this.
 8 That one of the things of whether it would affect my
 9 view on whether it's phony on whether this ad is run
 10 in campaign time or whether this ad is run regularly
 11 throughout the year. It seems less phony if it's
 12 used all year. It seems more phony if it's only done
 13 during campaign time. So that's where you take
 14 whether it's phony out and write a law and try to
 15 define it.
 16 My personal view is if this is only run
 17 three weeks before an election, it's pretty phony
 18 because this Medicare issue is not only something
 19 that members of Congress need to be persuaded on and
 20 Presidents need to be persuaded on between November
 21 and September and October of an election year.
 22 Q. Wouldn't it be fair to say that candidates
 23 for office maybe pay a little more attention to what
 24 is said about them as they get closer to an election?
 25 A. I think that's speculative. I think that

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1 many times throughout a term, you are very concerned
 2 that your constituents are very passionate about an
 3 issue. I'm not up for election right now, and I'm
 4 enormously concerned about what my constituents feel
 5 about the situation with regard to Iraq. I can't
 6 tell you that I would be more concerned during a
 7 campaign or more concerned now. I think that is very
 8 hard to say.
 9 Q. Do you think the public may listen more
 10 and be more focused on certain matters of public
 11 policy close to an election?
 12 A. I think it can be the reverse
 13 unfortunately because of the abyss into which our
 14 system is falling with the relentless attack of phony
 15 issue ads. People become so turned off during a
 16 campaign that they are less likely to listen to issue
 17 appeals because they suspect that they are not
 18 genuine appeals, and I believe strongly that the soft
 19 money system and the phony issue ads have compromised
 20 the ability of the people to have a chance to clearly
 21 access their views and persuade their members of
 22 Congress about these issues and it's extremely
 23 regrettable.
 24 I have seen this happen in the course of
 25 my 20-year career in politics. Campaign season used

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1 to be a time when there was a reasonable chance of
 2 issues coming to the floor, but that discussion has
 3 become drown in attack ads, soft money, and phony
 4 issue ads and it has been destructive to the way my
 5 constituents feel about the political process.
 6 The comment I hear, Mr. Abrams, is we
 7 don't know who to believe and that to me is just the
 8 opposite of what should be happening at campaign
 9 time. It's one of the reasons that we needed to act.
 10 Q. You believe the First Amendment protects
 11 the right to attack a candidate for Federal office?
 12 A. Yes.
 13 Q. Well, for example using this ad, what's
 14 phony about it?
 15 A. The juxtaposition of the timing of the ad
 16 and the mentioning of a candidate when it is
 17 extremely unlikely that the same ad was run in
 18 January of that year when it would have been just as
 19 appropriate to put this message forward. In fact,
 20 more appropriate because the legislative session is
 21 pretty much over by October or November. The ability
 22 to impact is probably less timely. When this kind of
 23 ad would have the biggest impact would be when we are
 24 coming into session and the legislative agenda is
 25 being set. This phony juxtaposition turns it on its

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1 head.
 2 Q. Is this ad pro-Gore or anti-Gore?
 3 A. I don't know.
 4 Q. But you do know that it's phony?
 5 A. I know my belief is the purpose of this ad
 6 is to influence an election.
 7 Q. But as a sitting United States Senator
 8 that's run for office and been elected twice as
 9 Senator, you cannot as you sit here today tell us
 10 whether this ad is pro-Gore or anti-Gore?
 11 A. Let me review it again. Well, my
 12 understanding of the way these ads usually work is
 13 when you call the guy's office, you are usually
 14 attacking the guy. This certainly is not helpful to
 15 Al Gore because what it suggests is that he was
 16 somehow responsible for the Medicare cuts and it, in
 17 my view, it's sort of a sneaky way of trying to blame
 18 him without directly saying that he should be thrown
 19 out of office or not elected. So it looks to me like
 20 an ad that attempts to cause Mr. Gore to lose votes.
 21 But I'm not absolutely certain. It sure reads that
 22 way to me.
 23 Q. But you are certain, aren't you, that this
 24 would be covered by the law?
 25 A. I believe it would be. I don't think I

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1 said I was certain. I would want the opportunity to
 2 take the statute and take a close look at it. I
 3 believe, given the context in which he placed it 60
 4 days before an election, the mentioning of a
 5 candidate's name, that it would be within the law,
 6 but again this ad is free to run as many times as
 7 people want to run it. There is no prohibition on
 8 this ad whatsoever.

9 Q. And your understanding as to the
 10 limitations with respect to the funding of that ad
 11 are what?

12 A. That there are certain restrictions on the
 13 use of corporate and union money, certain treasury
 14 monies, to fund the ad.

15 Q. And if this organization is itself a
 16 corporation, what then?

17 A. Depends on the type of corporation it is
 18 and I need more information about the nature of the
 19 organization.

20 Q. I want to pass you now a document
 21 previously marked in this case as Holman Exhibit 7.
 22 This ad I will represent to you ran within 60 days of
 23 the 1998 election. Is this ad a phony issue ad? I'm
 24 sorry about the copy, but --

25 A. I'm sorry about my eyes. We will all do

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1 the best we can. Okay.

2 Q. Can you tell us if this ad seems to be a
 3 phony issue ad? This is an ad run within 60 days of
 4 the election.

5 A. Which election?

6 Q. 1998.

7 A. This would be a reference to the type of
 8 ad giving reference to Senator Coats, which could
 9 come within electioneering communication I believe
 10 under the law.

11 Q. And is it your view that it should?

12 A. Yes.

13 Q. Does it make any difference one way or the
 14 other if this ad ran elsewhere in the country with
 15 the same language, but different Senator's names
 16 mentioned?

17 A. Are the Senators up for election?

18 Q. Some of them were. Yes.

19 A. Well, I think the statute provides that
 20 one of the tests is that -- one of the tests involved
 21 there is whether or not the ad is targeted to certain
 22 areas where people are up for office or not. I have
 23 to review the exact language, but I believe there is
 24 a provision that references that.

25 Q. I wasn't asking you on this question what

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1 the statute said. I'm really just asking if it made
 2 any difference to you as you looked at this ad and
 3 you cast your own judgment on whether it's a phony ad
 4 that it was run elsewhere in the country with respect
 5 to other candidates as well. Does that make any
 6 difference either way?

7 A. I don't think so.

8 Q. I'd like to mark what's been previously
 9 marked as Holman Exhibit 8. Not to mark it. I'm
 10 sorry. I want to show you Holman Exhibit 8. This is
 11 another ad that ran within 60 days of the 1998
 12 campaign. I don't want to ask you the same question.
 13 I ask you whether you think this ad is a, is a phony
 14 issue ad?

15 A. I would have to ask where the ad ran.

16 Q. It ran in Nevada during the campaign of
 17 Harry Reed against John Ensign for Senator in that
 18 state.

19 A. I believe it would probably still fall
 20 within the definition of electioneering
 21 communication. It does have the oddity of having
 22 both candidates or at least the two candidates that I
 23 was aware of in that race, but I think given the use
 24 of an objective test that is premised on the
 25 mentioning of a candidate's name that it would

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1 probably fall within the definition of electioneering
 2 communications.

3 Q. And do you think it should?

4 A. I think because an objective test requires
 5 that the parties, the people involved be able to know
 6 what they can and cannot do, the law is better.
 7 People have a way to determine what they can or
 8 cannot do, although this is not an ideal application
 9 of the law. It is better to have the law, the
 10 objective test, which this would include.

11 Q. I'd like to show you now what's been
 12 marked as Holman Exhibit 12. This ad was also run
 13 within 60 days of the 1998 election.

14 A. You want me to read it?

15 Q. Yes, please.

16 A. Okay.

17 Q. And first, is this ad, Holman 12, one that
 18 seems to you to be a phony issue ad?

19 A. When did it run?

20 Q. Within 60 days of the election involving
 21 the two individuals mentioned in the ad, Molly
 22 Bordonaro and David Wu?

23 A. And where did the ad run?

24 Q. It ran in their state.

25 A. The State of Washington?

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1 Q. This was run by a group called Americans
 2 for Limited Terms. Essentially term limits.
 3 A. I don't care to speculate on an ad where I
 4 don't even know what state it was run in. This has
 5 to do with where these ads were run and were there
 6 elections.
 7 Q. I'd like for you to assume with me that
 8 this ad would be subject to the Bipartisan Campaign
 9 Reform Act because it was run within 60 days of an
 10 election because it does mention the names of the two
 11 candidates for office. My question is whether in
 12 your view this ad, which I will read into the record
 13 in a moment just for clarity's sake, is the sort of
 14 phony ad that should be limited in any way.
 15 The ad says the people of America should
 16 be running our government. That's the way it was set
 17 up in the first place. The problem is the special
 18 interests and the paid lobbyists who control the
 19 Washington politicians. The answer is term limits.
 20 Term limits replace Washington insiders with new
 21 people who reflect community interests, not politics
 22 as usual. Molly Bordonaro has signed the pledge to
 23 limit her terms in Congress. David Wu refused. Call
 24 David Wu and ask him to sign the U.S. Term Limits
 25 Pledge. And on the screen, the last thing the viewer

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1 is left with are the words, call David Wu, tell him
 2 to sign the U.S. term limits pledge.
 3 And my question is, assuming what I have
 4 asked you to assume, within 60 days in the state in
 5 which these two candidates were running, is that what
 6 you view as essentially a phony issue?
 7 A. It looks to me like it would be within the
 8 definition of electioneering communication.
 9 Q. And it should be, in your view, should it
 10 not?
 11 A. I believe it meets, as far as I can tell,
 12 the tests of what an electioneering communication is
 13 and I certainly supported the statute, the law that
 14 would define it accordingly.
 15 Q. Would you like to take a break at any
 16 time?
 17 A. Yes.
 18 (Recess.)
 19 MR. ABRAMS: I'd like to mark as Feingold
 20 Exhibit 6 an ad published by the American Civil
 21 Liberties Union in March 2002.
 22 (Feingold Exhibit No. 6 was
 23 marked for identification.)
 24 BY MR. ABRAMS:
 25 Q. In you could have a look at this document.

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1 A. Okay.
 2 Q. This ad was published in Illinois
 3 newspapers in March of 2002 within 30 days of a
 4 primary date. It was also run on the radio in almost
 5 precisely the same time. I don't have a tape
 6 recorder here so I ask you to assume that these words
 7 were read on the radio. And my question is, is this
 8 the sort of ad that you view, if run, within 30 days
 9 of a primary as phony or sham in nature?
 10 A. My concern about so-called phony ads
 11 relates to broadcast ads. I believe that is where
 12 the real damage to the system is being done. I am
 13 most concerned about and that's what my constituents
 14 are most concerned about. That's what they talk to
 15 me about. Why are all these negative ads on TV. Why
 16 do they say these things about people. I don't hear
 17 people coming up to me complaining about newspaper
 18 ads.
 19 Q. Let me ask you two questions about that.
 20 First, reading this as a newspaper ad, is it in your
 21 view a sham issue?
 22 A. The notion of a sham issue is only
 23 something I have ever thought about or contemplated
 24 in the context of the abuse of the airwaves. That's
 25 the meaning of that term to me and that's the only

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1 context in which I consider it a serious problem.
 2 Q. Focusing on it then as an ad which was on
 3 the radio, and I represent to you that this was. It
 4 was broadcast on the radio in Illinois. Do you view
 5 it then as a sham issue ad?
 6 A. I view it, I believe, if it's within 60
 7 days or 30 days of the primary or 60 days of the
 8 general election, electioneering communication under
 9 the law.
 10 Q. And do you view it as the sort of an ad
 11 which you believe with your knowledge and your
 12 expertise and your experience should be viewed as an
 13 effort to defeat Representative Hastert, as opposed
 14 to stating a position on a public issue?
 15 A. Well, as I said, if you ask me about my
 16 personal opinion, that would depend whether this ad
 17 was run all year or whether it's just run during
 18 campaign time. It looks more phony to me and to the
 19 people of Wisconsin more phony, the closer it is to
 20 an election. That's why you need some bright line
 21 where Congress and the United States President come
 22 to terms where there is too great a risk that ads are
 23 manipulative and phony for the purpose of influencing
 24 the outcome of an election.
 25 That is why in my view, this kind of

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1 legislation in part ended up having this kind of a
 2 provision, because the ad itself is not automatically
 3 phony. It is in the context of an election and the
 4 use of it for purposes of an election, that's the
 5 analysis. Ads are not inherently phony, but they are
 6 phony if they are used in a certain context in a
 7 certain way and the purpose for which they're used.
 8 Q. Statute doesn't focus on purpose?
 9 A. Statute creates a bright line suggesting
 10 that when ads are run in a certain period of time,
 11 the risk is too great that the ads are not true issue
 12 ads, that they are really electioneering ads and
 13 therefore the statute objectively defines ads that
 14 mention the candidate within 60 days of the election,
 15 30 days of the primary as an electioneering
 16 communication and I think that's an appropriate
 17 legislative response to this frankly relatively new
 18 problem that has, I think, in a shocking way
 19 distorted the political process and that many people
 20 find astounding that these sorts of ads are allowed
 21 to run unfettered with unlimited funding sources.
 22 So it's the context and the way in which
 23 the ad is used. It is not the content of the ad
 24 alone that causes it to be a phony issue.
 25 Q. Is this a phony issue ad, this ad?

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1 A. Is it run within 60 days of the election?
 2 Q. Within 30 days of a primary.
 3 A. My personal view would depend on whether
 4 it was running all year or whether it was running
 5 during election time. I have no doubt it would fall
 6 within the law and that the law is an appropriate
 7 response to the issue of phony ads. But my view is
 8 this ad, if it were only run in January about this
 9 issue, the bill was up at that time, the thing --
 10 nothing about the content of the ad is phony. It's
 11 when it's used, particularly when it's used only
 12 during an election period that the phony quality
 13 comes into being.
 14 Q. So an ad would not be phony, in your view,
 15 if run three, six months earlier, might be phony if
 16 run close to an election, correct?
 17 A. The whole idea of phony or sham issue ads
 18 is a way of expressing that the ad is really a
 19 campaign ad. The farther away the ad is from a
 20 campaign the less likely it is to be perceived as a
 21 campaign ad.
 22 Q. I ask you to assume now that this ad ran
 23 only once, once in the newspaper, once on the radio,
 24 and only within 30 days of a primary. Can you offer
 25 us a conclusion as to whether the ad is a phony issue

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1 ad?
 2 A. I can only offer you the conclusion that
 3 the radio portion would be an electioneering
 4 communication under the law.
 5 Q. I understand that. But my question to you
 6 is not whether it's covered by the law. I know it's
 7 covered by the law, but whether it should be covered
 8 by the law -- but my question is this, as you read
 9 this ad and if you assume as I have asked you to that
 10 this was broadcast on the radio within 30 days of a
 11 primary, do you view this as a true issue ad or not?
 12 A. I view this as of the group of ads that
 13 are appropriately regulated for purposes of limiting
 14 unlimited contributions to fund these ads.
 15 Q. You view it as appropriate to limit the
 16 ACLU's ability in that respect to put this ad on
 17 within 30 days?
 18 A. No. I do not believe it's appropriate to
 19 limit the ACLU's capability. They can raise tens of
 20 millions of dollars as long as they run it within
 21 legal limits. There is no limitation on the ACLU
 22 with regard to how often they run this ad. They can
 23 run it every day, all day, every year under our law.
 24 Q. Does their ability to raise money have
 25 anything to do with their ability to be able to put

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1 this ad on the air?
 2 A. I don't know what their way of raising
 3 money is. I can tell you this. ACLU has been
 4 communicating for a very, very long time, and these
 5 phony issue ads only came into existence a couple of
 6 years ago. They seemed to do quite nicely without
 7 the phony issue ads. If the question is do we need
 8 to constitutionally or legislatively protect their
 9 right to get big checks out of corporate or labor
 10 accounts, my answer is no. They don't have a right
 11 to that. They have a right, though, to obtain funds
 12 legally and run the ad as many times as they want and
 13 our bill specifically does not prohibit them from
 14 doing that.
 15 Q. Unless they cannot raise the money to do
 16 it, right?
 17 A. If they can raise the money to do it --
 18 Q. In the way that you have set forth?
 19 A. -- they can run the ad. They can raise as
 20 much as they want with contributions within the
 21 limits to run the ad, just like anybody else.
 22 Q. Just to make sure I understand an earlier
 23 part of your answer. I do want to press you on this.
 24 Is this ad as you read it and after I tell you that
 25 it was broadcast within 30 days of a primary date, a

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1 phony issue ad?
 2 A. I think that's a meaningless term. The
 3 law has defined what an electioneering communication
 4 is. My personal view of whether it's a phony issue
 5 ad depends on giving me all the facts about when,
 6 whether this ad was run in the past, whether this is
 7 something they do regularly. If it is only done,
 8 this radio portion of the ad, three weeks before an
 9 election, my personal view is that it's phony. It's
 10 not really for purposes of affecting legislation.
 11 It's really for purposes of affecting election.
 12 But I don't know --
 13 Q. That was my question.
 14 A. Yes.
 15 (Whereupon, the deposition proceeded in
 16 confidential session.)
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1 CONFIDENTIAL
 2 BY MR. ABRAMS:
 3 Q. In this case you have identified two
 4 examples of requests to engage in legislative acts
 5 that would at least give rise to the appearance of
 6 undue influence of Congress with respect to policy
 7 matters. I'd like to direct your attention to
 8 Exhibit 2, which are the answers that you joined to
 9 the Madison Center plaintiffs' first set of
 10 interrogatories and specifically to page 31. Why
 11 don't we start on page 30.
 12 At the bottom of page 30 the intervenors,
 13 of whom you are one, said the following "intervenors
 14 will identify immediately below two examples of
 15 requests that they engage in legislative acts which
 16 would at least give rise to the appearance of undue
 17 influence on their judgment with respect to policy
 18 matters. In repeating this publicly available
 19 information, intervenors do not seek to disclose
 20 nonpublic legislative information or waive their
 21 speech or debate clause privileges and immunities."
 22 Now, in the first paragraph after that,
 23 you describe, you said the following, "in June 1998,
 24 it was widely reported that during the Senate's
 25 consideration of a bill entitled the National Tobacco

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1 Policy and Youth Smoking Reduction Act (Senate 1415),
 2 U.S. Senator Mitch McConnell then head of the
 3 National Republican Senatorial Committee, talked in a
 4 Republican policy meeting about political advertising
 5 by major tobacco manufacturers. In a complaint it
 6 filed on June 29, 1998 with the Federal Election
 7 Commission, the Campaign for Tobacco-Free Kids
 8 characterized Senator McConnell's communication as
 9 follows, based upon reports that have been widely
 10 published in the news media, only hours before
 11 Republican Senators were due to vote for or against
 12 closure on S. 1415 Senator Mitch McConnell informed
 13 his colleagues in a closed door meeting that if they
 14 voted to kill the tobacco bill, the major tobacco
 15 manufacturers were promising to mount a television ad
 16 campaign to support those who voted against the
 17 bill."
 18 And then there is a citation from the
 19 Tobacco Free Kids complaint. You don't have any
 20 personal information, do you, that Senator McConnell
 21 said that?
 22 A. Your client is not invited to the
 23 Republican Caucuses.
 24 Q. On what basis did you put this in a
 25 document that you signed?

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1 A. On the basis of a conversation that I had
 2 with Senator McCain I think almost immediately after
 3 the caucus where he described to me what had
 4 happened.
 5 Q. And when was that? 1998?
 6 A. Whenever this took place.
 7 Q. You cite a complaint with the Federal
 8 Election Commission of the Campaign for Tobacco Free
 9 Kids. What happened to that complaint?
 10 A. I don't know.
 11 Q. Does the fact that a complaint has been
 12 filed justify what appears on the complaint, the
 13 truth of it?
 14 A. Would you ask that again?
 15 Q. You have had a false complaint filed
 16 against you, have not you, in the Senate which you
 17 refer to in your interrogatory answers as one in
 18 which somebody made some claims against you which
 19 were rejected?
 20 A. Well, I believe that involved a
 21 termination that was without merit, not that it was
 22 factually false. That had to do with somebody who
 23 wasn't happy and we had to resolve a constituent case
 24 properly, so I can't say that we did not, that we
 25 successfully resolved the constituent case, but I

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1 don't believe the determination was it was false but
 2 it was not a legitimate ethics standard complaint
 3 from a constituent, which we do get from time to
 4 time. It's just that this constituent decided to go
 5 ahead and file an ethics complaint about it.
 6 Q. But as regards this complaint that is
 7 referred to on this page, you don't know the results
 8 of the complaint, right?
 9 A. I'm sorry. I just don't know at this
 10 time.
 11 Q. You then stated "in the fall of 1996, a
 12 senior Senate colleague suggested to Senator Feingold
 13 that Democrats should go along with inclusion of a
 14 provision favored by Federal Express' management in
 15 Federal Aviation Administration authorization
 16 legislation. Senator Feingold's colleagues stated,
 17 it just gave us 100,000." And there is next to this
 18 document an article that you wrote which said the
 19 same thing. Who was the colleague?
 20 MR. HARTH: Well, I'm going to request
 21 that this question and answer and any other
 22 follow-ups to it be designated as confidential,
 23 counsel eyes only because of the sensitive nature of
 24 -- because of the nature of the disclosure. I wonder
 25 if we need to clear the room in any way.

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1 MR. ABRAMS: Let me be clear why I asked
 2 the question and see if there is any other way to
 3 resolve it. This has been filed in this case and
 4 therefore presumably the intervenors are relying on
 5 this as a part of their case. Therefore, it seems to
 6 me important to know who Senator Feingold is talking
 7 about.
 8 MR. HARTH: And we are not saying that you
 9 cannot know that. But what we are saying is that
 10 under the protective order, we would like to
 11 designate his answers to this question as highly
 12 confidential or confidential, counsel eyes only, and
 13 that is going to require anyone who is not a counsel
 14 to leave the room during this portion of the
 15 questioning.
 16 MR. ABRAMS: Let me consult with my
 17 colleagues on that for a moment. Why don't we take a
 18 five-minute break.
 19 MR. HARTH: Yes. Let's take a break.
 20 (Recess.)
 21 THE REPORTER: "Question: You then stated
 22 'in the fall of 1996, a senior Senate colleague-
 23 suggested to Senator Feingold that Democrats should
 24 go along with inclusion of a provision favored by
 25 Federal Express' management in Federal Aviation

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1 Administration authorization legislation. Senator
 2 Feingold's colleagues stated, it just gave us
 3 100,000.' And there is next to this document an
 4 article that you wrote which said the same thing.
 5 Who was the colleague?"
 6 MR. HARTH: I'm going to first object to
 7 that question as calling for information that is
 8 confidential and in our view not necessarily relevant
 9 to any of the issues in this lawsuit. Given that
 10 objection, however, what I would like to do is to
 11 designate this question and this answer and any
 12 follow-up questions and answers as being
 13 confidential, counsel only, and under the protective
 14 order which has been entered into this case.
 15 And I will permit the Senator to answer
 16 the question if we clear this room of anyone who is
 17 not subject to the protective order, which as I
 18 understand it according to paragraph 6 of the
 19 protective order would only include counsel for the
 20 parties to this action.
 21 MR. ABRAMS: I will say for the record
 22 that it seems to me a party cannot have things two
 23 ways. If Senator Feingold wishes as part of his
 24 defense of the statute to rely upon the misconduct of
 25 one of his colleagues, then he should be prepared to

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1 respond to the question as to who the colleague is.
 2 THE WITNESS: Let me speak to my counsel.
 3 (Witness confers with counsel.)
 4 MR. HARTH: I don't believe that the
 5 Senator has referred to misconduct on the part of any
 6 colleague in his interrogatory answer or elsewhere,
 7 but I think we have made our positions here perfectly
 8 clear, and what we are going to ask is that prior to
 9 the Senator answering the pending question that we
 10 clear the room of all parties other than counsel.
 11 MR. ABRAMS: Nobody in back of me is
 12 leaving.
 13 MR. HARTH: The question we have, Mr.
 14 Abrams, concerns Mr. Bates, who I understand is a
 15 member of Senator McConnell's staff, and I don't
 16 recall him being counsel.
 17 MR. ABRAMS: He is counsel. I represent
 18 he is counsel for one of the plaintiffs.
 19 MR. BATES: I'm counsel for McInerney.
 20 I'm no longer a member of Senator McConnell's staff.
 21 MR. HARTH: Mr. Bates, have you signed the
 22 protective order?
 23 BY MR. ABRAMS:
 24 Q. I will rephrase the question. At page 31
 25 in response to interrogatories served upon the

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1 intervenors, the following response appears, "in the
 2 fall of 1996, a senior staff colleague suggested to
 3 Senator Feingold that Democrats should go along with
 4 inclusion of a provision favored by Federal Express'
 5 management in Federal Aviation Administration
 6 authorization legislation. Senator Feingold's
 7 colleague stated they just gave us 100,000."
 8 Who was your colleague, Senator Feingold,
 9 who said "they just gave us 100,000."
 10 A. Let me just first say that I regret that
 11 it's necessary for me to state the name of the
 12 Senator which I'm about to do because generally
 13 speaking, of course, that's not the way we do
 14 business. We try to respect the private
 15 conversations, though this is an exceptional
 16 situation where the statute is being challenged so I
 17 simply wanted to put that on the record and indicate
 18 that it was Senator Wendell Ford.
 19 Q. The interrogatory answer refers to the
 20 fall of 1996. Can you specify with any more detail
 21 when it was?
 22 A. I could probably figure it out if I was
 23 given a New York Times article which reviewed this
 24 whole incident. I believe it was in October because
 25 I remember this thing, this whole bill in this issue,

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1 Fed Ex came up at the very end of our year's work and
 2 that what some of us were doing was holding out the
 3 passage for the final piece of legislation for the
 4 year because of our concern about the Fed Ex
 5 provision. So I could narrow it down pretty
 6 precisely with help, but I know that it was in the
 7 fall and I know that it was a New York Times article
 8 that sort of goes through the whole story in some
 9 detail.
 10 Q. What, if anything, did you say to Senator
 11 Ford when he said they just gave us 100,000?
 12 A. I think I just looked at him.
 13 Q. I want to go back to the preceding page of
 14 the interrogatory answers of the intervenors on page
 15 30 in the third full paragraph, it states
 16 "intervenor have on numerous occasions been
 17 requested to engage in legislative acts which to the
 18 extent such acts are consistent with the preferences
 19 of donors of soft money to their party or any
 20 entities which financed electioneering communications
 21 benefiting them would give rise to the appearance of
 22 undue influence on their judgment."
 23 Have you, Senator Feingold, been requested
 24 to engage in legislative acts which were consistent
 25 with the preferences of donors of soft money to your

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1 party?
 2 MR. HARTH: Mr. Abrams, your questioning
 3 is getting into an area that potentially implicates
 4 the speech or debate clause. We read the case law as
 5 holding that corrupt promises or financial abuses
 6 fall outside the scope of legitimate legislative ads,
 7 and thus are not protected by the speech and debate
 8 clause, but I want to emphasize that to the extent
 9 that this is a gray area, Senator Feingold does not
 10 intend, in responding to what we believe to be
 11 permissible questions, to thereby waive his speech or
 12 debate cause privilege with respect to any other
 13 matter. Senator, you may answer the question.
 14 THE WITNESS: Can we bring the other
 15 people back in at this point, or are we going to be
 16 pursuing the name of the Senator which I just named?
 17 Because I'd like to have my people back in here.
 18 MR. ABRAMS: Why don't you have them come
 19 back in then.
 20 (Whereupon, the deposition resumed in open
 21 session.)
 22
 23
 24
 25

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1 OPEN SESSION
 2 THE WITNESS: So you want me to respond
 3 to this sentence?
 4 BY MR. ABRAMS:
 5 Q. With respect to you.
 6 A. And the question is again.
 7 Q. Have you been asked to engage in
 8 legislative acts of the sort referred to in the
 9 sentence that I just read into the record?
 10 A. I think all members of the Senate have
 11 been urged to support legislation which is the
 12 subject of substantial soft money contributions. For
 13 this reason I instituted something called the calling
 14 of the bankroll on the Senate floor which on 19
 15 occasions when a bill came up would indicate just how
 16 much money parties involved in the matter, or the
 17 groups that are interested in the matter have
 18 contributed in terms of soft money, PAC money.
 19 And one of the points I was trying to make
 20 is that that kind of money involving legislation does
 21 raise certainly what this sentence suggests, the
 22 appearance of undue influence, and in that context,
 23 every member of the Senate has repeatedly been asked
 24 to pass legislation, vote for legislation that is
 25 tainted by this reputation of soft money.

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1 Q. And now, would you specify situations in
 2 which you have been so requested?
 3 A. I would say on a regular basis all of us
 4 in the Democratic Caucus whenever we have our Tuesday
 5 lunches are urged to vote for legislation which many
 6 times has involved substantial expenditures of soft
 7 money by the parties interested in the legislation.
 8 It is not necessarily stated that way, of course, but
 9 that's not what the sentence suggests. The sentence
 10 simply says are we urged to vote for legislation
 11 which may have the public taint of soft money? Of
 12 course, the answer is yes and it's frequent.
 13 Q. You told us three times now that it's
 14 frequent and I want to ask you specifically now if
 15 you can recall for us the occasion, what happened?
 16 What was said to you specifically about which
 17 legislative acts?
 18 A. Well, I remember many caucuses where there
 19 has been a strong push to pass the bankruptcy law
 20 that is currently going through the United States
 21 Congress, a bill that is very infected with the soft
 22 money contributions of the major credit card
 23 companies, so that would be a good example where I
 24 have seen some very tough legislative pressure to
 25 pass a piece of legislation which is shockingly out

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1 of step with anybody that knows anything about
 2 bankruptcy.
 3 I go back home and cannot find a
 4 creditor's attorney, debtor's attorney, bankruptcy
 5 judge, trustee, law professor, creditor or debtor who
 6 can really argue that this is a fair bill, and the
 7 understanding about bankruptcy law as I understand
 8 it. Obviously I'm too young to have been around the
 9 Senate for the last time we did bankruptcy reform but
 10 it was 1978. This is something that is very rarely
 11 done in this country. It's as old as the country,
 12 the Constitution. So bankruptcy reform has always
 13 been done with some sense of consensus, and in
 14 particular, with reference to the people that know
 15 the law and know the business.
 16 The opposite is occurring here, and it is
 17 well-known throughout the country that this bill is
 18 tilted dramatically toward the credit card companies
 19 and in fact I have cited on the Senate floor and in
 20 public speeches cases where on the same day within 48
 21 hours of a critical passage of the bill through a
 22 critical House committee that one of the large credit
 23 card companies gave a \$200,000 soft money
 24 contribution. That to me is a good example of what
 25 you are seeking here.

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1 Q. Which credit card companies are you
 2 speaking of?
 3 A. I believe, I hope I'm getting the acronym
 4 right, MBNA.
 5 Q. Did they give soft money to the Democratic
 6 Party?
 7 A. I don't know whether they did. I do know
 8 that there was soft money given to a Republican
 9 campaign committee at a time that was very close in
 10 proximity to a critical vote in a House committee,
 11 and I would refer you to my specific description of
 12 this in the Congressional record and in other places
 13 in which there have been a number of occasions.
 14 Q. Has MBNA financed electioneering
 15 communications benefiting the Democratic Party?
 16 A. I don't know.
 17 Q. Focusing on this language here, is there
 18 any company that you can identify now which has
 19 financed electioneering communications benefiting the
 20 Democratic Party which has then led to your being
 21 requested to engage in legislative acts in its favor?
 22 A. Oh, I'm certain that there are a number of
 23 companies that have given money to the Democratic
 24 Party Senate Campaign Committee. I refer you to the
 25 Congressional record where there is a chart

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1 indicating a group of corporations that we call
 2 double givers. They give both to the Democratic and
 3 Republican Party. I believe I remember AT&T as one
 4 of them. If I'm wrong I apologize.
 5 I know that the Democratic Senate Campaign
 6 Committee has aggressively sought such contributions.
 7 They are part of the treasury of the Democratic
 8 Senate Campaign Committee and my sense is their
 9 aggressiveness on this is only outmatched by the
 10 Republican Party's aggressiveness in this regard.
 11 Q. And has AT&T to your knowledge financed
 12 electioneering communications benefiting the
 13 Democratic Party?
 14 A. I don't know for sure. I do believe that
 15 their contributions would have been used in the
 16 context of so-called soft money ads. Now, if we are
 17 talking about the party soft money ads as opposed to
 18 independent groups' ads, I'm fairly confident that
 19 these contributions are part of the package of money
 20 that has been used in order to finance the so-called
 21 soft money ads that the Democratic Party has done on
 22 behalf of virtually every candidate for the Senate.
 23 Q. And have you been asked to cast votes
 24 based on contributions made to you?
 25 A. Are you asking in general or about soft

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1 money or what are we talking about?

