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UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

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MITCH McCONNELL et al.,      :
                               :
      Plaintiffs,            :
                               :
      v.                      : No. 02-582
                               :
FEDERAL ELECTION COMMITTEE et al. :
                               :
      Defendants.           :
-----X

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Washington, D.C.

Monday, September 23, 2002

Deposition of

MITCH McCONNELL

a Plaintiff, called for examination by  
counsel for Adams Plaintiffs pursuant to  
notice and agreement of counsel, beginning  
at approximately 8:30 a.m. at the Russell  
Senate Office Building, Washington, D.C.,  
before Mark Mahoney of Beta Reporting &  
Videography Services, notary public in and  
for the District of Columbia, when were  
present on behalf of the respective parties:

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ALSO PRESENT:

ADAM KOZ  
U.S. Public Interest Research Group

DEREK CRESSMAN  
Democracy Program Director  
National Association of State PIRGs

\* \* \* \* \*

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1 P R O C E E D I N G S

2 Whereupon,

3 MITCH McCONNELL

4 was called as a witness and, having been  
5 first sworn, was examined and testified as  
6 follows:

7 EXAMINATION BY COUNSEL FOR ADAMS

8 PLAINTIFFS

9 BY MR. BONIFAZ:

10 Q Good morning, Senator.

11 A Good morning.

12 Q My name is John Bonifaz. I am the  
13 director of the National Voting Rights  
14 Institute in Boston, and co-counsel with my  
15 colleague, Bonnie Tenneriello for the Adams  
16 plaintiffs: Adams, the FEC, which is one of  
17 the 11 consolidated cases along with yours  
18 challenging certain provisions of the  
19 Bipartisan Campaign Reform Act.

20 Our clients are challenging the  
21 constitutionality of increases in the hard  
22 money contribution limits. Our questions

1 are going to focus on that subject this  
2 morning.

3 As a preliminary matter, just  
4 before I begin my line of questions,  
5 Senator, you've sat for a deposition before  
6 and given testimony in the past?

7 A Actually, I don't think I have  
8 given a deposition before.

9 Q You're aware that you're under  
10 oath today?

11 A I'm aware of that.

12 Q Your questions need to be verbal.  
13 The court reporter cannot pick up nodding  
14 and so forth.

15 MR. BARAN: His answers you mean?

16 MR. BONIFAZ: Yes -- need to be  
17 verbal.

18 THE WITNESS: Yes.

19 MR. BARAN: Can I ask if you will  
20 identify people at the counsel table so the  
21 record will reflect that.

22 MR. BONIFAZ: Sure. Go ahead. My



1 name is John Bonifaz again, counsel for  
2 Adams plaintiffs.

3 MS. TENNERIELLO: Bonnie  
4 Tenneriello, also counsel for Adams  
5 plaintiffs.

6 MR. LIOZ: My name is Adam Lioz.  
7 I'm the Democracy advocate for U.S. PIRG,  
8 which is one of the Plaintiffs in the case.

9 MR. CRESSMAN: Derek Cressman,  
10 Democracy program director for the state  
11 PIRGs.

12 MR. MOGILNICKI: Good morning. My  
13 name is Eric Mogilnicki. I'm with Wilmer  
14 Cutler & Pickering, and we represent  
15 Defendant intervenors.

16 MS. BECK: Stacy Beck, also with  
17 Wilmer Cutler & Pickering on behalf of  
18 intervenors.

19 MR. BATES: Hunter Bates on behalf  
20 of the Plaintiff, Tom McInerney.

21 MS. BUCKLEY: Susan Buckley. I'm  
22 with Cahill Gordon on behalf of the Senator.

1 MR. BARAN: I'm Jan Baran with  
2 Wiley Rein & Fielding on behalf of Senator  
3 McConnell.

4 MR. ABRAMS: I'm Floyd Abrams with  
5 Cahill Gordon on behalf of Senator  
6 McConnell. Everyone here is subject to the  
7 protective order then.

8 MR. BONIFAZ: Yes.

9 MR. BARAN: Just so that it's made  
10 clear, you two gentleman are not counsel in  
11 this proceeding.

12 MR. LIOZ: No.

13 MR. CRESSMAN: No.

14 MR. BARAN: Therefore, any  
15 questions or documents that are counsel  
16 only --

17 MR. BONIFAZ: Correct. They'll be  
18 excused.

19 MR. BARAN: You'd require them to  
20 be excused.

21 MR. BONIFAZ: Yes.

22 MR. BARAN: I think we have two

1 gentlemen back here.

2 MR. COOPER: Chuck Cooper with  
3 Cooper & Kirk. I represent the National  
4 Rifle Association.

5 MR. TITUS: I'm Herb Titus,  
6 Congressman Ron Paul.

7 MS. DUTCHER: I'm Valle Dutcher.  
8 I represent a group of plaintiffs in the  
9 McConnell case, Southeastern Legal  
10 Foundation; Center for Individual Freedom;  
11 Right to Work Foundation; 60 Plus; Pro  
12 English; and Congressman Bob Barr.

13 BY MR. BONIFAZ:

14 Q Just to continue on, Senator. We  
15 will be asking the first round of questions  
16 today. If at any time you need take a  
17 break, that's obviously permitted. There  
18 may be breaks that we need to take to confer  
19 from time to time. But we will go for three  
20 hours on our end of questioning, and the  
21 defendant intervenors counsel, will have  
22 four hours of questioning.

1           Have you consulted with anyone in  
2 preparation for the testimony you're going  
3 to be giving today?

4           A     I've consulted with my lawyers.

5           Q     Have you consulted with anyone  
6 else?

7           A     No.

8           Q     Thank you. First, I'd like to get  
9 into your campaign background. When did you  
10 first run for the United States Senate?

11          A     1984.

12          Q     To your recollection, how much did  
13 you raise in that campaign?

14          A     A little under \$2 million.

15          Q     Do you remember how much you  
16 spent?

17          A     Every penny of it.

18          Q     Did you have an opponent in the  
19 primary in that --

20          A     In the primary? There was a token  
21 opponent.

22          Q     "Token" meaning what?

1           A     Someone who filed because he liked  
2     to see his name in the paper.

3           Q     So did that opponent raise any  
4     money?

5           A     I don't remember.

6           Q     Did you have a general election  
7     opponent in 1984?

8           A     I did indeed.

9           Q     How much did that opponent raise?

10          A     Oh, this is a guess, but in the  
11     range of a half a million dollars more than  
12     I.

13          Q     Did that opponent spend every  
14     penny of it, to your knowledge?

15          A     I don't recall specifically, but  
16     it was a hotly contested race. I don't  
17     recall specifically, but it was a very  
18     contested race.

19          Q     You won that election; is that  
20     right?

21          A     I did.

22          Q     Do you remember the percentage of

1 the vote?

2 A Three-tenths of 1 percent. About  
3 a vote a precinct.

4 Q Then in 1990, you ran again for  
5 re-election.

6 A I did.

7 Q Did you have a primary opponent  
8 then?

9 A I believe there were -- there was  
10 one or more token opponents again.

11 Q How much did you raise for that  
12 primary election?

13 A I don't recall.

14 Q Overall for the whole general  
15 election.

16 A Overall? Somewhere between 5  
17 and 6 million.

18 Q Did you have a general election  
19 opponent that year?

20 A I did indeed.

21 Q Do you remember how much your  
22 general election opponent raised?

1           A     I don't. I don't. It was a very  
2     contested race. He was very visible.

3           Q     Was it anywhere near your 5  
4     million?

5           A     It was not as much, but I don't  
6     recall exactly how much he spent.

7           Q     Then again, this last cycle before  
8     this year 1996, do you remember how much you  
9     raised for the '96 general election  
10    campaign?

11          A     That's the one we were just  
12    talking about, wasn't it?

13          Q     1990, we were talking about.

14          A     Oh, I'm sorry. In '96, I think he  
15    raised slightly less than I did in '90, but  
16    in the same general range, roughly \$5  
17    million.

18          Q     Did you have a primary opponent  
19    in '96?

20          A     I believe I had a token opponent.

21          Q     That token opponent raised how  
22    much?

1 A I don't know.

2 Q Far less than 5 million?

3 A I'm certain of that, but I don't  
4 know. I'm not sure.

5 Q Did you spend nearly all that  
6 money in '96?

7 A I did.

8 Q Did you have a general election  
9 opponent in '96?

10 A Well, I thought you were referring  
11 to the general election. Yes, we spent  
12 virtually all of the money in the general  
13 election.

14 Q Your general election opponent, do  
15 you recall how much he or she raised?

16 A I don't.

17 Q Was it anywhere near your 5 to 6  
18 million?

19 A It was certainly enough to be very  
20 competitive.

21 Q In all these races, Senator, that  
22 you've been in, were you able to effectively



1 compete in each of them for the office of  
2 the United States Senate?

3 A Well, since I was successful, I  
4 think I successfully competed.

5 Q You were able to get your message  
6 out.

7 A As were my opponents.

8 Q You had enough money to do that.

9 A In the dollars of that era, in  
10 each of the dollar -- as you know, there's  
11 been a lot of inflation over the last 18  
12 years. But based upon the cost of  
13 campaigning at that time, both myself and my  
14 opponents were able to get their message  
15 across.

16 Q As early as six years ago, you had  
17 enough money to get your message out.

18 A The difficulty was that the  
19 increase in cost is so dramatic that after  
20 each -- over a six-year period, spending the  
21 same amount of money buys you considerably  
22 less. In other words, you get less

1 opportunity to reach the voters with the  
2 same amount of money with the passage of  
3 time.

4 Q I understand that, Senator, but I  
5 just want to make sure we're clear here.  
6 You said you've been able to effectively  
7 compete in each of these races, which  
8 includes the most recent one in 1996; is  
9 that right?

10 A Well, I was successful in the  
11 race, but I was able to reach fewer voters  
12 with the same amount of money in 1996 that I  
13 did in 1990.

14 Q Were you able to purchase  
15 television time in 1996?

16 A I was.

17 Q Were you able to purchase radio  
18 time?

19 A I believe we did, yes.

20 Q Were you able to pay for campaign  
21 staff in 1996?

22 A I was.

1 Q Were you able to pay for printed  
2 materials for your campaign in 1996?

3 A I was.

4 Q Were you able to conduct mailings  
5 to potential voters in 1996?

6 A I don't believe we did mailings  
7 out of the -- we probably did some  
8 fundraising mailings.

9 Q Were you able to conduct any  
10 get-out-to-vote efforts in 1996?

11 A That's typically done by the  
12 parties.

13 Q Your campaign did none of that on  
14 Election Day?

15 A My recollection is that that  
16 function is typically done by the parties.

17 Q What percentage of your  
18 contributors, Senator, give \$1,000 or more  
19 to you for your campaigns?

20 MR. BARAN: I object to the form  
21 of the question. Which campaign are you  
22 talking about now?

1           MR. BONIFAZ: All of them in  
2 general. Well, I'll go ahead and start  
3 with '96.

4           THE WITNESS: I don't know.

5           BY MR. BONIFAZ:

6           Q     Do you have a general  
7 understanding or you have no idea?

8           A     I have no idea.

9           Q     Do you place any particular  
10 importance on those who can give you \$1,000  
11 at the maximum level for the primary and/or  
12 the general?

13           MR. BARAN: I object to the form  
14 of the question. I don't know what you mean  
15 by "any particular importance."

16           BY MR. BONIFAZ:

17           Q     Senator, you can go ahead and  
18 answer the question.

19           MR. BARAN: You can answer it, if  
20 you can, Senator. Go ahead.

21           THE WITNESS: Well, I'm certainly  
22 grateful for the donors who support me,

1 whether it's a \$5 contribution or a maximum  
2 contribution.

3 BY MR. BONIFAZ:

4 Q You just spoke about the cost of  
5 campaigning. Is it fair to assume that the  
6 more you can raise, the better you are able  
7 to get your message out?

8 A I'm told that the cost of  
9 campaigning goes up about 40 percent over a  
10 six-year term, and -- so there's no question  
11 that you reach fewer and fewer people and  
12 are able to do less and less over the years  
13 by raising the same amount of money.

14 Q So those who are able to give  
15 you \$1,000 contributions, are they able to  
16 get you to that higher level of overall  
17 campaign funds more quickly than those who  
18 are able to give you only \$5?

19 A Well, it depends. There are some  
20 candidates who have very successful  
21 direct-mail appeals because they're able to  
22 appeal to a broad number of people, and

1 those kinds of candidates receive a  
2 substantial amount of their funds from  
3 smaller donors. It just depends on the  
4 candidate and the campaign.

5 Q I'm asking about your experience  
6 in your campaigns.

7 A I don't remember. As I told you  
8 earlier when you asked this question, what  
9 percentage of campaign contributions came  
10 from large donors versus medium donors  
11 versus smaller donors, the FEC records would  
12 reflect that.

13 Q Right. But this is a different  
14 question than the percentage. The question  
15 is, in your campaign experience, have you  
16 been able to reach a higher level of  
17 campaign resources more quickly with those  
18 who are able to give \$1,000 donations versus  
19 those able to give \$5?

20 A I don't know what you mean by  
21 "more quickly."

22 Q If you have a fundraiser

1 with \$1,000 contributors and 100 people  
2 come, are you raising more money more  
3 quickly than if you had a 100 people come  
4 who could only give \$5?

5 A But if you had a lot of people  
6 come who were only giving \$5, there might  
7 not be any distinction between the two.

8 Q But with that hypothetical I just  
9 gave you.

10 A You know, there are events of all  
11 sizes. Some of them are huge events where  
12 you have people there who've given smaller  
13 amounts. It varies. It just depends on the  
14 nature of the event.

15 Q Do you know any of your \$1,000  
16 contributors?

17 A Do I know any of them? Yes. I  
18 also know a lot of my small donors.

19 Q How do you go about raising  
20 your \$1,000 contributions?

21 A It could be direct mail. It could  
22 be large events. It could be medium-sized

1 events. It could be small events.

2 Q Can you describe these events?

3 A Sometimes they're in people's  
4 homes. Sometimes they're in hotels. I  
5 guess that's about the only place you could  
6 have an event would be in somebody's home or  
7 some meeting hall of some sort. Yeah,  
8 that's typically what it is.

9 Q Who are these people who are  
10 coming to these events giving \$1,000 each?

11 A Who are they?

12 Q Yes. Can you describe them?

13 A People who support me for  
14 re-election.

15 Q What about their backgrounds? Do  
16 you know anything about their backgrounds?

17 A I really don't.

18 Q But you know some of them.

19 A I know some of them, and I know a  
20 lot of people who contribute at all levels.

21 Q Those who you know, what do you  
22 know about their backgrounds, the \$1,000



1 contributors?

2 A Which ones are you referring to?

3 Q You can break it down for me. You  
4 said you know some of your \$1,000  
5 contributors.

6 A Well --

7 Q Of those whom you know, what can  
8 you tell me about their backgrounds? Who  
9 are they?

10 A They're all kinds of people. It  
11 could be a farmer, small businessman,  
12 professional. There's no one background  
13 that you could conclude people have. As you  
14 know, in this country, people are -- this is  
15 a very diverse country, with all kinds of --  
16 people engaged in all kinds of activities.  
17 There's simply no way to characterize what a  
18 typical donor is like.

19 Q Do any of your donations come from  
20 out of state?

21 A Yes.

22 Q Any of your \$1,000 donations come

1 from out of state?

2 A I assume so. We'd have to check  
3 the FEC records to --

4 Q Why would people from out of state  
5 be giving you money for your campaigns?

6 A Because I'm a United States  
7 Senator and work on issues that affect the  
8 entire country, and for that matter, the  
9 entire world.

10 Q Senator, I'd like to introduce  
11 into the record what we'll mark as McConnell  
12 Exhibit 1.

13 MR. BONIFAZ: I'm sorry, I don't  
14 have copies for all counsel here.

15 (McConnell Deposition Exhibit  
16 No. 1 was marked for  
17 identification.)

18 MR. BARAN: Before you begin the  
19 questioning, will you be questioning on the  
20 whole document?

21 MR. BONIFAZ: No, just a couple  
22 pages.

1           MR. BARAN: All right. Because I  
2 do want the Senator to have a chance to read  
3 the pages, depending on --

4           MR. BONIFAZ: Sure. Sure, that's  
5 fine.

6           MR. BARAN: It's up to you how you  
7 phrase the questions.

8           BY MR. BONIFAZ:

9           Q     Just before getting to this  
10 document, Senator, I have one other question  
11 relating to my prior set of questions. Do  
12 you believe a foreign national should be  
13 allowed to contribute to your campaigns?

14          A     I believe that's -- unless they're  
15 in the country with a green card, I believe  
16 that's prohibited.

17          Q     Your testimony about being a  
18 United States Senator, you cover both  
19 domestic and foreign policy; is that right?

20          A     Um-hmm.

21          Q     What is the distinction between  
22 why people from outside Kentucky but live in

1 United States citizens can give you -- or  
2 having a green card can give you money, but  
3 others cannot?

4 A I don't know. You'll have to ask  
5 the framers of the existing law. But that  
6 is -- I believe that's been the law for  
7 quite some time.

8 Q But in your opinion, should  
9 foreign nationals be allowed to contribute  
10 to political campaigns?

11 A That's been the law for quite some  
12 time. If you have a green card, I believe  
13 you're able to contribute. If you don't,  
14 you can't.

15 Q Senator, I understand what the law  
16 is. I'm asking your opinion.

17 A I think the law speaks for itself.

18 Q Does that mean you do not believe  
19 foreign nationals should be able to give to  
20 your campaign?

21 A I believe in complying with the  
22 law as it is written. That's my

1 understanding of what the law is.

2 Q Turning to this study, entitled:  
3 "Individual Congressional Campaign  
4 Contributors: Wealthy, Conservative and  
5 Reform-Minded." This is a study produced  
6 in 1997 by four political scientists.  
7 Senator, if you can please review the first  
8 two pages, and I'll then ask some questions  
9 about it.

10 Senator, turning your attention to  
11 page 2 of this study, and under the  
12 heading "1., Social Characteristics." The  
13 study found, "Congressional donors are  
14 overwhelmingly drawn from the most powerful  
15 and affluent groups in American society."  
16 Then there's a chart there demonstrating  
17 that four-fifths of donors report an annual  
18 income of more than \$100,000 a year, and  
19 only 1 in 20 had incomes of less  
20 than \$50,000 a year. Twenty percent had  
21 incomes of \$500,000 or more.

22 Other important characteristics of

1 the donors included that more than 9 out  
2 of 10 are white, four-fifths are male. More  
3 than four-fifths are 45 years or older.

4 Based on your campaign experience,  
5 is this study reflective of the donor pool  
6 that you have had giving you the maximum  
7 level of contributions?

8 MR. BARAN: First, I want to  
9 object to the question on a number of  
10 grounds. There's no foundation laid as to  
11 what this study is, who wrote it, whether  
12 it's worthy of reliance at all. It is a  
13 piece of paper, which is hearsay as far as  
14 this case is concerned. It's a document,  
15 which as far as we know, the Senator's never  
16 seen before. To premise questions on this  
17 supposed accuracy of statements in this  
18 piece of paper seem to me plainly  
19 objectionable.

20 If you want the Senator's views on  
21 whether if he knows more than 9 out of 10 of  
22 his contributors are white, that's one

1 thing. But I'll object to all questions,  
2 based on the accuracy or indeed the  
3 existence of this study.

4 BY MR. BONIFAZ:

5 Q Senator, you can go ahead and  
6 answer my question.

7 MR. BARAN: Could you reread the  
8 question, please?

9 (The reporter read the record as  
10 requested.)

11 THE WITNESS: Well, I really have  
12 no idea. We don't require our donors to  
13 give us financial statements. I have no  
14 idea what their income level is or -- so I  
15 really just don't know.

16 BY MR. BONIFAZ:

17 Q You stated earlier that you know  
18 some people who have given you the maximum  
19 level of contributions. Do you know any  
20 schoolteachers who've given you that maximum  
21 level of \$1,000?

22 A I -- I don't know what the

1 professions are of the donors. The FEC  
2 records I believe require to make our best  
3 effort to get that. But I couldn't tell you  
4 off the top of my head what the incomes --  
5 or I wouldn't know what their income was or  
6 what their profession is of donors.

7 Q Do you know any waiters or  
8 waitresses who've given you a \$1,000 or  
9 more?

10 A As I said, I don't know the income  
11 level or the occupations. I have no  
12 recollection of that, of the people who  
13 support me.

14 Q Do you know any coal miners who  
15 have given you \$1,000 or more?

16 A As I said, I don't -- I don't --  
17 we don't check our donors to find out what  
18 their occupations are or what their income  
19 level is.

20 Q Do you know any nurses who have  
21 given you \$1,000 or more?

22 A As I said, we don't check on the



1 occupation or the income level of donors.

2 Q Do you know any janitors or maids  
3 who have given you \$1,000 or more?

4 A I don't -- as I've said, I don't  
5 know the occupation nor do I know the -- how  
6 much that my donors make.

7 Q Do you know anyone who holds a  
8 minimum wage job who's given you \$1,000 or  
9 more?

10 A As I've said, I don't know the  
11 income level or occupation of the donors  
12 that have contributed to me.

13 Q Do you know any corporate  
14 executives who have given you \$1,000 or  
15 more?

16 A As I said, I don't -- I don't look  
17 at the income level or the occupation.

18 Q Senator, you understand you're  
19 under oath?

20 A I do.

21 Q Do you know any corporate  
22 executives who have ever given you \$1,000 or

1 more?

2 A I know a number of people who've  
3 given me \$1,000 or more in a whole variety  
4 of different occupations.

5 Q Do you know if any of them are  
6 corporate executives?

7 A Some of them are corporate  
8 executives; some of them are other things.

9 Q Thank you. Moving to your 2002  
10 race, how much money have you already raised  
11 for the 2002 race for re-election,  
12 approximately?

13 MR. BARAN: Could you repeat the  
14 question? I'm sorry.

15 MR. ABRAMS: Could you ask the  
16 question again, please?

17 BY MR. BONIFAZ:

18 Q Moving to the 2002 race, how much  
19 money have you already raised for your  
20 re-election campaign for the 2002 general  
21 election?

22 MR. BARAN: I will object to

1 questions about the 2002 campaign starting  
2 January 2002. We have had agreements  
3 reached with respect to the scope of  
4 discovery in this case which cut off  
5 discovery as of the end of 2001. The 2002  
6 race is underway now, and I will object to  
7 questions about it and direct the witness  
8 not to respond to questions about it.

9 MR. BONIFAZ: We'll take a break.

10 (Recess)

11 MR. BONIFAZ: I'd like to  
12 introduce another exhibit to be marked as  
13 McConnell Exhibit 2.

14 (McConnell Deposition Exhibit  
15 No. 2 was marked for  
16 identification.)

17 BY MR. BONIFAZ:

18 Q Senator, this is from  
19 opensecrets.org, which is a website at  
20 Center for Responsive Politics which  
21 analyzes data from the Federal Election  
22 Commission. The first page has a breakdown

1 of the total amount of money raised and  
2 spent by you in the 2000 race and the total  
3 amount of money raised and spent by your  
4 Democratic opponent. In turning to page 2,  
5 there is a breakdown of in-state versus  
6 out-of-state monies raised. Then page 3,  
7 top metro areas where you and your opponent  
8 have raised money.

9 We spoke earlier about people  
10 giving you money from out of state. Why are  
11 so many people giving you money from New  
12 York, Senator?

13 MR. BARAN: I object to the form  
14 of the question. You can answer.

15 THE WITNESS: You'd have to ask  
16 the donors why they contribute.

17 BY MR. BONIFAZ:

18 Q Why are so many people giving you  
19 money from the Washington, D.C. metropolitan  
20 area?

21 MR. BARAN: I object to the form  
22 of the question.

1 BY MR. BONIFAZ:

2 Q Go ahead and answer, Senator.

3 A As I said, you'd have to ask the  
4 donors why they contribute.

5 Q You have no idea why these two  
6 major metropolitan areas outside of your  
7 state are the leading outside-of-state metro  
8 areas donating to your campaign?

9 MR. BARAN: I object to the form  
10 of the question. I object to the assumption  
11 and the question of the accuracy of  
12 somebody's website. If the Senator knows  
13 what the answer is, he's free to answer it.

14 BY MR. BONIFAZ:

15 Q Go ahead, Senator.

16 A Again, I think you'd have to ask  
17 the donors why they contribute. I assume  
18 it's because they like my work.

19 Q They just happen to be from New  
20 York and Washington, D.C.

21 MR. BARAN: I object to the form  
22 of the question.

1 BY MR. BONIFAZ:

2 Q Go ahead, Senator.

3 A I think the FEC reports reflect  
4 where the donors reside.

5 (McConnell Exhibit 3 was marked  
6 for identification.)

7 BY MR. BONIFAZ:

8 Q Next exhibit, we mark as McConnell  
9 Exhibit 3. Senator, this is a breakdown of  
10 individual donor data from the 1997-2002  
11 cycle, focusing on tobacco and mining  
12 individual donors. Then a second chart  
13 focusing on top individual donors, which  
14 overlaps in some part where the tobacco and  
15 mining donor was. This was produced by the  
16 Center for Responsive Politics based on FEC  
17 data.

18 I'd like to turn your attention to  
19 page 2 of this chart. Under the first line  
20 there of the second chart, do you see  
21 Guardsmark, Inc., \$47,000?