2 Q. Let's start with soft money. Have you

3 received any soft money contributions? Let me

4 rephrase that. Have any soft money contributions

5 been used in support of your election in 1998?

6 A. I specifically sought to stop soft money

7 ads from being done in my state. I don't believe

8 that the Democratic Senate Campaign Committee did any

9 soft money ads on my behalf, that they honored my

10 request. They did do independent hard money ads

11 which I also objected to. And I specifically

12 requested that it not be done and I don't believe

13 there were any soft money ads on my behalf by the

14 Democratic Senate Campaign Committee.

15 Q. Have you cast any vote as a Senator as a

16 result of soft money contributions which favored your

17 campaign?

18 A. I may have voted against some bills

19 because the bills were backed by soft money.

20 Q. Have you voted in favor of any bills?

21 A. I don't believe so.

22 Q. Have you been influenced to vote in favor

23 of legislation that you really opposed because of

24 electioneering communications in your favor?

25 A. Well, I specifically ask that groups not

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1 do these ads on my behalf or to benefit me. I'm the

2 only Senator, at least at the time of my '98

3 election, to have specifically said I did not want

4 the party soft money. So I'm not a very good person

5 to ask because I didn't get it. I have not benefited

6 from soft money.

7 Q. And you have never been in a position,

8 then, in which you had to withstand whatever pressure

9 may be put on others to vote in a particular way

10 because of soft money donations?

11 A. Well, I certainly stand as a person who is

12 under a great deal of pressure from my colleagues who

13 in many cases have benefited from soft money

14 contribution ads. They are -- obviously just about

15 every member of the Senate is in that position and I

16 am under regular pressure from these individuals to

17 support legislation that is tainted by soft money.

18 I'm not saying it's their only reason for

19 supporting the legislation. It depends on who we are

20 talking about, what the bill is, but I guarantee you,

21 I have been here 10 years and I have seen a dramatic

22 change in the way in which these kinds of

23 conversations occur. The presence of soft money has

24 altered even the way that we do business on the floor

25 of the Senate in my view. The power of soft money I

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1 think has caused us to not have the kind of

2 deliberative process that we had under Senator

3 Mitchell, and even under Senator Dole.

4 The relatively recent abuse of soft money

5 has greatly limited the ability of Senators to

6 exercise their rights to offer amendments and have a

7 reasonable opportunity to debate, and that is why I

8 believe it is corrupting. So the pressure comes from

9 people saying, look, we have to pass this bill, I

10 certainly concede that they almost specifically never

11 refer to money, but there is a sense that we have to

12 do this and it feels different than it did in the

13 early '90s.

14 Q. You referred, Senator Feingold, to having

15 been subject to pressures to voting a particular way.

16 Did you yield to those pressures?

17 A. No.

18 Q. I'm going to ask you about two more

19 advertisements and then we are just about done. I'd

20 like to mark as Feingold Exhibit 7 a story board of

21 an advertisement that ran in 2000 in Utah within 60

22 days of a Utah Congressional election.

23 (Feingold Exhibit No. 7 was

24 marked for identification.)

25 THE WITNESS: Okay.

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1 BY MR. ABRAMS:

2 Q. First, would this ad, assuming it was

3 broadcast within 60 days of an election in which Jim

4 Matheson was one of the candidates for Congress, fall

5 within the restrictions of the Bipartisan Campaign

6 Reform Act?

7 A. I believe this would be an electioneering

8 communication within the law, unless I'm missing

9 something here. It appears to be.

10 Q. And is this in your view a phony issue ad?

11 A. This ad appears in my view, given the

12 context that you just gave me, to be directed at

13 beating Mr. Matheson, and it's an electioneering ad

14 in my view.

15 Q. And is that true notwithstanding the

16 language of the ad which urges Matheson to make a

17 decision on what position to take on prescription

18 drug coverage for seniors?

19 A. As I have said several times, the statute

20 contemplates an objective test of what an

21 electioneering ad is. Mentioning of the candidate's

22 name triggers that during the 60-day period and it's

23 not the content of the ad or how things are phrased

24 that triggers it. It's the mentioning of a name

25 during a certain time period. That's the nature of

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1 the objective test.
 2 Q. And I was taking you back to our
 3 discussion earlier, which is not about what the
 4 statute covers but about your own view, someone
 5 that's very knowledgeable of politics, political ads,
 6 running for office and the like as to whether this
 7 particular ad, irrespective of the statute, is what
 8 you consider a phony issue ad?
 9 A. The ad appears to be more in danger of
 10 being phony, or my view of it as being phony, the
 11 more that it's in the context of the election. If
 12 this ad were only run in January at the beginning of
 13 a legislative session, two-year legislative session,
 14 my view of it as a phony issue ad would be less
 15 likely. It is, again, as I have said several times,
 16 the context, not the content of the ad which is most
 17 important.
 18 Q. Sometimes ads are run throughout a year,
 19 are they not?
 20 A. I don't know. I mean that's unusual for
 21 one ad to be run all year. Even Harry and Louise I
 22 don't think was all year.
 23 Q. Sometimes ads are run within and without
 24 the 60-day time period, right?
 25 A. I believe so, but I can't say for sure.

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1 Q. And would they be in your view phony ads
 2 if they were run -- strike that. Would you more
 3 likely view them as phony ads if they were run
 4 throughout the year or only towards an election?
 5 Would you view an ad that that was run throughout a
 6 year rather than towards an election year as one
 7 which would be less likely to be a phony ad?
 8 A. I would view an ad that was run throughout
 9 the two-year cycle of a Congressional period as less
 10 intended to be phony than an ad that is only run
 11 during an election period.
 12 Q. So the ad that I showed you at the very
 13 beginning of our exchange which mentions you and
 14 Senator Kohl in the context of partial birth
 15 abortion, if that ad had been run for a lengthy
 16 period of time, would you be more inclined to view it
 17 as not phony?
 18 A. Well, it depends on its nexus to
 19 legislative process. It would only be rational for a
 20 group like this that's truly trying to influence
 21 passage of a bill to run ads at a time when there is
 22 some possibility that members of the Congress will be
 23 making some kind of decision on it. So yes. If the
 24 ad was run nonstop for two years to keep the heat on
 25 some particular issue, I would be less suspicious of

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1 it as being a phony issue ad in my own view.
 2 However, given the proliferation of soft
 3 money, I don't know exactly where we are heading in
 4 terms of these elections, in terms of what window of
 5 time is going to be the time of combat for these
 6 elections. I mean, that's why this legislation picks
 7 a very narrow period of time during which we expect
 8 others to follow the campaign rules and does not go
 9 too far in terms of reaching all the way back for
 10 fear of getting at the kinds of things you are
 11 raising in a situation where people are simply trying
 12 to pass some kind of legislation.
 13 Q. Do you consider the 60-day limit a narrow
 14 limit of time?
 15 A. I think it's a reasonable period when, as
 16 well as the 30-day period prior to a primary, when
 17 people expect to focus on candidates and campaigns
 18 and where messages put in broadcast form are very
 19 likely to be intended to influence the outcome of an
 20 election, and I think that's a fairly reasonable time
 21 period.
 22 Q. Given the 30-day and 60-day time periods,
 23 couldn't you have a situation where a sitting
 24 President could have much less criticism voice to
 25 phone and advertisements in a campaign year; couldn't

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1 you have a situation where given all the primaries
 2 around the country, and given the 60-day limit where
 3 you could have considerable diminution of public
 4 adverse advertising commentary on a sitting
 5 President?
 6 A. There is no prohibition in this bill on
 7 any advertising whatsoever. There could be unlimited
 8 ads at any time on any subject by anyone.
 9 Q. But you don't really expect there to be as
 10 many ads, do you, after this bill as before?
 11 A. We will find out.
 12 Q. Do you have an expectation?
 13 A. My concern is not so much how many ads
 14 there are, but that the ads be in the context of
 15 fairness to all participants in the electoral
 16 process. I'm not interested in less ads or more ads.
 17 That's not my concern.
 18 Q. I wasn't asking you if you were interested
 19 in it. I was asking if you anticipated.
 20 A. I would love to have that crystal ball,
 21 Mr. Abrams. I don't know. The issue is not how many
 22 ads there are.
 23 Q. Is one of the purposes as you view it or
 24 is one of the advantages of this statute greater
 25 fairness in terms of what is said during campaigns?

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1 A. No. My goal is that everybody has to play
 2 by the same rules to make the electoral process fair
 3 so that a person can be elected in a manner that the
 4 American people believe is a fair process and frankly
 5 it's simply the way the process worked a few years
 6 ago. The Republic has stood very well without phony
 7 broadcast issues. This is a completely new phony
 8 process that was needed neither for John F. Kennedy
 9 nor Ronald Reagan.
 10 Q. And the phoniness, as I understand it, the
 11 phoniness is simply because it appears within 60 days
 12 of the election, is that correct?
 13 A. The phoniness is the hiding under the
 14 umbrella of an ad being an issue ad when everybody in
 15 the whole country knows it's a campaign ad, when
 16 everybody in the whole country knows that it is
 17 perfectly legitimate to regulate ads that say vote
 18 for or vote against a candidate and then to pretend
 19 that by playing a cute game of calling somebody's
 20 office that somehow you are not doing the same thing.
 21 That's what's phony, and everybody knows it's phony.
 22 Q. I'd like to mark as Exhibit 8, I believe
 23 it's the final ad I will show you.
 24 (Feingold Exhibit No. 8 was
 25 marked for identification.)

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1 BY MR. ABRAMS:
 2 Q. I will represent to you, Senator Feingold,
 3 that this ad was also shown within 60 days of an
 4 election, of a Federal election in Kentucky.
 5 A. You want me to review the ad?
 6 Q. Yes, please.
 7 A. Okay. I have read it.
 8 Q. And this ad as well was broadcast within
 9 60 days of Congresswoman Northrup's re-election day.
 10 It would fall within the purview of the statute,
 11 would it not?
 12 A. On first rereading it appears to me that
 13 the Congresswoman's name is mentioned. It's within
 14 60 days. It appears that it would be an
 15 electioneering communication.
 16 Q. Would it also be a phony issue ad as we
 17 have been using those words?
 18 A. Again, that depends in terms of my own
 19 personal view on the context. How long has it been
 20 running. Was it done throughout the two-year period.
 21 Does it only appear two weeks before an election.
 22 Those things inform my personal view whether it's
 23 relevant or not, as to whether it's phony. The
 24 statute does not say phony issue ad. It says
 25 electioneering communication.

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1 Q. Would it be fair to say that the statute
 2 which relates to electioneering communications
 3 includes some ads which are not what you believe to
 4 be phony issue ads?
 5 A. I'm not certain. I can't speculate on a
 6 law that is under constitutional challenge, hasn't
 7 been even run through that process and has not been
 8 applied. I can't tell you for sure. I know what --
 9 I can guess how this would be affected, but in terms
 10 of my own view of all these ads, it's very hard to
 11 tell. I would have to look at each one of them and
 12 give me all the facts and I will tell you whether
 13 it's phony or not. It's speculative.
 14 Q. Only if you had the facts could you answer
 15 the question?
 16 A. The question is what do I think of it?
 17 Q. Whether you think, whether you think a
 18 particular ad is a phony issue ad, you need to have a
 19 lot of facts?
 20 A. Not a lot.
 21 Q. You need to know when it was run, how
 22 often it was run, right?
 23 A. That would be helpful. That would be
 24 helpful.
 25 Q. You would need to know when it started

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1 being run?
 2 A. All of that would help me make a
 3 determination of whether I think the ad is simply
 4 intended to influence an outcome of an election or
 5 whether it is intended as an issue.
 6 Q. Is there anything else that you would want
 7 to know for you to decide for yourself that a
 8 particular ad was a phony issue ad?
 9 A. There may be other things. Those are the
 10 things I would ask for.
 11 MR. ABRAMS: Thank you. I have no further
 12 questions at this time.
 13 MR. CARVIN: Can we go off the record for
 14 a second?
 15 THE WITNESS: Five minutes.
 16 (Recess.)
 17 (Feingold Exhibit No. 9 was
 18 marked for identification.)
 19 EXAMINATION BY COUNSEL
 20 FOR PLAINTIFF RNC
 21 BY MR. CARVIN:
 22 Q. Good morning, Senator. My name is Mike
 23 Carvin, I represent the Republican National Committee
 24 and various state parties in this litigation. I
 25 think it's been marked as Feingold Exhibit 9. I have

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1 handed you some intervenor defendants' objections and
 2 responses to Senator McConnell's first set of
 3 interrogatories, and you were one of the signatories
 4 to these interrogatory responses, if you turn to page
 5 19.
 6 A. Yes, sir.
 7 Q. I'd like to direct your attention,
 8 Senator, if I could to page 14. You may want to look
 9 at page 13 as well to see the specific question that
 10 this interrogatory response is responding to, and
 11 take your time to read it. I'm going to basically
 12 ask you about some ways in which the actual intended
 13 corruption --
 14 A. Which interrogatory are you referring to?
 15 Q. The page number, it's on page 13. The
 16 interrogatory number is also 13, and the answer that
 17 I'm going to, the response I'm going to direct your
 18 attention to is on page 14.
 19 A. So you want me to review the
 20 interrogatory, objections and response. Is that
 21 correct?
 22 Q. It's up to you if you want to read the
 23 objections. But I want you to read the response.
 24 But feel free to. Sure. Okay.
 25 Again, towards the bottom of page 14, it

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1 states that Federal elected officials are tainted by
 2 the appearance of corruption to the extent they,
 3 among other things, benefit from soft money
 4 contributions channeled through political parties.
 5 Do you see that?
 6 A. Yes, sir.
 7 Q. Do you agree with that?
 8 A. Do I agree with what?
 9 Q. The assertion that Federal officials are
 10 tainted by the appearance of corruption to the extent
 11 they, among other things, benefit from soft money
 12 contributions channeled through political parties?
 13 A. I agree that the soft money contributions
 14 because of their unlimited nature do have the effect
 15 of raising serious concern in the minds of the
 16 American people, constituents of individual Senators,
 17 and that the appearance of corruption does arise as a
 18 result of those contributions in many cases, and that
 19 has a tainting effect on I think just about everybody
 20 that participates in the process.
 21 Q. And I take it that the basic reason for
 22 that is that when these political parties channel
 23 those substantial unlimited amounts of money from
 24 wealthy individuals, corporations and unions, it
 25 creates the appearance that the Federal candidate or

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1 officeholder is unduly influenced by those soft money
 2 donors?
 3 A. That's one location where it occurs, but
 4 certainly not the only one. When there are press
 5 accounts of members going to events and getting large
 6 contributions such as the coverage of the Republican
 7 and Democratic National Conventions when there are
 8 television accounts of a big Republican or Democratic
 9 fund-raiser and a bill passing the next day, these
 10 are all different points at which the taint of soft
 11 money can occur. It does not exclusively as it
 12 pertains to particular sums of money being sent for a
 13 particular candidate, the taint is much broader and
 14 much more systemic.
 15 Q. No. I'm not trying to limit your answer.
 16 This is the first of the four examples of you gave in
 17 which the taint -- frankly, I represent political
 18 parties and I was focusing on the first one because
 19 really what I'm trying to figure out is whether in
 20 your opinion one of the purposes of the soft money
 21 ban in addition to reducing the undue influence of
 22 corporations and unions and wealthy individuals was
 23 also to reduce the influence or effectiveness of
 24 political parties.
 25 MR. HARTH: I'm going to object to

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1 questions inquiring into Senator Feingold's purpose
 2 in different provisions of the Act. I think that
 3 that really is a core speech and debate area, and I
 4 wonder if you could find a way to rephrase that.
 5 BY MR. CARVIN:
 6 Q. Frankly, I'm trying to tie it to the
 7 interrogatories. I'm not asking you as an
 8 individual. Just in the terms of the same manner in
 9 which you responded to these interrogatories, you
 10 identified different purposes. In doing the Act, is
 11 one of those purposes as well to reduce the
 12 effectiveness of political parties in addition to
 13 soft money donors.
 14 A. Would you please state the question again?
 15 Q. Is one of the purposes of the Act to
 16 reduce the influence or effectiveness of national or
 17 state political parties, in addition to reducing
 18 undue influence of soft money donors?
 19 A. I think the Act would greatly strengthen
 20 the political parties because they get back to what
 21 they are supposed to be instead of money raising
 22 machines, they are parties that represent people. I
 23 think soft money is very destructive to the integrity
 24 of political parties nationally and locally and a lot
 25 of people are turned off so my guess is this will

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1 greatly strengthen the hand of political parties and
 2 I believe that my own state party chair of our
 3 Democratic Party indicated her belief that this would
 4 have a positive impact on generating grassroots
 5 interest again.
 6 The party has gone a long way away from
 7 their roots in trying to get the grassroots people
 8 involved. They have become money making machines.
 9 Q. That was not an unintended consequence of
 10 the Act, to strengthen political parties?
 11 A. I don't know if it will. It is my hope
 12 that particularly the local and state parties will
 13 again get to play a more serious role in the
 14 political process because they have been marginalized
 15 by the power of unlimited contributions and the
 16 influence that they have in the process.
 17 My observation of 20 years in politics is
 18 that people that are rank-and-file members of the
 19 parties back home have much less role than they used
 20 to have, and I think that's a regrettable thing.
 21 This bill was an inspiration to many party members
 22 back home who believe that maybe we could get back to
 23 knocking on doors and putting up yard signs and
 24 having barbecues and bean feeds and all the good
 25 things that I was brought up to believe political

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1 parties do and I had a pleasure doing throughout so
 2 much of my career.
 3 Q. I take it that, just to be clear on this
 4 point, I can show you some examples, but I think you
 5 will agree that in public, you have noted that one of
 6 the purposes of the soft money ban was to reduce the
 7 influence of I think you have referred to them as
 8 special interests, and so my question would be, would
 9 you include national or state parties as one of those
 10 special interests whose influences would be reduced
 11 under the soft money ban?
 12 A. I don't think of the parties as special
 13 interests. I am concerned about the effect that soft
 14 money dominated national parties have on state
 15 parties and on the political process, but I don't,
 16 when I hear the words special interest, I think of
 17 not political parties as much as groups that
 18 represent particular issues specifically.
 19 But certainly the role that soft money in
 20 the context of the national parties plays is very
 21 troubling and is a serious problem, but hopefully our
 22 bill will cure that and the national parties will be
 23 able to get back to their roots which involved
 24 working with the state parties to try to elect the
 25 best candidates rather than seeing who can get the

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1 most giant checks from corporations and unions.
 2 Q. And was one of the purposes of the Act to
 3 reduce the associational bonds between the parties,
 4 national or state and candidates?
 5 MR. HARTH: I'm going to object again to
 6 the questioning of the Senator about the purposes, a
 7 purpose of the legislation. I know that he's capable
 8 of answering that question, but to the extent that
 9 you are asking for his contentions as a party in this
 10 litigation in the same manner as he has responded to
 11 the interrogatories, I would object.
 12 BY MR. CARVIN:
 13 Q. This is all in the context of your role as
 14 a party and contentions you have made in the
 15 interrogatories. I'm not asking for any private
 16 considerations or that sort of thing. Just your
 17 understanding of the Act, and in that connection, was
 18 one of the purposes of the Act to try and reduce the
 19 associational bonds between either national or state
 20 parties and candidates for Federal office?
 21 A. I have never thought of it in those terms.
 22 I would say this. That to the extent that soft money
 23 and the need that the candidates perceive to have
 24 soft money to protect their seats or to challenge
 25 another candidate, to the extent that soft money

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1 constitutes a very large club over the head of a
 2 candidate from a national party, where they can be
 3 threatened with not receiving that kind of help, then
 4 bond is one I could do without.
 5 The bond that I have always felt with the
 6 Democratic Party, including the national party, of
 7 working to get the best candidates without the threat
 8 of getting party money or not getting party money.
 9 It's a value. I'm strengthening it. I do believe
 10 that the soft money process of -- the national
 11 party's extremely aggressive effort to use soft money
 12 and frankly use it in ways to let candidates know who
 13 is going to get supported and who is not has greatly
 14 damaged the Democratic Party and the Republican Party
 15 and I expressed my views to that effect when I spoke
 16 at what was called the shadow convention in Los
 17 Angeles at the time of the national Democratic
 18 Convention which I believe was one of the worst
 19 displays of soft money fund-raising in the history of
 20 our country.
 21 Q. Are you aware of any instance in which a
 22 national party committee has threatened any Federal
 23 legislator for not following the interests of soft
 24 money donors?
 25 A. I have heard conversations about the

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1 possibility of that happening. I don't know whether
 2 it's actually, I can't cite chapter, verse of it
 3 actually being done. I don't know if it's that sort
 4 of a club that's out there and people don't
 5 necessarily participate, for example, in raising soft
 6 money, some of the other items.
 7 But I don't -- frankly, I'm not the person
 8 that people generally come to to discuss these
 9 things.
 10 Q. So you say you have heard of conversations
 11 about the possibility of that happening. Was this a
 12 conversation with somebody who was either in control
 13 of the soft money or had been implicitly threatened
 14 with withholding of soft money?
 15 A. As I recall, it was probably with campaign
 16 staff who heard it from others that this is something
 17 that was being a concern, that if they did not
 18 participate enough in raising soft money, they may
 19 not get as much money or they might not get as many
 20 soft money ads. It was probably at least once. But
 21 I recall this kind of discussion.
 22 Q. Give me your best recollection of any such
 23 discussion.
 24 A. I think I remember campaign staff of mine
 25 telling me they had heard from somebody in the

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1 Democratic committee or some other campaign that
 2 there was some pressure on members to raise soft
 3 money and that the amount of soft money they might
 4 get would be affected by whether they participate.
 5 Q. Did you ever hear of such comment by any
 6 person associated with the national political
 7 committee?
 8 A. I can't recall at this time if I ever
 9 heard anything directly like that.
 10 Q. It's the kind of thing that would have
 11 stuck out of your mind?
 12 A. I will tell you, not necessarily, because
 13 every Tuesday there is a Democratic Caucus lunch.
 14 And that lunch begins with an urging of members to
 15 raise money. And that did not used to be the way it
 16 was done when I first got here. Allotted time that
 17 is spent discussing which events are coming up and
 18 which events that they need people to help raise
 19 money for has increased dramatically in the last 10
 20 years.
 21 I believe that on some occasions the, it's
 22 usually just implicit but to me the unspoken message
 23 is you know, you better help us with this or we are
 24 going to look less favorably on your race, and I'm
 25 not saying it was ever stated explicitly in there but

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1 it seemed like kind of a constant drumbeat and it
 2 really got out of control when we were handed binders
 3 for the Democratic convention in the year 2000 with
 4 the pretty strong urging that we attend at least nine
 5 soft money-related events, that there was another 10
 6 which would be a good idea.
 7 This struck me as not explicit but pretty
 8 strong pushing for members to be involved in raising
 9 soft money or be involved in soft money.
 10 Q. And who was doing the pushing?
 11 A. It was principally being done by the
 12 Chairman of the Democratic Senate Campaign Committee.
 13 Q. Who is that?
 14 A. I believe at the time it was Robert
 15 Torricelli. And by the way, because I would not
 16 normally just reveal a conversation from the caucus,
 17 I have publicly stated this in the past. I let
 18 people know because of my concern that this was going
 19 on and I referred to it on a number of occasions when
 20 I was in Los Angeles during the week of the
 21 Democratic National Convention and I believe there
 22 was some coverage of it on ABC News of my comments in
 23 this regard and Mr. Torricelli's response.
 24 Q. And who is head of the Democratic Caucus?
 25 A. The person who chairs the caucus is

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1 Senator Daschle.
 2 Q. And has Senator Daschle himself ever
 3 pushed for other Senators to raise soft money?
 4 A. What is usually the procedure is that the
 5 campaign committee Chairman is called upon to give a
 6 report and they give a report and on occasion, the
 7 now Majority Leader joins in with the Senators urging
 8 us to attend an event or helping to raise money.
 9 Q. And after the push is made, are you aware
 10 of any expenditure decision by any of the three
 11 national Democratic committees that have been
 12 affected in any way by whether or not a member
 13 participates in raising soft money?
 14 A. I'm not privy to those conversations.
 15 Q. So the answer is no?
 16 A. I am not directly aware of any specific
 17 decisions. I could I suppose speculate, but I would
 18 really not be comfortable in doing that. It's my
 19 sense that decisions are made where to put resources
 20 and one of the factors that's considered is how
 21 participant a Senator has been in raising money.
 22 Q. Let me focus if I can on any informal
 23 understanding between the political committees and
 24 the soft money donors. Are you aware of any such
 25 understanding of the donors directing to whom the

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1 donation would go, which candidates?
 2 A. I'm going to have to ask you to repeat
 3 that.
 4 Q. Are you aware of any informal
 5 understanding between any of the national political
 6 committees and soft money donors concerning the
 7 donors' desire where the donation will be spent, in
 8 which race or in which state?
 9 A. I am not personally aware of it. It's
 10 possible. My sense is that more generally, the
 11 consideration was done to the parties in general, to
 12 the Democratic Senate Campaign Committee and
 13 Republican Senate Campaign Committee, and the donors
 14 accept that the Senate Campaign Committee staff
 15 decide who gets it. I just don't know.
 16 I believe the more appropriate thing is
 17 for the money to be generally given to the party
 18 because the closer you get to having it tied directly
 19 to a particular member is you are getting closer to
 20 the line of having the member sort of, in a sham sort
 21 of way directly getting the money for their campaign.
 22 I know that individual Senators are asked to raise
 23 soft money from their own states, and I believe that
 24 they have an expectation that they will benefit in
 25 their campaigns from that, and I'm not suggesting

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1 that that's illegal but it is one of the problems I
 2 believe that helps corrupt the system.
 3 Q. Well, given your knowledge of national
 4 political committees, is the general expenditure
 5 criteria spending money where it is going to do the
 6 most good, i.e. in competitive races, in your case
 7 where a Democrat would have a shot of winning, or is
 8 it based on which candidate raises it?
 9 MR. HARTH: I will object on foundation.
 10 THE WITNESS: Please repeat the question.
 11 BY MR. CARVIN:
 12 Q. In terms of just your personal knowledge,
 13 are you aware of whether or not the expenditure
 14 criteria by national political committees is based on
 15 their view as to where the money is most effectively
 16 spent in helping them win competitive elections?
 17 A. There is no doubt in my mind. Please
 18 finish.
 19 Q. That's the best way to put it?
 20 A. There is no doubt in my mind that that's
 21 one factor. It's an important factor. I am told
 22 that Senator McConnell chose not to put resources
 23 into a potentially strong possible Republican race in
 24 the State of Washington against incumbent Patti
 25 Murray when Representative Linda Smith was opposing

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1 her because she had supported our campaign finance
 2 reform. So that's a factor that I have been told was
 3 considered. That's one thing. I think another
 4 factor is -- well, my guess is that sometimes it's a
 5 factor whether someone has been active in activities
 6 of the party, but I can't cite chapter and verse on
 7 that.
 8 Q. Let me break it down. The McConnell
 9 example you gave did not relate to the extent to
 10 which the Republican candidate participated in
 11 raising soft money --
 12 A. I can't say that it did not. I don't know
 13 the whole history of it. Ms. Smith was a co-sponsor
 14 of our bill. One of the -- classic Contract with
 15 America Republican, to come on our bill, and I could
 16 be wrong, but I think it's very possible that she
 17 wasn't participating in raising soft money for a
 18 campaign. But I don't know for sure.
 19 Q. Who told you that?
 20 A. I heard it several times. It's common
 21 wisdom in Washington. That's why that race got no
 22 money and amazingly enough, several million was spent
 23 by the Republican campaign committee on the race in
 24 Wisconsin.
 25 Q. That was a fairly competitive race, if I

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1 recall?
 2 A. And that's exactly my point is that both
 3 races were potentially competitive. One got the
 4 funding, and one did not.
 5 Q. Well, just so I'm clear, though, that
 6 issue relates to the position of the individual, that
 7 the individual candidates took on campaign finance
 8 reform. Has anyone told you in words or effect that
 9 a funding decision by any national party committee
 10 was affected to the extent to which the candidate was
 11 involved or participated in soft money efforts?
 12 A. I can't say that's the case for sure but
 13 that's my belief.
 14 Q. What is your belief?
 15 A. My judgment based on the way people talk,
 16 the body language, it's quite obvious to me that one
 17 of the factors that affects how candidates are
 18 treated is the extent to which they participate in
 19 the fund-raising.
 20 Q. Well, have you ever seen any committee
 21 leaders say that?
 22 A. No. It's just my judgment based on what I
 23 have observed over the course of 20 years.
 24 Q. Have you ever seen either a Senate leader
 25 or committee leader implying that?

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1 A. I think it has been implicit in some of
 2 the conversations I have heard, but I can't cite
 3 exact language. I don't recall explicit statements
 4 to that effect.
 5 Q. Have you suffered in any way in terms of
 6 national political committee support because of your
 7 relative lack of involvement in soft money?
 8 A. I have never participated in soft money
 9 fund-raising, and I did not want to, so I don't
 10 believe that I suffered from it because I did not
 11 want it.
 12 Q. Have you been in on any discussions by any
 13 leadership group of the national party committee
 14 where they have made funding decisions in terms of
 15 various elections?
 16 A. Being in the room where they are
 17 discussing -- I don't think so.
 18 Q. Have you ever, without being in the room,
 19 have you been made aware of the criteria that are
 20 used in the decisions they make?
 21 A. Not in so many words. I don't remember
 22 receiving a presentation on how this is done. This
 23 is my reading the newspaper, how people talk to
 24 people, conversations, informal conversations you
 25 hear about somebody saying how the race is going and

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1 A. I'm not prepared to do that. I can't do
 2 that. I'm not going to do that.
 3 Q. Was this the result of articles or surveys
 4 related to that?
 5 A. Not to my knowledge.
 6 Q. Is there a distinction between the amount
 7 of money raised by national candidates and the amount
 8 of money expended by the committees?
 9 A. No.
 10 Q. Have you analyzed it more specifically
 11 than that?
 12 A. No.
 13 Q. And how about, again, just as a matter of
 14 judgment and common sense, it had seemed to me that
 15 the big soft money fund-raisers, the magnet for soft
 16 money fund-raisers would be sort of the leaders of
 17 the various Houses of Congresses, Senate Majority
 18 Leaders, and other well-known leaders and committee
 19 chairs.
 20 A. I think that's inaccurate. The real
 21 magnet would be the President of the United States.
 22 There is an enormous difference in that.
 23 Q. That's right. That's why I focused my
 24 question on legislative leaders.
 25 A. Whether or not the legislative leaders

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1 whether they are getting overwhelmed, what kind of
 2 help they are getting, but I don't remember anybody
 3 coming out and saying I was cut off on X date.
 4 Q. Well, let me focus in on that example of
 5 the conversation. To me if a candidate said in this
 6 hypothetical I'm being overwhelmed, they are spending
 7 a lot of money on the other side, and that was a
 8 factor in the national political committee's
 9 spending, that would not be in any way tied to the
 10 soft money fund-raising from the candidate but simply
 11 their need.
 12 A. It's my sense to the extent that the
 13 parties respond to that kind of a plea, it is a
 14 combination of genuine concern that the person would
 15 be defeated and some consideration of whether that
 16 individual has been as strong as other individuals in
 17 terms of raising the money, but I can't prove it.
 18 Q. And I think I have asked you about your
 19 personal knowledge. I'm going to expand it a little
 20 bit. You said based on your judgment, what you have
 21 seen in the newspaper. Can you give me two examples
 22 of where you think or have surmised that a funding
 23 decision by a national political committee was
 24 affected by the candidates involvement in soft money
 25 fund-raising?

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1 were there.
 2 Q. No. If you were ranking potential
 3 fund-raising soft money appeal among various
 4 legislators, would it not be the case that the people
 5 who attended these fund-raising events predominantly
 6 would be people who tend to be more in a leadership
 7 position?
 8 A. Not necessarily. Not necessarily.
 9 Q. So that has not been the experience?
 10 A. Sometimes a particular member, particular
 11 member is publicly popular. Doesn't necessarily
 12 follow through.
 13 Q. And with respect to either these popular
 14 or leadership type candidates, in your experience,
 15 have they not been able to raise a lot of money for
 16 their own campaigns?
 17 A. I don't know. I assume that many of these
 18 people have been successful in raising money for
 19 their own campaigns.
 20 Q. Doesn't it logically follow that if you
 21 considered somebody, by a committee, would -- could
 22 raise soft money for them, you would be in a position
 23 to raise money for your own campaign?
 24 A. I don't think so. Sometimes the
 25 overemphasis on soft money fund-raising involves a

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1 few phone calls to a big corporation or union and
 2 hard money donors, people who in the past have given
 3 one hundred or two hundred thousand dollars has grown
 4 stale. It's so much easier just to call up \$100,000
 5 and people involved trying to raise solutions.
 6 Q. Let me ask who you thought the top five
 7 soft money fund-raisers are for the Democratic Party?
 8 A. I don't know. I have never gone through
 9 and sort of tried to figure out who raised what. I'm
 10 aware that there is a lot of money being raised and
 11 it's often a team effort. I don't know whether it's
 12 one person's phone call or whether it's the presence
 13 of a group at a particular ERCC or RSCC event, you
 14 know, it's sort of a group effort, so I really
 15 wouldn't know how to piece that out.
 16 Q. I take it the same would be true for
 17 Republicans?
 18 A. I mentioned Republican Committee. It's
 19 true with Republican Committee also. I would argue
 20 more so.
 21 Q. Do you generally talk to the DNC about
 22 pending legislation? Have you ever in one of your
 23 meetings?
 24 A. I believe we talked to them about the
 25 McCain-Feingold. It wasn't always pleasant.