22 A Um-hmm.

1 Q Do you know what Guardsmark, Inc.  
2 is?

3 A Yes.

4 MR. BARAN: First, I want to  
5 object to questions based on an  
6 unauthenticated document, which counsel may  
7 vouch for but which gives no indication on  
8 its face as to who prepared it and on what  
9 basis.

10 But you can answer the question of  
11 whether you know what Guardsmark, Inc. is.

12 THE WITNESS: Yes, I know what  
13 Guardsmark Inc. is.

14 BY MR. BONIFAZ:

15 Q What is Guardsmark, Inc.?

16 A I believe it's a private security  
17 firm.

18 Q Where is it based?

19 A Memphis, I think.

20 Q Do you know individuals associated  
21 with Guardsmark, Inc.?

22 A I do.

1 Q Why is Guardsmark, Inc. giving  
2 you \$47,000 in total?

3 A You'd have to ask -- well, I don't  
4 think Guardsmark, Inc. has given me \$47,000.  
5 You'd have to ask each of those donors why  
6 they contributed.

7 Q You have no idea why individuals  
8 associated with Guardsmark, Inc. have given  
9 you a total of \$47,000?

10 A The chairman of the company is a  
11 friend of mine, a friend of my wife's. He  
12 offered to give a fundraiser, and worked  
13 hard, and we had a successful event.

14 Q Where did that event take place?

15 A In Memphis.

16 Q Approximately when did that even  
17 take place?

18 A I don't remember.

19 Q What kind of event was it?

20 A It was a luncheon event.

21 Q Was there a minimum requirement of  
22 donation for the event?



1 A Not that I know of.

2 MR. BARAN: Why don't you wait for  
3 his question.

4 BY MR. BONIFAZ:

5 Q Did you speak at that event?

6 A I usually do speak at events, yes.

7 Q Did you speak at that event?

8 A I'd be surprised if I didn't. I  
9 usually do. That's what political people  
10 do, is speak.

11 Q Did you also spend time talking  
12 with the attendees at that event?

13 A I expect that I would have done  
14 that. I usually do.

15 Q Did your wife attend that event?

16 A I don't believe she did.

17 Q This chairman of this company,  
18 what is his name?

19 A Ira Lippman.

20 Q How did this event get initiated?

21 Did Mr. Lippman say he would host an event  
22 to you or did you ask him to do it?

1           A     He was on the board years ago when  
2     my wife was head of United Way, and that's  
3     how I met him many years ago. My  
4     recollection is that he did an event for me  
5     in my previous campaign based upon our  
6     friendship and the fact that I had known  
7     him.

8           Q     How did the event get initiated?

9           A     I'm sure that I called him.

10          Q     What is it you asked him to do?

11          A     I asked him if he could have a  
12     fundraiser for me in Memphis.

13          Q     Based on the fact that \$47,000 of  
14     this came from individuals associated with  
15     Guardsmark, is it fair to say that he had  
16     something to do with that?

17                   MR. BARAN: I object to the form  
18     of the question.

19                   BY MR. BONIFAZ:

20          Q     Go ahead, Senator.

21          A     I was not certain who he would  
22     solicit, but I was certainly pleased that he

1 was willing to give a fundraiser on my  
2 behalf and grateful for his support.

3 Q Turning to the next line, UST,  
4 Inc., Senator, do you know what UST, Inc.  
5 is?

6 A I do.

7 Q What is it?

8 A They're a holding company, I  
9 think, for a number of companies that make  
10 smokeless tobacco, which is the leaf for  
11 which is grown in my state.

12 Q Where is it based?

13 A I'm not certain. I think it's  
14 Connecticut, but I'm not certain.

15 Q Why would individuals associated  
16 with UST, Inc. Be giving a total of \$22,500  
17 to your campaign?

18 A You'd have to ask them as to what  
19 their motivation was. Tobacco is important  
20 in my state. As you may know, we have a  
21 large number of tobacco growers in Kentucky.

22 Q Do they have any business in your

1 state?

2 MR. BARAN: Whom? I objection to  
3 the form of the question? Whom?

4 BY MR. BONIFAZ:

5 Q UST, Inc.

6 A Yeah, I believe they do. We grow  
7 the kind of tobacco in Kentucky that is used  
8 in smokeless tobacco. It employs a great  
9 number of people in that state.

10 Q Do you know any individuals  
11 associated with UST, Inc.?

12 A I do.

13 Q Who do you know?

14 A I know a person named Cratteville.

15 Q Who is he?

16 A He is one of their execs who works  
17 with Congress, and that's the person that we  
18 frequently have dealings with related to  
19 issues that affect my constituents who grow  
20 tobacco.

21 Q Who else do you know associated  
22 with UST, Inc.?

1           A     That is the only person I can  
2 think of at the moment. I'm sure I've met  
3 many others.

4           Q     Did he have anything to do with  
5 this fundraising event in Connecticut?

6           A     Frankly, I don't remember. I'd be  
7 surprised if he didn't, but I just simply  
8 don't remember. I don't even know if we had  
9 an event in Connecticut. We could have.

10          Q     I'm sorry. You're right. You  
11 didn't say anything about a Connecticut  
12 event. How did this money for UST get  
13 raised?

14          A     I don't remember.

15          Q     Was there any fundraising event  
16 that the executive you know organized for  
17 you for your campaign?

18          A     He could have, but I simply don't  
19 remember. Fundraising events are not  
20 unusual.

21          Q     But you do remember the event that  
22 the chairman of Guardsmark, Inc. organized

1 for you?

2 A Oh yes. I do remember that one,  
3 yes.

4 Q Any particular reason why you  
5 remember that one?

6 A Some you remember and some you  
7 don't. There are a lot of fundraising  
8 events in the course of a successful  
9 campaign.

10 Q Does Guardsmark, Inc. have any  
11 business in Kentucky?

12 A They have employees in Kentucky,  
13 yes. I believe it's a nationwide firm.

14 Q Turning to the next donor, the  
15 third one, Griffin Industries; do you know  
16 what that is?

17 A I think I do. Do you have  
18 anything beyond just this?

19 Q I don't.

20 A I'm not certain.

21 Q To the best of your recollection,  
22 what do you know Griffin Industries to be?

1                   MR. BARAN: I advise the witness  
2 not to guess, but --

3                   THE WITNESS: Yes, I'm not  
4 gonna --

5                   MR. BONIFAZ: But if he does have  
6 a judgment, he can offer it.

7                   THE WITNESS: There is a business  
8 in Kentucky, rendering business, and the  
9 chairman of that is a man named Griffin. I  
10 don't know whether this is the same company  
11 or not.

12                   BY MR. BONIFAZ:

13                   Q    A few lines down, you see Global  
14 Crossing there?

15                   A    I do.

16                   Q    Individuals associated with giving  
17 a total of \$9,000. Do you know any  
18 individuals associated with Global Crossing?

19                   MR. BARAN: I object to the form  
20 of the question. You may answer.

21                   THE WITNESS: I don't think so.  
22 But, again, I don't know the association of

1 various donors.

2 BY MR. BONIFAZ:

3 Q I'd like to turn your attention,  
4 Senator, back to Exhibit 2. Turning to the  
5 fourth page, which is entitled "Top  
6 Sectors." This page breaks down the  
7 different sectors where the contributions  
8 have come from. There's a line here,  
9 financial, insurance and real estate sector  
10 has given a combined total of \$609,104 to  
11 your campaign.

12 Why is the financial, insurance,  
13 real estate sector giving that kind of money  
14 to your campaign, Senator?

15 MR. BARAN: I object to the form  
16 of the question. There's no foundation laid  
17 for the reliance on this document, which is  
18 hearsay and unauthenticated. The Senator  
19 can answer it if he knows.

20 THE WITNESS: I have no idea what  
21 the motivation of donors are. You'd have to  
22 ask them.



1 BY MR. BONIFAZ:

2 Q Do you know corporate executives  
3 in the financial, insurance and real estate  
4 sector?

5 A I'm sure that I do.

6 Q Have they been helpful to you in  
7 raising money for your campaigns?

8 A I wouldn't be surprised if some  
9 have.

10 Q The first line, agribusiness  
11 sector, giving a total of \$338,390. Why  
12 would the agribusiness sector be giving that  
13 kind of money to your campaign?

14 MR. BARAN: I object to the  
15 question on grounds previously stated;  
16 foundation, hearsay and basis for relying on  
17 the number. The Senator can answer if he's  
18 able.

19 THE WITNESS: Again, you'd have to  
20 ask the donors what their motivation would  
21 be.

22 BY MR. BONIFAZ:

1 Q Do you know corporate executives  
2 associated with the agribusiness sector?

3 A Agriculture is very big in my  
4 state, and I certainly do know people who  
5 are involved in agriculture.

6 Q Have any of those individuals you  
7 know helped you raise money for your  
8 campaigns?

9 A I certainly hope so.

10 Q Have they?

11 A I'd be surprised if they hadn't.

12 Q Do you know of any individuals in  
13 the agribusiness sector who have helped  
14 raise you money for your campaigns?

15 A Yes.

16 Q Who?

17 A Well, I can think of a man named  
18 Wayne Hunt who's in the agriculture business  
19 in Hopkinsville, Kentucky who's been very  
20 helpful to me.

21 Q How has he helped you?

22 A He's asked others to contribute to

1 my campaigns.

2 Q How has he done that?

3 A How has he done it? You'd have to  
4 ask him.

5 Q You have no idea how he's done it?

6 MR. BARAN: I object to the form  
7 of the question. I don't even understand  
8 what the question means about how he's done  
9 it.

10 THE WITNESS: I don't think I do  
11 either.

12 BY MR. BONIFAZ:

13 Q How has he asked other individuals  
14 to --

15 A I don't know. You'd have to ask  
16 him.

17 Q Turning to energy, natural  
18 resource sector giving \$303,000. Why would  
19 that sector be giving you that kind of money  
20 for your campaign?

21 MR. BARAN: I object to the form  
22 of the question. There's no foundation laid

1 with respect to the document. The document  
2 is hearsay. The assumption that the figure  
3 is accurate is something that the record  
4 will not bear in terms of questioning based  
5 upon it. There's no authentication of the  
6 document. The Senator can answer the  
7 question if he can.

8 THE WITNESS: I -- I couldn't  
9 speculate as to the reason for the donors'  
10 contributions.

11 BY MR. BONIFAZ:

12 Q Do you know corporate executives  
13 associated with that sector?

14 A Which sector are we talking about?

15 Q Energy/natural resource.

16 A I do know some, yes.

17 Q Have any of them helped you raise  
18 money for your campaigns?

19 A I'd be surprised if they hadn't.  
20 Kentucky is currently number three in the  
21 nation in coal production. We have a lot of  
22 energy interest in our state.

1           Q     Do you know any of those  
2 individuals who've helped you raise money  
3 for your campaigns?

4           A     Yes.

5           Q     Can you please name some?

6           A     I think of John Hall, who is a  
7 retired executive at the Ashland Company,  
8 which is an oil refiner.

9           Q     Anyone else?

10          A     I can't think of anybody else  
11 right now, but there are -- there are  
12 people.

13          Q     What has Mr. Hall done for you?

14          A     He's contributed to my campaign.

15          Q     Has he done anything else in terms  
16 of raising money?

17          A     I don't recall, frankly.

18          Q     You've talked about people who  
19 have helped you raise money from others.  
20 Beyond the individuals you mentioned, do you  
21 know other individuals who have helped you  
22 raise money for your campaigns?

1           A     There are many people who help if  
2     you're going to have a successful campaign.  
3     I mean, you simply cannot have a successful  
4     campaign unless you have a lot of people  
5     willing to help you.

6           Q     How are they organized?

7           A     How are they organized?

8           MR. BARAN: I object to the form  
9     of the question. It assumes organization  
10    for one thing. Are you including his staff  
11    for example? Are you including everybody he  
12    knows?

13           MR. BONIFAZ: No, he said there  
14    are many people who help raise money for his  
15    campaigns. So my question is, how is it  
16    that they go about doing that? How do you  
17    get them to do that?

18           MR. BARAN: What does the Senator  
19    do?

20           MR. BONIFAZ: Yes.

21           THE WITNESS: Well, we have a  
22    person in our campaign that works on calling

1 up people and asking them to help.

2 BY MR. BONIFAZ:

3 Q What do you do directly on behalf  
4 of that effort?

5 A Usually what I do is show up at an  
6 event and discuss the issues with people and  
7 respond to their questions, thank them for  
8 their support.

9 Q Do you ever make direct calls to  
10 people who are going to help you raise money  
11 for your campaign?

12 A Occasionally.

13 Q What is the purpose of that call?

14 A To motivate people to help me  
15 succeed in my election.

16 Q What do you usually ask them to  
17 do?

18 A It depends.

19 Q Give me the range of what it is  
20 you usually ask them to do.

21 A It could be a lot of different  
22 things, from volunteering in the campaign to

1 holding an event, either one well people  
2 might contribute and some where they might  
3 not contribute. Putting together a  
4 successful campaign involves being able to  
5 motivate a lot of people to help you.

6 Q Are any of these people asked to  
7 set a goal, the amount of money they're  
8 going to try to raise for you?

9 A Very seldom, but occasionally.

10 Q On those occasions, what are those  
11 goals?

12 A I don't remember. It would depend  
13 on the -- what we were trying to achieve at  
14 the time.

15 Q Senator, in addition to speaking  
16 with these people about helping you raise  
17 money, do you ever in those conversations  
18 talk with them about pending or proposed  
19 legislation?

20 A Very rarely.

21 Q When have you?

22 A I -- I don't bring it up.



1 Occasionally, the people will bring up an  
2 issue, but it's pretty rare.

3 Q Can you give some examples of  
4 where it's come up?

5 A I can't think of any right  
6 offhand.

7 Q But you know that it's come up.

8 A Occasionally, sure. Citizens have  
9 a right to talk about issues with their  
10 elected officials, and occasionally it does  
11 come up.

12 Q You can think of no example though  
13 where it's come up?

14 A I can't give you an example right  
15 off the top of my head because it's so  
16 common. I mean, people discuss issues with  
17 people who are either in office or running  
18 for office. That's -- they don't usually  
19 call me up to talk about the football  
20 scores.

21 Q You said very rarely. Now you say  
22 it's common. Which is it?

1           A     Well, I'm not sure I understood  
2 your question then.

3           Q     I asked you initially whether whey  
4 you talk with these people about helping you  
5 to raise money, whether they discuss with  
6 you pending or proposed legislation. You  
7 said very rarely. Now you say it's so  
8 common.

9           A     But it is common for issues to  
10 come up. In those particular calls?

11          Q     Yes.

12          A     It's not all that common. But it  
13 is very common for issues to be discussed  
14 with people who are elected officials or  
15 people who are running for office.

16          Q     So in those discussions where it  
17 does come in those particular calls, can you  
18 give any examples of what that conversation  
19 has been about?

20          A     No, because it could be -- you  
21 know, people's interests are quite broad.  
22 It is very common for people to be

1 discussing issues with elected officials and  
2 with candidates.

3 Q In these conversations with people  
4 who are going to help you raise money and  
5 your asking them to do so, have you ever  
6 talked with them about matters dealing with  
7 the executive branch, executive agencies?

8 A Not that I can recall.

9 Q Has it ever happened?

10 A Has it ever happened? Not that I  
11 can recall.

12 Q Senator, do you believe there's  
13 any inherent advantage that incumbents have  
14 in running re-election for the United States  
15 Senate?

16 A Well, incumbency is a mixed bag.  
17 In some ways it's like being an umpire.  
18 Every time you make a decision, there's some  
19 who are not going to like it. So it is not  
20 an overwhelming advantage, but you are  
21 typically pretty well-known. Of course, you  
22 can be pretty well-known in a good way or

1 pretty well-known in a bad way. So I'd say  
2 it's a mixed bag.

3 Q Are you aware of the fact that 95  
4 percent of incumbents running for  
5 re-election get elected?

6 A I don't know of that particular  
7 statistic. I would assume that most of them  
8 would be successful.

9 Q Why is that?

10 A Well, I expect this because the  
11 voters and the different constituencies  
12 think they've done a good job.

13 Q Based on your experience both as  
14 United States Senator and as former chair of  
15 the National Republican Senatorial  
16 Committee, do you believe that the vast  
17 majority of incumbents face stiff  
18 competition when they run for re-election  
19 for the United States Senate?

20 A In my own career, I've defeated  
21 two incumbents, so it is certainly possible  
22 to beat incumbents. If it were not, I would

1 not be here. Many incumbents do have  
2 difficult races. Many incumbents don't. In  
3 the House of Representatives, for example,  
4 competition is largely determined by the  
5 districts that are drawn. As a result of  
6 many incumbent-safe districts, they're not  
7 competitive. It has nothing to do with  
8 financial resources; it's simply the way the  
9 districts are drawn.

10 Q In the United States Senate races  
11 where there is not stiff competition as  
12 you've acknowledged in those certain races,  
13 does that in your view pose any concern with  
14 respect to the health of the democracy?

15 A Well, certainly some --

16 MR. BARAN: I object to the form  
17 of the question. Respect this as a  
18 litigation, not a political science seminar.  
19 I would ask counsel to ask questions bearing  
20 on the litigation.

21 BY MR. BONIFAZ:

22 Q Senator, you can answer the

1 question.

2 A I've forgotten the question now.  
3 Will you tell me what it is?

4 Q On those United States Senate  
5 races where there has not been stiff  
6 competition as you've acknowledged, does  
7 that pose any concern regarding the health  
8 of our democracy to you?

9 A Well, I think we can stipulate  
10 that some incumbents are more popular than  
11 others. Generally speaking, unpopular  
12 incumbents are the ones who lose.

13 Q In your view, Senator, is money a  
14 measure of a candidate's popular support,  
15 the amount a money a candidate can raise and  
16 spend?

17 A It's hard to measure all the  
18 ingredients of what makes for a popular  
19 candidate. But certainly, a candidate who  
20 could not generate support from others,  
21 whether it's financial or voluntary  
22 assistance, is not likely to be successful.

1           Q     What about a candidate who does  
2     not know or have any friends who know people  
3     who can give at the top end level, but has  
4     an enormous amount of support from people  
5     who can give \$5, \$10, and that candidate is  
6     running up against someone like you who's  
7     been able to raise a significant amount of  
8     money from those at the top end? How does  
9     that candidate fare in terms of measuring of  
10    the popular support.

11           MR. BARAN: I object to the form  
12    of the question. You can answer if you  
13    understand.

14           THE WITNESS: I'm not sure what  
15    you're driving at here. A candidate who  
16    doesn't have a lot of friends, as you put  
17    it, is not likely to win an election.

18           BY MR. BONIFAZ:

19           Q     Senator, I didn't say friends.

20           A     I thought that's what you said.

21           Q     I said a candidate who doesn't  
22    have a lot of friends to give at the

1 level -- at the maximum level of \$1,000.  
2 This hypothetical candidate has a lot of  
3 friends, but the friends can only give \$5.  
4 Is money in that instance a measure of a  
5 candidate's -- is the amount of money that  
6 that candidate can raise a measure of the  
7 candidate's popular support?

8 A Well, not necessarily. I mean, if  
9 he's an extremely well-known candidate or a  
10 celebrity candidate, he or she could  
11 conceivably have an advantage over the  
12 incumbent.

13 Q But if the person's not  
14 well-known, not a celebrity, but has an  
15 enormous number of friends who can only  
16 give \$5, is that person at any disadvantage  
17 running against somebody like you?

18 A Well, if he's got an awful lot of  
19 friends -- he or she has an awful lot of  
20 friends -- he'd have a good shot.

21 Q Do you ever save any of the money  
22 that you raise for your campaigns for future



1 campaigns?

2 A Any at all? We may have carried  
3 forward a small balance in each of the last  
4 two. I couldn't tell you exactly how much.

5 Q Are you aware, with respect to  
6 your colleagues here in the Senate, of any  
7 of them transferring money over from a  
8 campaign that's ended into the next campaign  
9 account?

10 A I haven't checked the balances,  
11 but I would be surprised if that were not  
12 the case.

13 Q Why do senators do that?

14 A Why do they do that?

15 Q Yes.

16 A They do it because they didn't  
17 have to spend it in the previous election to  
18 get elected. Rather than squander it, they  
19 simply carry it forward.

20 Q Do you believe that the bank  
21 accounts that they carry forward into the  
22 next campaign season have any effect on

1 discouraging competition for that future  
2 race?

3 A It depends on how popular the  
4 incumbent is. If an incumbent is unpopular,  
5 he will have competition.

6 Q But the amount of money in that  
7 account has no effect on whether or not  
8 there'd be competition?

9 A Sometimes it does; sometimes it  
10 doesn't.

11 Q It what instances does it?

12 A Senator D'Amato, for example, had  
13 an enormous amount of money running for  
14 re-election. I didn't discourage opponents,  
15 and he lost. Senator Faircloth had an  
16 enormous amount of money both in his  
17 campaign and personally, and it didn't  
18 discourage competition, and he lost.

19 Q I was asking about the instance  
20 where it does discourage competition. You  
21 said sometimes it does and sometimes it  
22 doesn't.

1           A     I don't know when -- I don't know  
2 when it discourages competition.

3           Q     You only know when it doesn't.

4           A     How do you know when something  
5 doesn't happen?

6           Q     Well, Senator, just to review your  
7 answer --

8           A     I mean, I can't speculate about  
9 why a candidate doesn't appear. I can give  
10 you examples of candidates who had a lot of  
11 money, either raised in their campaigns or  
12 personally, for whom no opposition was  
13 discouraged, and they were defeated. But I  
14 can't tell you why somebody doesn't come  
15 forward.

16          Q     You know of no instance where a  
17 Senator having an enormous amount of money  
18 in his or her campaign account for the next  
19 election cycle before it even truly began --  
20 in that instance, would that have affected  
21 competition?

22          A     It's hard to know. It's hard to

1 know. I mean, I can think of a couple of --  
2 at least one Senator who's enormously  
3 popular. He doesn't raise much money at  
4 all, and never has trouble getting  
5 reelected.

6 Q Senator, you chaired the NRSC; is  
7 that correct?

8 A I did.

9 Q From what years to what years?

10 A In the '98 and 2000 cycle.

11 Q What was your responsibility in  
12 that capacity?

13 A To try to elect Republican  
14 candidates to the U.S. Senate.

15 Q Did you engage in raising money on  
16 behalf of the NRSC?

17 A I did.

18 Q What did you do for the NRSC in  
19 that capacity? How did you go about raising  
20 money?

21 A I went to a seemingly endless  
22 number of events, both in Washington and

1 around the country, and was very busy  
2 working with strategy on candidates,  
3 candidate recruitment, trying to win  
4 elections.

5 Q What kind of events were these?

6 A All kinds-- sessions with  
7 pollsters, with strategists, fundraising  
8 events, virtually the full gamut of the  
9 kinds of things you do to provide assistance  
10 to candidates of your party.

11 Q Did any corporate executives ever  
12 help you raise money for the NRSC during  
13 your tenure?

14 A I'm sure they did.

15 Q Do you know any of them?

16 A I'm sure I do.

17 Q Who do you know? Senator?

18 A You mean to help me raise money or  
19 give their own money.

20 MR. BONIFAZ: I'm sorry. Just for  
21 the record, the Senator consulted with  
22 counsel after I asked that question.

1 BY MR. BONIFAZ:

2 Q Senator, my question is, who of  
3 the corporate executives that you know has  
4 helped you raise money for the NRSC?

5 MR. BARAN: For the record, the  
6 Senator did consult with counsel, as the  
7 Senator is entitled to do.

8 THE WITNESS: There were a number  
9 of corporate executives, and just -- I'm  
10 trying to think of -- I can think of two. I  
11 don't know whether they helped me with  
12 others, but they certainly gave their own  
13 money. Tom McInerney from New York and Paul  
14 Singer from New York were two examples of  
15 people who helped. We usually had a chair  
16 of our donors each year. I cannot remember  
17 who the chairmen were, but that should be in  
18 the record somewhere.

19 BY MR. BONIFAZ:

20 Q How did you get them to help?

21 A I asked them to help. These are  
22 people who felt that it would be a good idea

1 to have a Republican majority in the U.S.  
2 Senate, who shared our desire to achieve  
3 those results and wanted to help.

4 Q Is it fair to say your  
5 responsibility and effort was to raise as  
6 much money as possible in these events?

7 A Absolutely.

8 Q Is it also fair to say that in  
9 light of that, your interest was in raising  
10 money at the top level as much as possible?

11 A No. We had -- we had programs for  
12 every conceivable donor level, from  
13 direct-mail donors who would typically be  
14 the smaller donors. We had a program for  
15 the \$1,000 donors, the \$5,000 donors,  
16 the \$10,000 donors. We tried to appeal to a  
17 broad segment of donors. In fact, the party  
18 committees are more dependent on direct  
19 mail -- small donors -- than the typical  
20 campaign.

21 Q How much did you raise in hard  
22 money dollars for the NRSC during your

1 tenure?

2 A I don't recall, but I -- all of  
3 that would be reflected in the FEC records  
4 for the Senatorial Committee.

5 Q Was it in the tens and millions of  
6 dollars?

7 A I sure hope so.

8 Q What percentage of that money came  
9 from the \$1,000 donors?

10 A I don't know.

11 Q Was there any involvement of other  
12 United States senators in your efforts on  
13 behalf of the NRSC?

14 A Sure. We would encourage senators  
15 to come to events. We had a very large  
16 dinner which we had once a year. We would  
17 encourage them to help us make phone calls  
18 for that.