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1 Sometimes it was.
 2 Q. And what were those conversations?
 3 MR. HARTH: I'm going to --
 4 BY MR. CARVIN:
 5 Q. I'm actually not particularly interested.
 6 Obviously, that's one that pretty directly affected
 7 the Democratic National Committee, McCain-Feingold.
 8 With respect to other legislation, do you generally
 9 as a matter of course have conversations with agents
 10 or officials with Democratic National Committee --
 11 A. Do I?
 12 Q. Yes.
 13 A. No.
 14 Q. Are you aware of those that do?
 15 A. I don't know.
 16 Q. Would that be true for the Congressional
 17 committees as well?
 18 A. I don't understand what you are asking.
 19 Q. My question is have you had conversations
 20 or if you knew of others having conversations with
 21 the Democratic National Committee, I'm just trying to
 22 make it clear that I'm now expanding my question to
 23 include the Democratic Senatorial committee.
 24 A. Whether I regularly check on them?
 25 Q. Are you aware of any members of Congress

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1 or the Senate doing that?
 2 A. I'm not aware of them.
 3 Q. Is there any regular meetings where the
 4 political committees will set guidelines on these
 5 things?
 6 A. There may be. I certainly don't recall
 7 attending them.
 8 Q. Now I'm expanding it to any member or
 9 agent of a national political committee, lobby the
 10 particular members on particular pieces of
 11 legislation?
 12 A. Do they lobby members?
 13 Q. I will phrase that as, sought to influence
 14 a voter action.
 15 A. I think sometimes they express their views
 16 about whether a bill should pass, but not to me.
 17 Q. Can you give me an example where somebody
 18 has done that with respect to any Senator or
 19 Representative anywhere?
 20 A. I'm going to confer with my counsel for a
 21 moment.
 22 MR. CARVIN: Take five minutes.
 23 (Recess.)
 24 THE REPORTER: "Question: Can you give me
 25 an example where somebody has done that with respect

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1 to any Senator or Representative anywhere?"
 2 BY MR. CARVIN:
 3 Q. I can summarize that for you. Are you
 4 aware of any agent or official of a national party
 5 committee seeking to influence legislation or a vote
 6 by a member of Congress through conversation?
 7 MR. HARTH: I am going to object to that
 8 question as calling for testimony that is at the core
 9 of the speech and debate clause privilege and for
 10 that reason, I'm going to instruct Senator Feingold
 11 not to answer that question.
 12 (Whereupon, the deposition proceeded in
 13 confidential session.)
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1 **CONFIDENTIAL**
 2 **MR. CARVIN:** This isn't the place to get
 3 into a debate about this but I'm just trying to
 4 figure out the analysis. Previously we had a
 5 discussion about Senator Ford, and people seeking to
 6 influence his vote. And obviously in your
 7 interrogatories and elsewhere you have said that one
 8 of your principle concerns is that soft money will be
 9 used to unduly influence legislators.
 10 All I'm trying to figure out, consistent
 11 with the colloquy you had this morning about Senator
 12 Ford's vote, is are you aware of any instances where
 13 people raise that money in committees and have sought
 14 to influence legislators. It would seem to me
 15 directly relevant and B, totally stemming from the
 16 representations that Senator Feingold has made
 17 voluntarily in his interrogatory responses.
 18 **MR. HARTH:** No. I took your question as
 19 being broader than the way you have narrowed it. I
 20 mean, you basically put it in terms of does anyone
 21 from any party committee, are you aware of anyone
 22 from any party committee seeking to lobby on
 23 legislation. That's very broad.
 24 **MR. CARVIN:** Maybe it would be helpful if
 25 I broke it down into its components parties, without

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1 **OPEN SESSION**
 2 **BY MR. CARVIN:**
 3 **Q.** Is that something the committees do? They
 4 tend to lobby members on particular pieces of
 5 legislation, without giving any specific example?
 6 **A.** I think it depends on the legislation. I
 7 think sometimes they do.
 8 **Q.** And again, without giving any detail, have
 9 you ever been approached by a member of any national
 10 party committee with respect to any legislation?
 11 **A.** As I indicated, I had conversations
 12 involving McCain-Feingold.
 13 **Q.** Fair enough. In addition to that.
 14 **A.** I believe there have been other such
 15 conversations, but frankly I can't recall the exact
 16 conversation at this point. I would not say they
 17 have been frequent because again, I don't have a lot
 18 of contact with these people. I'm not the guy to
 19 ask.
 20 **Q.** And in light of the restriction on your
 21 personal knowledge, are you aware of -- again, is it
 22 their practice with other Senators or House members
 23 to lobby them on particular pieces of legislation
 24 without getting into anything specific?
 25 **A.** I believe that it has occurred.

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1 giving me any specific examples.
 2 (Whereupon, the deposition resumed in open
 3 session.)
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1 **Q.** Anything more specific than that that you
 2 can recall at this point?
 3 **A.** I would choose not to get into that at
 4 this point.
 5 **Q.** Well, this is the confusion. Before we
 6 can worry about speech and debate, do you recall an
 7 instance occurring and then your counsel can invoke
 8 whatever privileges he wants. I just want to know if
 9 we are having an academic discussion. Do you recall
 10 this actually coming up?
 11 **A.** How do you define official Democratic
 12 committee?
 13 **Q.** I would say anybody who appears to -- or
 14 is acting on behalf of the committee.
 15 **A.** It could be somebody who is both a member
 16 of the committee and a Senator.
 17 **Q.** Well, let's leave the Senatorial committee
 18 aside.
 19 **A.** Then you are not really talking about my
 20 world.
 21 **Q.** Whatever. Okay. That's fair enough.
 22 Let's focus on the Democratic National Committee
 23 first. Are you aware of any?
 24 **A.** My principle knowledge to the extent of
 25 having any would have to do with officials of the

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1 Democratic Senate Campaign Committee.
 2 Q. So then just to clarify the record, are
 3 you aware of any instances when the Democratic
 4 National Committee has approached a member of
 5 Congress about pending legislation?
 6 A. I'm not certain.
 7 Q. You don't have any specific recollection?
 8 A. Not at this moment.
 9 Q. And now let's phrase it in terms of the
 10 Democratic Senatorial committee. Has any person
 11 associated with the Senatorial committee who is not a
 12 Senator approached to your knowledge any member of
 13 Congress about pending legislation?
 14 A. I'm not certain.
 15 Q. You may want to check with your counsel
 16 before you answer this. What about a Senator who was
 17 acting on behalf of the Senatorial committee
 18 approaching another member of Congress about pending
 19 legislation. First, are you aware of any such
 20 instance?
 21 MR. HARTH: Other than the Senator himself
 22 which he has talked about?
 23 BY MR. CARVIN:
 24 Q. Yes.
 25 A. Yes. I am aware of it.

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1 Q. Is that routine?
 2 A. I don't know whether it's routine or not.
 3 Q. Can you give me a rough estimate of how
 4 many such occurrences?
 5 A. I have no way of calculating how many
 6 occurrences there have been.
 7 Q. Less than five?
 8 A. I don't know how I would calculate it. My
 9 guess would be more than five.
 10 Q. Do you have any knowledge of it?
 11 A. Not direct knowledge.
 12 Q. Have you heard about more than five
 13 instances where a Senator, acting on behalf of the
 14 Senatorial committee has approached a member of
 15 Congress about legislation?
 16 A. Yes.
 17 Q. Can you give me a rough estimate as to how
 18 many such times this occurred?
 19 A. I don't know.
 20 Q. More than 10?
 21 A. Probably.
 22 Q. More than 20?
 23 A. When you get to that point, I don't know
 24 that I could piece out 20, over 20 occasions where I
 25 remember something like that, but I think possibly

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1 that many occasions where I feel like there has been
 2 some accounting to me or reaccounting to me things
 3 related to pieces of legislation and the kind of
 4 money an entity has given to the Democratic
 5 committee.
 6 Q. Just to be clear on that, there have been
 7 conversations where a member of the committee has
 8 approached a member of Congress and in that
 9 conversation, mentioned soft money donations to the
 10 committee?
 11 A. I don't know if it was that precise.
 12 Q. Are you aware of any such conversation?
 13 A. These conversations were summarized for
 14 me, so I can't tell you whether the conversation was
 15 that precise or not.
 16 Q. Well, what was the impression of the
 17 person summarizing it to you? Was there any linkage,
 18 direct or indirect, between the request on pending
 19 legislation and soft money donations?
 20 A. My sense is that somewhere in the course
 21 of these conversations, one Senator said to another
 22 something to -- to the effect that interests involved
 23 were giving a lot of money to the Senate Democratic
 24 campaign.
 25 (Whereupon, the deposition proceeded in

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1 confidential session.)
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1 **CONFIDENTIAL**
 2 **BY MR. CARVIN:**
 3 Q. And that would be analogous to the
 4 conversation you recalled earlier involving Senator
 5 Ford?
 6 A. I can't say because I remember how Senator
 7 Ford and I interacted. I don't know what the nature
 8 of the interaction would be with these other people.
 9 They could be joking. They could be dead serious.
 10 They could be sort of an aside. Could be a direct
 11 push. I wasn't there. I just know that on a number
 12 of occasions it's been related to me that financial
 13 contributions of an interest is something that the
 14 Senator was reminded of.
 15 (Whereupon, the deposition resumed in open
 16 session.)
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1 Q. And I take it from that answer that access
 2 to you is in no way affected by the amount or
 3 identity of soft money donations to the Democratic
 4 Senatorial committee?
 5 A. I cannot imagine a situation where I
 6 decided to -- that I would meet with somebody because
 7 they gave soft money. I think if anything it would
 8 be something to make me more concerned. Just because
 9 somebody gives a soft money contribution doesn't mean
 10 they have a right to deal with me as a constituent.
 11 It's a turn off for me.
 12 Q. Are you aware of any other members of
 13 Congress who provide preferential access because of
 14 soft money donations to national political parties?
 15 A. I don't think I'm in a position to say
 16 that myself.
 17 Q. And the questions thus far -- just so I'm
 18 clear, I'm asking a slightly different question about
 19 the national parties. Now I'd like to talk about
 20 soft money donations to the state parties. Are you
 21 aware of any informal arrangements where state
 22 parties will devote resources to a Federal candidate
 23 or officeholder who has raised money, soft money for
 24 that state party?
 25 A. Say it again?

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1 **OPEN SESSION**
 2 **BY MR. CARVIN:**
 3 Q. Just so we are clear, by another Senator?
 4 A. That's what I'm referring to here. I
 5 believe that it probably has occurred involving
 6 others, but the context in which I believe it has
 7 happened and at least have heard accounts of it is in
 8 the context of one Senator talking to another.
 9 Q. And has that Senator had a special
 10 involvement in the Democratic Senatorial committee?
 11 A. Sometimes in these anecdotes, yes.
 12 Sometimes not.
 13 Q. And generally then, how are Senators made
 14 aware of -- can we go off the record?
 15 (Discussion off the record.)
 16 **BY MR. CARVIN:**
 17 Q. How generally are, to your knowledge,
 18 Senators made aware of, if at all, the amounts and
 19 identities of soft money donors to the national
 20 committees?
 21 A. I don't know exactly how that's done and
 22 how much it's done. I made a real effort to be far
 23 away from that part of the process so I'm not privy
 24 to or aware of exactly how that's done and to what
 25 extent it's done.

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1 Q. Are you aware of any informal arrangement
 2 between the candidate and the state party where the
 3 candidate will benefit in his election campaign if he
 4 engages in soft money fund-raising efforts for the
 5 state party?
 6 A. I have heard of such arrangements. I, of
 7 course, have never been involved in an arrangement
 8 like that myself because I never raised soft money,
 9 but I believe -- I don't know. I guess it's
 10 possible. I guess I have heard that that's something
 11 that is sometimes done. But again, because I have
 12 not engaged in that kind of an enterprise from my own
 13 campaigns, I'm not very familiar with how it's done
 14 or when it's done or how often it's done.
 15 Q. To the extent you know, is that kind of
 16 arrangement less likely as between a Federal
 17 candidate and a state party than it is as between a
 18 Federal candidate and a national party committee?
 19 A. I guess I don't feel knowledgeable enough
 20 to say.
 21 Q. Well, in 1992, the Wisconsin party did
 22 make soft money expenditures that benefited your
 23 campaign. Do you know that?
 24 A. I recall that the party contributed hard
 25 money dollars under 441 (a)(d) that benefited my

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1 campaign.

2 Q. That would be in the nature of a direct

3 contribution, if I have the numbers right?

4 A. However the law worked. It's based on the

5 size of your state, how much hard money a campaign

6 committee can give. That was hard money.

7 Q. Right. And in 1992, the Wisconsin

8 Democratic Party was involved in get out the vote

9 efforts. Did they run ads during that?

10 A. I don't know. To be frank, I don't

11 believe I knew what soft money was then. I was

12 focused on the hard money system and I knew enough to

13 know that we were permitted to get a certain amount

14 of hard money from the national party and even though

15 I knew a little something about campaign finance

16 reform, I did not really know the difference between

17 soft money, hard money or -- and of course it hadn't

18 reached the point where it was being used, as I

19 understand -- or for ads until several years later.

20 Q. Just so I'm clear, you did have hard money

21 donations from the national party in 1992?

22 A. However that is appropriately done under

23 the 441 (a)(8) statute, I did receive an allotment.

24 I don't remember if it had to go to the state party

25 or however it's appropriately done, to benefit my

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1 campaign. Yes.

2 Q. And was that not true in 1998?

3 A. No. It also happened in 1998. I made a

4 clear distinction between hard and soft money in my

5 campaign and I benefited from and appreciated the

6 help of money raised in hard money denominations.

7 Q. And did you get any direct or indirect

8 help in either '92 or '98 from the state party?

9 A. I was a participant in 1992 and 1998 in

10 the campaign in which my campaign had to contribute

11 dollars to be a part of that process and my only

12 involvement there was to contribute what was expected

13 of my campaign or in some cases to help raise some

14 money, hard dollars for that effort.

15 Q. And turning sort of to my original

16 question, what do you call these bankroll --

17 A. Calling of the bankrolling.

18 Q. And when you call the bankroll, do you

19 look at or assess soft money donations to state

20 parties?

21 A. I think what we chose to do because it was

22 easily accessible was to give both the PAC

23 contributions and the soft money contributions to the

24 Federal parties. We didn't, we did not think we

25 should get into the, that it would be simplest if we

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1 did not ascribe these hard money contributions to

2 individuals. It would simply be too voluminous so we

3 chose soft money as an example, the soft money system

4 and we thought it would be fair to bring in the hard

5 money aspect, the PAC contributions.

6 And we weren't purporting to be

7 comprehensive. We were purporting to put on the

8 record some sense of the kinds of money, who was

9 contributing to the, to the interests or the, or to

10 the furthering of the bill or belief that these

11 interests had an interest in these bills, so that's

12 what we were trying to do. We weren't trying to do a

13 dissertation on every kind of money that was behind

14 the bill.

15 Q. But I take it that this implication was

16 that these contributions created the appearance of

17 influencing how legislation stood?

18 A. When you get people from special

19 interests, especially on the soft money side, it

20 raises an appearance of corruption.

21 Q. But you did list not only soft money

22 contributions but contributions from PACs?

23 A. We did.

24 Q. And that would also, I take it, influence

25 or potentially create the appearance of influencing

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1 how a member of Congress might vote on a particular

2 legislation?

3 A. Soft money is a major participant in the

4 process. I certainly have had concerns about even

5 excessive amounts of hard money. I don't think it

6 ever remotely compares to the influence of unlimited

7 soft money contributions but frankly, Senator McCain

8 and I originally sought to create a voluntary

9 incentive system to get people to have a chance, to

10 have a fair chance to participate in the process and

11 the way that a person became eligible for that was to

12 limit voluntarily certain aspects of their

13 fund-raising, how much money they got from out of

14 state and how much PAC money.

15 So the experience I have had in these 10

16 years is to see something that troubled me and want

17 to change it and then see something that was so much

18 worse it astounded me in its corrupting influence and

19 that's how the bill ended up being what it is.

20 Q. So your original perception was that PAC

21 money contributions could create the appearance of

22 influencing the way legislators behaved?

23 A. It's not the way I analyzed it. As a

24 candidate when I listen to people back home, talking

25 about the system, what people said was, gee, you have

CONTAINS COUNSEL ONLY INFORMATION

<p style="text-align: right;">Page 122</p> <p>1 to have so much money to run, unless you have a lot 2 of money, you cannot run. People would talk about 3 how much time it takes candidates, how much time they 4 have to spend raising money. 5 These were the kinds of conversations that 6 led to a desire to have a voluntary system that would 7 give a person who doesn't have a lot of money a 8 chance to get some reduced television time. It was 9 not -- the conversation was not focused on whether 10 the money corrupted or not. The focus was on just 11 how, how could we give the little guy a chance to 12 campaign. 13 The soft money, with the unlimited 14 contributions, is what really got us thinking about 15 when contributions reach this kind of level, it seems 16 sort of inherently corrupting. And my focus shifted 17 frankly from the campaign aspect of fund-raising and 18 hard money to the effect on the political process and 19 the legislative process the contributions have. It 20 was always a part of it, but the soft money really 21 tilted the concern of my constituents and my own 22 concern toward what I consider to be the corrupting 23 of our Congress. 24 Q. And when you were calling the bankroll to 25 illustrate the potential corruption of Congress, you</p>	<p style="text-align: right;">Page 124</p> <p>1 very significant reform that I think for many years 2 helped prevent PAC money from having the kind of 3 influence that soft money has had. 4 I don't think there is any connection 5 between the influence of soft money on the process in 6 recent years versus the influence of PAC money, which 7 is raised by individual members usually and in 8 smaller increments rather than conversations that 9 involve hundred thousand, 500,000, 200,000. That's 10 the Rubicon that they came across when the soft money 11 loophole exploded. 12 Q. Again, folks in state parties, are you 13 aware of any national party expenditure decisions 14 that are affected in any way by the amount that 15 Federal candidates have raised soft money for state 16 parties? 17 A. I'm not aware of any such incidents 18 directly. 19 Q. Have you heard anecdotally that candidates 20 might be favored or disfavored relative to their soft 21 money fund-raising relative to state parties? 22 A. I have not heard that specifically. 23 Q. Are you aware of any instances where state 24 party donors give to state parties so that money can 25 be indirectly channeled to benefit the Federal --</p>
<p style="text-align: right;">Page 123</p> <p>1 would deliberately include in there contributions 2 that were made by PACs, correct? 3 A. We thought it would be more balanced to 4 indicate both. Of course, the difference is that PAC 5 contributions had to be given in limited amounts, and 6 the soft money contributions could be in unlimited 7 amounts and I think the consequences of the two are 8 dramatically different in terms of the process. 9 Q. Did you think you were unfairly tarnishing 10 people who had accepted PAC contributions since those 11 were subject to contribution limits by lumping them 12 in with soft money contributions? 13 A. It certainly was not my intent. I was 14 trying to indicate what kind of money was behind 15 these bills at the beginning of a debate and to let 16 people know, have access to the Congressional record, 17 to that kind of information, something that is not 18 obviously done on the floor of the Senate. I think 19 it's appropriate to do it. I don't think -- I was 20 not intending in any way to lump the two. 21 I have been very clear that I consider the 22 soft money contributions to be extremely corrupting 23 because of their size and that even though I don't 24 love the hard money system as it exists, in fact, I 25 prefer public financing, the limitations on PACs is a</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Repeat that. 2 Q. Are you aware of any instances where state 3 party donors give to state parties with an implicit 4 understanding that that money will be channeled to 5 and somehow benefit a Federal officeholder or 6 candidate? 7 A. I'm sure there are cases where somebody is 8 called by the state party campaign committee and they 9 say, you know, if you give us some money, among the 10 people that will benefit are X, Y and Z, who were on 11 the ballot. And that's how the coordinated campaign 12 in our state would raise money. They would say this 13 is going to help state people. It's going to help 14 Federal people, and that would be an appeal that 15 would be made. 16 I don't know whether or not they ever say 17 that it would just be for one person. That's 18 possible, but the general appeal that I would think 19 is occurring is we want to create this database that 20 will benefit everybody is usually the way it's 21 presented. 22 Q. Do you think that that kind of 23 conversation creates the appearance of corruption for 24 Federal candidates? 25 A. If the request is for hard money, limited</p>

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1 money, no.
 2 Q. And the example you just gave would have
 3 been in the hard money context, the coordinated
 4 campaign situation?
 5 A. That is the example I was thinking of is
 6 where somebody is entitled to give in addition to
 7 whatever they have given additional candidates, 5,000
 8 to the state party. They call the person up and they
 9 say you know, we appreciate what you have done for
 10 our individual candidates, here's something else you
 11 can do. It's limited to only a certain amount of
 12 money based on the Federal law but you can contribute
 13 another 5,000 to help all these people together hire
 14 staff or whatever needs to be done for coordinating
 15 your efforts.
 16 Q. Fair enough. But are you aware of any
 17 such conversation involving soft money, unlimited
 18 donations where there might be some implicit or
 19 direct connection where this might benefit a Federal
 20 --
 21 A. I have not heard such a conversation. I
 22 can't say that such conversations have not occurred.
 23 Q. And if the soft money would be for generic
 24 campaign activity and things that did benefit people
 25 all along the ballots, some going to Federal and

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1 state and local candidates. In your mind, would that
 2 create the appearance of corruption for the Federal
 3 office?
 4 A. You are talking about soft money?
 5 Q. Yes.
 6 A. Well, I think it's less direct in terms of
 7 the appearance, but I think the problem is if there
 8 is an unlimited ability to do that, you would create
 9 a loophole where if it's completely unfettered where
 10 you are simply going to have that system re-created
 11 at the state level, it's harder, but I would be
 12 concerned that unlimited contributions are going to
 13 be allowed to influence Federal elections. We have
 14 got a problem. I believe it will take a little time
 15 but I believe the taint of the soft money
 16 contributions would certainly come forward again.
 17 It would be a little less transactional in
 18 the current system where you have a Federal Senator
 19 directly asking for a contribution that goes into the
 20 Democrat or Republican Campaign Committee and the
 21 person goes down to the floor the next day and votes.
 22 That to me is the worst scenario but the scenario
 23 that you have described has potential danger in it as
 24 well.
 25 Q. Are you aware of any instances where that

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1 has occurred where there has been any kind of
 2 indirect link between a Federal candidate or
 3 legislator's behavior and soft money donations to the
 4 state?
 5 A. I don't know what you mean by legislative
 6 behavior.
 7 Q. How he acts on a bill or whether he brings
 8 a bill up or --
 9 A. I have no awareness of any precise example
 10 like that relating to a state party.
 11 Q. And how about access? Which way the
 12 legislator might vote, preferential access to a large
 13 committee who contributed to a state party. Are you
 14 aware of any such instances?
 15 A. What do you mean by access?
 16 Q. You --
 17 A. I'm not aware of specific instances.
 18 Q. Are you aware of any generally?
 19 A. It's not something I have heard a lot
 20 about.
 21 Q. What I'm trying to figure out, Senator, in
 22 all candor is whether your principal concern about
 23 the ban on soft money with respect to state parties
 24 was because this loophole that you have just
 25 described would occur? Is that the principal focus?

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1 MR. HARTH: I'm going to object to that as
 2 going back to the questions about his thought process
 3 and sponsorship and voting for the Act.
 4 BY MR. CARVIN:
 5 Q. Maybe I can make it more general.
 6 Senator, in the Stanford Law Review article and
 7 others you have said your concern about state parties
 8 was that leaving state parties unregulated would
 9 create a loophole. Maybe we can start there. Could
 10 you describe to me which loophole, how this loophole
 11 would work?
 12 A. Well, my concern has been the current
 13 system which is a very efficient transactional system
 14 that allows national parties to do this themselves.
 15 If our bill were to simply prohibit that and allow
 16 Senators to be able to just call up and say could you
 17 give this 500,000 that you gave last year to the
 18 Democratic Senate Campaign Committee, to the Illinois
 19 committee, that would essentially re-create the
 20 system in a more indirect way but it would be very
 21 similar in terms of the negative consequences.
 22 It has not been necessary always to handle
 23 it that way for the Democratic Senate Campaign
 24 Committee, the Republican Committee because they are
 25 currently able to take those checks indirectly, and I

<p style="text-align: right;">Page 130</p> <p>1 think that's probably preferred because there is more 2 control when they have it in their own bank account 3 as opposed to a state party's bank account. 4 But I do believe we sought to make sure 5 that another loophole wouldn't be open and that would 6 allow the system to be re-created and I believe it 7 certainly has the potential to be very damaging to 8 the process, perhaps as damaging to the process, if 9 this whole thing can simply be done through the state 10 party. 11 Q. Did you examine whether that potential 12 loophole under the current system had been exploited 13 or did people just not have the incentive to do it? 14 A. I think it has been explored under the 15 current system but as I suggested, because a lot of 16 money can be raised directly by the national parties, 17 I don't think it's been exploited as far as it would 18 be under a system where we clearly stopped it at the 19 national committee level but the only opportunity was 20 to do it through the state parties and I'm concerned 21 that that would happen. 22 Q. Can you give me an example of how it's 23 been exploited. I'm frankly not clear since the 24 national party has been raised, the soft money, the 25 circumstances in which the kind of loophole</p>	<p style="text-align: right;">Page 132</p> <p>1 contributions from interests with regard to which 2 they vote on matters that affect those interests. 3 Q. But even if, even if the donations to the 4 state party couldn't directly benefit the Federal 5 officeholder? 6 A. You mean under the new law or under the 7 old law? 8 Q. Under the old law. 9 A. I think under the old law it could benefit 10 the Federal officeholder. 11 Q. Are you aware of any examples where people 12 have sought to receive preferential access or undue 13 influence because of the benefit provided by soft 14 money donations to state parties for Federal 15 candidates? 16 A. I don't think so. 17 MR. CARVIN: I notice it's 12:35. Do you 18 know any more about the vote situation at this point? 19 (Discussion off the record.) 20 MR. HARTH: Let's take five minutes now. 21 (Recess.) 22 BY MR. CARVIN: 23 Q. Just to wrap up the question and I don't 24 think I have asked you these particular questions. 25 Are you aware of any instances where Federal</p>
<p style="text-align: right;">Page 131</p> <p>1 exploitation you just described would occur? 2 A. Well, I can tell you that there was a 3 publicly reported dispute between me and Senator 4 Hillary Clinton recently discussing new campaign 5 finance law, and the nature of the discussion was 6 about what would happen at state party fund-raisers 7 that involved soft money, so I believe what they were 8 talking about there was not a theoretical situation, 9 but would it be possible to continue to do what we 10 are doing under the new law. 11 Q. Can you be more -- 12 A. That's all I know. 13 Q. What were they doing under the existing 14 law? 15 A. Well, I believe it's legal under current 16 -- not current, but pre-McCain-Feingold for a party 17 to hold a soft money fund-raiser and have a Federal 18 official there and urge people to give soft money. 19 Q. And what I'm not clear on is you think 20 that creates the appearance of corruption because the 21 Federal candidate who has raised the money for the 22 state party will then give preferential access or 23 influence to soft money donors to the state party? 24 A. I think it creates an appearance of 25 corruption having public officials seeking large</p>	<p style="text-align: right;">Page 133</p> <p>1 legislators gave preferential access or influence to 2 soft money donors to the state or local parties? 3 A. In particular that the soft money 4 contribution to the party was the reason they gave 5 access? 6 Q. Reason or factor. 7 A. I don't know of any. 8 Q. Are you aware of any tallying or keeping 9 track by the national committees of candidates who 10 were responsible for soft money fund-raising to 11 states? 12 A. I don't know how they do that or if they 13 do it. 14 Q. You discussed this with Mr. Abrams, but 15 just to make sure I'm clear, are you aware of any 16 Representative who has ever changed their vote 17 because of a soft money donor? 18 A. I cannot say to a moral certainty that 19 that's occurred. 20 Q. Do -- 21 A. It's in that person's mind. 22 Q. From your perception, are there instances 23 where a Representative has voted differently than 24 they, he or she, would have absent the soft money? 25 A. I don't think there is any question that a</p>

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1 number of bills have passed here that would not have
 2 passed had it not been for soft money.
 3 Q. Can you give me an example of a few of
 4 those?
 5 A. Telecommunications Act of 1996 would not
 6 have passed. I think the current bankruptcy law
 7 would not be nearly have such a head of steam behind
 8 it were it not for soft money and I'm also quite
 9 certain that the Federal Express provision would not
 10 had been inserted in the Aviation Act had it not been
 11 for soft money.
 12 Q. The Telecommunications Act, did that
 13 receive stronger support from Democratic
 14 Representatives than it would have absent the soft
 15 money?
 16 A. I don't know exactly who would have been
 17 more supportive or less supportive. What I do know
 18 is that by the time the negotiations were going on in
 19 this bill, as has been said by a number of people at
 20 the table cutting the deal were typically the
 21 interests had given substantial soft money
 22 contributions, usually to both parties.
 23 Q. Were those telecommunications or cable
 24 companies?
 25 A. Combination of phone companies, cable

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1 FEC?
 2 A. Yes, they are.
 3 Q. And if you could turn to page 8, please.
 4 I think you probably want to read the second half of
 5 that that begins with the intent of this provision,
 6 perhaps going down the --
 7 A. The gold print there.
 8 Q. And probably read the next paragraph as
 9 well so you understand the context. Have you had an
 10 opportunity to review that?
 11 A. I have.
 12 Q. I don't think this is a controversial
 13 point, under anybody's views under the law, unless
 14 there is a special election for Federal offices held
 15 in a nonFederal election year, that all expenses by a
 16 state party could be soft or nonFederal?
 17 A. I would have to go back and review this.
 18 Q. Let me ask you this. You are not sure
 19 what the statute provides. Do you not presently
 20 recall what the statute provides?
 21 A. I would want an opportunity to sit down
 22 and go over these provisions with my staff to review
 23 exactly what was intended here and what we were doing
 24 rather than misstating the situation.
 25 Q. It's not a legal quiz so I will just --

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1 companies, broadcasters and others.
 2 Q. Now, it is your understanding, I take it,
 3 that under McCain-Feingold, state and local parties
 4 could spend unregulated soft money for get out the
 5 vote generic campaign activities in off-year
 6 elections, elections where there is no Federal
 7 candidate on the ballot?
 8 A. I believe there is some scope for that,
 9 but I want to be cautious because this is -- I
 10 believe some aspects of this are subject to the
 11 dispute that's going on vis-a-vis the FEC's
 12 interpretation.
 13 Q. It's not a trick.
 14 A. I don't want to get into the precise issue
 15 there.
 16 Q. Let me give you your comments on that.
 17 This would be 10.
 18 (Feingold Exhibit No. 10 was
 19 marked for identification.)
 20 BY MR. CARVIN:
 21 Q. Exhibit 10 is comments you and other
 22 Representatives filed with the FEC in connection with
 23 implementation of the Act, is that right?
 24 A. What was your question?
 25 Q. Is that the comments you filed with the

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1 would it make sense to you to prohibit a state party
 2 from spending money that could only benefit
 3 nonFederal candidates?
 4 A. To prohibit?
 5 Q. Them from spending soft money in elections
 6 that do not affect Federal candidates since there are
 7 no Federal candidates on the ballot?
 8 A. As a general proposition, I am not trying
 9 to prohibit states from doing what they want, as long
 10 as it does not affect the Federal election.
 11 Q. And in an off-year election, that would be
 12 a fairly stark example of a situation that couldn't
 13 influence a Federal election?
 14 A. Depending what it's used for and whether
 15 there is carryover uses in another year, I'm not
 16 ready to sign off on that.
 17 Q. As to money actually expended say during
 18 2001 say in Virginia which did not have any Federal
 19 candidates on the ballot, that was not something
 20 where McCain-Feingold sought to regulate the use of
 21 soft money, is that correct?
 22 MR. HARTH: I'm going to object to the
 23 questioning of this witness about what
 24 McCain-Feingold sought to do or what the intent was.
 25 MR. CARVIN: Let me strike that.

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1 BY MR. CARVIN:
 2 Q. I will go back to -- as far as you know
 3 would that be prohibited by the Act?
 4 A. It is conceivable to me that expenditures
 5 by a state party pursuant to nonFederal candidates,
 6 if not properly defined, could be used pursuant to
 7 Federal elections in the following year in that same
 8 state, so there would be a concern in that area that
 9 I had to think about, certain acquisitions of certain
 10 lists or other things that may be of use not only in
 11 year one, but also in year two in elections. That
 12 would be my general way of analyzing it although I
 13 would have to look carefully at exactly what we are
 14 talking about.
 15 Q. Let me make it as simple as possible. Do
 16 you know the restriction on voter registration
 17 activities 120 days before a Federal election. Does
 18 that ring a bell with you? Would you like to see the
 19 Act?
 20 A. What --
 21 Q. To the best of your recollection, does
 22 Federal election activity by a state party include
 23 voter registration activity that occurs more than 120
 24 days before a Federal election?
 25 A. I would want to review the Act.

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1 MR. CARVIN: We have a copy of the Act.
 2 (Feingold Exhibit No. 11 was
 3 marked for identification.)
 4 BY MR. CARVIN:
 5 Q. The best explanation is in the right-hand
 6 corner. It's called 116 STAT. We can keep going.
 7 We will see it. We can get into the Act. If you
 8 turn to the next page which will be 116 STAT 85. I
 9 also switched corners on you and it's the definition
 10 of Federal election activity.
 11 A. Bottom?
 12 Q. It says voter registration activity during
 13 the period that begins on the date that is 120 days
 14 before the date a regularly scheduled Federal
 15 election is held and ends on the date of the
 16 election. Do you see that?
 17 A. That's what it says.
 18 Q. In light of that, would it be, is it your
 19 understanding that the Act permits state parties to
 20 spend soft money for voter registration activity that
 21 occurs more than 120 days before the date of a
 22 regularly scheduled Federal election?
 23 A. I'm not certain. I think it would
 24 potentially depend on what types of expenditures and
 25 whether these are expenditures that would be useful

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1 during -- in other words, it would still be useful in
 2 the period where the prohibition or the rules apply
 3 so I would have to take an example of soft money
 4 contribution, see how it was used, and analyze it in
 5 the context of the law. I can't sort of do it
 6 without knowing exactly what we are talking about.
 7 Q. So sitting here today, you are not sure
 8 whether or not the Act prohibits states from engaging
 9 in voter registration activity in off-year elections
 10 when there is no Federal candidate on the ballot?
 11 A. This says that Federal election activity
 12 is defined as voter registration activity during the
 13 period that begins on the date that is 120 days
 14 before the date a regularly scheduled election is
 15 held and ends on the date -- that is clear. You then
 16 ask me whether this means they can use soft money
 17 prior to that and I responded by saying well, I want
 18 to know what the soft money is being used for so I
 19 want to make sure it doesn't trip some other
 20 provision in the bill.
 21 Q. You should assume that the soft money
 22 would be used for voter registration activity.
 23 A. What kind of activity?
 24 Q. However voter registration activity is
 25 defined in the Act.

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1 A. One question I would ask, is it something
 2 that could be defined as voter registration activity
 3 or some other kind of activity. It's possible that
 4 some particular kind of conduct would be something
 5 you could define as voter registration activity or
 6 some other kind of conduct.
 7 I don't want to say that soft money paid
 8 for activity is automatically only within this
 9 provision so I agree with you this is what it says.
 10 It sounds as if there would be some context prior to
 11 that period where certain kinds of state party soft
 12 money used only for state party purposes could be
 13 used but I'm not going to give you sort of a blanket
 14 okay that any kind of soft money in that context is
 15 all right.
 16 Q. Well, then I will ask you, do you think an
 17 appearance of corruption is created by soft money
 18 spent by state parties for voter registration
 19 activity one year prior to any Federal election?
 20 A. I think it may well create an appearance
 21 of corruption within that state's political
 22 situation. It's outside of my purview as a Federal
 23 legislator, but yes, I would say unlimited soft money
 24 contributions not regulated by a state law probably
 25 would create the same kind of corruption and

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1 appearance of corruption that we are experiencing
 2 here in Washington. That is not something that it
 3 appears appropriate for Congress to decide. The
 4 states probably should decide their own campaign
 5 finance laws insofar as it does not affect Federal
 6 elections.
 7 Q. Why is that?
 8 A. Because of Federalism considerations.
 9 Q. And in light of those Federalism
 10 considerations, do you think it creates appearances
 11 of corruption for Federal candidates or officeholders
 12 when a state spends soft money for voter registration
 13 one year prior to any Federal election?
 14 A. I wouldn't rule it out.
 15 Q. And was that the kind of appearance of
 16 corruption that the Act was designed to permit?
 17 MR. HARTH: I'm going to object to
 18 questions asking the Senator what the Act was
 19 designed to do. He is appearing here as a party and
 20 I think that's a core speech and debate privilege
 21 question. I'm going to instruct the Senator not to
 22 answer that question.
 23 BY MR. CARVIN:
 24 Q. Let me ask you this. Could you pull out
 25 your interrogatory responses again, please?

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1 A. Which one was that? Which one was that?
 2 Q. Interrogatory responses, Exhibit 9,
 3 please. You have listed on page 14 of that document
 4 four circumstances where Federal election officials
 5 are tainted by the appearance of corruption, is that
 6 correct?
 7 A. States -- Federal election officials are
 8 tainted by the appearance of corruption to the extent
 9 they, among other things -- it listed four items.
 10 Q. Right. Do those four items include soft
 11 money expenditures by state parties for voter
 12 registration activities more than a year prior to a
 13 Federal election?
 14 A. In my mind, it could. Whether or not the
 15 Act actually reaches that or the decision was made to
 16 limit it, but I believe that it is possible that
 17 either as a matter of impropriety at the Federal
 18 level or within the state's own political system that
 19 the soft money contributions could have that impact,
 20 but our job here is to legislate with regard to
 21 Federal elections and --
 22 Q. So my question's again about Federal
 23 officials, elected officials or candidates. In
 24 addition to what's listed here, are Federal officials
 25 or candidates tainted by the appearance of corruption

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1 to the extent that state parties spend soft money
 2 dollars for voter registration prior, one year prior
 3 to a Federal election?
 4 A. I think it has that potential.
 5 Q. Why?
 6 A. I think any time a Federal official
 7 benefits from a very large political contribution
 8 from one entity, it has the potential to raise at
 9 least the appearance of corruption.
 10 Q. How would a Federal official benefit from
 11 expenditures of soft money dollars by state parties
 12 for voter registration one year prior to a Federal
 13 election?
 14 A. I'd have to see the case and see what
 15 happened in that situation and what the lists and
 16 other items that were purchased during that period
 17 were used for subsequent to the first election.
 18 Q. Can you give me a hypothetical
 19 circumstance in which in light of all those facts a
 20 Federally elected official can possibly benefit from
 21 the activity I explained?
 22 A. Let's say a state party purchases some
 23 very expensive software program relating to voter
 24 registration, uses soft money to purchase it, has it
 25 in their possession and then applies that the next

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1 year to a Federal.
 2 Q. And that would in your mind create an
 3 appearance of corruption?
 4 A. In my mind, it has the potential to create
 5 a nexus between a state, between a Federal candidate
 6 and a state party organization, but I don't -- in my
 7 view it's not sort of the core kind of thing that I
 8 was addressing, but what I'm trying to do here, what
 9 I had hoped to do here in dealing with this issue in
 10 general is to try to make sure we did not leave many
 11 loopholes so that money that is currently being sort
 12 of directly used as soft money at the Federal level
 13 or even at the state level is somehow channeled
 14 through other means.
 15 This certainly is a more narrow situation.
 16 It's less subject, likely to be subject to abuse, but
 17 we are trying hard not to have this whole thing
 18 happen all over again because that's sort of been the
 19 lessons or the history of this issue and probably
 20 will always be, is that loopholes will be created
 21 that will have to be closed.
 22 So I can't say for sure that this is one
 23 that will be exploited. It may not be. It may be
 24 clean, but we never know for sure and that's why we
 25 try to write the language in a way that allows for

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1 whatever the states legitimately can do or have done
 2 in the past but at the same time does not allow it to
 3 become a conduit or a shell game where the money is
 4 then used in effect for Federal elections.
 5 Q. And under the example you gave where they
 6 did have expensive software for voter registration in
 7 your mind that would be a conduit or shell game to
 8 benefit Federal --
 9 A. It's conceivable to me it would be. I
 10 don't know. You would have to look at exactly what
 11 it is, whether you could apply it from one election
 12 to another. Whether it would really work on both
 13 state and Federal elections. I'm just saying that
 14 smart lawyers, and I may say that as a lawyer myself,
 15 could perhaps work with this language to do that sort
 16 of thing and that's the kind of thing we were alert
 17 to when we try to write a law to make sure we aren't
 18 failing in our goal when it is to prohibit the taint
 19 of soft money contributions on our political process.
 20 Q. So in light of that taint, in your view,
 21 this creates a sufficient appearance of corruption
 22 that it could be permissibly regulated under the
 23 First Amendment by Congress to prevent undue
 24 influence on Federal candidates or officeholders? Do
 25 I have that right?

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1 MR. HARTH: Objection. Vague. What could
 2 be?
 3 BY MR. CARVIN:
 4 Q. The example we have just been discussing
 5 which is state parties using soft money to engage in
 6 voter registration through software or other means?
 7 A. I believe as you pointed out, the statute
 8 does not explicitly prohibit prior to this period
 9 that we are talking about this activity. I was
 10 merely explaining that this is the kind of
 11 distinction that causes me to be on alert and wonder
 12 in the future that it may become an avenue of trying
 13 to accomplish indirectly what we prohibit directly.
 14 I made no representations about whether
 15 it's something we did not do and the bill would be
 16 constitutional. We did not do it, so we are
 17 speculating about whether I have any concerns about
 18 that time period. I do. But the bill does not
 19 explicitly address that time period.
 20 Q. Is there less of an appearance of
 21 corruption in the hypothetical we have been
 22 discussing than under the activities that the bill
 23 does prohibit?
 24 A. It depends on how much money is involved.
 25 It depends on whether it's \$5 million that is not

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1 covered by the bill versus one 10,000, 100,000 check
 2 covered by the bill. It's not only what the kind of
 3 activity it is, it's the kind of money that's
 4 involved and the kinds of fund-raising practices and
 5 the like that go into it. It's a combination of
 6 things that create an appearance of corruption.
 7 Q. And if your constituents still had an
 8 appearance of corruption after the effective date of
 9 McCain-Feingold and the state parties and smart
 10 lawyers did take advantage of these kinds of
 11 loopholes, in your mind, that would be something that
 12 subsequent legislation could continue to address to
 13 ensure that there was no indirect perception of undue
 14 influence on Federal candidates?
 15 A. Oh, it would be worth a look but I would
 16 always do what I have always done, which is to take
 17 the First Amendment and the Constitution and its
 18 limitations very seriously and before I would
 19 legislate on it, I would do as I did on this bill
 20 which is not do anything which I believe violates the
 21 Constitution or even the rulings of the Supreme Court
 22 current law.
 23 That would be the spirit in which I would
 24 do it. That's the spirit in which I proposed the
 25 so-called phony issue ads rules and the ban on soft

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1 money. There are many who want to pass an amendment
 2 to solve campaign finance reform laws problems by
 3 amending the Constitution, and I am frequently asked,
 4 did I ever make a mistake in voting, and the only one
 5 I confess to or that I really am sure I was wrong
 6 about is one time I did vote for a constitutional
 7 amendment relating to campaign finance reform because
 8 I thought this is the kind of thing that's so
 9 important to the Republic that we need to do it.
 10 I knew by the time I got back to the
 11 office I had made a mistake. Because nobody should
 12 be amending the Bill of Rights for any purpose, and
 13 the next time this came up I voted against that
 14 constitutional amendment. It's not always easy to
 15 explain to my constituents because of the outrage
 16 that's going on in this town with the raising of soft
 17 money and the corruption in this town. But I
 18 realized, as I should have known that first time, and
 19 I knew before and I knew 20 minutes after.
 20 To solve this problem, as important as it
 21 is, we have to do it consistent with the Constitution
 22 and that is exactly why I supported the provisions I
 23 did in this bill. I believe they are constitutional
 24 and so in answer to your question because I think
 25 that's reasonable background, scenarios like this

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1 comes up about state parties where I think it's being
 2 used as a sham way to basically use soft money, I
 3 will analyze it with the Constitution in one hand and
 4 reports of concerns in my other hand and I will come
 5 to a conclusion.
 6 Q. In light of your concerns about both soft
 7 money on the one hand and First Amendment on the
 8 other, can you think of any Congressional prohibition
 9 on soft money to any state or local party that would
 10 violate the First Amendment?
 11 A. It's conceivable to me.
 12 Q. What circumstances would those be?
 13 A. If it relates to -- to the extent that I
 14 think the constitutional analysis may differ, for
 15 example, when it comes to purposes that do not relate
 16 to broadcast versus let's say the print media. I
 17 think the law takes a somewhat different view of
 18 analysis of other different kinds of speech, so it
 19 would be a different analysis relating to that.
 20 Q. Just so I'm clear, is there any
 21 restriction of contributions to any political party
 22 at any level that you think violates the First
 23 Amendment?
 24 A. I would say based on Supreme Court
 25 rulings, if you prohibited campaign contributions

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1 entirely, it would probably run afoul of Buckley V.
 2 Vallejo, where they talk about Congress having the
 3 ability to make a determination that a certain level
 4 of contribution is too high.
 5 Q. Just so I'm clear, is there any
 6 restriction on soft money, i.e. money that doesn't
 7 comply with the source and amount limitations as
 8 amended where application of those restrictions to
 9 any political party at any level would violate First
 10 Amendment rights?
 11 A. I think it's possible but I can't come up
 12 with any example.
 13 Q. So is there any activity, for example, by
 14 a local party that is so divorced from Federal
 15 elections, and therefore the potential influence of
 16 Federal candidates that you think is inappropriate --
 17 that it doesn't create the appearance of corruption?
 18 A. It's possible.
 19 Q. Can you give me an example?
 20 A. Not really. I mean it's possible that
 21 there would be something that would be that distinct
 22 and in its very nature something that can only be
 23 used and couldn't be reused and could only be used in
 24 a state election. I can imagine a scenario like
 25 that. Yes.

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1 Q. And how about the -- but one example would
 2 not be a state party conducting voter registration
 3 for state legislative elections?
 4 A. As I indicated clearly, I'm not sure. It
 5 would depend exactly what they are doing. That's why
 6 I went through the example of the software. Whether
 7 it's transferrable to another election or whether
 8 something is of its very nature not usable other than
 9 -- only in a state election.
 10 Q. Right. As you are sitting here today, do
 11 you know if the Act prohibits voter registration
 12 activity more than 120 days before a Federal
 13 election?
 14 A. Based on the language that we just
 15 reviewed together, it appears that it does not.
 16 Q. Is it fair to infer then that it did not,
 17 the Act did not seek to eliminate all uses of soft
 18 money that could potentially create an appearance of
 19 corruption in some circumstances?
 20 MR. HARTH: I'm going to object to
 21 questioning the Senator about the purpose of the Act.
 22 I think you can ask him about his contention. I
 23 don't think you can ask him the purposes for which
 24 the Act was intended.
 25 BY MR. CARVIN:

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1 Q. I don't understand that. Does your
 2 understanding of the Act prohibit all actions which
 3 you think create an appearance of corruption for
 4 Federal candidates who are officeholders?
 5 A. Does it prohibit all possible situations
 6 like that?
 7 Q. That you think it raises a appearance of
 8 corruption for Federal candidates.
 9 A. I'm not sure we got everything. I hope we
 10 did. I can't be sure. The ability to create these
 11 loopholes is always there. My guess is that we might
 12 have missed a thing or two and again I reiterate that
 13 there is some things we should miss if we aren't
 14 going too far. But I'm hoping that we got the major
 15 things that are out there now and if it turns out
 16 that the smart people trying to evade this law use
 17 these good faith limitations in the bill to
 18 reintroduce Federal soft money into the picture or
 19 benefit Federal candidates, then we will have to
 20 address it, but I can't say that we for sure got at
 21 everything.
 22 Q. Well, what if the situation occurred
 23 without getting into specific examples. Maybe we
 24 should start there. You would agree, I take it, that
 25 voter registration activity, get out the vote

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1 activity for an off-year election would at least
 2 disproportionately benefit state candidates versus
 3 Federal candidates?
 4 A. I cannot say that because I don't know
 5 exactly what the expenditures are, what the value of
 6 the expenditures are, what the relative value is in
 7 the state election versus the Federal election.
 8 Let's say that the state election was only used for
 9 electing Democratic leaning county board members, and
 10 it was a low turnout election, not very many
 11 contested races but that the software that was
 12 purchased for that purpose was also very useful in
 13 terms of a Federal election the following year.
 14 I can imagine a scenario where the value
 15 would be the other way. Probably not, but you know,
 16 this is why people sit around trying to figure out
 17 these loopholes, what is technically allowed. How
 18 can we acquire something that we can use later by
 19 using a loophole that exists now or maybe it never
 20 will be a loophole. Maybe it will only be used for
 21 purposes of trying to get those county board members
 22 elected and maybe they just throw it away or they
 23 never use it in a Federal election. That would be
 24 the kind of concern I have.
 25 Q. And what if after that analysis you

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1 concluded that it did disproportionately benefit, I
 2 will ascribe 90 percent to nonFederal candidates but
 3 there was some 10 percent overflow to Federal
 4 candidates, however you want to define it, does that
 5 create the appearance of corruption that you think is
 6 constitutionally permissible to regulation?
 7 A. It's possible it does. I'd have to look
 8 at all the facts and figures and look at the
 9 Constitution and the Court cases and make a judgment
 10 based on what I'm seeing and what I'm hearing and
 11 people's feelings about it.
 12 Q. And does the Act prohibit things that 90
 13 percent will disproportionately benefit nonFederal
 14 candidates?
 15 A. Repeat the question?
 16 Q. Does the Act prohibit uses of soft money
 17 that 90 percent disproportionately benefit state of
 18 nonFederal candidates?
 19 A. I don't understand the question.
 20 Q. We just agreed there are certain
 21 activities that will disproportionately benefit
 22 nonFederal candidates. As I understood your answer,
 23 that could nonetheless create the appearance of
 24 corruption?
 25 A. I can imagine a scenario where it would.

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1 Q. Does the Act seek to eliminate those
 2 scenarios where it disproportionately benefits
 3 nonFederal candidates?
 4 MR. HARTH: I'm going to object again to
 5 the questions concerning the purpose of the Act.
 6 BY MR. CARVIN: It's just the effect of
 7 the Act.
 8 MR. HARTH: I think you asked him about
 9 his -- the Act intended or is the purpose of the Act
 10 -- he -- he is not here to state what is the purpose
 11 of the Act.
 12 MR. CARVIN: Here's my concern. In light
 13 of that concern, I tried to ask him a specific
 14 statutory issue, and Senator Feingold understandably
 15 said he did not want to opine on that, so now I'm
 16 trying to take the level to a little bit more the
 17 level of generality so we are not hung up on the
 18 particularized statutory provision.
 19 BY MR. CARVIN:
 20 Q. I'm not asking for what motivated a
 21 particular Senator or what particular conversation
 22 you had with a particular Senator. I'm asking in
 23 your opinion does the Act prohibit uses of soft money
 24 by state parties that disproportionately benefit
 25 nonFederal candidates, in your view?

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1 A. It's possible.
 2 Q. What provisions of the Act do that?
 3 A. What provisions of the Act have that
 4 effect? I don't know how it's going to be played
 5 out. I don't know how it's going to be used. Is
 6 there a 90-10 provision you are referring to in
 7 there? Or are you just speculating about a
 8 theoretical example of where something is 90 percent.
 9 If something -- if a certain activity
 10 benefits a state candidate to the tune of \$9 million,
 11 but still benefits a Federal candidate to the tune of
 12 a million dollars, it is certainly conceivable to me
 13 that that raises the appearance of corruption with
 14 regard to Federal campaigns.
 15 Q. And in that example, the appearance of
 16 corruption, is that the kind of appearance of
 17 corruption that is prohibited by the Act?
 18 A. Depending on the particular provision, and
 19 depending on what kind of an impact it has in terms
 20 of an appearance of corruption, it is conceivable.
 21 But I don't know for sure whether such a thing could
 22 ever occur.
 23 Q. But even if, even if in your judgment the
 24 particular activity disproportionately benefited
 25 nonFederal candidates, that would be a legitimate use

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1 of Congress' power to eliminate the appearance of
 2 corruption?
 3 A. It's an interesting question. I think
 4 that the notion that the presence of a dominant state
 5 political benefit would purge the, or cleanse the
 6 appearance of impropriety of the Federal benefit is
 7 questionable. I think I'd like to review a case like
 8 that and think it through.
 9 (Whereupon, at 1:35 p.m., the deposition
 10 in the above-entitled matter was recessed, to
 11 reconvene at 2:35 p.m., this same day.)
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1 A. My sense is that after the effective date
 2 of the Act that they could not raise soft money and
 3 transfer it to the state parties.
 4 Q. And why does that distinction make sense,
 5 prohibiting the national parties from transferring
 6 soft money to state parties, even if the state party
 7 uses it for purposes which the state party could use
 8 its own soft money for?
 9 MR. HARTH: In his personal view?
 10 BY MR. CARVIN:
 11 Q. Yes.
 12 A. Well, it leaves open the business of
 13 Federal officeholders and Federal campaign committees
 14 raising unlimited contributions and then transferring
 15 them to state parties, so they are still in the
 16 business of raising unlimited campaign contributions.
 17 Q. Now, there are restrictions on Federal
 18 officeholders engaging in soft money raising for
 19 state parties as well, is that correct, soft money
 20 fundraising?
 21 A. I believe that's correct.
 22 Q. Is it the case then that there would be no
 23 appearance of corruption if Federal officeholders or
 24 candidates were prohibited from raising soft money
 25 for the national parties, and those national parties

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1 AFTERNOON SESSION
 2 (2:35 p.m.)
 3 Whereupon,
 4 SENATOR RUSSELL FEINGOLD,
 5 the witness on the stand at the time of recess,
 6 having been previously duly sworn, was further
 7 examined and testified as follows:
 8 EXAMINATION BY COUNSEL FOR
 9 PLAINTIFF RNC (RESUMED)
 10 BY MR. CARVIN:
 11 Q. Before we were talking about certain
 12 activities that state parties can spend soft money
 13 on. Without getting into any specifics, is it your
 14 understanding that the Act does not prohibit state
 15 parties from using soft money on certain activities?
 16 A. My understanding is that the line was
 17 drawn that permits non-Federal money to be used in
 18 certain circumstances relating to state elections,
 19 state and local elections.
 20 Q. By state parties?
 21 A. State parties. Yes.
 22 Q. Is it your understanding, though, that
 23 national parties cannot transfer their soft money to
 24 state parties even for activities that state parties
 25 could do with their own soft money?

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1 transferred the soft money to states for purposes for
 2 which the states could use their own soft money?
 3 A. I don't think I understood that example.
 4 Q. Well, I'm trying to make it as simple as I
 5 can, because your concern was that Federal office
 6 holders were still in the business of raising the
 7 soft money?
 8 A. One of several of my concerns relating to
 9 soft money. It's not the only one.
 10 Q. Why wouldn't the problem and the transfer
 11 situation we discussed be solved simply by
 12 prohibiting Federal officeholders from raising soft
 13 money?
 14 A. Officials of the national party were
 15 raising the soft money as representatives of, let's
 16 say staff members of the Democratic Senate Campaign
 17 Committee. I would be concerned about what their
 18 status is, what their relationship is to the
 19 officeholder, and examples of that. I don't think
 20 the problem only arises in the context of Federal
 21 officeholders raising the money -- it is the most
 22 egregious situation -- and special provisions
 23 relating to the specific goals of Federal
 24 officeholders, we are concerned about the ability of
 25 corporations, unions or individuals to give unlimited

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<p style="text-align: right;">Page 162</p> <p>1 money even if they were never solicited. I mean 2 that's the worst thing. In fact, the Committee for 3 Economic Development endorsed our bill and said 4 publicly, we understand why you guys could refer to 5 this as legalized bribery. We see it as legalized 6 extortion. 7 In other words, they don't call up asking 8 to give the money. They are pressed to give the 9 money by officeholders, so principally, the first 10 concern would be officeholders, but let's say just 11 the national party mechanism engaged in the practice 12 of raising unlimited contributions. That still has 13 concerns. 14 Q. Even if the money was spent on purely 15 non-Federal elections? 16 A. It still would, probably. 17 Q. So you think there is an appearance of 18 corruption even if Federal officeholders were not 19 involved in the fundraising and even if they didn't 20 benefit from the expenditures made in connection with 21 Federal elections? 22 A. I think you identified a couple of things 23 that reduced the negative aspects of the problem, but 24 I don't think you completely eliminated it. 25 Q. And does the Act completely eliminate it?</p>	<p style="text-align: right;">Page 164</p> <p>1 time smart lawyers figure out ways to create those 2 loopholes and that's why people say, well, they said, 3 well, you guys are going to, they always are going to 4 find ways around this. And I say that's why we don't 5 elect a legislature once for two years and pass all 6 the laws for all time. 7 We need to elect a new legislature every 8 two years in order to address the problems as they 9 come up, and given the connection between money and 10 politics, it will probably also, always be necessary 11 to be vigilant about abuses and loopholes. And the 12 big problem here is not that there wasn't a good law 13 passed in the early '70s, it's that basically nothing 14 was done for the next 25 years to update it. To me 15 this is, our bill here is largely an update. It is 16 not the fundamental reform that I personally would 17 prefer. It's an update of what I think was the goal 18 back in the early '70s of trying to bring some 19 reasonable rules to the system. 20 Q. I'd like you to take a look at an exhibit 21 which I believe is now 12. 22 (Feingold Exhibit No. 12 was 23 marked for identification.) 24 BY MR. CARVIN: 25 Q. Senator, can you review this at your</p>
<p style="text-align: right;">Page 163</p> <p>1 A. The Act attempts within the limits of the 2 Constitution to close the loopholes that have allowed 3 this soft money system to come into being. 4 Q. Does it eliminate the appearance of 5 corruption problem to the extent permitted by the 6 Constitution? 7 A. I can't say that for sure it does it 8 everywhere. We were able to reach a bill that I 9 think takes a very strong step in that direction. I 10 think it addresses the most serious aspects of the 11 soft money problem. I can't tell you with certainty 12 that we caught everything, and that's why Senator 13 McCain and I always say that this is the kind of 14 thing you have to keep doing every few years in order 15 to keep it up to date, not unlike the loopholes that 16 are created whenever you do tax reform. It's not 17 unlike that, where we have not had a tax reform bill 18 since 1986 in this country, and it's really starting 19 to show. 20 Q. Because people are figuring out ways 21 around -- 22 A. People figure out ways to get around the 23 intent and the purpose of the law and to achieve the 24 same objectives in terms of being able to funnel soft 25 money into the system or get tax loopholes. And over</p>	<p style="text-align: right;">Page 165</p> <p>1 leisure? I will represent to you that it's a 2 fundraising solicitation letter from the 3 then-chairman of the Republican National Committee, 4 Jim Nicholson, urging people to give moneys for the 5 Coleman for Mayor campaign in St. Paul, Minnesota. 6 Under your understanding of the Act, would this 7 solicitation by the chairman of the RNC be 8 prohibited? 9 A. I'm not absolutely certain. I do know it 10 was signed by an elected official, a Federal 11 official, I believe would be prohibited, but I would 12 have to check the statute with regard to the chairman 13 of the party. 14 Q. We have marked that as Exhibit 12, I 15 believe. Could you take a look at 11, please. 16 A. 11. 17 Q. Front, first page there, 101A, do you see 18 that? 19 A. This -- 20 Q. Actually the second page after the cover 21 page. 22 A. What are you asking me? 23 Q. If you could look at -- it's a little 24 confusing, 101.A but it's under something called 25 Section 323, Soft Money of Political Parties. I</p>

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1 think a)(1) would answer your question. It also
 2 applies to agents.
 3 A. I think that's, it appears to be correct,
 4 that this, it would apply to Mr. Nicholson.
 5 Q. That's because agents of the national
 6 committee cannot solicit a donation not subject to
 7 the limitations, prohibitions and reporting
 8 requirements?
 9 A. I think that's right.
 10 Q. And what appearance of corruption is
 11 created by this fundraising solicitation, in your
 12 view?
 13 A. I think whenever a Federal official or an
 14 agent of a Federal official, which Mr. Nicholson is
 15 in this context, is in a position to seek unlimited
 16 contributions from corporations, unions and
 17 individuals, which is something that obviously he in
 18 that status believes to be of benefit to his
 19 political party, as well as to the state parties,
 20 that that raises a concern about appearance of
 21 corruption.
 22 Q. Mr. Nicholson as chairman of the RNC is an
 23 agent of Federal officials?
 24 A. Mr. Nicholson. Let me check the
 25 definition in the statute here.

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1 I don't know if he is legally an agent but
 2 he is operating under the direction of elected
 3 Federal officials, whether it be the President or
 4 Congressional leaders. Leaders of political parties
 5 at the national level are very closely tied in with
 6 the elected officials and frankly do not operate very
 7 independently from the political leadership of the
 8 party when the leader of the party is President of
 9 the United States, but even to some extent when the
 10 legislative leader or leader of the party is not
 11 President of the United States.
 12 Q. So then there could be an appearance of
 13 corruption even if the person doing the solicitation
 14 is not themselves a Federal candidate or officeholder
 15 and even if the beneficiary of the solicitation is
 16 not a candidate or officeholder?
 17 A. I think all you need to do is look at the
 18 record of the Clinton White House and the DNC during
 19 the Clinton years and the interrelationship, the
 20 nexus between the DNC and soft money fundraising and
 21 what was going on in the Lincoln Bedroom to see that
 22 there clearly is a nexus.
 23 Q. And --
 24 A. And certainly with regard to appearance
 25 there is a nexus.

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1 Q. And was anything that President Clinton
 2 did in his various episodes a solicitation of a
 3 donation for a local candidate?
 4 A. I'm not certain whether it was. You are
 5 asking me about the relationship between the DNC
 6 officials or the RNC officials and the officeholders.
 7 What I'm saying in response to that is there is an
 8 obvious nexus between the two that is sufficient to
 9 raise the appearance of impropriety. In other words,
 10 when Mr., when the head of the DNC or the head of the
 11 RNC sends out a letter, I think very few people would
 12 perceive that as coming only from somebody who heads
 13 a political party. I think just about anybody would
 14 consider that to be a message as well from the
 15 elected official who runs the party in fact.
 16 Q. Are you aware of any example of where
 17 solicitation by the chairman of a national party for
 18 a local candidate induced a Federal officeholder to
 19 provide preferential treatment or access?
 20 A. I'm not aware of any.
 21 Q. Are you aware of any examples where
 22 solicitation by chairman of the national party for a
 23 local candidate created the appearance of undue
 24 influence under a Federal officeholder or candidate?
 25 A. Probably the leading example after the

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1 investigations of the 1996 campaigns that came out of
 2 the Thompson hearings was the story of Mr. Roger
 3 Tamraz. I am told, although I would have to verify
 4 it, that Mr. Tamraz's contribution, in at least some
 5 cases his contributions were to state parties. That
 6 is probably one of the two or three greatest examples
 7 of the appearance of impropriety in terms of the
 8 discussions of this issue.
 9 The Republican members often enjoy
 10 referring to that one because it was done by, in
 11 connection with a Democratic president. But I
 12 believe that was in the context of money being
 13 solicited. I'm not sure exactly how it was
 14 solicited, but it was solicited by Federal people,
 15 I'm guessing by DNC officials, and that it was
 16 directed to the state parties. If I'm wrong about
 17 that, I apologize, but I believe that's at least part
 18 of the story of the Tamraz contribution, and it's a
 19 classic.
 20 Q. I'm sorry. And the factual basis for that
 21 is we can go check the Thompson Committee reports to
 22 get the exact reports?
 23 A. Either that or whatever document in the
 24 record, Congressional Record that describes the
 25 300,000 that he gave because that led to the famous

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1 remark: Next time I'm going to get 600,000. But I
 2 would hope you would check it because I'm not 100
 3 percent sure of my recollection. I think that's an
 4 example of it.
 5 Q. What about a situation where a Governor in
 6 the state solicits donations to the mayor in that
 7 state? Would that create the appearance of
 8 corruption of a Federal officeholder or candidate?
 9 A. Less likely, if it involves only state
 10 officials.
 11 Q. Less likely --
 12 A. But it certainly would create an
 13 appearance of corruption in the state's political
 14 context.
 15 Q. But I take it you agreed that this Act is
 16 concerned with appearance of corruption by Federal
 17 officials, not state officials?
 18 A. This Act is, but not my own personal
 19 concerns are not restricted to political corruption
 20 at the Federal level. We got these kinds of problems
 21 in Wisconsin, in our own state with a failure to
 22 reform the system, and we need a ban on soft money in
 23 Wisconsin, too.
 24 Q. How about a state party chairman raising
 25 money for state parties? Does that create an

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1 corruption even if the state chairman is a member of
 2 the national political committee?
 3 A. I'm not certain. Something I have not
 4 really thought about. I mean, I don't believe that
 5 we specifically address or prohibit state party
 6 chairmen from soliciting money for explicitly state
 7 campaigns. So I have not thought specifically about
 8 the possible nexus between that versus the national
 9 party but it does give me pause and I'd have to think
 10 about it.
 11 Q. How about the national party raising money
 12 for state and local parties? Does that create the
 13 feeling of corruption for office holders?
 14 A. I think it can.
 15 Q. And what would be the appearance in those
 16 circumstances?
 17 A. Well again, just in the case of the
 18 chairman of the national party, these people frankly
 19 work in effect for the national officeholder, and
 20 they are, whether legally or not agents, they are
 21 operatives on behalf of the Federal office. They are
 22 engaged in the practice of soliciting large
 23 contributions from corporations and unions that are
 24 then passed on to the state parties. I think it
 25 creates a potential appearance of corruption.