19 Q Was it ever expected that they  
20 help?

21 A Some did and some didn't.

22 Q Was it ever expected that they



1 help?

2 A You can't ask -- you can't demand  
3 that senators do things. Some senators are  
4 more willing to help than others.

5 Q Does a senator's ability to raise  
6 money for the NRSC ever affect his or her  
7 committee assignments?

8 A No.

9 Q Does it ever affect his or her  
10 position in terms of rank vis a vis  
11 leadership in the United States Senate?

12 A No.

13 MR. BARAN: Can we take a  
14 five-minute break?

15 MR. BONIFAZ: Yes.

16 (Recess)

17 BY MR. BONIFAZ:

18 Q Senator, in your tenure as chair  
19 of the NRSC, have you ever tried to recruit  
20 U.S. Senate candidates who have refused to  
21 run because the opponent had a major  
22 campaign war chest in terms of money?

1           A     I don't recall anybody in that  
2     category.  Certainly I was trying to recruit  
3     candidates, yes.

4           Q     Have you ever tried to recruit a  
5     U.S. Senate candidate who's expressed  
6     unwillingness to run because of the money  
7     barrier?

8           A     No, I can't recall an example of  
9     that.

10          Q     Turning to what is commonly  
11     referred to as the Millionaire Amendment in  
12     the current law, do you believe this set of  
13     provisions levels the playing field,  
14     Senator?

15          A     What do you mean "levels the  
16     playing field"?

17          Q     There's a fair amount of  
18     statements on the floor of the United States  
19     Senate during this debate about leveling the  
20     playing field.  In fact, you yourself said  
21     it leveled the playing field between a  
22     modestly well-off candidate and a

1       millionaire candidate.  So my question is,  
2       do you believe this provision levels the  
3       playing field?

4               MR. BARAN:  First of all, I'll  
5       alert counsel to the fact that when he  
6       refers to statements made on the floor,  
7       we're getting close to getting into the  
8       speech and debate area.  I don't have any  
9       problem with the underlying substance of  
10      your question, so I won't direct the witness  
11      not to answer.

12              MR. BONIFAZ:  Just to be clear, I  
13      only stated those statements to give  
14      clarification, because the Senator did not  
15      understand what leveling the playing field  
16      meant.

17              MR. BARAN:  Have you told him what  
18      it means?

19              MR. BONIFAZ:  I gave clarification  
20      based on his colleagues and his own words on  
21      the United States Senate floor.

22              MR. BARAN:  Well, you can answer

1 if you can, Senator.

2 THE WITNESS: I generally don't  
3 use that terminology. I think in the  
4 Buckley case, the court made it clear that  
5 leveling the playing field is impermissible  
6 under the First Amendment. So I generally  
7 don't use that term. I may have, but I  
8 generally don't.

9 BY MR. BONIFAZ:

10 Q What do you believe it does?

11 A Well, it certainly illustrates  
12 that the contribution limit must not have a  
13 corrupting -- the absence of a contribution  
14 limit must not have a corrupting, or  
15 appearance of corruption, problem. Because  
16 if you were running against a candidate who  
17 had great wealth, you'd be able to receive  
18 more from an individual donor than you would  
19 if you were running just a candidate who did  
20 not have great wealth. So it calls into  
21 question, it seems to me, the whole notion  
22 that the contribution limit, even at its

1 higher level in McCain-Feingold, is  
2 constitutional.

3 Q Do you believe it helps modestly,  
4 well-off candidates compete with millionaire  
5 candidates?

6 A I really don't know.

7 Q Under this provision, candidates  
8 who are facing those kind of self-funding  
9 candidates can in certain circumstances  
10 raise up to \$12,000 per individual. Who  
11 would be able to give \$12,000 to candidates,  
12 Senator?

13 MR. BARAN: I object to the form  
14 of the question, names of people.

15 THE WITNESS: I'm not good at  
16 naming any people. I don't know who might  
17 be willing to contribute 12,000 to a  
18 candidate.

19 BY MR. BONIFAZ:

20 Q You don't know anyone who could  
21 contribute \$12,000 to a candidate?

22 A Who could or would?

1 Q Who could.

2 A That's a big difference.

3 Q Who could.

4 A I suppose there are many people  
5 who could. I don't know how many people  
6 would.

7 Q Of the people who you know who  
8 could, can you please name some?

9 A No, I really don't know. I'd be  
10 speculating about what they might do.

11 Q Do you know any schoolteachers who  
12 can give \$12,000?

13 A I -- could be. I don't know.

14 Q You don't know any.

15 A There could be some.

16 Q But you don't know any.

17 A I wouldn't have any way of knowing  
18 who might be so motivated to contribute that  
19 sum to a candidate.

20 Q Do you know anyone holding a  
21 minimum wage job who could give \$12,000 to a  
22 candidate?

1           MR. BARAN: Are you asking for  
2 names, names of individuals?

3           MR. BONIFAZ: First I'm asking  
4 whether he knows anyone who's in that  
5 category.

6           THE WITNESS: What is the  
7 question?

8           BY MR. BONIFAZ:

9           Q     Do you know anyone who holds a  
10 minimum wage job who could give \$12,000 to a  
11 candidate?

12          A     I really don't know.

13          Q     Do you know anyone living below  
14 the poverty line who could give \$12,000 to a  
15 United States Senate candidate?

16          A     I really don't know.

17          Q     Do you know any corporate  
18 executive who could give \$12,000 to a United  
19 States Senate candidate?

20          A     I can't imagine how I could  
21 speculate about who might be willing to give  
22 that amount of money to a candidate.

1           Q     Who could, Senator? Do you know  
2     any corporate executive who could  
3     give \$12,000 to a --

4           MR. BARAN: I object to the form  
5     of the question. It's not comprehensible.  
6     You mean, a corporate executive that  
7     has \$12,000?

8           MR. BONIFAZ: Correct, can afford  
9     to.

10          MR. BARAN: Senators?

11          BY MR. BONIFAZ:

12          Q     Do you know any corporate  
13     executive that can afford to give \$12,000 to  
14     a campaign?

15          A     I suppose there are many Americans  
16     who could.

17          Q     Do you know any corporate  
18     executives who can --

19          A     There are many Americans who could  
20     if they chose to whether they were corporate  
21     executives or not.

22          Q     Is it reasonable to think that



1 someone making a minimum wage can afford to  
2 contribute \$12,000 to a candidate?

3 A I can't speculate about what would  
4 motivate someone to contribute to a  
5 candidate. You'd have to ask the donors.

6 Q Senator, I'm not asking about the  
7 motivation. I'm asking about the ability to  
8 do so. Is it reasonable to think that  
9 someone holding a minimum wage job can  
10 afford to, is able to, contribute \$12,000 to  
11 a candidate?

12 A There are many --

13 MR. BARAN: I object to the form  
14 of the question. Calls for speculation.

15 BY MR. BONIFAZ:

16 Q You can answer the question,  
17 Senator.

18 MR. BARAN: You can answer it if  
19 you can, Senator.

20 THE WITNESS: I don't know, you  
21 know, who might contribute such a sum to a  
22 candidate. My assumption is that there are

1 many Americans who would not contribute such  
2 a sum to a candidate.

3 BY MR. BONIFAZ:

4 Q I am going to ask one more time  
5 and try to be clear as possible. Is it  
6 reasonable to think that someone holding a  
7 minimum wage job can afford to  
8 contribute \$12,000 to a United States Senate  
9 candidate?

10 A It is --

11 MR. BARAN: I object to the form  
12 of the question.

13 THE WITNESS: It is certainly  
14 possible that someone in a minimum wage job  
15 could make a large contribution to a  
16 candidate if they had a significant net  
17 worth. I mean, you're asking to speculate  
18 about the net worth and the motivation of a  
19 whole range of people, and I simply can't do  
20 that.

21 BY MR. BONIFAZ:

22 Q So you would agree that someone

1       who's holding a minimum wage job who doesn't  
2       have a significant net worth could not  
3       afford to contribute \$12,000 to a political  
4       campaign, running for the United States  
5       Senate?

6           A     If they were highly motivated to  
7       do that, I suppose they could figure a way  
8       to do it. But you're asking me to speculate  
9       about a combination of both means and  
10      motivation that I simply can't do.

11          Q     How much time, Senator, do you  
12      spend raising money for your political  
13      campaigns?

14          A     Not much.

15          Q     Can you give an estimate of every  
16      week how much time you spend?

17          A     Many weeks, none.

18          Q     Other weeks, how much time do you  
19      spend?

20          A     It varies.

21          Q     What's the range?

22          A     It's hard to speculate. But it

1 certainly is not terribly time-consuming and  
2 doesn't get in the way, in any way, of  
3 anything else that I'm involved in as a U.S.  
4 Senator.

5 Q You've testified that as chair of  
6 the NRSC, you attended many events, both in  
7 Washington and all across the country. How  
8 much time during your tenure as chair of the  
9 NRSC did you spend raising money?

10 A Well, I spent more time during  
11 those years than I did in years when I was  
12 not in that job. I certainly knew that I --  
13 I had an additional responsibility during  
14 those years, which is one of the reasons why  
15 members typically don't do that job very  
16 long because it's very time-consuming.

17 Even in those years, it would be  
18 hard to speculate exactly how much time I  
19 spent on NRSC activities, but I was  
20 certainly busier during those years than the  
21 years I've been in the Senate when I have  
22 not had that additional responsibility.

1           Q     Can you give any minimal amount of  
2     time that you spent every week raising money  
3     for the NRSC during your time as chair of  
4     it?

5           A     Not every week, and some weeks  
6     were more than other weeks.  But I spent a  
7     reasonable amount of time working on that.

8           Q     What was the range of time?

9           A     What do you mean "what was the  
10    range of time?"

11          Q     In terms of hours spent every  
12    week, what was the range of time?

13          A     I didn't spend hours every week on  
14    that.

15          Q     Those weeks where you did spend  
16    significant time, what was the range?

17          A     Some weeks were busier than  
18    others.  If we were in recess, I would spend  
19    more time on it.  If we were close to the  
20    election and in recess, more time on it.  So  
21    it would depend on where you were in a  
22    two-year cycle and whether or not the Senate

1 was in session.

2 Q Did you ever spend a significant  
3 amount of time while the Senate was in  
4 session?

5 A While the Senate was in session?  
6 Not while I had things to do that required  
7 me to be a Senator, no.

8 Q Have you ever missed a vote  
9 because you needed to attend a fundraising  
10 event?

11 A I don't think so.

12 Q Can you recall any instance  
13 where --

14 A No, I can't. I can't recall it.

15 Q You're engaged in running for  
16 re-election right now.

17 A Um-hmm.

18 Q Are you spending any time raising  
19 money right now in this period of time?

20 MR. BARAN: I object to the  
21 question to the extent it deals with  
22 the 2002 campaign. I will allow the witness

1 to answer this question in terms of whether  
2 he spends any time.

3 THE WITNESS: Well, I attend  
4 events when I'm in the state, and  
5 occasionally an event up here.

6 BY MR. BONIFAZ:

7 Q Are you spending any time raising  
8 money during his election period for your  
9 re-election campaign in November?

10 A Yes. As I just said, I'm  
11 attending such events both in my state and  
12 up here.

13 Q These are fundraising events.

14 A Yes, um-hmm.

15 Q Has the Senate ever been in  
16 session while you're attending these events?

17 A I've not missed a vote to do that.

18 Q Has the Senate ever been in  
19 session while you're attending these events?

20 A Well, the Senate is in session  
21 frequently, and there are two or three  
22 people on the floor dealing with the debate.

1       Everybody is not there constantly.  When  
2       we're all required to be there is when  
3       there's a vote.

4           Q     Is it fair to say though, based on  
5       your answer, that you have been attending  
6       fundraising events during this time when the  
7       Senate's been in session?

8           A     There -- I'm sure there's not  
9       anyone in the Senate who's not been to an  
10      event, fundraising or otherwise, while the  
11      Senate is in session.  There's nothing  
12      particular significant about the Senate  
13      being in session legislatively, unless you  
14      are managing a bill or required to be there  
15      to vote.

16           MR. BONIFAZ:  Thank you, Senator.  
17      I have no further questions.  My colleague,  
18      Bonnie Tenneriello, is going to begin  
19      questions unless we want to do a break.  
20      It's up to you.

21           MS. TENNERIELLO:  Well, we need to  
22      I think --



1 MR BONIFAZ: Re-arrange.

2 MS. TENNERIELLO: Re-arrange. So  
3 shall we just take a two minute --

4 MR. BARAN: Well, why don't you  
5 just change seats?

6 MS. TENNERIELLO: All right.

7 FURTHER EXAMINATION BY COUNSEL FOR ADAMS

8 PLAINTIFFS

9 BY MS. TENNERIELLO:

10 Q Senator, I'm Bonnie Tenneriello  
11 with the National Voting Rights Institute,  
12 and also representing the Adams plaintiffs  
13 in this case.