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1 appearance of corruption for Federal candidates or
 2 officeholders?
 3 A. I guess I would want to know more about
 4 the relationship of that state party chairman to the
 5 national party, what their legal, what their legal
 6 and other powers vis-a-vis the Federal party, have
 7 some of those questions answered. I don't think I
 8 could answer that in the abstract.
 9 Q. Let's assume he is a member of the
 10 national committee by virtue of being a state
 11 chairman of the party. Same question.
 12 A. Takes it to a somewhat higher level.
 13 Q. Do you think in those circumstances it
 14 does create an appearance --
 15 A. I would like to look at all the facts.
 16 Q. What other facts?
 17 A. I'd like to look at the complete story of
 18 what's involved here, what the money is being used
 19 for, what exemption they think it would fall under or
 20 what provision they are relying on, what the money is
 21 being used for. I don't rule out the possibility
 22 that they create an appearance of corruption.
 23 Q. So in some circumstances it's at least
 24 possible for, that the state chairman's solicitation
 25 for state parties doesn't create the appearance of

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1 Q. Now, Federal officeholders themselves can
 2 raise hard money for state and local -- do you know?
 3 A. Hard money.
 4 Q. Is that correct?
 5 A. That's my understanding.
 6 Q. And can the chairman of the RNC raise hard
 7 money for state and local candidates under the Act?
 8 A. I guess I don't think they are prohibited
 9 from doing that.
 10 Q. So you wouldn't think that the provision
 11 we looked at before, that prohibits the national
 12 committees of political parties or any agents thereof
 13 from soliciting money not subject to the limitations,
 14 prohibitions and reporting requirements of this Act,
 15 would disable an agent of the national committee from
 16 raising money for state and local candidates?
 17 A. It says the national committee or
 18 political party may not solicit, receive or direct to
 19 another person a contribution, donation or transfer
 20 of funds or any other thing of value, expend funds
 21 that are not subject to limitations. Limitations are
 22 the hard money limitations. So I read that to be
 23 within the hard money limits, they can participate in
 24 hard money fundraising.
 25 Q. So your understanding of the Act is that

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1 there is hard money donations to state and local
 2 candidates?
 3 A. I'm saying that officials can participate
 4 in raising hard money. And to the extent that there
 5 are hard money limits, they can do it. If it
 6 involves unlimited contributions, I do not think they
 7 can do it.
 8 Q. Just so I'm clear, is there anything in
 9 the Act that imposes a limitation and prohibition on
 10 the amount of money raised by state and local
 11 candidates?
 12 A. Raised by state and local candidates.
 13 Q. Yes.
 14 A. I didn't think we were talking about state
 15 and local candidates.
 16 Q. Yes.
 17 A. State and local candidates, how much money
 18 they can raise.
 19 Q. Yes?
 20 A. For themselves.
 21 Q. Sure?
 22 A. We refer to state law for their, for their
 23 contribution, how much they can raise. We don't
 24 attempt to rewrite state laws with regard to whether
 25 they have a hard money limit or not. I understand

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1 some states don't have limits like this. Virginia
 2 doesn't have those kind of limitations.
 3 Q. In light of that, since you defer to state
 4 law on that, a national committee effort to raise
 5 money to solicit funds for state and local candidates
 6 would be a solicitation of funds that is not subject
 7 to the limitation, prohibitions and reporting
 8 requirements of this Act, correct?
 9 A. I don't believe the Federal party
 10 officials are allowed under the bill to raise
 11 unlimited contributions that go over the limits of
 12 the law.
 13 Q. No. I understand that. I certainly agree
 14 with you on that. But are they, could they raise or
 15 solicit a \$2,000 contribution to a state candidate,
 16 under your understanding?
 17 A. I think it's as long as it doesn't go over
 18 the hard money amount, that they can do it. Even
 19 though it may not technically be hard money. That's
 20 the limitation that I think we place in order to
 21 permit them to do that, but not going over what would
 22 be the hard money amount if we were talking about a
 23 Federal candidate, but I'm not absolutely certain.
 24 Q. Do you know what the rule is with respect
 25 to Federal candidates, as opposed to agents of the

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1 national committee?
 2 A. I think Federal candidates are also
 3 allowed to participate to the extent that somebody
 4 would be able to give hard money at the Federal
 5 level.
 6 Q. Would you see a reason for distinguishing
 7 between Federal candidates' fundraising abilities for
 8 state and local candidates as opposed to candidates
 9 of the national committee?
 10 A. I think they are closely related.
 11 Q. Federal officeholders and candidates can
 12 raise unlimited amounts for Section 501(c) groups
 13 whose principal purpose is not get out the vote or
 14 voter registration activities, correct?
 15 A. I think there is a different treatment of
 16 those abilities.
 17 Q. Does that fundraising by Federal
 18 officeholders and candidates for these groups create
 19 an appearance of corruption?
 20 A. I think it's far less likely than the
 21 other kinds of items we were talking about for
 22 appearance of corruption.
 23 Q. Why is that?
 24 A. Because of the nexus between the
 25 individual who is doing the solicitation and the type

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1 of group they are dealing with and the types of
 2 activities that that group is engaged in is much less
 3 close than in the other examples that we were looking
 4 at.
 5 Q. So Federal officeholders soliciting funds
 6 that are used by state and local parties for "get out
 7 the vote" activities do create an appearance of
 8 corruption, but Federal officeholders' solicitations
 9 for independent groups, 501(c)(3) groups "get out the
 10 vote" activities does not create an appearance of
 11 corruption?
 12 A. I'd say it's less likely only because the
 13 groups you are talking about here are not engaged
 14 exclusively in political activity. As I understand
 15 our bill, it cannot be -- that money be used for
 16 political activity explicitly, which of course is not
 17 what the case would be with regard to state and local
 18 parties, because that's all they do.
 19 Q. On the other hand, there is no prohibition
 20 on using it for get out the vote or voter
 21 registration activities?
 22 A. I believe that is left up to the
 23 association, the group; and the purpose there
 24 obviously is that these organizations have a number
 25 of purposes, and as long as they are not bound or

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1 forced to use the money for a particular purpose,
 2 that definitely is a less direct nexus of fundraising
 3 and political use of money. When they have that
 4 within their discretion.
 5 Q. There are 501(c) organizations whose
 6 principal purpose is get out the vote or voter
 7 registration activities, and Federal candidates can
 8 solicit \$20,000 per donor per year for those groups,
 9 is that correct?
 10 A. I believe that is correct.
 11 Q. Since those groups' principal purpose is
 12 get out the vote or voter registration activity, does
 13 that solicitation of \$20,000 per year create the
 14 appearance of corruption with respect to the
 15 candidate or Federal officeholder?
 16 A. I think what it does, because it is
 17 limited to a set amount, is it reduces -- a much more
 18 restrained amount than many of the amounts that we
 19 talked about in terms of soft money -- that it
 20 reduces the potential appearance of corruption. I
 21 would not say that there could be no appearance of
 22 corruption.
 23 There, I think there is the potential for
 24 appearance of corruption in essentially any kind of
 25 contributions. What we have to do here is determine

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1 what levels and what amounts, at any particular time
 2 in history, sort of give rise to what would be a
 3 public perception that that amount of money is so
 4 great and so significant that it almost inherently
 5 creates an appearance of corruption.
 6 I think in a culture, an environment of a
 7 quarter million, half million, million dollar
 8 contributions, that a \$20,000 limitation is less
 9 likely to give rise to the appearance of corruption.
 10 Q. And therefore if Federal officeholders
 11 were permitted to raise \$20,000 for state and local
 12 parties' get out the vote and voter registration
 13 activities, it would be less likely to create an
 14 appearance of corruption as well?
 15 A. If it was limited.
 16 Q. To \$20,000 per year as it is for the
 17 501(c) organization?
 18 A. I think any time you have a limitation you
 19 have a better chance it's going to appear less
 20 corrupt, but it does not rule out the possibility
 21 there would be an appearance of corruption. I think
 22 the magnitude of it and the harm of the process is
 23 reduced to the extent you are able to keep a hard,
 24 what in effect is hard money limitation on whatever
 25 can be done.

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1 Q. And the appearance of corruption with
 2 respect to the 501(c) organizations is significantly
 3 reduced such that Federal officeholders are not
 4 soliciting amounts up to \$20,000 per donor per year.
 5 Would it then not follow that the appearance of
 6 corruption is so reduced that Federal officeholders
 7 should be able to raise \$20,000 per donor per year
 8 for state parties' get out the vote and voter
 9 registration activities?
 10 A. Not necessarily, because you are missing
 11 the critical element here, which is that the
 12 organizations you are talking about previously are
 13 not obligated or restricted in terms of their
 14 functions that they could perform to political
 15 activity, and so they are not obligated to use that
 16 money for political campaigns. And obviously state
 17 and political parties are. I believe any expenditure
 18 of a political party has to be for a political
 19 purpose. So I think that's a significant distinction
 20 that allows a reasonable Congress to make a
 21 distinction, as I believe we have done.
 22 Q. And the distinction so far as I can
 23 discern is that the parties' exclusive purpose is
 24 political, whereas these outside groups' principal
 25 purpose is get out the vote or voter registration?

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1 Is that your point?
 2 A. I did not assume you were talking about an
 3 organization whose principal purpose was get out the
 4 vote. I thought we were talking about a range of
 5 organizations, some of which have entirely different
 6 functions, such as education, such as health care.
 7 And those solicitations that are within a set amount
 8 as I understand under the bill can only, the
 9 officeholder may not direct or require that the
 10 contribution be used for that purpose, for the
 11 purpose that the officeholder may wish. And that's
 12 one of the protections in the bill, to allow that
 13 organization to receive funds within limits, but to
 14 not be required to use it for political purposes.
 15 Q. Just so we are clear, initially, I talked
 16 about groups whose principal purpose was not get out
 17 the vote, but with respect to 501(c) organizations
 18 whose principal purpose is get out the vote or voter
 19 registration, soliciting \$20,000 per donor per year
 20 does not create an appearance of corruption, is that
 21 correct?
 22 A. That's not what I said. I said that any
 23 of these situations have potential to create an
 24 appearance of corruption. There are two factors, or
 25 at least one factor there that makes it less likely,

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1 and that's the dollar limitation.
 2 Q. And that dollar limitation, however,
 3 doesn't solve the appearance of corruption problems
 4 for state and local parties' get out the vote or
 5 voter registration?
 6 A. As I said, any type of contributions
 7 potentially raise an appearance of corruption. I
 8 didn't say that the \$20,000 limitation solves the
 9 appearance of corruption, but it was the judgment of
 10 Congress that this is something we could do to try to
 11 limit the corruption caused by soft money in this
 12 context by not allowing unlimited contribution of
 13 this kind, is analogous to the underlying assumption
 14 of the whole hard money system, which is that yes,
 15 contributions have the potential to cause corruption
 16 or the appearance of corruption. But that what
 17 Congress can do is to pick an amount that is
 18 reasonable in terms of giving people a chance to
 19 participate in the political process, without
 20 allowing that amount to be so high that it begins to
 21 raise strong possibilities of appearance of
 22 corruption.
 23 Q. Is there any difference between 501(c) and
 24 state parties? Strike that. Is there any reason
 25 that these 501(c) organizations whose principal

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1 purpose is get out the vote and state parties should
 2 be treated differently with Federal officers, with
 3 respect to Federal officers' solicitation of \$20,000
 4 donations, other than the 501(c) organizations'
 5 principal purpose is get out the vote, and the state
 6 parties' exclusive purpose?
 7 A. No. I would say the relative independence
 8 of the 501(c) vis-a-vis a state and local political
 9 party would be another factor.
 10 Q. How would that affect the appearance of
 11 corruption for a Federal candidate?
 12 A. Well, the fact that these 501s are
 13 independent and not under the control of national
 14 political parties is a factor in favor of having a
 15 rule where you could allow a reasonable amount,
 16 limited amount that may not be so appropriate in the
 17 context of a state or local political party, that is
 18 far more subject to the control of the national
 19 political party.
 20 Q. So your understanding of the national
 21 political parties' control is extended to decisions
 22 of the state and local parties?
 23 A. Not in every instance, but I think they
 24 have a significant influence.
 25 Q. And can you give me an example of that?

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1 A. Every time there is a presidential
 2 campaign, Federal national campaign guys come in and
 3 they want to do things one way and state people maybe
 4 think the guy is not going to win anyway so they want
 5 to make sure they get the Governor reelected and they
 6 have fights about how to spend the money. Classic.
 7 So there is a tension, and naturally
 8 because of the infusion of money that can come from
 9 the activity in a presidential election year, the
 10 national party has a lot of clout when it comes to
 11 the state party's decision. It may not be the same
 12 decision they would have made in a nonpresidential
 13 year. So I do think they have real impact.
 14 (Feingold Exhibit No. 13 was
 15 marked for identification.)
 16 BY MR. CARVIN:
 17 Q. Feingold 13 is an article in "The Hill,"
 18 "House Dems make plans to circumvent campaign
 19 reform." Have you ever read this article before, as
 20 you recall?
 21 A. I have not read it closely.
 22 Q. The second paragraph says, does it not,
 23 that House Minority Leader Dick Gephardt has assured
 24 African-American members of his caucus that he will
 25 raise money for groups such as the National

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1 Association for the Advancement of Colored People
 2 (NAACP) and the Southwest Voter Project to pay for
 3 their voter registration and get-out-the-vote
 4 operations. Do you know if that's accurate?
 5 A. If you don't mind, I'm going to read this
 6 in its entirety. Okay.
 7 Q. Is it true that Representative Gephardt
 8 assured members of the African-American caucus that
 9 he would raise funds for the NAACP?
 10 A. I don't know.
 11 Q. If that activity did go forward it would
 12 be legal reason to discuss?
 13 A. All depends on how it was done.
 14 Q. When would it be illegal?
 15 A. As I understand the law, I could be wrong
 16 on this, if he invited the NAACP to use the money for
 17 certain purposes, I believe that's not permitted
 18 under the statute.
 19 Q. It would be impermissible in the statute?
 20 A. There may be other things that would be
 21 permissible. I'm not going to give a blank check to
 22 any possible approach here that I don't know about.
 23 It is conceivable there would be a legal way to do it
 24 under this law. If this turns out to be a loophole,
 25 as opposed to a reasonable provision, it is something

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1 that we will have to revisit but hopefully people
 2 will take the limitation and the intent of this
 3 seriously.
 4 Q. And the newspaper says that in the second
 5 page, fourth paragraph, do you see?
 6 A. Clyburn.
 7 Q. "Clyburn, a one-time opponent who voted
 8 for the bill, said he switched his position because
 9 of Gephardt's assurances. Clay and Kilpatrick also
 10 voted for the bill."
 11 If it's true that one or all these members
 12 switched their votes because of the promise that they
 13 and Gephardt could raise money for preferred outside
 14 groups, would that constitute corruption or the
 15 appearance of corruption in your mind?
 16 A. If members of Congress believe that a
 17 certain kind of activity was permitted under current
 18 law as legitimate and important, the fact that
 19 somebody might be assured that they will be able to
 20 continue to do that in my mind does not raise an
 21 appearance of corruption. If there was an explicit
 22 promise that a certain amount of money would be
 23 raised by a certain amount of time in return for a
 24 vote, I would be more concerned about that. I
 25 certainly don't think that's the case.

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1 I think the way I read this is that
 2 members were assured that there still would be some
 3 legitimate ways for an organization such as the NAACP
 4 to be able to get limited help in raising some of
 5 their funds, as is allowed under present law.
 6 Q. Even if the use of that funds did
 7 indirectly benefit Federal candidates through
 8 get-out-the-vote or voter registration activity, that
 9 wouldn't create an appearance of corruption?
 10 A. Well, as I said, it's possible to have an
 11 appearance of corruption anywhere in these
 12 circumstances, but the dollar limitation of the
 13 \$20,000 is an important element of preventing a very
 14 strong appearance of corruption. It depends on the
 15 time and value of money, but compared to a quarter
 16 million dollar, half million dollar, million dollar
 17 contributions, I would say it has less likelihood of
 18 creating an appearance of corruption. But I would
 19 not rule out the possibility that if it is somehow
 20 exploited or used in a way that we did not intend it,
 21 it could rise to something. It could be addressed.
 22 Q. Could the chairman of the DNC or RNC
 23 solicit money for these 501(c) corporations under the
 24 Act?
 25 A. I would have to refer to the Act. Well, I

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1 don't know if there is another provision that relates
 2 to this, but the provision you asked me to refer to
 3 in the past says contribution, donation transfer of
 4 funds or any other thing of value, that are not
 5 subject to prohibitions. Are there other provisions
 6 I should be reviewing?
 7 Q. You may want to just be careful. Turn to
 8 116 Stat. 85 which has an exception entitled
 9 Permitting Certain Solicitations.
 10 A. Certain specific solicitations. (B).
 11 Q. You see permitting, Certain Specific
 12 Solicitations and then yes, the relevant part would
 13 be (B).
 14 MR. HARTH: Are you representing that
 15 these are all of the divisions that relate to this
 16 issue, or are these just the two that you want him to
 17 look at?
 18 MR. CARVIN: Yes. Because I think it's
 19 more than adequate to answer the question which there
 20 is an exception for candidates and officeholders to
 21 make solicitations on behalf of the (c)(3)
 22 organizations. It's my understanding that there is
 23 no similar provisions for officials or agents of the
 24 national party committee.
 25 THE WITNESS: I'm not certain.

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1 BY MR. CARVIN:
 2 Q. And if there was, can you think of any
 3 reason why it would make sense to allow Federal
 4 candidates or officeholders to solicit money for
 5 501(c) organizations in the manner described, but
 6 prohibit officials or agents in the national party
 7 from doing the same activity?
 8 A. Not off the top of my head. No.
 9 Q. Is it your understanding that state
 10 parties are prohibited from raising soft money?
 11 A. I don't believe they are prohibited if
 12 under their state law they are allowed to have soft
 13 money. I think they can raise soft money for their
 14 state elections.
 15 Q. The prohibition, as it is now on state
 16 parties relates to the expenditure of what they call
 17 soft money, money not controlled by the Act?
 18 A. Raising or spending, is that what you are
 19 asking?
 20 Q. No. My first question was about raising,
 21 and now my question is, isn't the restriction simply
 22 on how they expend or disburse soft money, and the
 23 prohibition relates to expenditure for Federal
 24 election activity?
 25 A. I believe we only sought to affect state

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1 party soft money usage as it relates to Federal
 2 elections.
 3 Q. And do you agree that the raising of soft
 4 money by state parties, so long as it's not expended
 5 in Federal election activity, does not give rise to a
 6 sufficient appearance of corruption to be restricted
 7 by Federal law?
 8 A. Well, I think it may well give rise to an
 9 appearance of corruption or actual corruption. It
 10 just does not seem appropriate or maybe even possible
 11 for Federal law to affect something that would only
 12 affect state elections, if in fact that's the case.
 13 Q. Why is that?
 14 A. Because we have a federal system and the
 15 Federal Government has the interest in affecting the
 16 integrity of the Federal political process, the
 17 Federal campaigns and the Federal Government. I
 18 think it would require a very strong showing that in
 19 some way implicated a provision of the Bill of Rights
 20 or some other constitutional protection for to us
 21 intervene directly in the way that states choose to
 22 finance their own campaigns. An equal protection
 23 clause or due process or some provision would
 24 essentially allow for Federal intrusion into an area
 25 that has been traditionally left to the states under

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1 our system of government.
 2 We have an interest in protecting the
 3 integrity of the Federal elections and the Federal
 4 Government, and I think we have to let the states as
 5 a general rule make their own rules about campaigns,
 6 and one of my regrets is that it's, one, rarer that
 7 the Federal Government is ahead of the states. But
 8 in this case, some of the states were ahead of the
 9 Federal Government and in some cases the Federal
 10 Government is actually ahead of the states.
 11 The Federal Government is usually the last
 12 one to clean things up on some of these issues, so
 13 this is something that Maine and Arizona and
 14 Massachusetts are moving in the direction or have
 15 succeeded in creating public financing. Other states
 16 such as Wisconsin have not updated their campaign
 17 finance law for decades, and the effects of it are
 18 being felt.
 19 Q. And the reason, just so I'm clear, that
 20 the national parties can't transfer funds for those
 21 uniquely state activities is because of the nexus
 22 between the leaders of the political committee and
 23 the Federal candidates that you previously described?
 24 A. I think the basis which we would legislate
 25 on that has to do with affecting the integrity and

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1 reputation of the Federal Government and Federal
 2 elections, not anything that is specific only to
 3 state elections. My sense is that there needs to be
 4 some Federal nexus and that there is in that
 5 circumstance.
 6 (Feingold Exhibit No. 14 was
 7 marked for identification.)
 8 BY MR. CARVIN:
 9 Q. I've handed you what has been marked as
 10 Feingold 14. It's paid for by the newspapers in the
 11 state. Am I right that had McCain-Feingold been
 12 enacted in 1996, that this ad could only be paid for
 13 purely with hard money?
 14 A. I will have to read it.
 15 Q. As you are doing that, note that it does
 16 refer to a candidate for Federal office, Newt
 17 Gingrich, and obviously urges people to vote
 18 Democratic in 1996.
 19 A. I have read it.
 20 Q. Have you had an opportunity to review it?
 21 A. Yes.
 22 Q. Is it correct that under McCain-Feingold,
 23 such ads as this would have to be paid with purely
 24 hard money?
 25 A. As I understand current law, there are

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1 some cases where there are some kind of hard money or
 2 soft money mixes that are allowed under the law. I'm
 3 not intimately familiar with that. I don't know
 4 whether that affects this.
 5 As a general rule, our bill seeks to have
 6 only hard money used for items that are intended to
 7 influence a Federal election, so this could be
 8 reasonably read to include Federal elections, which,
 9 in 1996 you had a big presidential campaign going on.
 10 I would be inclined to think that this would be
 11 something that could require the use of hard money to
 12 pay for it, but again, I don't know all the details
 13 of whether there may be some exception that I'm not
 14 aware of.
 15 Q. And what appearance of corruption for
 16 Federal officeholders or candidates does this
 17 relatively generic "vote Democratic" appeal to
 18 African Americans create in your mind?
 19 A. Well, I think the most likely beneficiary
 20 of something like this would be Bill Clinton and Al
 21 Gore and to the extent that soft money was used to
 22 finance this, I think there is a clear connection.
 23 Q. Again, even if it was a soft money
 24 donation to the state?
 25 A. To be used for purposes of influencing a

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1 Federal election, and that Federal election more than
 2 anything else was about whether Bill Clinton was
 3 going to be President or Bob Dole, and in most
 4 people's minds, when they picked this up, unless they
 5 are more sophisticated politically, the first thing
 6 they are going to think of is who is running for
 7 President when they think vote Democratic. Maybe
 8 they are thinking about Gray Davis these days but I'm
 9 guessing they are thinking about the presidential
 10 campaign in a presidential year.
 11 Q. Right. But I thought you had indicated
 12 earlier that there was some effort to allocate the
 13 benefits to Federal candidates vis-a-vis state
 14 candidates?
 15 A. I'm sorry. I didn't understand.
 16 MR. HARTH: What?
 17 BY MR. CARVIN:
 18 Q. Strike that. Let me give you a better
 19 question. Is it your understanding, is it your view
 20 that there is an appearance of corruption whenever
 21 get-out-the-vote or generic campaign activity
 22 benefits any Federal candidate, even if it benefits
 23 state and local candidates as well?
 24 A. As I have indicated, appearance of
 25 corruption would apply even potentially to an

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1 entirely state ad relating to state candidates. It's
 2 just that appearance of corruption would not relate
 3 to the Federal Government, so a mixed ad that relates
 4 to both the state and Federal election may raise the
 5 appearance of corruption with regard to both the
 6 state campaign and the Federal campaign, but the
 7 Federal interest relates to that portion of the ad or
 8 the way in which the ad potentially affects the
 9 Federal election. And the presence of unlimited soft
 10 money contributions in paying for the ad does raise
 11 the appearance of corruption potential --
 12 Q. Now --
 13 A. -- with regard to the Federal part of the
 14 program.
 15 Q. That's my question. With the Federal part
 16 of the program, would that interest in limiting the
 17 appearance of corruption for Federal candidates be
 18 sufficiently mitigated in your view if there was some
 19 allocation of soft money versus hard money reflecting
 20 the relevant appearance of the battle of the
 21 candidates?
 22 A. I would have to think about it. Not
 23 necessarily. To me, if you have something that is 95
 24 percent corrupting at the state level and only 5
 25 percent corrupting at the Federal level, I have still

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1 got a concern about it as a Federal legislator.
 2 Q. And you think the appearance of corruption
 3 attaches even if no Federal officers were involved in
 4 raising the money and even if the soft money donation
 5 went to the state party. Do I have that correct?
 6 A. If unlimited contributions are used in
 7 order to influence a Federal election, regardless of
 8 how it got there, it does raise the possibility of
 9 appearance of corruption.
 10 Q. The possibility of appearance of
 11 corruption?
 12 A. I can't say that in every instance people
 13 would be outraged by it but it's of the nature of the
 14 kind of expenditure raised, used to influence the
 15 Federal election that does, I think, potentially
 16 taint the process. So if a huge corporation, Exxon,
 17 gives \$5 million to the Republican Party of
 18 California, and they run an ad that's primarily
 19 talking about generic Republican issues but this
 20 refers in part to specific Federal candidates as --
 21 you know, usually it's usually something to do with
 22 Ted Kennedy on the other side. On our side it's Newt
 23 Gingrich and on the other side it's Ted Kennedy --
 24 but once you have done that, I think you are using
 25 your money in a way that influences a Federal

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1 election.
 2 And it seems to me that has the potential
 3 to raise the appearance of corruption, regardless of
 4 whether the money was raised by a Federal official.
 5 And although that of course in my mind makes it
 6 worse, but to me, there is still enough there to be
 7 concerned about.
 8 Q. Is it your understanding of the
 9 Constitution that the possibility or the potential
 10 for the appearance of corruption provides a
 11 sufficient Federal interest to ban donations to
 12 political parties at the state and local level?
 13 MR. HARTH: You are asking for his
 14 personal views as a party to the litigation?
 15 MR. CARVIN: Yes.
 16 THE WITNESS: Well, the Shrink Missouri
 17 case was all about whether or not there could be
 18 limitations on contributions by the Missouri
 19 legislature, and the Supreme Court indicated that
 20 yes, because of either corruption or in the words of
 21 Justice Souter, the appearance of corruption, could
 22 be a basis on which a legislature, whether it's state
 23 or Federal, could compete, that it is necessary to
 24 have some limitations in order to avoid either actual
 25 corruption or the appearance of corruption.

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1 BY MR. CARVIN:
 2 Q. Yes. And my question is what about the
 3 possibility for the potential for the appearance of
 4 corruption. Is it your understanding that that's a
 5 sufficiently strong interest to regulate soft money
 6 donations to state and local parties?
 7 A. I would say that it is not requirement for
 8 Congress to let a disaster occur before they can try
 9 to protect it. It can be reasonably anticipated that
 10 a system is going to be abused. I don't see any
 11 reason in the world why Congress cannot legislate.
 12 That's exactly what we sought to do with the 527
 13 organizations where that loophole was just beginning
 14 to be exploited and we saw the problem. It's being
 15 litigated now. We were way behind the soft money
 16 one.
 17 But no, I don't think you have to already
 18 have actual corruption or the clear appearance of
 19 corruption which I think the Congress is required to
 20 anticipate that a particular kind of activity would
 21 give rise to an appearance of corruption. I might be
 22 wrong on this. That might be sufficient.
 23 Q. What could be wrong with the appearance of
 24 corruption?
 25 A. In my view, it would be. I stand to be

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1 corrected by the judges if I'm wrong, but I would
 2 think if a legislature and a state sees what's
 3 happening in another state, that this system is
 4 careening out of control in Michigan, and people in
 5 Wisconsin go, "you know, that's really ruined things
 6 here. Let's get ahead of this thing and let's close
 7 this loophole before --" it seems to me the
 8 possibility of the appearance of corruption arising
 9 would be much better to solve in advance than have to
 10 clean it up after, which is what we are stuck doing
 11 here now.
 12 Q. I'd like to hand you another exhibit which
 13 I believe is 15.
 14 (Feingold Exhibit No. 15 was
 15 marked for identification.)
 16 BY MR. CARVIN:
 17 Q. If you could briefly review. It was run
 18 by California and paid for by the California
 19 Democratic Party. It's a radio ad. California state
 20 party.
 21 A. Okay.
 22 Q. Is it your understanding that if
 23 McCain-Feingold had been in effect at the time this
 24 ad was run, it would have had to have been
 25 exclusively paid for with hard money?

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1 A. Well, I'd have to think about it and
 2 evaluate it more closely because I could be reading
 3 this wrong, but the only reference here that could
 4 possibly be Federal is simply the word Republican.
 5 Was there something in here that I'm missing where
 6 this has to do with the Federal?
 7 Q. Well, it says if you will note the last
 8 two sentences, three sentences: On Tuesday vote yes
 9 on our future and no on Prop 209. Don't let the
 10 Republicans get away with it. Don't say home.
 11 Would that be considered get-out-the-vote activity or
 12 generic?
 13 A. It's possible because -- this is 1992.
 14 Q. Yes?
 15 A. And this is the same ballot where
 16 President Clinton and Vice President Gore would be on
 17 the ballot? It's closer to the line, but it may be
 18 within.
 19 Q. What's your understanding of words by a
 20 state Democratic Party that would fall within either
 21 generic campaign or activity that's get-out-the-vote
 22 activity of the Act?
 23 A. I don't understand your question.
 24 Q. Would this ad constitute Federal election
 25 activity under the Act as you understand it?

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1 A. I'm not absolutely certain. I'd have to
 2 sit down and think it through a while and read the,
 3 read the statute and think about it a little bit.
 4 Q. Fair enough. But I mean, is there some
 5 difference between saying vote Democratic in '96 and
 6 saying don't stay home, that's what they are counting
 7 on, and making other assertions, negative assertions
 8 about Republicans?
 9 A. As you pointed out, the explicit reference
 10 to Newt Gingrich and the explicit reference to some
 11 clearly Federal legislation, if I could refer to that
 12 document.
 13 Q. Actually, it's right here.
 14 A. Yes. This refers to student loans,
 15 increasing the minimum wage. I suppose somebody
 16 could argue that those are either state or Federal
 17 but I think it would be more likely that somebody
 18 would, given the presence in the paragraph of Newt
 19 Gingrich, I would think it's a little bit easier to
 20 regard this as relating to a Federal election.
 21 I think given the facts you have given me,
 22 this may well also, but this, the exhibit, the vote
 23 Democrat 19 -- Democratic '96, on November 5th we are
 24 voting for ourselves, seems a little more clear to be
 25 in that category than the ad that you have referred

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1 to as mean spirited, a 60-second radio spot paid for
 2 by the California Democratic Party relating to
 3 Proposition 209, which is you know obviously
 4 explicitly a state initiative.
 5 I mean, this is, this is more clearly
 6 referring more just to a state referendum, although
 7 of course when people turn out to vote, as you
 8 pointed out, on that day, there are other things that
 9 are Federal that are on the ballot.
 10 Q. And that's really my question. Is it your
 11 understanding that there needs to be some reference
 12 to a Federal candidate to be Federal election
 13 activity such that it triggers the restrictions on
 14 state parties?
 15 A. Not necessarily. I think that these are,
 16 this one is fairly clear and I think that it's
 17 possible that merely doing expenditures at a time of
 18 a Federal election that would mean the expenditure
 19 relates to the, benefits the Federal election may
 20 well be sufficient even without an explicit
 21 reference.
 22 For example, if the thing only said vote
 23 Democrat, I think, you know, in the year of a Federal
 24 election the use of soft money for that kind of an ad
 25 may be a problem.