14 You testified earlier in regard to  
15 the NRSC fundraising that most small  
16 donors -- I believe the substance of your  
17 testimony, and correct me if I'm wrong, was  
18 that the smaller donors tend to give through  
19 direct mail. Is that correct?

20 A Yes, I think that is correct.

21 Q So the smaller donors would not,  
22 as a rule, be the ones attending

1 fundraisers?

2 A There are a couple of events every  
3 year where people who contribute by direct  
4 mail do come. But the bulk of the  
5 direct-mail fundraising is done by direct  
6 mail.

7 Q Do you make a habit of personally  
8 calling smaller donors to ask for  
9 contributions?

10 A We have an enormous number of  
11 small donors. It would interfere I suppose  
12 with everything else if I spent a lot of  
13 time calling small donors.

14 Q That's not practical, in other  
15 words.

16 MR. BARAN: Is that a question? I  
17 move to strike the comment.

18 MS. TENNERIELLO: I'm asking what  
19 is the substance of your --

20 BY MS. TENNERIELLO:

21 Q Why would you be unable to call  
22 your small donors then?

1           A     I don't spend much time calling  
2 large donors either.

3                   MS. TENNERIELLO: I have questions  
4 relating to documents which have been  
5 designated attorney-only confidential. So  
6 I'm afraid we'll have to ask non-counsel to  
7 leave.\*

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1 BY MS. TENNERIELLO:

2 Q Senator McConnell, you raised a  
3 significant amount of money from people  
4 associated with the mining industry, is that  
5 not correct?

6 A I don't have the records before  
7 me, but I hope so.

8 Q Would you assume that that is  
9 true, being that your state is a --

10 A I don't have the records before  
11 me, but Kentucky is a significant energy  
12 state, and it would not be surprising if  
13 people in the energy business would be  
14 supportive.

15 Q Senator McConnell, I would like to  
16 show you a profile of your financial  
17 contributions done by the Center for  
18 Responsive Politics based on filings to the  
19 Federal Election Commission and posted on  
20 their Web site, [www.opensecrets.org](http://www.opensecrets.org).

21 (McConnell Deposition Exhibit

22 No. 16 was marked for

1 identification.)

2 BY MS. TENNERIELLO:

3 Q On the second page of this  
4 exhibit, according to their analysis, the  
5 Center for Responsive Politics' analysis of  
6 contributions, your campaign received for  
7 the 1997 to 2002 cycle \$145,650 from the  
8 mining industry?

9 MR. ABRAMS: I object to the form  
10 of the question. I object to the question  
11 because there is no foundation laid to use  
12 this document. The document is hearsay.  
13 The document has not been identified by the  
14 witness or otherwise vouched for in a way  
15 that makes it appropriately usable except  
16 perhaps to refresh his recollection if his  
17 recollection fails.

18 For all those grounds, I object to  
19 the question. The Senator is free to look  
20 at that chart on page 2 for whatever  
21 guidance it may give him and to respond to  
22 the question.

1 MS. TENNERIELLO: I am also going  
2 to ask you to look at what was marked  
3 earlier as Exhibit Number 3, if we have that  
4 available. Let me state, I understand all  
5 my questions regarding these exhibits to be  
6 subject to your objection, so there need not  
7 be repetition of the objection as to  
8 questioning on these exhibits.

9 BY MS. TENNERIELLO:

10 Q You see the list on the first page  
11 of Exhibit Number 3 of companies listed as  
12 the employer of individual donors to your  
13 campaign, several of which are mining  
14 companies? Have executives from any of the  
15 mining companies listed served on your  
16 steering committees for any of your events?

17 A First, as you know the companies  
18 can't contribute. These are apparently  
19 occupational listings of individual  
20 contributions apparently to my campaign.

21 Q Yes.

22 A Is your question have any of these

1 individuals ever been on a steering  
2 committee of mine for a fundraiser?

3 Q As far as you recall.

4 A I don't know.

5 Q Do you recall speaking with  
6 executives of any coal company, any of the  
7 corporations involved in coal listed  
8 regarding the 2001 Clean Coal Bill that you  
9 sponsored with Senator Byrd?

10 A We consult with people in the coal  
11 mining industry fairly routinely because  
12 Kentucky is the third largest coal-producing  
13 state in the nation, and Senator Byrd and I  
14 did have a clean coal technology bill. Both  
15 he and I consulted with the industry in  
16 putting together a proposal which, as far as  
17 I know, was supported by members of Congress  
18 from both states regardless of political  
19 affiliation.

20 Q Did you speak with any coal mining  
21 industry executives regarding the Clean Coal  
22 Bill?

1           A     I don't remember specifically. I  
2     am confident my staff did. We would not  
3     craft such a bill without consulting the  
4     industry that would be affected by it, just  
5     like any other piece of legislation you  
6     consult with the people who are affected by  
7     it in putting it together.

8           Q     Would you have consulted with  
9     environmental groups opposed to this bill?

10          A     I am sure that we did, yes.

11          Q     Can you recall any that you met  
12     with?

13          A     I didn't personally. This was  
14     handled as far as I can recall at the staff  
15     level, but I would be surprised if we didn't  
16     hear from all sides in putting it together.

17          Q     Can you recall the name of any  
18     industry executives of a single one that you  
19     have met with on this issue?

20          A     On this issue, no.

21          Q     You cannot?

22          A     I cannot.



1           Q     Can you recall any environmental  
2 group that you met with on this issue?

3           A     Personally, no, I cannot. Support  
4 for clean coal technology is -- goes back at  
5 least 20 years, and it has been supported by  
6 all members of the Kentucky and West  
7 Virginia delegation.

8           Q     This bill would have involved  
9 spending a significant amount of money,  
10 approximately a billion dollars over ten  
11 years in research on coal technologies and  
12 would have involved significant tax breaks  
13 estimated at some six billion dollars for  
14 the coal industry, and it would have  
15 involved a ten-year exemption from the Clean  
16 Air Act for the coal industry, is that not  
17 correct?

18          A     I don't know.

19               MR. ABRAMS: I object to the form  
20 of the question.

21               MS. TENNERIELLO: Excuse me.

22               THE WITNESS: I don't know the

1 details of the legislation. I do know that  
2 Senator Byrd and I felt that it was a sound  
3 piece of legislation, that it would improve  
4 the environment and make it possible for us  
5 to have more jobs in both West Virginia and  
6 Kentucky.

7 BY MS. TENNERIELLO:

8 Q Would you agree that this  
9 legislation would benefit the coal industry?

10 A It would benefit the people who  
11 work in the coal industry, and it would also  
12 benefit people who want to breathe cleaner  
13 air.

14 Q In November of 1999, you  
15 co-sponsored an appropriations rider on  
16 mountaintop mining. Do you recall that?

17 A I recall the issue, yes.

18 Q It would exempt mountaintop mining  
19 from the Clean Water Act, allow waste to be  
20 released from mountaintop mining into rivers  
21 and streams, would permit no additional hard  
22 rock mining regulations or regulations on

1 the release of mining waste on federal land.  
2 Would this appropriations rider have  
3 benefited the coal industry?

4 MR. ABRAMS: I object to the form  
5 of the question.

6 THE WITNESS: A substantial part  
7 of the mining industry in West Virginia and  
8 Kentucky was shut down by a federal court  
9 decision. Senator Byrd and I had a concern  
10 about that in terms of the number of  
11 employees who would be displaced in both  
12 West Virginia and Kentucky, and I don't  
13 recall at this juncture how that whole issue  
14 came about or what the final resolution was,  
15 but at that particular juncture, we were  
16 very concerned about the impact of that  
17 decision on unemployment in West Virginia  
18 and Kentucky.

19 BY MS. TENNERIELLO:

20 Q Do you recall meeting with any  
21 industry executives to discuss this?

22 A I don't. I am sure my staff did

1 and I am sure Senator Byrd's staff did.

2 Q You don't recall a single meeting  
3 with a single mining executive?

4 A I don't. I would be surprised if  
5 my staff didn't have a number of meetings  
6 with them. This was a huge issue in West  
7 Virginia and Kentucky. It was basically  
8 shutting down a significant part of the  
9 mining industry and resulting in  
10 unemployment.

11 Q Do you recall meeting with an  
12 environmental group on this issue?

13 A I am sure my staff did, but I  
14 didn't, nor do I recall, frankly, meeting  
15 with industry execs on it either.

16 Q Senator, to your knowledge, have  
17 individuals associated with the insurance  
18 industry, individuals employed by the  
19 insurance industry contributed in  
20 significant numbers to your campaigns?

21 A I think the FEC report listing  
22 professions would probably give you a sense

1 of that.

2 Q Returning to page 2 of Exhibit  
3 Number 16, again, this is FEC data. This is  
4 The Center for Responsive Politics' analysis  
5 of FEC data. They indicate that the  
6 insurance industry -- if you look at  
7 number 8, they indicate that the insurance  
8 industry, individuals listing the insurance  
9 industry as their employers  
10 contributed \$113,143 to your campaign for  
11 the 1997-2002 cycle. Would it surprise you  
12 if that were true?

13 MR. ABRAMS: The same objection as  
14 before. No foundation, hearsay, and I  
15 object to any question rooted in the  
16 purported accuracy of these numbers.

17 You may respond, Senator. The  
18 question was would it surprise you if that  
19 number was accurate.

20 THE WITNESS: Well, that is kind  
21 of an odd question. I have a generally  
22 pro-free enterprise voting record, and it

1 would not surprise me that people in that  
2 particular business would think my  
3 re-election was a -- you know, that they  
4 might support me.

5 BY MS. TENNERIELLO:

6 Q In April of 1999, you sponsored  
7 the Auto Choice Reform Act, which would  
8 allow drivers to choose essentially no-fault  
9 insurance and opt out of traditional tort  
10 liability. Do you recall that?

11 A I do.

12 Q Do you recall discussing the Auto  
13 Choice Reform Act with any member of the  
14 insurance industry?

15 A Well, first of all, my co-sponsors  
16 were Joe Liebermann and Pat Moynihan, and I  
17 have had a long-standing interest in  
18 litigation reform, going back to my first  
19 two years in the Senate, and have sponsored  
20 and co-sponsored numerous proposals on  
21 litigation reform of one sort or another  
22 throughout my 18-year history. Auto choice

1 was just one of them.

2 Q I don't doubt the sincerity of  
3 your commitment to tort reform. I am simply  
4 asking, do you recall discussing this  
5 particular legislation with anybody in the  
6 insurance industry?

7 A I would be surprised if we would  
8 not have discussed it with people in the  
9 industry. I don't recall personal meetings  
10 myself, but you don't put together a major  
11 piece of legislation without discussing  
12 people who know a lot about the subject.

13 Q Can you recall a meeting with  
14 anyone, any insurance industry executive at  
15 all ever?

16 A Ever?

17 Q Any specific. Do you remember?

18 A I am sure I have had meetings that  
19 insurance industry executives have been in.

20 Q You cannot as you sit here  
21 remember one specific meeting that you could  
22 tell me?

1           A     No, I can't because in the course  
2     of a week we have constant meetings. That  
3     is a big part of what we do here, meetings  
4     and meetings and meetings and meetings. I  
5     am sure that I have met with insurance  
6     industry executives.

7           Q     The same would be true if I were  
8     to ask you to recall meetings with coal  
9     industry executives at all at any point in  
10    time and not limited to the clean coal  
11    legislation that we discussed?

12          A     I am sure I have met with them,  
13    yes. I mean, the rule of mouth is that  
14    anybody from Kentucky sees either me or the  
15    staff. There are meetings going on all the  
16    time.

17          Q     Do you recall who you met with  
18    this past week?

19          A     This past week?

20          Q     Yes.

21          A     Just last week? I would have to  
22    consult my schedule. There are meetings



1 every single day, all kinds of meetings.

2 Q Do you have any memory as you sit  
3 here of the meetings you held this past  
4 week?

5 A Yes. I went to a Republican  
6 policy luncheon on Tuesday, I went to a  
7 steering committee luncheon on Wednesday, I  
8 went to a Thursday Group luncheon on  
9 Thursday.

10 Q What is the steering committee?

11 A It is a group of Republican  
12 senators.

13 Q I'm sorry, Thursday Group?

14 A Another group of Republican  
15 senators.

16 Q I'm sorry, please continue.

17 A You are trying to find out if I  
18 remember anything from last week?

19 Q Do you remember meeting with any  
20 individual industry representatives?

21 A Last week?

22 Q Yes.

1           A     We had a bunch of people from  
2     Kentucky, and I can't remember whether it  
3     was last week or the week before, we had  
4     people from -- we had teachers in, we had  
5     real estate people in. That is what goes on  
6     every day around here.