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1 Q. Let me ask you that. Just a straight
 2 generic get-out-the-vote paid for by in this case the
 3 Democratic Party that says vote Democratic and it is
 4 a Federal election day. Is it your understanding of
 5 the Act that that kind of generic campaign activity
 6 can't be paid for soft money, but must be paid for
 7 with either hard money or combination of hard and the
 8 Levin amendment?
 9 MR. HARTH: You are asking for his
 10 understanding, not as a special status, or Senator,
 11 just his general understanding based on however the
 12 FEC wants to look at that?
 13 THE WITNESS: I would like to refer back
 14 to that one we looked at earlier where we talked
 15 about voter registration. What page is that?
 16 BY MR. CARVIN:
 17 Q. That's on 116 STAT 95. At the bottom it
 18 says Federal Election Activity.
 19 A. Let me if I might refer to sub (ii).
 20 Under (20)(A) it refers to: The term "Federal
 21 election activity" means (ii) voter identification,
 22 get-out-the-vote activity, or generic campaign
 23 activity conducted in connection with an election
 24 which a candidate for Federal office appears on the
 25 ballot.

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1 It seems to include the examples you have
 2 given me.
 3 Q. Right. And that's my understanding as
 4 well, so again, as you pointed out, this deals with a
 5 state initiative that obviously is important to the
 6 African-American community?
 7 A. No. I didn't point that out. I didn't say
 8 anything about that.
 9 Q. Okay. It dealt with a state ballot
 10 initiative, but does include a generic campaign
 11 get-out-the-vote kind of message, so in light of
 12 that, my question would be what is your view of the
 13 appearance of corruption created by this Act?
 14 A. Given the fact that it is, if it is paid
 15 for by soft money, that presumably is urging people
 16 to vote in a, an election that has significant
 17 presence of Federal candidates in the ballot during
 18 the time period that we just referred to, that raises
 19 the possibility that very large, inappropriately
 20 large contributions would be used to pay for such ads
 21 that -- may demand and that -- may welcome, through
 22 the offices of the Federal party or the Federal
 23 officials.
 24 And that is something that we do not want
 25 to have happen, to have soft money be handled through

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1 the state parties in order to pay for these types of
 2 ads.
 3 Q. Let me make it clear. My question would
 4 be if the state party itself had raised and expended
 5 this money without the involvement of the Federal
 6 party, is that appearance of corruption?
 7 A. Potentially. Again, if it is used in
 8 connection with the Federal election, which this is,
 9 it's not necessarily its principal intent but the
 10 effect of it is to influence people to come out and
 11 vote in a Federal election. I think although it
 12 certainly is less troubling to me than when a Federal
 13 official raises it directly, that it still
 14 potentially could raise the appearance of corruption
 15 with regards to the way it's paid for.
 16 Q. Now, under the Act, the NAACP could run
 17 this ad with unlimited --
 18 A. Not with unlimited soft money.
 19 Q. What prohibition of the Act would prevent
 20 the NAACP from running generic --
 21 A. Excuse me. I don't know whether they can
 22 run that ad or not. You are saying with their own
 23 funds through their own Political Action Committee.
 24 Q. No. Assume they don't even have a
 25 committee?

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1 A. I'm not certain, but I suppose they could
 2 run this ad.
 3 Q. And a Federal officeholder, as we
 4 discussed before, could raise money at least --
 5 A. Not unlimited money.
 6 Q. At least up to \$20,000?
 7 A. No. You asked me about potential
 8 unlimited soft money paying for this ad, now you are
 9 talking about a situation where a Federal
 10 officeholder could presume, apparently ask that
 11 \$20,000 be contributed in general to the NAACP, but
 12 not to be used for the purposes of these ads. So
 13 there is monetary limitation on the amount and
 14 limitation on not being able to direct or require
 15 that money be used for that purpose.
 16 Q. Let's break it down. Let's assume that
 17 the Federal officeholder was involved in the
 18 solicitation of funds that went to pay for this ad.
 19 A. Which ad?
 20 Q. Mean-spirited.
 21 A. Okay.
 22 Q. Would that create the appearance of
 23 corruption?
 24 A. Potentially, yes.
 25 Q. Then why then isn't this prohibited?

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1 MR. HARTH: I'm going to object.
 2 BY MR. CARVIN:
 3 Q. What reason is it, if it does create the
 4 appearance of corruption?
 5 A. You say this is not prohibited.
 6 Q. If the NAACP pays for the ad, correct?
 7 A. I have indicated that that scenario also
 8 potentially raises the appearance of corruption, but
 9 that it is a reasonable judgment for Congress to make
 10 that because it is not required to use these funds
 11 for that purpose and can be used for any other
 12 purpose -- school lunch program -- that this does not
 13 have the same nexus as the California state
 14 Democratic Party receiving a \$500,000 contribution
 15 from someone else.
 16 And the only purpose for which a political
 17 party can make expenditures as I understand the law
 18 at least in most states is for a political purpose.
 19 Well, there is a difference.
 20 Q. And even if the NAACP chooses to exercise
 21 its discretion to engage in Federal election
 22 activity, that doesn't create the appearance of
 23 corruption because they remained free to spend it on
 24 other things?
 25 A. As I have said repeatedly, I have never

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1 said that it could not raise the appearance of
 2 corruption. What I have said over and over again was
 3 that it is less likely to raise the appearance of
 4 corruption than the state political party situation
 5 where they have no choice.
 6 Look, the NAACP has their very
 7 distinguished group of directors. I'm sure they have
 8 disagreements about how money should be spent and I
 9 bet sometimes people that want to do ads win and I
 10 bet sometimes people that want to do school lunch
 11 programs win. I would say both situations could
 12 potentially lead to the appearance of corruption, it
 13 is reasonable for Congress to conclude that there is
 14 less danger of that with regard to a more independent
 15 organization that has the freedom to spend as it
 16 wishes as opposed to an exclusively political
 17 organization which is required by law to only spend
 18 the money for political purposes.
 19 Q. And that would be true even if a Federal
 20 officeholder had engaged in solicitations of
 21 unlimited amounts to the NAACP?
 22 A. They are not allowed to.
 23 Q. Is it your understanding the principal
 24 purpose of the NAACP is to engage in voter
 25 registration or get-out-the-vote activity?

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1 A. Principal purpose of the NAACP.
 2 Q. Yes?
 3 A. That is not my understanding. My
 4 understanding is they had a broader agenda.
 5 Q. Then why would there be a limitation on
 6 the amount of money the Federal Government can
 7 solicit?
 8 A. Probably Congress is determined that
 9 people shouldn't be soliciting large contributions
 10 for anything.
 11 Q. I thought we agreed if the organization's
 12 principal purpose was not get-out-the-vote and voter
 13 registration, then there is no ceiling on the amount
 14 of the contribution that can be solicited by the
 15 Federal officeholder, is that correct?
 16 A. I'd have to check the statute.
 17 Q. I think the statute would speak for
 18 itself.
 19 MR. HARTH: In all cases.
 20 BY MR. CARVIN:
 21 Q. Yes. I don't want to belabor. This I
 22 will just ask you, is there an appearance of
 23 corruption if a Federal officeholder raises unlimited
 24 amounts for an outside group whose principal purpose
 25 is not get-out-the-vote, if the organization ran an

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1 ad like "Mean Spirited" that we just looked at?
 2 A. Well, it bothers me, and I would not
 3 engage in that kind of fundraising. But it was the
 4 judgement of the Congress to not reach into those
 5 areas that are not less directly connected to the
 6 electoral process.
 7 Q. It is your understanding that generic Vote
 8 Democratic or Vote Republican on door hangers by
 9 state political parties is also Federal election
 10 activity?
 11 A. I just read you the statute. If I'm
 12 missing something there, I believe all it said was if
 13 this goes on in connection with an election where
 14 there is a Federal candidate that it is deemed to be
 15 within the law.
 16 Q. Senator, I'm trying to save time. There
 17 are door hangers and these things that say vote
 18 Democratic, vote Republican, which role under the
 19 activity?
 20 A. That's why I read the language we went
 21 over. You can't sort of pretend that something
 22 that's done that's obviously going to have an impact
 23 on the Federal election is somehow insulated from
 24 that impact. I think our goal here was to try to get
 25 at the problem of unlimited soft money contributions

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1 and wanted to make sure the same system wouldn't be
 2 recreated at the state level that existed at the
 3 Federal level. Our goal was not to keep state
 4 parties from doing whatever they can under their
 5 state law with regard to local and state elections
 6 exclusively.
 7 MR. CARVIN: Do you want to go off the
 8 record? Let's take a break.
 9 (Recess.)
 10 BY MR. CARVIN:
 11 Q. Senator, are you aware under the current
 12 system what percentage of funds of state parties came
 13 from national parties?
 14 A. I don't know.
 15 Q. Do you generally know?
 16 A. I don't recall right now. I'm sure I read
 17 it and probably said it on the floor of the Senate
 18 and I would refer you to that. I refer you to that.
 19 I just don't recall at this moment.
 20 Q. Do you think cutting off the transfer of
 21 funds from the state parties as well as the
 22 restrictions on soft money fundraising by state
 23 parties that we have discussed will affect the
 24 financial status of state parties?
 25 MR. HARTH: This is his personal

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1 understanding?
 2 THE WITNESS: I do not think it will
 3 affect state parties adversely. I think this whole
 4 process is going to benefit state parties enormously
 5 because instead of being focused on money, they are
 6 going to be focused on getting people motivated and
 7 excited for candidates. I have been in enough
 8 elections that I know it's going to be more important
 9 for people to be motivated emotionally.
 10 BY MR. CARVIN:
 11 Q. Do you have any view as to whether or not
 12 they will be able to raise or have the same amount of
 13 money under the new regime as the present regime?
 14 A. I don't know. It's possible that they
 15 will make people feel included again and they will
 16 more likely be to give hard dollar contributions and
 17 they will get as much money that way as they are
 18 getting through soft money.
 19 Q. Have you done any analysis of that?
 20 A. Not specifically.
 21 Q. Are you aware of any analysis?
 22 A. I think there has been some analysis. I
 23 don't recall any at this point. I know my own
 24 instincts are that parties are going to be much more
 25 vibrant and that they will be adequately financed.

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1 It's not as if one party will have this
 2 rule and one isn't. What parties are generally
 3 interested in is having a fair shot at whipping over
 4 the other party. It's not in the abstract. And so I
 5 think the parties will benefit from not being in what
 6 they perceive to be a smart money bidding war, and
 7 they will be able to focus more on doing what they do
 8 best, which is reaching out to people and motivating
 9 the voters.
 10 Q. Have you analyzed the expenditures by the
 11 national parties in terms of how much they spend on
 12 say, state and local elections, how much they spend
 13 on state and local candidates versus Federal? Have
 14 you done any analysis on that?
 15 MR. HARTH: I'm going to object to that
 16 question as calling for testimony that is privileged
 17 under the speech and debate clause. The analysis or
 18 thinking or studies and what they have relied on in
 19 putting together this legislation go to the core.
 20 BY MR. CARVIN:
 21 Q. I'm not limiting it to the consideration
 22 of legislation. You have been in politics for a long
 23 time. The question is whether you have a general
 24 sense from nonlegislative reading as to how the
 25 national parties tend to allocate their expenditures.

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1 A. Well, when I'm not doing my legislative
 2 work I don't read these kinds of analyses for my
 3 light reading. I find it hard to imagine the context
 4 in which I would have read one of these documents
 5 under than at gunpoint from one of my staff members.
 6 I don't think I have an independent analysis of
 7 expenditures.
 8 I can tell you what people say to me back
 9 home. I have done 700 listening sessions in my state
 10 in the last 10 years. I'd be happy to tell you about
 11 what people said to me there. I don't recall outside
 12 of the context of my legislative work doing an
 13 analysis of how much money the Federal parties gave
 14 at one time or another time. That's all part of my
 15 work. I certainly haven't done it in the context of
 16 my campaign. Maybe my campaign people have done it,
 17 but I'm not aware of it.
 18 Q. Well again, without giving me an answer, I
 19 just want to know if this is an academic discussion
 20 or not. Without telling me what it was, are you
 21 aware of any analysis that was done in connection
 22 with this legislative effort?
 23 A. Vaguely. I just, I'd have to look at the
 24 800 speeches and documents that I have reviewed in
 25 this seven-year battle to win this battle on campaign

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1 finance reform. I have done a lot of studies. I
 2 will refer you to the Congressional Record where my
 3 comments are. It may well be that I have addressed
 4 this at some point during the last seven years. I
 5 just don't recall.
 6 Q. And how about, well, let me actually give
 7 you a -- if, I think we have talked about the outside
 8 groups could be -- let's make it a group like the
 9 AFL-CIO so we are kind of specific. Is it your
 10 understanding of the Act that there is any
 11 prohibition on the union from doing a phone bank or
 12 get-out-the-vote activity with actual union treasury
 13 funds?
 14 MR. HARTH: Mike, as you have stated, the
 15 law speaks for itself. I'm going to assume that you
 16 are asking him in his personal capacity for his
 17 recollection of what may be in the law, as opposed to
 18 some statement in his capacity as a lawmaker.
 19 MR. CARVIN: That's fair enough. You can,
 20 if it's all right with you, Senator, we will have
 21 that running caveat or understanding about questions.
 22 I'm just asking you about your party. You have
 23 looked at this, obviously.
 24 BY MR. CARVIN:
 25 Q. Is it your understanding that the Act will

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1 prohibit, I will use the AFL-CIO, from running a
 2 phone bank on election day or doing get-out-the-vote
 3 or voter identification activities?
 4 A. I don't believe so.
 5 Q. And if the AFL-CIO gave a \$200,000
 6 donation to the DNC, the DNC couldn't use that
 7 \$200,000 to do get-out-the-vote or voter
 8 identification on election day under the Act, is that
 9 correct?
 10 A. I don't think they could cut a check from
 11 the labor union treasury to do that.
 12 Q. And does the AFL-CIO directly running a
 13 phone bank, let's use that as the example, on
 14 election day create the appearance that they would
 15 unduly influence or corrupt a Federal candidate who
 16 is running that day?
 17 A. If they were to independently run their
 18 own phone bank?
 19 Q. Yes?
 20 A. That would not strike me as raising the
 21 appearance.
 22 Q. So large expenditures by unions that
 23 directly benefit a party, including Federal
 24 candidates, doesn't raise an appearance of
 25 corruption?

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1 A. No. Because there is no, because those
 2 are independent entities, unlike the state parties
 3 and the local parties. At least it's less likely to
 4 raise an appearance of corruption because they can do
 5 what they want. Labor unions are not required to
 6 support Democratic candidates and sometimes don't and
 7 they can't be ordered to do that. They are
 8 independent.
 9 Q. And if they, do labor organizations lobby
 10 Democratic candidates, to your knowledge?
 11 A. They certainly lobby both Republican and
 12 Democratic officeholders.
 13 Q. And would those officeholders be induced
 14 to provide preferential acts, as to undue influence
 15 to the labor organizations, in return for running
 16 phone banks on election days that indirectly benefit
 17 them? Or at least would there be the appearance
 18 thereof?
 19 A. It's possible that somebody would think it
 20 through that way but it's my sense that that is not
 21 necessarily the way things are perceived because it
 22 is entirely voluntary. There is no, there is no, in
 23 fact, under the law, even the law now, there is not
 24 supposed to be an agreement between an officeholder
 25 and an independent group to do something like that.

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1 One of the things we try to do in our law
 2 is make sure that it isn't so narrowly defined that
 3 you can do it with a wink and a nod. You try to make
 4 sure if there is any kind of a deal between an
 5 officeholder and let's say a labor union, that that's
 6 something that you can't do under the coordination
 7 provisions. Whether or not an individual member
 8 thinks about the fact that a labor union might run a
 9 phone bank for them, I don't know. My sense is that
 10 they probably, that isn't the first thing they think
 11 of.
 12 Q. And would that be true as to the other
 13 outside groups that you have talked about that do
 14 become involved in get-out-the-vote or voter
 15 registration activity, nonparty groups?
 16 MR. HARTH: Your hypothetical is still the
 17 independent, completely independent.
 18 BY MR. CARVIN:
 19 Q. Just so we are clear, independent of
 20 parties, is that correct?
 21 MR. HARTH: No wink and nod.
 22 BY MR. CARVIN:
 23 Q. Uncoordinated, I think is the term in the
 24 statute.
 25 A. Yes. I think the experience that a lot of

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1 us have had is we don't know what these independent
 2 groups are going to do. That's the way it should be.
 3 I have certainly had the experience of waking up and
 4 seeing on television ads by an independent group that
 5 was supposed to help me that horrified me. It was
 6 very -- I was very upset that a negative ad was being
 7 run against my opponent when I was trying to run a
 8 positive campaign. So this vision of sort of these
 9 independent groups as being helpful is not
 10 necessarily how an officeholder regards it;
 11 nonetheless, I think they have a right to run their
 12 phone banks and to run the ads that are within the
 13 limits and within, playing by the rules that
 14 everybody else plays by, and the whole idea is that I
 15 as an officeholder can't control that.
 16 Q. And that's why the outside groups in your
 17 opinion should be allowed to use this unregulated
 18 money to engage in those activities while the state
 19 parties, for example, should not be allowed to do so?
 20 A. I think they are in a different category
 21 because they are independent and I can't direct them
 22 nor do I have agents of a higher level political
 23 party to direct them to do X, Y, or Z. They are free
 24 to do what they want.
 25 Q. Just so I'm clear, you do have the power,

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1 for example, to tell the Wisconsin Democratic Party
 2 how to spend its money?
 3 A. Not by myself. No. I am one of several
 4 voices.
 5 Q. And is it generally the case that several
 6 officeholders can direct their state parties on how
 7 to direct their money?
 8 A. Certainly not in Wisconsin. It's often
 9 the state legislators who are the heavyweights. I
 10 can't speak to other states. Maybe there is a, in
 11 Illinois it was the mayor of Chicago who often made
 12 these decisions. It depends on the state.
 13 Q. That's fair. I'm going to hand you an
 14 interview that I think you did with, as best as I can
 15 tell, this is called the American Prospect. I will
 16 handled it to you in just one second.
 17 (Feingold Exhibit No. 16 was
 18 marked for identification.)
 19 BY MR. CARVIN:
 20 Q. This was on September 19th, 2000. I don't
 21 want there to be any misimpression. This was, if my
 22 math is right, prior to final Congressional passage
 23 of the Act?
 24 A. That date would be prior to the final
 25 passage.

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1 Q. I would like to, feel free to read it. I
 2 actually am interested in the colloquy you had on
 3 page 3 of this interview. The question begins,
 4 Suppose that you were a big money donor. And that's
 5 what I wanted to ask you a couple of questions about.
 6 The question was suppose you were a big money donor,
 7 what's the next loophole you would explore --
 8 A. I'm still reading this.
 9 Q. Okay. I'm sorry.
 10 A. Okay. I just wanted to finish the part
 11 about McCain's charisma.
 12 Q. That may take forever. The question I
 13 would like to direct your attention to is the one
 14 that says supposing you were a big money donor,
 15 what's the next loophole you would exploit if the
 16 soft money loophole were closed, and the beginning of
 17 the answer is I'm not sure what the next tactic will
 18 be. I suppose they will try to do more with the
 19 so-called independent expenditures and then there is
 20 a bracket which I'm not sure that's part of your
 21 quote but it says try to funnel more money through
 22 independent groups. You can read the rest.
 23 My basic question to you is do you have
 24 any view at this time now, that the legislation has
 25 been enacted, as to whether or not some of the soft

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1 money that used to go to political parties will be or
 2 people are trying to attract to the so-called
 3 independent groups that we have been discussing?
 4 A. I think my view continues to be as it's
 5 been for some time. I think I have been right about
 6 this. It goes against the conventional wisdom but
 7 the conventional wisdom is that all the money will
 8 flow to the independent groups. I have always said
 9 that doesn't make sense to me because AT&T, when they
 10 give their soft money check to the Democratic Senate
 11 Campaign Committee and they give the same check to
 12 the Republican Campaign Committee, are engaged in a
 13 very direct transactional arrangement where they are
 14 able to know that they have given money to both sides
 15 and that the money that they are giving to is to
 16 people who not only run the campaign committee but
 17 also vote and are very closely tied to the leadership
 18 of the Senate.
 19 That's not what you get if you give that
 20 same \$300,000 to the National Rifle Association or
 21 Sierra Club. In fact, one of the problems for AT&T
 22 or a commercial organization is they don't
 23 necessarily want to take sides in the abortion issue
 24 or the gun issue, so it's always been my perception
 25 that that money doesn't flow.

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1 The current system prior to
 2 McCain-Feingold, most problematic, most problematic
 3 aspect of that system is that we had a brave new
 4 world of transactional arrangements between the
 5 national political parties and these entities. I do
 6 not think that they will find it as attractive, in
 7 fact, I'd go back to my Committee for Economic
 8 Development analogy, these corporations weren't
 9 desperately trying to unload money. This wasn't, it
 10 wasn't sort of like "Gee, we've got way too much in
 11 profits, maybe we could give it to the political
 12 parties." It was pressure from officeholders for
 13 them to give that money, pay to play basically.
 14 Now, under the law, those same senators
 15 can't pull up and say "Mr. AT&T CEO, you give that
 16 \$300,000," or it will be a violation of the law.
 17 Q. And is that why it would definitely reduce
 18 the amount of money in these elections if soft money
 19 was banned?
 20 A. I don't know that it would reduce the
 21 amount of money in the elections. I don't think that
 22 the transfer of that money into the independent
 23 groups will occur. Maybe these companies, although I
 24 doubt it, depending on their issues, will run their
 25 own ads.

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1 Q. Well, political parties spend a lot of
 2 money on issue ads. And political parties are also
 3 spending substantial sums on mailings and
 4 get-out-the-vote and those kinds of things. If the
 5 money that currently goes to the political parties is
 6 not transferred or somehow redirected for independent
 7 expenditures, won't there be fewer ads, mailings and
 8 things like that?
 9 A. Could be. I mean look, there will
 10 probably be less money spent on the next election. I
 11 don't know about this one because we still have the
 12 money in place. After a couple of cycles of this, it
 13 may well be that less money will be spent on the
 14 election in general. It may be that there will be
 15 less money spent on ads. I'm not certain.
 16 I certainly hope that there will be fewer
 17 phony issue ads paid for by giant contributions, but
 18 not necessarily fewer ads. I have no problem with
 19 unlimited advertisements, as long as they are not
 20 paid for through corruptingly large contributions.
 21 Q. How about the scenario we talked about
 22 before: The AFL-CIO can't give \$200,000 to the DNC,
 23 but they think it's important so they spend the
 24 \$200,000 on their own phone bank. Does that strike
 25 you as a more realistic scenario?

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1 A. My guess is they probably would focus more
 2 of their attention on their own members.
 3 Q. How about, to go through your first
 4 example in the first interrogatories where we
 5 discussed Senator O'Connell. I understand your point
 6 that AT&T doesn't want to get involved in the
 7 abortion controversy, but wouldn't corporations
 8 continue to or perhaps enhance those kinds of
 9 advertisements that are directed at candidates
 10 outside of the 60 and 30-day periods?
 11 A. Would they continue to run them in effect
 12 on their own?
 13 Q. Yes.
 14 A. I don't know, because they lose one of the
 15 major benefits of giving soft money. One of the
 16 greatest benefits of giving soft money is it is
 17 handed directly or at least indirectly to a campaign
 18 functionary or a Senator who says thank you, and then
 19 proceeds to vote on their issue. That doesn't occur
 20 when you are just running the ads on your own.
 21 That is the critical difference that has
 22 occurred in the '90s. This campaign contribution
 23 process has developed into a transactional process
 24 involving national political parties. That is not as
 25 the kind of scenario that you are describing. I

CONTAINS COUNSEL ONLY INFORMATION

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1 can't say a certain entity may not be passionate
 2 about an issue.
 3 Let me give you one example. After the
 4 Federal Express incident, Fred Smith, the founder of
 5 Federal Express, asked whether he could come and just
 6 talk to me about the incident. Obviously, I'm no
 7 buddy of Federal Express, but I thought it would be
 8 very interesting to hear what I had to say. He came
 9 in and told me his life story, which is incredible.
 10 This guy was a lawyer who had the good
 11 sense to come up with one of the most brilliant ideas
 12 ever, Federal Express Corporation, and he proceeded
 13 to tell me about what he had done and then he talked
 14 to me about the fact that he didn't enjoy having to
 15 give these considerations, but he felt that we had
 16 set up the system that way and that he had no choice.
 17 And that he had no choice as the CEO of his company,
 18 as the founder of his company, other than to pay to
 19 play. And so that's what he did.
 20 I don't think Fred Smith gives \$300,000
 21 for the National Right to Life or runs his own ads
 22 about what Federal Express wants. He did it
 23 because -- he told me he did it because he felt he
 24 had to, because we set up the system this way. That
 25 is what is corrupt and that's what has to change.

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1 Q. So you think, if I'm understanding you
 2 correctly, that the ban on soft money will reduce the
 3 money of the national political parties and therefore
 4 some power would devolve from them to other entities?
 5 A. I didn't say that.
 6 Q. Let me break it down. Do you think, let's
 7 start at the beginning. Do you think it will reduce
 8 the financial wherewithal of the national political
 9 parties?
 10 A. It could, although I will tell you the
 11 national political parties use this money so quickly
 12 in most cases just to buy these ads, that, I don't
 13 know about the underlying financial condition of the
 14 parties, but my guess is they would have less money
 15 available for advertisements. That would be my
 16 guess. I'm not certain, but that would be my guess.
 17 Yes. It's so much harder to raise the money under
 18 the hard money limits than it is to ask one company
 19 for 500,000 or one unit for 500,000.
 20 Q. And do you, you personally view that as a
 21 beneficial development, if the national political
 22 party's financial power did decrease?
 23 A. No. I would not consider that a benefit
 24 in and of itself. I consider the benefit the lack of
 25 nexus between the contributors and the party. It is

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1 not, the parties had all kinds of hard money and they
 2 were running tons of ads, yes, people get sick of the
 3 ads but I don't think the mere presence of any ads,
 4 if they are limited to hard money contributions is,
 5 involves an appearance of corruption or involves a
 6 problem for the political system.
 7 The goal here was not to take money out of
 8 elections. The goal here was to take a type of money
 9 out of elections that was corrupting elections and
 10 corrupting our system of government
 11 Q. Well, it was part of the goal to shift
 12 power from the national parties to the state and
 13 local parties?
 14 A. I think that would be one of the effects.
 15 I can't say that that was sort of a core goal of
 16 mine. I mean, I was focused on as I have said many
 17 times a problem with national politicians raising
 18 this kind of money, asking for this kind of money,
 19 kinds of legislation that I think was coming up
 20 because of soft money, the way in which it made our
 21 campaigns look back home, these ads tend to be
 22 because they are sort of faceless and phoney, very
 23 negative. That type of thing, as opposed, I believe
 24 that one benefit would be probably what you just
 25 said, but that was not sort of something that I

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1 thought about a lot as I was working on this bill.
 2 Q. Would there be an additional benefit of
 3 devolving power from the national parties to these
 4 independent groups we have been discussing as well?
 5 MR. HARTH: In his personal view?
 6 BY MR. CARVIN:
 7 Q. Yes?
 8 A. It could be. I happen to be one who
 9 believes in marketplace of ideas and that the more
 10 voices the better, and that a system in which we have
 11 vibrant state parties, independent groups and
 12 candidates and everybody having a chance to speak, as
 13 long as no one is using corrupt contributions to pay
 14 for their operations that that's a better system.
 15 Q. Are you concerned that many of these
 16 outside groups don't report the amounts or sources of
 17 donations to the Federal Election Commission?
 18 A. I generally prefer that there be
 19 disclosure. I would always want to consider whether
 20 any kind of disclosure was in any way an imposition
 21 on the First Amendment rights of association of any
 22 organization, but I certainly am one who as a general
 23 rule would look at disclosure as the least
 24 restrictive way to try to deal with the
 25 problem.

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1 Q. And the appearance of corruption is
 2 enhanced or added to if large expenditures are made
 3 by groups that don't report either the amount or
 4 identity of those donors.
 5 Would you agree with that?
 6 MR. HARTH: Expenditures on Federal
 7 elections?
 8 BY MR. CARVIN:
 9 Q. Federal election activity.
 10 A. I mean, I think the issue of the
 11 appearance of corruption in the context of whether a
 12 newly elected member of Congress and the President,
 13 truly independent expenditures are made by
 14 organizations, I don't know that that leads to an
 15 appearance of corruption. I don't see what that has
 16 to do with it.
 17 Q. So you don't need disclosures and it
 18 pertains to corruption issues?
 19 A. I think disclosure can help minimize the
 20 appearance of corruption. Disclosure of what? I
 21 think disclosure is important. I think it's very
 22 valuable for our democracy, and people do want to
 23 know as much as they can, but disclosure, and
 24 disclosure does allow people to, for example consider
 25 whether there might be some kind of corrupting

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1 influence, but when it is a truly independent group
 2 that is prohibited by law from actually coordinating
 3 with a candidate, I think it's slightly different.
 4 I'm not saying couldn't involve that. It
 5 just isn't sort of in the core area which is my
 6 concern about our very institution here about elected
 7 members of Congress having the appearance, having the
 8 Congress or our legislative process having the
 9 appearance of corruption.
 10 (Feingold Exhibits Nos. 17-18
 11 were marked for identification.)
 12 BY MR. CARVIN:
 13 Q. The first one marked Feingold 17 is an AP
 14 and the second one, 18, is from the Daily News.
 15 A. Do you want me to review these?
 16 Q. Yes. I will ask you first about the AP if
 17 that's okay. The AP story says that Senator Feingold
 18 said a "core group" of five or six Democrats,
 19 including Clinton, were trying to find ways to get
 20 around the ban. He declined to identify the others.
 21 Did you tell any reporter that a core
 22 group of five or six Democrats were trying to get
 23 around --
 24 MR. HARTH: This line of questioning is
 25 raising some speech and debate issues in my mind. I

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1 wonder if we might take a short break. It's been
 2 about an hour anyway so that I can discuss this with
 3 my client.
 4 MR. CARVIN: We will go off the record for
 5 a second.
 6 (Discussion off the record.)
 7 (Recess.)
 8 BY MR. CARVIN:
 9 Q. The question, Senator Feingold, is did you
 10 say to any reporter that a core group of five or six
 11 Democrats were trying to find ways to get around the
 12 soft money ban?
 13 MR. HARTH: I am going to object to that
 14 question and it's calling for testimony that is
 15 protected by the speech and debate clause. My
 16 understanding is that this conversation took place in
 17 the context of consideration of legislation and for
 18 that reason, I'm going to instruct Senator Feingold
 19 not to answer that question.
 20 MR. CARVIN: Can you either Senator or
 21 counsel give me more context as to what legislative
 22 act or what meetings in connection with the
 23 legislation are?
 24 MR. HARTH: I think it's set out pretty
 25 well in the story. I'm certainly not going to

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1 testify about it. My understanding is that this was
 2 a private meeting amongst senators in which
 3 legislation was discussed. There are proposals out
 4 there that would go to how effective the Reform Act
 5 is going to be and it's my understanding that this is
 6 something that's currently on the burner and it is
 7 therefore covered by speech and debate.
 8 MR. CARVIN: It's unfortunate we have
 9 reached this impasse. There is no point in us
 10 arguing about it, but obviously, we are reserving the
 11 right to keep this deposition open to get an answer
 12 to these questions if we need judicial resolution
 13 whether or not speech and debate can be properly
 14 severed here. There is no point in me making a
 15 speech at this point. I will give you that notice
 16 that we may continue for that very little purpose in
 17 terms of the questions that he instructed you not to
 18 answer.
 19 Just so the record is clear, counsel, any
 20 additional questions about either the core group or
 21 the contents of that meeting, you would make the same
 22 instruction and give the same objection?
 23 MR. HARTH: No. I would make the same
 24 objection and give the same instruction.
 25 MR. CARVIN: Including the identification

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1 of the other five or six Democrats that constituted
 2 the so-called core group.
 3 BY MR. CARVIN:
 4 Q. Let me just ask you without reference to
 5 that conference, if there is a provision in the Act,
 6 I take it where Federal officials can go to
 7 fund-raising dinners where the purpose is
 8 fund-raising for state and local parties?
 9 A. I think that is correct.
 10 Q. If in your view a Federal officeholder
 11 candidate said something like let's support the
 12 party, and donor subsequently made soft money
 13 contributions to the party, would that create any
 14 liability or potential liability for the Federal
 15 officeholder under the Act?
 16 MR. HARTH: Well again, I'm going to
 17 object to Senator Feingold being asked questions
 18 about the fine points of how the Act should be
 19 enforced. He can certainly give his personal opinion
 20 to the extent that he is able to. If you would like
 21 to look at the ad.
 22 THE WITNESS: I feel that the regulations
 23 promulgated by the FEC adopted too narrow of a
 24 definition to be consistent with the purposes of the
 25 Act. I think that the FEC should develop rules that

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1 MR. CARVIN: Could we go off the record
 2 for a second. I think Mr. Abrams wanted three or
 3 four more minutes. So I'm done. Thank you very
 4 much.
 5 FURTHER EXAMINATION BY COUNSEL
 6 FOR PLAINTIFF McCONNELL
 7 BY MR. ABRAMS:
 8 Q. Really two questions that I forgot to ask
 9 you, Senator. I showed you a lot of story boards
 10 earlier. Let's just go back to one of them,
 11 Exhibit 3, which is the view, Senator Kohl by the
 12 National Pro Life Alliance. My question is assuming
 13 that the National Pro Life Alliance is a group which
 14 takes a corporate form.
 15 Assuming that the National Pro Life
 16 Alliance is a group that takes a corporate form, and
 17 that it paid for this ad, what is the appearance of
 18 corruption, if any, that this ad creates? I want to
 19 bring you back.
 20 A. If they have received large contributions
 21 for treasuries of corporations or individuals or
 22 unions to pay for these ads, I believe that these
 23 kinds of ads create a, an appearance of corruption in
 24 terms of our system. It's less direct than the
 25 problem that occurs when the contributions are made

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1 would probably permit the general kind of statement
 2 that you just posited, as long as there is not
 3 specific reference to fund-raising.
 4 That would be what I would hope for, but I
 5 would want to look at these, the language of what
 6 they come up with and this is why we are reviewing
 7 the number of options, as counsel has indicated.
 8 This is an ongoing matter.
 9 BY MR. CARVIN:
 10 Q. My final question is does the Act
 11 criminalize former President Clinton's infamous White
 12 House coffees for big donors? Would those be illegal
 13 under the Act as you understand it?
 14 A. The Act prohibits fund-raising on Federal
 15 property. Whether or not that reaches the specifics
 16 of the Lincoln Bedroom case, I would have to look
 17 very close to exactly what the arguments are there.
 18 It certainly would be my hope that those kinds of
 19 functions would no longer occur involving large
 20 unlimited contributions and in fact, they couldn't
 21 occur because people can't give those kind of checks
 22 any more. See it was not so much that there were
 23 coffees, it's that because of this corrupt system,
 24 somebody could be asked to give \$200,000 to come to
 25 the coffee. That's where the problem existed.

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1 directly to the national political parties, but it
 2 does allow an opportunity for contributions to be
 3 unlimited contributions to be funneled through other
 4 entities in a way that has not been permitted in the
 5 past, has not been a part of our political system in
 6 the past, and has led to the proliferation of these
 7 very troubling phoney issue ads.
 8 Q. When you refer, Senator, to large
 9 contributions or unlimited contributions, the statute
 10 doesn't look to those terms at all, does it? The
 11 statute would come into play if there was any
 12 contribution, however small, correct?
 13 A. The statute simply reflects the law of the
 14 land that has been in place since the Tillman Act of
 15 1907 and the Taft-Hartley Act with regard to
 16 corporation and unions since the Taft-Hartley Act in
 17 the late 1940s which says that corporations and
 18 unions cannot give direct contributions, and it
 19 extends the concept to funneling of corporate
 20 contributions to other entities.
 21 Q. It extends it no matter how small the
 22 contribution might be to the national pro-life group,
 23 correct?
 24 A. Only if it comes from a corporate reunion
 25 program. An individual can give their normal

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1 contribution. In fact, that's how I believe the
 2 right to life and NRA get most of their money and
 3 they would be completely, those contributions would
 4 be completely unaffected by our law.
 5 Q. But if they received any money from the
 6 corporation and it ran through their general funds
 7 and then an ad like this appeared, it would fall
 8 under the statute, would it not?
 9 A. I believe they have the opportunity to
 10 segregate the funds.
 11 Q. If they don't segregate the funds, it
 12 would fall into the statute?
 13 A. Right. But there is absolutely no reason
 14 why they couldn't segregate their funds. That's
 15 perfectly allowable.
 16 Q. Are there some organizations that don't
 17 want to segregate their funds?
 18 A. The ACLU is a good example.
 19 Q. Two more, and my time is up. You
 20 mentioned ads, and I have shown you ads which say
 21 call Senator so and so, contact Senator so and so.
 22 Your constituent sometimes do call you and contact
 23 you, do they not?
 24 A. Yes, they do.
 25 Q. And they sometimes talk about issues

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1 including abortion, right to life issues and other
 2 issues, do they not?
 3 A. Yes, they do.
 4 Q. In your opinion, are they sometimes
 5 affected by advertisements that they have seen on
 6 television?
 7 A. I'm sure they are.
 8 Q. Finally, you voted against the Wellstone
 9 amendment. Is that still a part of the law?
 10 A. Yes, it is.
 11 Q. And what is the impact of that, in your
 12 understanding, with respect to organizations such as
 13 501(c)4s and the like?
 14 A. My understanding is it brings them within
 15 the scope of the law, puts them in a similar posture
 16 as corporations and unions which were brought in with
 17 the addition of the Snowe-Jeffords amendment.
 18 Q. So if an organization which is a 501(c)4,
 19 say, puts out any of these ads, they would be treated
 20 just the same as a corporation or a union, correct?
 21 A. I'm not certain that they are treated just
 22 the same. There may be some nuances as between the
 23 Wellstone amendment and the Snowe-Jeffords amendment.
 24 I think it certainly adds them to the list of groups
 25 or organizations that are affected by the attempt to

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1 clean up this phoney issue ad problem.
 2 MR. ABRAMS: Thank you, Senator.
 3 EXAMINATION BY COUNSEL
 4 FOR ADAMS PLAINTIFFS
 5 BY MR. BONIFAZ:
 6 Q. Good afternoon, Senator. My name is John
 7 Bonifaz. I serve as co-counsel in the Adams V. FEC
 8 case which is one of the 11 consolidated cases.
 9 Unlike the other Plaintiffs' counsel in the room
 10 today and Plaintiffs' counsel for all other 10 cases,
 11 my clients have a very different issue.
 12 My clients support the soft money
 13 regulations in the McCain-Feingold bill. My clients
 14 support the issue, the sham issue ad regulations and
 15 in fact, to be clear, on behalf of my clients, we
 16 intend to file an amicus brief in support of the
 17 constitutionality of those provisions at a later
 18 stage.
 19 The focus in our case is on the hard money
 20 limit increases and to give you just a context for
 21 this, I'd like to introduce and have marked as an
 22 exhibit to our complaint. And just to read into the
 23 record for you, Senator, the first three paragraphs
 24 of this complaint.
 25 (Feingold Exhibit Nos. 19-20)

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1 were marked for identification.)
 2 BY MR. BONIFAZ:
 3 One, a fundamental principle of
 4 democracy -- rule by the people is that all of the
 5 people must have the equal opportunity to participate
 6 in the electoral process. The multiple provisions of
 7 the Bipartisan Campaign Reform Act of 2002, that
 8 increase hard money contribution limits threaten to
 9 undermine this fundamental principle of democracy, as
 10 guaranteed by the equal protection guarantee
 11 incorporated by the Due Process Clause of the Fifth
 12 Amendment to the United States Constitution.
 13 By dramatically increasing the maximum
 14 hard-money contributions that donors may make, the
 15 BCRA allows the voices of the few to drown out the
 16 voices of the many, thereby precluding a large
 17 segment of the voting populace from commanding
 18 candidates' attention to issues that concern them,
 19 rendering them voiceless and without influence in the
 20 political process and denying their right to equal
 21 participation in the electoral process. Similarly,
 22 the Millionaire Amendment denies the right to equal
 23 participation to candidates with high levels of
 24 grass-roots support but without access to large
 25 contributors.

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1 By creating these economic obstacles to
 2 equal participation in the political process, the
 3 multiple BCRA provisions that increase hard-money
 4 contribution limits violate the equal protection
 5 guarantee incorporated by the Due Process Clause of
 6 the Fifth Amendment to the United States
 7 Constitution.
 8 These influence the Fannie Lou Hamer Act,
 9 the United States Public Interest Research Group and
 10 three state-based PIRGs, and any number of voters and
 11 candidates led by Victoria Jackson Gray Adams, who
 12 along with Fannie Lou Hamer, led the Mississippi
 13 freedom delegation to the 1963 Democratic challenge
 14 of the seating of the all-white Mississippi
 15 delegation.
 16 Senator, I'd like to focus in on these
 17 claims first by asking you about your own campaign
 18 finance background, which is quite distinct from
 19 other colleagues of yours in the Senate. This
 20 exhibit comes from open secrets.org.
 21 Senator, this is based on your 1995, 2000
 22 profile and I'm wondering if you could just identify
 23 from this chart what it says about your small
 24 individual contributions.
 25 A. Apparently it indicates with regard to the

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1 source of funds. I don't know what time period this
 2 covers. 2000, that during that time period I
 3 received 55.5 percent of all my, of all of my
 4 contributions from small individual contributions of
 5 less than \$200. That's how I interpret this.
 6 Q. How typical is that for a United States
 7 Senator? To have that kind of breakdown?
 8 A. I'm not certain. My guess is it's pretty
 9 high percentage. I don't know for sure. I know
 10 there are some that rely on a much greater extent on
 11 PACs. Certainly candidate self-financing. Probably
 12 there are a much higher percentage of those that have
 13 individual contributions. I can't authoritatively
 14 speak to the fact that this is atypical. I don't
 15 have the statistics in front of me.
 16 Q. Based on your experience and background
 17 and based on those numbers, have you found that the
 18 prior thousand dollars contribution limits were
 19 sufficient and adequate for you to run an effective
 20 campaign, get your message out?
 21 A. I have never considered the prior thousand
 22 dollars limitation to be a barrier to my ability to
 23 run for office.
 24 Q. And can you comment in general about the
 25 importance of hard money contributions to political

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1 campaigns, particularly those that come with the
 2 maximum thousand dollar level for either you or your
 3 colleagues here in the Senate.
 4 A. Well, part of the picture, and as you have
 5 indicated, my campaign, they don't even constitute,
 6 they don't even constitute a majority of the
 7 contributions only, but at least during this period a
 8 third of the contributions, so I don't know, in large
 9 individual contributions is defined here as only \$200
 10 so the figure relating to the maximum would be much
 11 smaller.
 12 Q. Is it your understanding that a number of
 13 senators and candidates running for the United States
 14 Senate depend heavily on trying to get the largest
 15 amount, the maximum amount of contributions and hard
 16 money dollars for their campaigns?
 17 A. Again, I'd like to be able to help you but
 18 I don't know. I may know of a couple cases in the
 19 past, but I don't know of exactly to what extent
 20 certain senators rely on the larger contributions or
 21 not. I indicated I'm sure there are many who would
 22 do more of that than I do or have it as a greater
 23 percentage but I can't speak to who they are or how
 24 many there are.
 25 Q. You mentioned earlier today that you had

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1 objected to the use of hard money ads in your last
 2 campaign. Can you explain why you objected to that?
 3 A. It was not that they were hard money. It
 4 was that I had asked the Democratic Senate Campaign
 5 Committee to stay out of my race because of the terms
 6 of the soft money element. And I found it disturbing
 7 that they would on their own start running
 8 independent ads that happened to be hard money ads
 9 that were harshly negative with regard to my
 10 opponent.
 11 It's an approach that I never used in my
 12 career and to expect my constituents at a very
 13 critical time in the campaign to know that those ads
 14 were hard money versus soft money was too much to ask
 15 of my constituents because my opponent was accusing
 16 me of using soft money ads when of course, they were
 17 not. He was asserting that those were soft money
 18 ads. They were not, but how do you explain that to
 19 people, so I, even though I had asked that they
 20 simply not do the soft money ads, I also requested,
 21 although I certainly control them, I said this is
 22 inconsistent with the style of my campaign and
 23 inconsistent with my attempt to explain to the people
 24 of Wisconsin that I was drawing a line with regard to
 25 not doing, using soft money ads, even though my

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1 opponent was relying heavily on soft money ads
 2 directed by Senator McConnell to be used against me
 3 in Wisconsin.
 4 Q. You also said earlier today that I
 5 certainly had concerns about the excessive amount of
 6 hard money?
 7 A. Yes.
 8 Q. And can you explain why you had those
 9 concerns?
 10 A. Well, I think it's unfortunately true that
 11 prior to this whole soft money system arising that
 12 members are spending an awful lot of time spending
 13 too much time raising even the hard money. It was
 14 consuming too much of their time. There was an arms
 15 race going on about the hard money and it got worse
 16 with the soft money because you started having
 17 unlimited considerations and some people say because
 18 you could raise money in smaller amounts you can get
 19 it quicker.
 20 The amount you need gets bigger and bigger
 21 and it's an arms race. Even in the context of hard
 22 money, there was certainly a problem Senator Byrd has
 23 called fractured attention. Senators are either
 24 pushed under the soft or hard money system, but
 25 perhaps to a lesser degree, to constantly be raising

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1 money.
 2 Q. Do you think that the increased
 3 contribution limits will exacerbate those time
 4 pressures or alleviate them?
 5 A. I don't think it's going to help
 6 necessarily because, people have argued that to me.
 7 They have said, well, look, instead of having to call
 8 somebody up and ask them for \$2,000, they can call
 9 them up and ask them for \$4,000 and I asked the
 10 person that I was talking to what makes you think
 11 there won't be just as many calls but it will just be
 12 more money. I wouldn't argue that that somehow is a
 13 benefit of this change.
 14 (Feingold Exhibit No. 21 was
 15 marked for identification.)
 16 BY MR. BONIFAZ:
 17 Q. I'd like to introduce as the next exhibit
 18 an article from the Progressive Magazine. This is
 19 number 21. And to turn your attention to page 4 at
 20 the top, page 4 of 9.
 21 This is an interview you conducted with
 22 Matthew Rothschild, editor of The Progressive, and I
 23 will just read the question and perhaps you could
 24 read the answer into the record.
 25 The question is to me, the new law doesn't

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1 solve the basic problem which is politicians are
 2 still going to ask the richest Americans to finance
 3 their campaigns. Who can give \$1,000 or \$2,000 to a
 4 single candidate? Who can give a total of \$95,000
 5 over a two-year cycle? Your basic constituent can't
 6 write out that kind of check. And then you respond,
 7 according to this piece.
 8 Can you read that into the record?
 9 A. My response?
 10 Q. Yes.
 11 A. I agree. My ideal system would be public
 12 financing. My second choice would probably be \$100
 13 per person. For me it was worth it to get rid of
 14 unlimited contributions. It was worth it to
 15 acknowledge a little bit the argument that \$1,000
 16 25 years ago was much more than \$2,000 today. It was
 17 necessary in order to plug this soft money hole, but
 18 it's regrettable. That's why I wanted to move on to
 19 public financing.
 20 Q. First, Senator, why, in your view, just to
 21 expand on this, why was it regrettable?
 22 A. Because I believe as I believe Mr. Abrams
 23 does that a system of public financing is the best
 24 system and that's where we should be heading but we
 25 are not obviously able to get that done at this time.

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1 That's where I would like to be. I'd rather not be
 2 in the position of having to have campaign
 3 contributions.
 4 I would prefer it if members didn't have
 5 to engage in the practice of engaging in campaign
 6 contributions. I think that's the system we should
 7 have. They are having good experiences in places
 8 like Maine with that. It's unfortunate that even
 9 this hard money system is continuing the way it is.
 10 It is certainly in my view lesser evil than the soft
 11 money system, but there are problems with it.
 12 Q. What interests are promoted by public
 13 funding?
 14 A. I think that public funding gives people
 15 who normally couldn't run for public office, because
 16 of the cost of elections, a chance to participate.
 17 That's how I got into politics. We had a good public
 18 financing system in Wisconsin, partial public
 19 financing system when I first ran for the state
 20 Senate. I had no money then. I have no money now
 21 basically. But nobody ever said you need money to
 22 run for the state Senate and fortunately our
 23 progressive state at least at the time had a public
 24 financing system where people could check off I think
 25 a dollar, two dollars off your taxes to permit

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1 public, partial public financing of campaigns.
 2 The only thing you had to do was agree not
 3 to spend more than \$35 so if you raised half of that
 4 amount in small contributions as I did by contacting
 5 former teachers and cousins I had never heard of, I
 6 was able by middle of August to do that and then the
 7 State of Wisconsin issued a check for the other half
 8 and I was able to knock on doors and focus on that.
 9 I did not have to focus on fund-raising.
 10 I only won the election by 31 votes out of 47,000. I
 11 knocked on 15,000 doors. So I was enormously
 12 grateful for the wisdom of my state having that
 13 system and I regret that it's never been updated.
 14 You have to agree to \$35,000 limit when you have \$1
 15 million state Senate campaigns. I think Maine is
 16 having a good experience with this kind of system.
 17 It's obviously preferable to this money mess. It's
 18 preferable to the hard money system.
 19 Q. And do you think that the increased
 20 contribution limits in Bipartisan Campaign Reform Act
 21 help or hurt candidates who do not have access to
 22 wealth?
 23 A. Well, I think you can argue it either way.
 24 I suppose that there are those who would say that a
 25 person that doesn't have a lot of money would be able

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1 to get limited help under these limits from a group
 2 of people that they know well, would still be limited
 3 but they wouldn't have to spend as much time raising
 4 the money because they could get it. Others would
 5 say no, you have reached a point here where you are
 6 asking too much money from any individual and that
 7 that creates too much of a potential feeling of
 8 obligation, let's say, toward the people who gave the
 9 money.
 10 I wouldn't say those would be the
 11 arguments. I generally prefer that the contribution
 12 limits be where they were. I don't consider it a
 13 disaster that this happened, but as is known
 14 from my public statements, it was not something that
 15 I was excited about.
 16 Q. What do you think is going to be the
 17 overall impact of the increased contribution limits
 18 on the electoral process?
 19 A. I think the net result of McCain-Feingold
 20 by getting rid of soft money contributions while
 21 these hard money contributions go up will be net very
 22 positive for the system.
 23 Q. Senator, I recognize that you see it in
 24 its totality. I'm focused only, however, on certain
 25 provisions and because there is a severability clause

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1 currently in the law. That's all we are focused on
 2 in our case.
 3 What is the impact of the increased hard
 4 money contribution limits on the electoral process?
 5 A. I'm not certain. I don't think it's going
 6 to be a big help.
 7 Q. Why not?
 8 A. I think the thousand dollar limit worked
 9 okay. I don't think the \$2,000 was horribly wrong.
 10 I don't think it's a big plus of the bill.
 11 Q. Do you think it's going to make elections
 12 more or less competitive?
 13 A. I don't know.
 14 Q. What would your prediction be?
 15 A. I just don't know because it depends on
 16 how challengers and others that have a difficult time
 17 accessing political process use this provision.
 18 There could be people that are going to be able to
 19 get to the critical mass of funding more quickly
 20 because they can get the higher contributions. But
 21 my sense is a good grassroots campaign is best off to
 22 get most of their money from small contributions
 23 because you don't just get the money, you get the
 24 enthusiasm of so many people who don't just, they
 25 don't just contribute, they get up and talk it up and

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1 they are excited because they are giving their \$25.
 2 I think it could go either way. I can't
 3 really predict. I think there is certainly, we
 4 certainly could reach a point here where the increase
 5 would have been so significant that it would raise
 6 more questions, but I guess that's all I will say.
 7 Q. I'd like to focus on the sources of the
 8 thousand dollar contributors. Who in your view based
 9 on your experience and knowledge, who contributes at
 10 that level?
 11 A. You know it's a wide variety of people.
 12 Sometimes it's very wealthy people. Sometimes it's
 13 the schoolteacher down the road who has retired and
 14 knows you and knows you personally and so gives sort
 15 of a disproportionate amount. It really depends
 16 where, sort of what kind of campaign you have. I
 17 found that in my case the people who would give me a
 18 thousand when I was running as a challenger usually
 19 were people that knew me pretty well. They were not
 20 necessarily poor people but they weren't necessarily
 21 frankly wealthy people.
 22 This may be less true when it comes to
 23 incumbents.
 24 Q. How so?
 25 A. It's probably more likely that an

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1 incumbent would have more well-to-do thousand dollar
 2 contributors simply because of the number of people
 3 that frankly want to contribute to somebody that's
 4 already in office.
 5 Q. And what impact does that have both on the
 6 electoral and legislative process that incumbents
 7 raised significant amounts of money from well-to-do
 8 people?
 9 A. I don't think it's a positive impact. I
 10 think the negative impact is far less than the impact
 11 of soft money, but I don't think it's a positive
 12 impact in the process. That's why I prefer public
 13 finance. I think we are better off in a system where
 14 candidates agree to essentially take the same amount
 15 of money and they have a fair fight, rather than
 16 having one candidate either through their own
 17 personal financing or how they get their
 18 contribution. It's somewhat troubling to me.
 19 That's the way the system is and that's
 20 one of the reasons that Senator McCain and I
 21 originally sought to reform the hard money system by
 22 trying to create a situation where somebody who
 23 raised a modest amount of money could get free and
 24 reduced costs for television time so they wouldn't
 25 sort of be overwhelmed by the ability of an incumbent

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1 or self-financing. That was our vision of sort of in
 2 my view.
 3 I prefer as I have indicated public
 4 financing but my second choice is a system where
 5 candidates have a chance to say look, I'm not going
 6 to spend my time raising all kinds of money or I
 7 can't spend time raising all sorts of money. I'm
 8 going to limit myself and I'm going to get some free
 9 television time.
 10 Q. You mentioned in talking about that matter
 11 earlier today that you wanted to focus on at that
 12 time in that particular effort on how we could "give
 13 the little guy a chance to campaign."
 14 Did you think increasing the contribution
 15 limits as has been done in the bipartisan campaign
 16 reform format helps give the little guy a chance to
 17 campaign?
 18 A. I wouldn't cite that as the little guy
 19 provision. No.
 20 Q. Does it hurt the efforts of the little guy
 21 to campaign?
 22 A. I'm not certain that it hurts the little
 23 guy. I just don't know that it doesn't.
 24 (Feingold Exhibit No. 22 was
 25 marked for identification.)

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1 BY MR. BONIFAZ:
 2 Q. Next Exhibit is 22. It's a study,
 3 Senator, that was released in 1997 by four political
 4 scientists focusing on who the top end contributors
 5 are who give more than \$200 or more. These are hard
 6 money contributors. The study found nine out of ten
 7 are white male and that the vast majority earned over
 8 \$100,000 a year.
 9 Based on that information, are you
 10 troubled at all by the increased contribution limits
 11 which would conceivably give that top end elite pool
 12 of people more influence on the hard money side?
 13 A. What's your question again?
 14 Q. Based on that information, are you
 15 troubled at all by the likelihood that this top end
 16 donor pool will be able to give even more money on
 17 the hard money side?
 18 A. It would be a matter that I would want to
 19 think about and be concerned about. It's one of the
 20 reasons that I frankly spend a fair amount of
 21 campaign money doing the kinds of activities that
 22 allow me to give contributions from small
 23 contributors which statistics indicate are the
 24 majority of my contributors because I think each
 25 Senator has to make your own judgment about this but

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1 for me, I'm more comfortable getting more of my
 2 contributions from small contributors.
 3 I don't have a problem with getting some
 4 of my contributions up to whatever the hard money
 5 limit is, and I won't have a problem. But I will
 6 continue to prefer because of the types of concern
 7 there is a profile of my contributors that would
 8 indicate that the vast majority are not only in
 9 number which of course is overwhelming, but also even
 10 in quantity. It comes from smaller contributions. I
 11 am more comfortable with that. And the kind of
 12 information you give is consistent with why that
 13 gives me a comfort level and makes me feel better
 14 about the way I'm financing my campaign.
 15 Q. Do you think others here in the up states
 16 Senate share your concern about that?
 17 A. I can't speak to that. I know there are
 18 some members that agree with me on. This but I have
 19 not had this conversation one-on-one with most of the
 20 members of the Senate.
 21 Q. Are you aware of the process of bundling
 22 hard money contributions?
 23 A. I'm aware of the process that some groups
 24 are just, for example, a group called council for a
 25 livable world, some of these groups put together

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1 groups of contributions.
 2 Q. Do you define it, what do you know what
 3 bundling is?
 4 A. I believe it is a legally allowed, if we
 5 are talking about the same thing, process by which in
 6 certain circumstances an organization can solicit
 7 funds from contributors. Typically I think small
 8 contributors and that those contributions can be put
 9 together in a group and sent to a particular
 10 candidate's campaign, but I think there are
 11 limitations about how it can be done, what can be
 12 done.
 13 Q. Well, let's talk specifically about the
 14 Bush Pioneers?
 15 A. I have heard of them.
 16 Q. And the Bush Pioneers as you may know were
 17 individuals in the Bush campaign who were charged
 18 with raising at least \$101,000 contributors so they
 19 had to get up to \$100,000 to get that Pioneer label
 20 and they effectively bundled to get that label. In
 21 fact, there was a tracking system so that the Pioneer
 22 wannabes weren't getting credit for contributions
 23 coming to those that have already gotten the
 24 designated Pioneer label.
 25 Do you think these kinds of bundlers of

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1 hard money will gain greater influence with the
 2 increased hard money contribution limits?
 3 A. It's possible. I mean, I think that even
 4 though the process of bundling may be legal at this
 5 point, it's something that I think we have to
 6 continue to examine, although I am told that there
 7 are some serious, more serious constitutional
 8 questions relating to dealing with that problem than
 9 perhaps some of the other things that are included in
 10 the bill.
 11 It's possible that if there is that effect
 12 of a, for money raising machine, that we have to be
 13 on guard that somehow through what is technically the
 14 hard money system, the bundling of many, many checks
 15 of that size together could conceivably begin to
 16 re-create something that would begin to look like the
 17 soft money system. They would have a long way to go
 18 because there is some difference, huge difference
 19 between being, writing a \$500,000 check versus
 20 getting 500 of them. But it's the kind of thing that
 21 I would look at and be concerned about as I go on to
 22 the legislative process and that I would watch unfold
 23 as this legislative process goes on and what happens
 24 to it.
 25 Q. Do you think a poor person running for

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1 political office without access to wealthy friends,
 2 without access to wealthy interests running up
 3 against someone, an incumbent perhaps, or even a
 4 challenger with access to that kind of network, do
 5 you think the increased hard money contribution
 6 limits help or hurt that low-income candidate?
 7 A. It would probably help the low-income
 8 candidate some but it would help the incumbent more.
 9 Q. How does it help?
 10 A. They would be able to identify a few
 11 people who are say close friends, a couple of people
 12 they know and get more money. On the other hand, the
 13 incumbent would probably be able to identify a lot
 14 more of those people, so there is always this
 15 question raised of, the way I have always looked at
 16 campaigns is not who has the most money, it's whether
 17 you have enough money to get your message out so it's
 18 always this question and there is the thing, the
 19 point of diminishing returns so the incumbent raises
 20 such an outrageous amount of money and runs a big
 21 money campaign against somebody who had raised
 22 enough.
 23 I mean that person can sort of, as long as
 24 they can get their message out, they may win even
 25 though they have less money. The problem is a lot of

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1 people can't get to that threshold. So I would say
 2 these provisions may help people get to that
 3 threshold but they may prefer not to have that option
 4 because of the opportunities it gives the incumbent.
 5 Q. I'm going to just turn to the next exhibit
 6 related to the point you were just discussing,
 7 Senator. This is from the Congressional Record and
 8 it focuses on the debate on what is commonly referred
 9 to as the Millionaire Amendment.
 10 (Feingold Exhibit No. 23 was
 11 marked for identification.)
 12 BY MR. BONIFAZ:
 13 Q. I'd like to turn your attention to a floor
 14 statement by Senator Dodd in this matter. I will
 15 give you a page number in a moment.
 16 Let me turn your attention to S. 2451, a
 17 statement made by Senator Domenici, first column
 18 there highlighted in your copy, essentially in that
 19 context it is an equalizer amendment. It is a fair
 20 play. This is referring to the Millionaire
 21 Amendment.
 22 Do you agree with that characterization is
 23 the Millionaire Amendment an equalizer amendment?
 24 MR. HARTH: I'm going to object on speech
 25 and debate clause grounds to this line of

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1 questioning. I think we get into the actual
 2 senatorial debate and ask the Senator for comments on
 3 that debate, you are going to the core of that
 4 privilege. I'm going to instruct the Senator not to
 5 answer that question.
 6 MR. BONIFAZ: Well David, I'm asking the
 7 Senator his view as to whether or not the Millionaire
 8 Amendment is an equalizer amendment. It may be that
 9 Senator Domenici said that on the floor but I asked a
 10 series of questions that reflected much of the debate
 11 in the Congressional Record and you didn't object to
 12 those. So I'm not sure what the consistency is with
 13 your objection to this question.
 14 MR. HARTH: I think if you were to ask the
 15 question without reference to the Congressional
 16 debate, if you were to ask him in his personal
 17 opinion is this an equalizer, I wouldn't have a
 18 problem, but when you want him to comment on excerpts
 19 from the floor debate with respect to a bill that the
 20 Senate was considering, I do have a problem with
 21 that.
 22 BY MR. BONIFAZ:
 23 Q. Senator, in your personal view, is the
 24 Millionaire Amendment an equalizer amendment?
 25 A. I don't know what that means.

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1 Q. Is it an amendment that creates fair play,
 2 a level playing field?
 3 A. I think you can argue it either way.
 4 Q. What do you believe?
 5 A. I'm not sure. It's not my favorite way to
 6 get at the problem. Otherwise I probably would have
 7 been more into voting for it.
 8 Q. Why is it not your favorite way?
 9 A. I indicated I believe in public financing
 10 of campaigns to solve the problem or voluntary limits
 11 on spending in order to solve the problem. To me,
 12 this, this isn't as good as those other two in my
 13 personal view.
 14 Q. Senator Dodd referred to this as
 15 incumbency protection. Do you believe that in your
 16 personal view the Millionaire Amendment protects
 17 incumbents?
 18 MR. HARTH: Well, are you asking him
 19 whether he agrees with a specific statement by
 20 Senator Dodd?
 21 MR. BONIFAZ: No, I was just giving the
 22 context of that question, but I'm asking him in his
 23 personal view whether he believes the millionaire
 24 amendment protects incumbents.
 25 THE WITNESS: In my personal view?

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1 BY MR. BONIFAZ:
 2 Q. Yes?
 3 A. It could go either way. We have
 4 multimillionaire senators and multimillionaire
 5 challengers. It depends on the race.
 6 Q. Are you aware of the concept of war
 7 chests, campaign war chests?
 8 A. As I understand the term, it's an attempt
 9 to build up a large amount of campaign contributions
 10 and the way it's been expressed sometimes is
 11 sometimes in politics, I have heard it is an attempt
 12 to discourage people from running against you.
 13 That's one connotation of the phrase war chest.
 14 Q. Do you believe that the increased
 15 contribution limits will enable those who engage in
 16 building up campaign war chests and trying to
 17 discourage anyone from competing against them, do you
 18 think the increased contribution limits will advance
 19 that effort?
 20 A. Far less so than the soft money system,
 21 but it is certainly more likely to advance that cause
 22 than not. Or that attempt to create a war chest than
 23 not.
 24 Q. And what impact do you believe that will
 25 have on competition in Federal elections?