7           Q     If you would give me just one  
8     moment. I have one further set of questions  
9     to ask before we conclude this part of the  
10    deposition.

11                     Senator McConnell, have you ever  
12    spoken with an official or employee of a  
13    regulatory agency of the United States  
14    government about the concerns of a donor to  
15    your campaign?

16                     MR. ABRAMS: I object to the form  
17    of the question.

18                     THE WITNESS: I don't recall  
19    having done that.

20                     BY MS. TENNERIELLO:

21           Q     To your knowledge, you have never  
22    spoken to any executive agency official or

1 employee regarding the concerns of anyone  
2 who has contributed to your campaigns?

3 A First of all, we don't -- in  
4 carrying out our function here in the  
5 Senate, we don't ask people whether they  
6 contribute or not. And dealing with  
7 regulatory agencies is typically done by  
8 case workers on my behalf, but we have no  
9 way of knowing who might be a donor and who  
10 might not be.

11 Q You don't have any personal  
12 knowledge of who your donors are, your  
13 highest donors?

14 A I don't keep a list of who they  
15 are. I am generally familiar obviously with  
16 a number of them because they are friends of  
17 mine but we don't take official action in my  
18 office based upon whether people contribute  
19 or didn't contribute.

20 Q Oh, I am not implying anything  
21 about the motivation for such an  
22 intervention. I am simply asking as a

1 factual matter whether you have spoken with  
2 the agency about the concerns and I  
3 understand you to say that you have not, you  
4 don't personally speak with agency staff.  
5 So let me ask you have you ever instructed a  
6 staff person to intervene with a regulatory  
7 agency on behalf of someone who you knew to  
8 be a campaign donor. And again, I don't  
9 mean to imply that that was the motivation.

10 A Yes, as I said, we don't carry out  
11 legislative or regulatory contacts based  
12 upon who may have contributed and who may  
13 not have contributed. That is simply not  
14 the way we conduct business.

15 Q I know that. I am not asking you  
16 what it was based on. I am simply asking  
17 you as a factual matter if you have ever  
18 instructed a staff person to intervene with  
19 a regulatory agency on behalf of someone who  
20 you were aware had contributed to your  
21 campaign.

22 A I don't think I understand the

1 question. I think I have answered it a  
2 couple of times.

3 MS. TENNERIELLO: All right.  
4 Senator McConnell, thank you very much. I  
5 have no further questions.

6 THE WITNESS: Okay.

7 EXAMINATION BY COUNSEL FOR DEFENDANT

8 INTERVENORS

9 BY MR. MOGILNICKI:

10 Q Hello, Senator. It hardly seems  
11 fair that the lawyers keep switching and you  
12 have to keep answering questions. If you  
13 would like a break, I would be happy to take  
14 one.

15 A No, I'm okay.

16 Q Fine. My name is Eric Mogilnicki  
17 and I represent the Defendant Intervenors in  
18 this case. With me is my colleague, Stacey  
19 Beck.

20 I am honored to be able to speak  
21 with you today about the issues in this  
22 case, and I am going to try to ask you

1 questions as clearly as I can. If for any  
2 reason my questions aren't clear, please let  
3 me know and I'll try to rephrase them. I  
4 suspect Mr. Abrams will help you in that  
5 regard as well.

6 Just so we are clear, when I today  
7 use the term "soft money," I am using that  
8 term as it is set forth in Section 101 of  
9 the Bipartisan Campaign Reform Act. Is that  
10 clear?

11 A Yes. I understand that soft money  
12 is everything that isn't hard money that is  
13 spent by national parties, yes.

14 Q Well, the Act which I will often  
15 call BCRA today says that: "It is a  
16 contribution, donation or transfer of funds  
17 of anything of value that are not subject to  
18 the limitations, prohibitions or reported  
19 requirements of this Act." Is that clear?

20 A Yes. Of course, it is regulated  
21 at the state level, but I understand. I  
22 think I understand the definition.

1 Q I just want to make sure we are  
2 communicating when I use the term.

3 A Yes.

4 Q Hard money is funds that aren't  
5 soft money. Is that fair enough?

6 A Right. Soft money was created  
7 when we created hard money.

8 MR. BARAN: Just for clarification  
9 purposes are you referring to transfers or  
10 donations just at the national level?

11 MR. MOGILNICKI: I don't think any  
12 clarification is necessary. The Senator  
13 understands what I mean by hard and soft  
14 money.

15 THE WITNESS: Well, I think it  
16 would be good to designate when we are  
17 talking about party soft money or non-party  
18 soft money.

19 MR. MOGILNICKI: When I talk about  
20 soft money, I am going to name soft money as  
21 defined by the BCRA. I don't believe it  
22 makes a distinction between parties and

1 non-parties.

2 THE WITNESS: There is a  
3 difference, though.

4 MR. ABRAMS: Why don't you ask  
5 some questions to the Senator.

6 MR. MOGILNICKI: All right. I'll  
7 tell you this, Senator. If at any time you  
8 are not sure what I mean by soft money,  
9 please let me know and we will have this  
10 colloquy if it becomes necessary, is that  
11 all right?

12 THE WITNESS: Uh-huh.

13 BY MR. MOGILNICKI:

14 Q Senator, did you run ads in  
15 your 1996 Senate campaign?

16 A Yes.

17 Q Is it fair to say that the purpose  
18 of your broadcast ads was to persuade  
19 Kentucky's voters to reelect you to the  
20 United States Senate?

21 A That is what we hoped, yes.

22 MR. MOGILNICKI: I would like to



1 introduce an exhibit. This is a compilation  
2 of ads from your 1996 campaign as produced  
3 by you in this litigation.

4 Could you mark this as the next  
5 exhibit?

6 (McConnell Deposition Exhibit  
7 No. 17 was marked for  
8 identification.)

9 MR. BARAN: Is this a compilation  
10 you have --

11 MR. MOGILNICKI: No, this is the  
12 tape that was produced to us.

13 MR. BARAN: Could you give us a  
14 production number of the one on it?

15 MS. TENNERIELLO: This is a copy  
16 of the original tape?

17 MR. MOGILNICKI: That you produced  
18 to us and we will provide you with a copy  
19 before the deposition is closed.

20 MR. BARAN: Okay.

21 MR. MOGILNICKI: Would you play  
22 that?

1 BY MR. MOGILNICKI:

2 Q We are going to show you one of  
3 the ads on the compilation, Senator, an ad  
4 entitled "Wrong".

5 A Entitled what, sir?

6 Q Wrong, W-r-o-n-g. Do you recall  
7 running that ad as part of your re-election  
8 campaign?

9 A Yes, I do.

10 Q I noticed that the name of the  
11 re-election committee is McConnell Senate  
12 Committee '96, is that right?

13 A It would have been, yes.

14 Q Wouldn't the purpose of the  
15 committee be clearer if it was Committee to  
16 Elect Senator Mitch McConnell, or McConnell  
17 for Senate?

18 A I think McConnell Senate  
19 Committee '96 certainly conveys that it is  
20 about a Senate campaign in '96.

21 Q That the committee's purpose is to  
22 re-elect you as Senator?

1           A     I can't imagine any other purpose.  
2     Yes, that would be the purpose.

3           Q     Do you recall whether this ad was  
4     run within 60 days of the election?

5           A     I don't.

6           Q     Were the issues portrayed in this  
7     ad important to Kentucky voters in 1996?

8           A     They were.

9           Q     Did knowing that you had voted  
10    for \$2,000 more for each senior citizen make  
11    elderly Kentucky voters more likely to vote  
12    for you?

13          A     Well, the purpose of running ads,  
14    obviously, is to persuade people to vote for  
15    you.

16          Q     In particular, did the line in the  
17    ad about your vote in favor of \$2,000 more  
18    for each senior citizen help persuade senior  
19    citizens to vote for your re-election  
20    campaign?

21          A     Well, certainly, you hope in  
22    running an ad that you are persuading people

1 to vote for you.

2 Q I assume you make every effort to  
3 make sure that your ads are persuasive to  
4 people, is that fair?

5 A Typically, candidates poll in  
6 order to get a sense of what voters are  
7 interested in talking about and try to  
8 address those issues that seem to be  
9 relevant in the given year based on the  
10 particular opponent.

11 Q Did you do polls in 1996?

12 A We did.

13 Q Did those polls reveal that  
14 Kentucky voters cared about the issue of  
15 Social Security?

16 A I assume that they did.

17 Q Did those polls reveal that your  
18 position as set forth in the ad would be  
19 appealing to Kentucky voters in evaluating  
20 whether or not to vote for you?

21 A You generally with a poll try to  
22 develop the positions that you have and the

1 positions your opponent has and measure the  
2 effectiveness of various approaches to those  
3 issues to be conveyed to the public.

4 Q Would it be fair to say having  
5 viewed the ad today that you believed  
6 in 1996 that describing your vote on Social  
7 Security benefits would help persuade voters  
8 to vote for you?

9 A Well, it is hard to measure these  
10 things. I mean, at the end I won the  
11 election but it is hard to know, you know,  
12 which ad may have worked and which ad may  
13 not have. It is always a rather inexact  
14 science.

15 Q I appreciate that, Senator. You,  
16 I assume, keep very close contact with folks  
17 in Kentucky, is that fair?

18 A How do you define "contact"?

19 Q You make a special effort to speak  
20 with the citizens of Kentucky on a regular  
21 basis.

22 A I go home a lot, yes.

1 Q You make a special effort to  
2 understand what they care about, is that  
3 fair?

4 A Sure.

5 Q Based on all those efforts, is it  
6 fair to say that in 1996, they cared about  
7 Social Security benefits?

8 A I think it would be safe to say  
9 that in any year, Kentuckians and Americans  
10 would care about Social Security benefits.

11 Q Based on that same understanding  
12 of what people in Kentucky care about, do  
13 you believe that knowing that your opponent  
14 in the '96 election supported higher taxes  
15 on the elderly would make Kentucky voters  
16 less likely to vote for him?

17 A I certainly hoped so.

18 Q It was therefore the intent of  
19 this ad to persuade Kentucky voters to vote  
20 for you?

21 A It is the intent of all the ads  
22 that I ran in my campaign to persuade

1 Kentucky voters to vote for me.

2 Q Do you believe it helped the  
3 people in Kentucky decide to vote for you?

4 A Does campaign advertising help?

5 Q Yes.

6 A I think we can stipulate that  
7 campaign advertising is helpful to voters.

8 Q How about this ad? Do you believe  
9 this ad helped?

10 A I have really no way of measuring,  
11 you know, how effective it was.

12 Q Based on your deep understanding  
13 of what people in Kentucky care about, can  
14 you help me understand whether or not this  
15 ad in your opinion helped the people decide  
16 to vote for you in 1996?

17 A It is hard to know. I mean, you  
18 would have to measure somehow in close  
19 proximity to the ad having been run whether  
20 or not it had an impact, and of course, it  
21 might not have been the only ad on the air  
22 at the time. So it is really hard to say

1       which work and which don't. At the end of  
2       the day when the election is over, either  
3       you won or you lost. And it is hard to draw  
4       precise conclusions about why an election  
5       comes out one way or another.

6           Q     Does your campaign or consultants  
7       working for your campaign ever show an ad to  
8       a small group of voters before it goes on  
9       the air?

10           MR. ABRAMS: Are you talking about  
11       a particular campaign ad?

12           MR. MOGILNICKI: Yes.

13           MR. ABRAMS: Which one?

14           THE WITNESS: Like a focus group?

15           MR. MOGILNICKI: Precisely.

16           MR. ABRAMS: Are you talking about  
17       a particular campaign ad?

18           MR. MOGILNICKI: I asked if he  
19       ever did it. I think the question is clear.

20           MR. ABRAMS: Well, what is the  
21       pending question?

22           MR. MOGILNICKI: I think the



1 reporter can tell us that.

2 (The reporter read the record as  
3 requested.)

4 THE WITNESS: Do you want to  
5 repeat your question? Is it about focus  
6 grouping and ads; was that it?

7 BY MR. MOGILNICKI:

8 Q Yes. Does your campaign ever use  
9 a focus group to review an ad before it's  
10 broadcast?

11 A I don't remember whether we've  
12 used a focus group to review an ad. I think  
13 we have, maybe once or twice, used focus  
14 groups, but I don't know, frankly, what they  
15 do at focus groups. I've never sat in on  
16 one and I don't know whether they show ads  
17 or news clips or what you do with a focus  
18 group.

19 We have not done much of that.

20 Q What other process leads off to a  
21 decision to broadcast a particular political  
22 ad?

1           A     Polling is an important tool in  
2     determining what voters are interested in,  
3     what your own weaknesses are, and what the  
4     weaknesses of your opponent are.

5           Q     Would your campaign staff review  
6     an ad before it was broadcast to make sure  
7     it was an effective ad?

8           A     Effectiveness is hard to measure.  
9     Certainly, everyone would look at an ad  
10    before it went on the air, but effectiveness  
11    is a very difficult thing to measure.