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1 A. If it has that impact, it could
 2 potentially discourage some people from running
 3 against a candidate.
 4 Q. Do you believe that it protects and
 5 enhances the integrity of the campaign process to
 6 increase contribution limits?
 7 A. I don't think it advances it. No. I
 8 don't think it necessarily does enormous damage at
 9 the level we are talking about here, but I certainly
 10 don't think it advances the process.
 11 Q. Does it do any damage to the integrity of
 12 the electoral process?
 13 A. I think every increase involves a greater
 14 possibility of damage. I am not able completely to
 15 counter the argument that's been made by Senator
 16 McConnell in the past which is what a thousand
 17 dollars was worth in 1973 versus what a thousand
 18 dollars is worth now. It's different. So I have
 19 never been entirely able to argue that the \$2,000 now
 20 is really greater than the thousand was before.
 21 Q. But your campaign experience shows that
 22 you have been able to run under the thousand dollars
 23 limit?
 24 A. Sure. I'm just saying in terms of the net
 25 effect of the process, I'm not sure you could

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1 effectively argue that a \$2,000 contribution today is
 2 more harmful than a thousand dollar contribution 20
 3 years ago. I think Senator McConnell gets carried
 4 away when he says it would be perfectly appropriate
 5 to increase it to \$3,500. You know, of course, I'm
 6 no fan of this but if the question is, what was your
 7 question again specifically?
 8 Q. What was my last question? I had asked
 9 you about competition whether it damaged the
 10 integrity of the electoral process?
 11 A. My guess is it doesn't help the question
 12 to what extent it was, to what the thousand dollar
 13 limit was 20 years ago. It may be roughly.
 14 Q. What impact do you believe the increased
 15 contribution limits have on the ability of ordinary
 16 citizen voices to be heard in the political process?
 17 A. I don't think it prevents them from being
 18 heard.
 19 Q. Does it damage it in any way? Does it
 20 hurt it in any way?
 21 A. I think if it's used, if candidates come
 22 to rely almost exclusively on this kind of
 23 contribution, and they ignore attempts to try to get
 24 smaller dollar contributions from other people, that
 25 there is a scenario where it could be helpful. That

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1 is not necessarily what would happen, but people came
 2 to rely principally on just people who gave them
 3 \$2,000, I think that would be potentially somewhat
 4 harmful to the -- to others.
 5 Q. What about on the public perception, and I
 6 want to divide this public perception in different
 7 ways, first on the public perception of corruption in
 8 the political process, leaving aside the soft money
 9 regulations which again my clients support.
 10 What impact will increasing the hard money
 11 limits have on public perception and corruption
 12 through the process?
 13 A. Well, I suspect it will be less than would
 14 have been the case prior to the development of the
 15 soft money system. I don't think you can answer that
 16 question in isolation from the soft money system
 17 because what has happened in the last few years
 18 during this horrible period when soft money has come
 19 to dominate our process is the amounts of money that
 20 used to seem like a lot of money don't seem like much
 21 at all.
 22 You start talking about hundred thousand
 23 dollar contributions in connection with the Lincoln
 24 Bedroom or \$150,000 to hear Cheryl Crowe at some
 25 party at the Democratic Convention in L.A.

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1 unfortunately, those amounts are so huge that I'm not
 2 sure people would react the same way to \$2,000 or
 3 \$4,000 than they would prior to the advent of soft
 4 money.
 5 It sort of desensitizes those people to
 6 those kind of distinctions and to the point where
 7 people used to complain bitterly about how much
 8 Political Action Committees can give and they are
 9 kind of shocked when they hear how much they can give
 10 now, \$10,600 a year to a Senator. It's dwarfed by
 11 the amounts that soft money can give.
 12 I'm going to ask for one quick break. 10
 13 minutes. Of course I meant 10.
 14 (Recess.)
 15 (Feingold Exhibit No. 24 was
 16 marked for identification.)
 17 BY MR. BONIFAZ:
 18 Q. Senator, the next exhibit is an Associated
 19 Press story that came out during the Senate debate on
 20 McCain-Feingold.
 21 I'd like to turn your attention to the
 22 quote by Senator Dodd. It is incredible that anyone
 23 would ever entertain such a thought as part of the
 24 campaign reform mechanism.
 25 A. What is the date of this article?

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1 Q. The date of this article, I apologize,
 2 it's not in here. It was March 2001 during the
 3 debate?
 4 A. Where did it appear?
 5 Q. It was an AP story that ran, this came off
 6 of AP archive website as of September 6 of this year.
 7 A. Okay.
 8 Q. So actually March 27th, 2001. Could you
 9 please comment as to whether you agree or disagree
 10 with that statement Senator Dodd made publicly to the
 11 Associated Press?
 12 A. Well, Chris Dodd is one of the reasons we
 13 succeeded in this battle because he did such a
 14 brilliant job of managing the floor debate. I would
 15 say that he states this a little more strongly than I
 16 would. I can't agree that it would be incredible
 17 that we would think about raising the limit. As you
 18 know, my ideal world, I would have preferred that we
 19 did not, but I think suggesting that it's incredible
 20 that we raise it is a little bit stronger than I
 21 would state it.
 22 Q. What about the other part of that that
 23 it's the cost of the American public that can afford
 24 to write a \$1,000 check. Do you agree with that part
 25 of the statement?

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1 A. Well, that it's a cost of living
 2 adjustment.
 3 Q. To give you the context, number of
 4 senators in support of this limit argued that there
 5 needed to be a cost of living adjustment to the
 6 contribution limits, and his counter to this was the
 7 people that give these \$1,000 are the top 1 percent
 8 of the American population so we are simply giving
 9 them a cost of living adjustment?
 10 A. I don't think it was necessary or
 11 essential for our democracy that we raise this limit,
 12 but I don't think it's irrational for people to argue
 13 that adjusting the figure up is consistent with
 14 inflation since the thousand dollar limit was first
 15 put into place. I don't consider it to be incredible
 16 or astonishing.
 17 Q. Okay. The next exhibit is an article
 18 which appeared in general public perspective May-June
 19 2002 entitled Raising Limits.
 20 (Feingold Exhibit No. 25 was
 21 marked for identification.)
 22 BY MR. BONIFAZ:
 23 Q. It's led by Clyde Wilcox. I'd like to
 24 turn your attention to the last page of this article.
 25 Second to last paragraph.

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1 What, then, is the likely impact of
 2 doubling the individual contribution limits?
 3 Although only one in six donors claim they would give
 4 more, and one in 20 would give less, the cumulative
 5 impact could be significant. Increased giving is
 6 likely to exacerbate the upper status character of
 7 the of the donor pool, providing greater voice to
 8 wealthy businessmen and individuals already heavily
 9 engaged in giving.
 10 Do you agree with that statement, Senator?
 11 A. It's a possible outcome. Another scenario
 12 that I think is probably a little bit less likely
 13 than more likely is that some candidates would choose
 14 to get less total contributions from wealthy people
 15 but get more from a smaller group of wealthy people.
 16 How I feel about that, I'm not certain but I think
 17 it's conceivable. I think overall there is a
 18 possibility what this says is true. I can't be sure.
 19 Q. If it does come to be true, what these
 20 scholars predict, do you think that does damage to
 21 the integrity of the electoral process? The
 22 exacerbation of the upper status character of the
 23 donor pool providing greater voice to wealthy
 24 businessmen individuals already engaged in giving?
 25 A. I think it depends on what's happening in

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1 the process and other contributors and other ways of
 2 raising money but I would say the odds of it being
 3 helpful to the process are not very good.
 4 Q. Do you think it could have the effect of
 5 further undermining public confidence in the
 6 political process?
 7 A. It's possible. As I said a few minutes
 8 ago, in light of the alarming huge soft money
 9 contributions, I don't know to what extent this level
 10 of increase will make people feel less comfortable
 11 with the political process. It may. I just think
 12 that until people are sort of get away, have a chance
 13 to get away from these alarmingly huge contributions,
 14 they may not see this as a big deal, or they may, but
 15 my guess is probably not for a while, until people
 16 are used to hearing that \$4,000 is a lot of money
 17 rather than \$400,000.
 18 Q. Do you think it's possible if this
 19 prediction is true that it would make the system more
 20 unequal?
 21 A. It can. It depends on what mix of
 22 contributions a particular candidate keeps. As I
 23 said, if somebody decided look, I'm just going to
 24 take a few of maximum contributions from a few
 25 individuals, but I'm going to get most of my money

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1 from direct mail from small contributors, it is
 2 possible that the mix that that person had would be
 3 in my view more progressive and more small dollar
 4 overall.
 5 I think it's also very possible it would
 6 go the other way. It depends on the individual
 7 person. As you have suggested, there are differences
 8 in the way each of us raise our funds and each
 9 candidate will have to make their own judgment under
 10 this law, not only of how much they are going to rely
 11 on these levels of contributions, but what else is
 12 part of the picture, how much PAC money will they
 13 take, et cetera, et cetera.
 14 Q. Senator, do you believe that leveling the
 15 playing field, promoting equality in the political
 16 process should be recognized as a constitutionally
 17 legitimate government interest in the campaign
 18 finance law context, personal view?
 19 A. I have never seen it in terms of equality.
 20 I have seen it in terms of from my view of making
 21 sure that everybody has a fair chance to participate
 22 so strict equality. In other words, both candidates
 23 having absolutely the same amount of money is not
 24 something I have always considered essential.
 25 I would love a voluntary public financing

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1 system and I would like people to opt to do that but
 2 my sort of message on this for a good 15 years before
 3 I was in the U.S. Senate is a qualified person who
 4 doesn't have a lot of money should be able to run for
 5 office and find a way to be able to get enough money
 6 to get their message out.
 7 They don't need to have as much as the
 8 other candidate but if they can't get to that
 9 critical mass to get their message out, that's to me
 10 the greatest problem rather than strict equality.
 11 And that's been my experience in my campaigns is that
 12 I, I have had to fight hard to get that critical mass
 13 but somehow we have gotten there and I have been
 14 outspent in just about every race I have ever been
 15 in.
 16 I managed to win but I think it's because
 17 I did have to get enough in order for people to know
 18 I was there. So no, I don't usually put it in terms
 19 of equality. I do believe this, that our system
 20 should try to approximate one person one vote as much
 21 as possible, that each person's vote should count the
 22 same, and I believe the soft money system clearly
 23 violates that system. I believe the hard money
 24 system sometimes as it's, when it is abused also
 25 violates that principle, and so my goal is to have

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1 the funding of campaigns not undermine the
 2 fundamental constitutional principle that everybody's
 3 vote should count the same.
 4 Q. What that everybody should be able to
 5 participate in the process on an equal, meaningful
 6 basis? Do you believe that's an important goal in
 7 the campaign finance law context?
 8 A. I think everybody should be able to
 9 participate in the process. I don't think that means
 10 we can prohibit certain levels of participation, just
 11 because somebody else doesn't participate. I don't
 12 think we could, for example, have, well, I think we
 13 would have voluntary public financing but I think it
 14 would be hard to demand strict equality in that
 15 regard but I think we could certainly seek to have
 16 sufficient rules, hard money limits and the like to
 17 make sure that no individual or group has such an
 18 excessive opportunity to dominate the process that it
 19 basically causes the other person's participation to
 20 be meaningless.
 21 Q. One of our clients is a woman, Cynthia
 22 Brown, who is running for the United States Senate in
 23 North Carolina. And she faces a situation where she
 24 would run again, where she may face somebody who put
 25 some significant amounts of his own money into his

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1 campaign, triggering the Millionaire Amendment, and
 2 she also may if she were to run outside of a
 3 two-party system face another candidate who was able
 4 to raise significant more amounts of hard money as a
 5 result of that Millionaire Amendment.
 6 Do you think candidates like Cynthia Brown
 7 who does not --
 8 A. Is she an incumbent?
 9 Q. No. Cynthia Brown is a challenger
 10 candidate?
 11 A. What's she running for?
 12 Q. For the United States Senate in the
 13 primary.
 14 A. In the Democratic primary?
 15 Q. Yes.
 16 A. Okay.
 17 Q. But she may choose and she has already
 18 made this clear in the complaint, she may choose to
 19 run again, and my question to you is --
 20 A. Excuse me. Run again. Has she lost this
 21 time?
 22 Q. If she doesn't prevail. Thank you. If
 23 she doesn't prevail. And so my question is what
 24 impact based on this discussion on equality and equal
 25 participation, what impact will increasing the

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1 contribution limits in accordance with the
 2 Millionaire Amendment have on her type of candidacy
 3 when faced with both the self-funded candidate and
 4 the candidate who is able to raise significant
 5 amounts more of our money.
 6 Does that new system help or hurt her
 7 based, compared to the old system?
 8 MR. HARTH: We are assuming she is a
 9 third-party candidate.
 10 MR. BONIFAZ: She is in the primary now.
 11 It could be in the primary or in the general. Either
 12 way, she is someone who does not have an ability to
 13 raise large thousand dollar contributions, let alone
 14 \$2,000, \$6,000, \$12,000 that are allowed under the
 15 Millionaire Amendment. The scenario is she is
 16 running against a self-funded candidate and another
 17 candidate that can raise potentially up to \$12,000
 18 per individual.
 19 BY MR. BONIFAZ:
 20 Q. Does this amendment, this Millionaire
 21 Amendment, help or hurt her opportunity, her
 22 participation in the political process, particularly
 23 in comparison to the prior system that existed?
 24 A. It may be the hour, but I'm having a
 25 little trouble evaluating this. I guess I can

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1 imagine a series of scenarios where it would make it
 2 harder for her. But it's hard for me to evaluate
 3 such a complicated hypothetical. Just a lot of
 4 variables.
 5 Q. I'm sorry, it's complicated.
 6 A. I'm not trying to be difficult.
 7 Q. I'm not trying to be difficult either,
 8 Senator. Well, you know, let me make it straighter.
 9 There are a fair number of people in this country who
 10 don't have the ability to raise maximum contribution
 11 levels at the thousand dollar level, today. Large
 12 numbers of people can't run for office trying to
 13 raise that kind of money.
 14 Is that a truism? Would you agree with
 15 that there are significant numbers of people. I
 16 don't want to put a percentage on it but significant
 17 amounts of people do not have the ability to raise
 18 significant contributions?
 19 A. There are many that couldn't raise much of
 20 it.
 21 Q. Under the Millionaire Amendment, if they
 22 run against someone who is self-funded and someone
 23 else who doesn't have the ability to raise
 24 significant amounts of money from large donors, is
 25 that kind of candidate helped or hurt by the

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1 Millionaire Amendment?
 2 A. I could see where they might get hurt. I
 3 can see where it might be a difficult situation.
 4 Q. Do you think that --
 5 A. I think it's a reasonable point.
 6 Q. Do you think that that kind of candidate
 7 is better off or worse off than the prior hard money
 8 limit?
 9 A. Without the millionaire's amendment?
 10 Q. Right.
 11 A. I can conceive of a situation where that
 12 person would be worse off. It's not easy for me to
 13 conceive of a situation where that person was better
 14 off.
 15 Q. Senator, you have often taken to the floor
 16 of the Senate to call the bankroll. You talked about
 17 this earlier today. Could you explain again why
 18 individual hard money contributions were not included
 19 in your discussion in calling the bankroll?
 20 A. We thought about just doing soft money
 21 contributions, and then --
 22 MR. HARTH: We are going to object to the
 23 question to the extent that it calls for the
 24 Senator's internal deliberations about the content of
 25 a speech that he gave on the floor of the Senate.

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1 MR. BONIFAZ: Fair enough. I will
 2 rephrase my question.
 3 BY MR. BONIFAZ:
 4 Q. When you think about the influence of
 5 money in the political process, and you mentioned
 6 publicly whether it's on the floor of the Senate or
 7 outside the Senate, the MBMA influence on the
 8 bankruptcy bill or the Federal Express example and so
 9 forth, does hard money at all come into the picture
 10 as a corrupting problem? Or at least the perception
 11 of corruption. Does hard money at all come into the
 12 picture?
 13 A. I have principally thought of the
 14 corruption issue in the context of soft money. But I
 15 can imagine scenarios where certain levels of hard
 16 money contributions could lead to an appearance of
 17 corruption. It is not inconceivable. To me the
 18 value of the hard money limits is that it is
 19 something that people can see that a person can give
 20 no more than this amount. There isn't this feeling
 21 of unlimited access or unlimited influence.
 22 But it is not inconceivable to me that
 23 that, that those kinds of problems arise in a hard
 24 money system and I think I have even said that I
 25 consider the hard money system that we have today and

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1 the hard money system that we will have after this
 2 bill is in place needs reforming, and part of the
 3 reason it needs reforming is that it also is less
 4 than attractive to the American people.
 5 I think it is far more attractive than the
 6 soft money system but it is still not attractive and
 7 I think it still has enough problems that it does
 8 allow for a discussion and concern about appearance
 9 of corruption.
 10 Q. Why is it less attractive? Why is it not
 11 as attractive to the American people as well?
 12 A. Why isn't it attractive?
 13 Q. Right.
 14 A. Because I think the American people are
 15 generally uncomfortable with the idea of their
 16 elected officials raising money, and I think they
 17 would be even more comfortable if politicians didn't
 18 have to raise money at all. That would be the ideal
 19 confidence builder, I think for the American people
 20 and that's why I support public financing.
 21 Q. You mentioned also earlier about these
 22 Democratic caucus lunches in which people were urged
 23 to raise money and to help certain candidates. In
 24 any of those kind of efforts or comments at these
 25 meetings, did hard money get mentioned?

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1 A. Yes.
 2 Q. Yes. And how so?
 3 A. Sometimes the push is for raising hard
 4 money, sometimes the push is for raising soft money.
 5 It's usually both.
 6 Q. Does it trouble you that hard money is
 7 part of the effort in those meetings where people are
 8 encouraged, pressured to help raise large amounts of
 9 hard money?
 10 A. Yes. I don't think the caucus room of the
 11 United States Capitol is a great place for that to be
 12 going on.
 13 Q. Do you think the increased contribution
 14 limits will exacerbate that problem?
 15 A. I don't think it will make them push
 16 harder or less hard. I think it will probably be the
 17 same. Probably the amount of money will be, I don't
 18 know for sure but I'm guessing the amount of money
 19 might be greater. I think it's likely the amount of
 20 hard money would be greater because there won't be
 21 the soft money so there is this fear there they are
 22 going to lose all kinds of money because of soft
 23 money being banned.
 24 I suspect there will be a fair amount of
 25 push to raise hard money and recognizing it can be

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1 raised in larger amounts per person. I suspect there
 2 will be a fair amount of that conversation, as much
 3 as I regret it.
 4 Q. Additional pressures to raise hard money?
 5 A. Those moments that are currently devoted
 6 to pushing us to raise soft money will be devoted to
 7 push us to raise hard money. The total amount of
 8 time that is spent pushing could become greater
 9 because it might be a little harder to raise the kind
 10 of money that parties become accustomed to in hard
 11 money amounts, so whether 15 minutes, an hour and a
 12 half is devoted to fund-raising or 25 minutes, we
 13 will find out.
 14 All I can tell you is when I first came to
 15 the Senate, about all they ever said about these
 16 meetings about fund-raising was we are going to have
 17 our annual dinner in two weeks at 7 o'clock and we
 18 hope senators will help by raising funds for one
 19 table of thousand dollars a person at the table.
 20 That was sort of the high water mark, and it has
 21 grown and grown and grown exponentially to the point
 22 where it is sort of the kickoff of the lunches every
 23 week.
 24 Q. You mentioned the MBNA example in the
 25 bankruptcy bill. Did hard money play any role in

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1 MBNA's influence for the bankruptcy bill?
 2 A. I don't know about that particular
 3 company. I wouldn't be surprised if it did. I just
 4 am aware of having cited the soft money example.
 5 Q. So you are aware of MBNA soft money
 6 donations but not hard money donations?
 7 A. I may have been aware of it. I may have
 8 placed it in the record at some point. It's very
 9 possible that I put PAC money contributions by MBNA
 10 or credit card companies in the record when I did the
 11 calling of the bankruptcy bill. I refer you to my
 12 calling of the bankruptcy bill which I believe I did.
 13 Q. Are you aware of any example in which the
 14 bundling of individual hard money limits, not PAC,
 15 but individual hard money, I'm sorry, are you aware
 16 of any example in which that kind of bundling had
 17 influence with legislation on Capitol Hill?
 18 A. Not off the top of my head. I mean, I
 19 just don't remember any particular conversation or
 20 discussion of bundling per se as having had an impact
 21 on a particular bill. I'm not saying it couldn't
 22 have, I just don't have any recollection at this
 23 point.
 24 Q. So you are not aware that MBNA funneled
 25 significant amounts of hard money dollars to members

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1 of the Senate Commerce Committee, particularly ones
 2 up for re-election during the bankruptcy debate?
 3 A. I'm not saying it's not true. I'm not
 4 saying I have not referred to it on the Senate floor.
 5 It may be true. I don't doubt it. I would concede
 6 that it would be part of the picture here of what's
 7 happened on this bankruptcy bill, if that's true.
 8 Q. Based on your experience and background,
 9 do ordinary citizens and voters enjoy access equal to
 10 that of large hard money donors on Capitol Hill?
 11 A. As a general proposition, probably not. I
 12 can't say that at any particular office or any
 13 particular period of time that that would, wouldn't
 14 be true. My overall sense is that the larger
 15 contributors might have better access.
 16 Q. How would increasing the contribution
 17 limits affect the disparity of access?
 18 A. I doubt it will help.
 19 Q. Will it exacerbate the disparity?
 20 A. It could. It doesn't have to, but it
 21 could.
 22 Q. Based on your experience and background,
 23 do you believe that ordinary citizen voters enjoy
 24 access equal to large hard money contributors with
 25 respect to intervention with agencies of the

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1 executive branch?
 2 A. I don't know for sure. It would be my
 3 hope that members intervene on the basis of the
 4 merits of what their constituents need.
 5 Q. What do you believe, though, is the case?
 6 A. I guess I'm not ready to say with any
 7 certainty that most members have a differential
 8 policy for contributors as opposed to others with
 9 regard to Federal agencies. I know that there may be
 10 examples. But I would hate to just say that without
 11 having the kind of actual basis to say it. It's
 12 possible.
 13 Q. How do you think increased contributions
 14 will affect future presidential campaigns?
 15 A. Well, I am somewhat concerned that it
 16 could cause more presidential candidates to choose
 17 not to use the public financing system.
 18 Q. Why is that?
 19 A. Well, they may choose as George Bush did
 20 to raise unlimited hard money rather than doing what
 21 all the other presidential candidates in the last 40
 22 years as I understand had done which is to opt for
 23 the public financing.
 24 Q. Do you think it will --
 25 A. Simply because it provides the opportunity

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1 Q. I was reading Mr. Rivers' quote and I'm
 2 interested in your comment on how the increased
 3 contribution limits will affect this problem
 4 Mr. Rivers identifies in terms of the negatively
 5 disproportionate impact that African-Americans face
 6 having decidedly less income, less disposable money
 7 to participate in the campaign financing process.
 8 What impact will the increased
 9 contribution limits have on that problem?
 10 A. Well, you know, I'm not certain. It could
 11 be negative. As I said, it depends on what
 12 individual candidates decided to be the mix of their
 13 contribution. It is possible that somebody would
 14 decide, look, I'm going to raise only 20 percent of
 15 my contributions from large groups. And I'm going to
 16 raise the rest from small contributors. It's
 17 possible that they would choose to do that, whereas
 18 they wouldn't have in the past because they can do it
 19 more quickly through less people or larger checks.
 20 Q. But their opponent, who could raise
 21 significant numbers of contributions at the maximum
 22 level would now have even more money?
 23 A. I'm referring, well, it depends on the
 24 situation. I mean, I can imagine a scenario,
 25 although perhaps it's less likely than more likely

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1 to raise a lot more than the public financing arena.
 2 Q. Do you think it will give greater
 3 influence to bundlers like the Bush Pioneers?
 4 A. It could.
 5 (Feingold Exhibit No. 26 was
 6 marked for identification.)
 7 BY MR. BONIFAZ:
 8 Q. Senator, my next exhibit is The Color of
 9 Money study which is Public Campaign organization
 10 based in Washington, D.C. that you know quite well
 11 put out in 1998.
 12 This study analyzed zip codes in the
 13 country finding that those top 100 donor communities
 14 were 80 percent white and gave an average of 1.4
 15 million and the communities with the highest
 16 concentration of people of color gave an average of
 17 \$7,000. There is a quote from Nelson Rivers III of
 18 the NAACP. He says we are impacted in a negatively
 19 disproportionate way. Since African-Americans have
 20 less income, less disposable money than people in the
 21 country, we are at a disadvantage when money is the
 22 deciding factor in whether you can participate.
 23 A. I'm sorry, I need a one-minute break.
 24 (Recess.)
 25 BY MR. BONIFAZ:

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1 where somebody would say I'm going to raise 20
 2 percent of my contributions from large contributors
 3 then what I'm going to do is a direct mail campaign
 4 that would be targeted at people who can only give \$5
 5 because I would really like to have a lot of
 6 contributors from all parts of the state who give
 7 less money and who have less money.
 8 To me, that would be one way to handle
 9 this. It's more likely probably that people will use
 10 this as a way to raise more money from large
 11 contributors.
 12 Q. Than to discourage competition?
 13 A. More likely, but not certain. I think
 14 people could not only for reasons of principle, but
 15 also for reasons of good politics realize that a
 16 better course is to try to get a lot of small
 17 contributions from a lot of people because it has a
 18 real positive impact on your campaign.
 19 Q. Sure. The next article is from roll call
 20 May 21, 2001.
 21 (Feingold Exhibit No. 27 was
 22 marked for identification.)
 23 BY MR. BONIFAZ:
 24 Q. I'd like to turn your attention to
 25 Congressman Bennie Thompson's lead quote in this

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1 piece that says the perception that increasing hard
 2 money is one of the key fixes for campaign finance
 3 reform for a lot of the members of the Congressional
 4 Black Caucus is absolutely erroneous, because we very
 5 rarely get the maximum amount of contributions under
 6 the present \$1,000 limitation.
 7 For traditionally disenfranchised groups,
 8 particularly communities of color, Senator, do you
 9 believe increased contribution limits help members of
 10 those communities participate in the political
 11 process at the Federal level both as candidates and
 12 as voters?
 13 A. Well, I regret Representative Thompson's
 14 adamant opposition to our legislation. But I would
 15 agree with his statement that increasing hard money
 16 is not one of the key fixes for campaign finance
 17 reform. I'd certainly agree with him on that. It's
 18 not one of the key fixes.
 19 Q. The next exhibit is a Washington Post op
 20 Ed by professor Spencer Overton to be marked as
 21 Exhibit 28.
 22 (Feingold Exhibit No. 28 was
 23 marked for identification.)
 24 BY MR. BONIFAZ:
 25 Q. I'd like to turn your attention to the

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1 second full paragraph in the second column. This
 2 piece is entitled Reform for the rest of America. He
 3 says "Economic and racial disparities would only
 4 increase under the amended McCain-Feingold. While
 5 the soft-money ban narrows the gap between the upper
 6 middle class and the super rich, the increase in hard
 7 money limits broadens the gap between these wealthier
 8 interests and all other Americans. Just like the
 9 poll tax, increase hard money limits further shut out
 10 those in our society who are the most marginalized.
 11 Do you agree with that statement, Senator?
 12 A. No. I think the statement economic and
 13 racial disparities have only increased as amend the
 14 McCain-Feingold bill is absolutely correct. I think
 15 the balance is clearly in favor of those groups
 16 because the relative advantage of getting rid of the
 17 huge soft money contributions overwhelms any damage
 18 that will occur from increasing the hard money limits
 19 so if the question is what's the net effect of the
 20 bill, I don't think this person can be more wrong.
 21 Q. Can I focus on the last sentence. Just
 22 like the poll tax, increased hard money limits
 23 further shut out those in our society who are the
 24 most marginalized? Do you agree with that statement?
 25 A. I think it's a pretty harsh

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1 characterization to suggest this is like the poll
 2 tax.
 3 Q. Do you think it has any exclusionary
 4 effect on those who are at the bottom of the economic
 5 ladder?
 6 A. I think it's conceivable. I think it
 7 creates some problems, but I think it's not helpful
 8 to the effort for campaign finance reform to start
 9 suggesting that an increase in hard money limits is
 10 like the poll tax. I think it's rhetoric that is
 11 unfortunate, and it gets in the way of the point I
 12 think you are trying to make, which is that it may
 13 move us in the wrong direction in some regards.
 14 (Feingold Exhibit No. 29 was
 15 marked for identification.)
 16 BY MR. BONIFAZ:
 17 Q. Senator, the next journal article is from
 18 Poverty & Race?
 19 A. I understand this is very good.
 20 Q. And I'd just like to turn your attention
 21 to the quote from James Madison on the first page
 22 there who wrote The Federalist Papers, number 57, Who
 23 are to be the electors of the Federal
 24 representatives? Not the rich, more than the poor;
 25 not the learned, more than the ignorant; not the

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1 haughty heirs of distinguished names, more than the
 2 humble sons of obscure and unpropitious fortune. The
 3 electors are to be the great body of the people of
 4 the United States.
 5 Senator, do you believe that the increased
 6 contribution limits are consistent with that vision
 7 that James Madison puts forth?
 8 A. I don't think the hard money increase in
 9 the bill by itself changes who the electors are at
 10 the Federal representatives.
 11 Q. Do you think it gives any further
 12 advantage to those who are at the very top end of the
 13 economic ladder?
 14 A. It could give some advantages.
 15 Q. And does that make it possible based on
 16 James Madison's concern that the rich more than the
 17 poor will have greater influence in electing our
 18 Federal representatives?
 19 A. I think that's possible. I just can't
 20 agree with Mr. Madison. If the implication was
 21 Mr. Madison's statement is that it somehow changes
 22 who the electors are, that language bothers me. If
 23 we are talking about the possibility that abuses in
 24 this area could affect the principle of one person,
 25 one vote, then I think I could understand it in that

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1 context.

2 In other words, I think what he is saying,

3 what you are saying by quoting him is that if a

4 system is such that it sort of makes the one person's

5 vote count less than another person's vote that

6 that's a concern.

7 Q. Do you think that the increased

8 contribution limits could have that impact?

9 A. I think there is some possibility, but I

10 think it is so dramatically less than the current

11 problem of soft money that it is, it sort of pales by

12 comparison.

13 Q. Standing alone, though?

14 A. It could, although again, I cannot have

15 not been able to completely counter the article that

16 a thousand dollar limit that was agreed to 25 years

17 ago cannot be considered much different than a \$2,000

18 limit today given what money buys and what people's

19 income is.

20 Q. That wasn't the rationale for the

21 Millionaire Amendment, however?

22 MR. HARTH: I'm going to object to that

23 question as calling for testimony on the speech and

24 debate clause. The Senator cannot be required to

25 explain the rationale of his legislation.

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1 BY MR. BONIFAZ:

2 Q. Sure. I'll rephrase it. You talked

3 several times in the past hour and a half about the

4 argument out there that inflation and so forth could

5 be recognized, but is it your understanding that the

6 Millionaire Amendment advances that interest from

7 your personal standpoint? Is that what that's about?

8 A. Advances which interest?

9 Q. Of dealing with the costs of campaign, the

10 inflationary concern that other members of the Senate

11 have put forward?

12 A. I don't think the millionaire's amendment

13 as I read it relates to the issues of inflation.

14 Q. What does it relate to?

15 A. As I understand, what I think people are

16 trying to achieve with that is that it relates to the

17 facts that millionaires spend their own personal

18 money and the view that a person could be able to

19 counter that by being able to raise a greater amount

20 of hard money from somebody than they otherwise would

21 be able to do. I guess that's what it's about.

22 Q. Did you vote for the Millionaire

23 Amendment?

24 MR. HARTH: I'm going to object to that as

25 being objectionable in the speech and debate clause.

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1 He cannot be questioned about his vote outside the

2 Senate chambers. I'm going to instruct him not to

3 answer that. It's obviously a matter of public

4 record but that really goes to the very heart of the

5 privilege.

6 BY MR. BONIFAZ:

7 Q. Senator, if the Supreme Court in taking up

8 all of these consolidated cases were to strike down

9 the millionaire amendment as unconstitutional, would

10 you favor or oppose that decision?

11 A. I don't think it's my job to favor or

12 oppose decisions of the U.S. Supreme Court unless I

13 have a prospect of passing legislation to ask them to

14 take another look at it, so I guess I will just

15 accept whatever the court decides on this. I can

16 tell you this. If for whatever reason the Supreme

17 Court decided that this was unconstitutional, I think

18 the bill that we propose would be intact, and you

19 will have achieved our primary objectives, but I did

20 vote for the overall bill, and so in so doing, I, I

21 at least, I hope that the Court approves the whole

22 bill, but there is some provisions that I think are

23 more critical than others.

24 Q. Would it strengthen the cause of reform if

25 the Millionaire Amendment were to be struck down?

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1 A. I'm not sure. I can argue that. I can

2 try to argue it the other way. I have mixed

3 feelings.

4 Q. You have mixed feelings?

5 A. Yes.

6 Q. What are those feelings?

7 A. Some things I like about the amendment.

8 There is some things I really don't like about the

9 amendment.

10 Q. What don't you like about it?

11 A. I don't like sort of a approach to solving

12 the problem of big money in politics that relates to

13 significantly raising contribution limits by multiple

14 as opposed to solving it with public financing or

15 giving people a chance to get reduced cost television

16 time. It's just not sort of my preference in terms

17 of how to solve this problem.

18 Q. Would it strengthen the cause of reform if

19 the overall increased contribution limits were to be

20 struck down?

21 A. I don't think it would do any harm. Might

22 be a good thing.

23 Q. Why might it be a good thing?

24 A. Might be a good thing.

25 Q. Why?