12          Q     Would you expect your staff to  
13    stop an ineffective ad from going on the  
14    air?

15          A     It's hard to know in advance  
16    what's going to be effective or ineffective.  
17    One of the old sayings in politics is that a  
18    lot of people lose votes with their own ads.

19          Q     Do you think your staff does all  
20    that it can to ensure that your ads are  
21    effective?

22          A     You never know that until you've

1 run an ad. Of course, you try not to put  
2 things on the air that you think will cost  
3 you votes.

4 Q Do you review ads before they're  
5 broadcast?

6 A I've usually seen them. Sure,  
7 I've seen them at least once before they go  
8 on the air.

9 Q Would you prevent an ad from being  
10 run if you thought it was ineffective or  
11 unlikely to assist your campaign?

12 A Well, again, at the risk of being  
13 redundant, it's hard to know in advance  
14 what's going to be effective. So there's  
15 always some risk involved in putting an ad  
16 on the air. It may bomb.

17 You don't do that on purpose.

18 Q What is your purpose?

19 A Your purpose is to gain votes, not  
20 lose votes.

21 Q I also have a written script for  
22 this ad, which I'd like to introduce as an

1 exhibit.

2 MR. BARAN: Are we continuing with  
3 the exhibit numbers here?

4 MR. MOGILNICKI: Yes, I think we  
5 ought to. So this is McConnell 18. Thank  
6 you. The videotape is 17, so the record is  
7 clear.

8 MR. BARAN: Thank you.

9 MR. MOGILNICKI: Okay.

10 (McConnell Deposition Exhibit  
11 No. 18 was marked for  
12 identification.)

13 BY MR. MOGILNICKI:

14 Q Would you take a moment to read  
15 this over, Senator?

16 A Okay.

17 Q Senator, I'd like to ask you a  
18 question, and I wanted you to have both  
19 Exhibit 17 and Exhibit 18 available to you  
20 to respond to it. Would you tell me if the  
21 campaign ad that we've seen and that you've  
22 now read a script for contained any of the

1 following terms: "vote for, elect, support,  
2 cast your ballot for, McConnell for Senate,  
3 vote against, defeat, or reject"?

4 A Well, first of all, there is no  
5 speech code for expressed advocacy; and  
6 second, all television ads must include a  
7 disclaimer on the ad, which tells you who  
8 paid for it, and if the ad is on radio, it  
9 must be said.

10 So there are no -- well, I think  
11 I've answered the question.

12 Q I'm not sure. Can you tell me yes  
13 or no whether any of the words that I just  
14 listed appear in the advertisement?

15 MR. BARAN: This is not a complete  
16 transcript.

17 MR. MOGILNICKI: I'm happy to show  
18 the ad again, if it would be helpful. This  
19 is the transcript that was produced by  
20 Senator McConnell and it's the closest thing  
21 we have.

22 MR. BARAN: You haven't

1 established the foundation for this  
2 particular document, but I can tell you that  
3 it doesn't include, for example, the  
4 disclaimer.

5 MR. MOGILNICKI: Okay.

6 MR. BARAN: Which was shown on the  
7 video.

8 MR. MOGILNICKI: First of all, I  
9 would ask that one counsel and one counsel  
10 only object to the form of questions.  
11 Second of all, Senator McConnell, I'd be  
12 happy to show you the ad again, if it's  
13 necessary for you to answer the pending  
14 question.

15 THE WITNESS: Well, I've answered  
16 the question. There is no speech  
17 requirement for expressed advocacy.

18 BY MR. MOGILNICKI:

19 Q I'm sorry, sir. That answer  
20 explains what the rules are. I'm asking you  
21 if these words appear in your political ad.

22 A All right. Read them again.

1 Q If it's helpful, these are the  
2 so-called magic words, set forth in Buckley  
3 v. Valeo.

4 MR. ABRAMS: I object to the form  
5 of the question. Please don't lecture about  
6 the law.

7 BY MR. MOGILNICKI:

8 Q The words I've asked you about are  
9 the words: "vote for, elect, support, cast  
10 your ballot for, McConnell for Senate, vote  
11 against, defeat, or reject"?

12 Do those words or phrases appear  
13 anywhere in your ad?

14 A Well, "McConnell Senate  
15 Committee '96" is on the ad; must be on the  
16 ad. Clearly, that conveys to the public  
17 that this is an ad on behalf of McConnell.

18 Q Senator, I'm sorry, but that's not  
19 responsive to my question, which is whether  
20 the set of words and terms I've set forth is  
21 in the ad or not in the ad, and I think that  
22 question is acceptable of a yes or no

1 answer.

2 (Witness conferred with counsel)

3 THE WITNESS: Those particular  
4 words are not in the ad.

5 BY MR. MOGILNICKI:

6 Q Are not in the videotape nor on  
7 the script, to be clear?

8 A Those particular words are not.

9 Q Thank you. Who is Greg Stevens &  
10 Company?

11 A Who are they?

12 Q Yes.

13 A This was the company that did the  
14 commercials.

15 Q Do you recognize the document  
16 that's been marked as McConnell 18?

17 A Do I recognize it?

18 Q Yes.

19 A It appears to be a written script  
20 of the ad we just viewed.

21 Q Have you seen this document  
22 before, to your knowledge?



1           A     Have I seen what?

2           Q     This document, Exhibit 18, before,  
3     to your knowledge?

4           A     I may have.

5           Q     Is it your position in this  
6     lawsuit that absent the BCRA, this same ad,  
7     with a different tag line, of course, could  
8     be run thousands of times in the days before  
9     a federal election by a corporation using  
10    funds from its corporate treasury?

11                                 (Witness conferred with counsel)

12                   MR. ABRAMS: I would just like to  
13     clarify, you're asking for a legal position  
14     of the Senator and his position in this  
15     lawsuit?

16                   MR. MOGILNICKI: That is correct.

17                   THE WITNESS: It is my view of  
18     issue advocacy that it should be permitted  
19     in a free society, at any point, up to and  
20     including the day of the election, in the  
21     same way that newspapers are free to state  
22     their views about candidates on the front

1 page, on the editorial page, anytime during  
2 the course of a year, without -- well, I  
3 think that answers my view of the issue  
4 advocacy.

5 BY MR. MOGILNICKI:

6 Q Well, for that to be a response,  
7 it would imply that you believe that your ad  
8 would qualify as issue advocacy, if there  
9 wasn't the tag line on it. Is that correct?

10 A Well, I think it is safe to say  
11 that I don't believe there ought to be a  
12 speech code. Fundamentally, I don't think  
13 we have any problems in this country because  
14 we're speaking too little, and I think  
15 individuals and groups ought to be free to  
16 express themselves at any point.

17 Q I understand and respect your  
18 point of view, Senator, but I don't believe  
19 that's responsive to the question I asked.  
20 The question I asked is whether this ad, the  
21 one we viewed, McConnell 17, would, in your  
22 view, qualify as an issue ad if it didn't

1 have the McConnell Senate tag line?

2 A Well, it depends.

3 MR. ABRAMS: I object to the form  
4 of the question. If we're going to talk  
5 about law, there's nothing in Buckley about  
6 issue ads. If you want to ask the Senator  
7 his -- something he's done, something he's  
8 participated in, that's one thing. If you  
9 want to talk about philosophy, and I'm not  
10 trying to cut you off from doing so, then  
11 you have to use the language of the case  
12 law, if you want to talk about law.

13 There's nothing about issue ads.

14 BY MR. MOGILNICKI:

15 Q Senator, can you answer my  
16 question?

17 A What was your question again?

18 Q Whether the ad we saw, and which  
19 has been marked as McConnell 17, could be  
20 run, in your view, as an issue ad, as long  
21 as the tag line was taken off, absent the  
22 BCRA?

1           A     Well, it depends. I mean, I  
2     generally have the view, as I expressed  
3     earlier, that people ought to be free to  
4     express themselves through issue advocacy at  
5     any time. So I opt on the side of allowing  
6     more expression, not less.

7           Q     When you say "it depends," what  
8     does it depend on?

9           A     Well, whoever crafted the ad would  
10    have to decide what they thought -- what  
11    message they wanted to deliver and who they  
12    delivered it to. You're asking me a  
13    hypothetical it's kind of hard to respond  
14    to.

15                    But my general frame of reference  
16    is that I don't think we ought to be  
17    quieting the voices of citizens. I think  
18    they ought to be encouraged and be free to  
19    express themselves through the use of issue  
20    advocacy.

21           Q     I'm asking you to apply that  
22    general framework to a very specific ad, one

1 that you've just seen, and which I'd be  
2 happy to show you again, and I'm asking you  
3 if you believe that is the sort of ad that a  
4 corporation, absent the BCRA, would be able  
5 to run thousands of times in the days before  
6 a federal election?

7 A Well, let me just say, in a free  
8 society, I think that individuals and groups  
9 ought to have the maximum freedom to express  
10 themselves at any time during the course of  
11 the year, just like newspapers do.

12 Q I continue to understand your  
13 general point, Senator. I'm asking a very  
14 specific question about a particular ad.

15 A You're asking me a hypothetical  
16 about this particular ad, and I think that  
17 is encompassed by my observation that I  
18 think in this society, we ought to opt in  
19 favor of more speech, not less; more voices,  
20 not fewer voices, all the time, anytime.

21 Q So you would concede that this ad,  
22 minus the tag line, is the sort of ad that,

1 absent the BCRA, a corporation could run  
2 using funds from its corporation treasury in  
3 the days before an election?

4 A In a free society, citizens and  
5 individuals ought to be able to express  
6 themselves at any point during the course of  
7 an election.

8 That's my general philosophical  
9 approach to this.

10 Q Yes, Senator, and I'm asking you  
11 to apply your general philosophical approach  
12 to a very specific example. Frankly, I'm  
13 having trouble understanding why the answer  
14 to my question is not just the word "yes."

15 A I'm having trouble understanding  
16 why you can't accept my answer, which is  
17 that if you start with a general  
18 philosophical approach, that people ought to  
19 be free to express themselves at any point  
20 during the year. I think I've answered your  
21 question.

22 Q Would that freedom include the

1 ability of a corporation, absent the BCRA,  
2 to run this ad in the days before an  
3 election?

4 A Well, it's my understanding that  
5 both individuals and groups can engage in  
6 issue advocacy before BCRA, at any point  
7 during the course of an election of a year.

8 Q This ad would qualify as issue  
9 advocacy; is that your position?

10 A If you believe in free speech,  
11 almost any ad would qualify, because people  
12 would be free to express themselves at any  
13 point in our free society.

14 Q Sir, you've said "almost any ad,"  
15 and that's why I have to ask you, what about  
16 this ad?

17 A It looks like free speech to me,  
18 and it looks to me like if you're going to  
19 have a free society in which people can  
20 express themselves 12 months out of the year  
21 at any time they choose to, almost anything  
22 would be allowed in the discussion of

1 issues, in a free society.

2 Q Among the things that would be  
3 allowed would be a corporation running this  
4 ad, using funds from its corporate treasury,  
5 in the days before an election?

6 A I don't know how many times I can  
7 give you the same answer. I opt on the side  
8 of more speech, not less speech. I don't  
9 favor trying to prevent discussion of issues  
10 on the airwaves.

11 Q Senator, if Defendants were to  
12 represent to the Court that this ad, minus  
13 the tag line, was an ad that could, absent  
14 the BCRA, be run in the days before an  
15 election, using corporate treasury money,  
16 would that be inaccurate in any regard?

17 A Now you're talking about -- you're  
18 talking about not party soft money here, but  
19 outside interest group soft money?

20 Q That's correct.

21 A My view, as I've repeatedly  
22 expressed to you, is that in a free society,



1 they ought to be free to discuss issues at  
2 any point, at any time, during the course of  
3 a year.

4 Q I'm asking you if that general  
5 view applies to this specific ad.

6 A It would apply to almost any ad,  
7 because I believe that in a free society,  
8 people ought to be -- have the ability,  
9 without government interference, to discuss  
10 issues at any point during the course of the  
11 year.

12 Q Would it apply to this ad?

13 A It would apply to almost any ad.

14 Q Is this ad one of the "almost any  
15 ads" to which it would apply?

16 A It would apply to almost any ad.  
17 In a free society, I can't imagine who you  
18 would want to censor and who you would want  
19 to permit free speech during the course of  
20 the year.

21 Q Senator, I'm asking about this  
22 specific ad.

1           A     I know you are, and I think I've  
2 answered your question.

3           Q     Each time, Senator, you have  
4 answered by mentioning general principals,  
5 without telling me whether or not they apply  
6 to allow a corporation to run this ad using  
7 corporate treasury funds, before an  
8 election, absent the BCRA; and so I beseech  
9 you to tell me how you view this ad.

10          A     I think that -- I think that both  
11 corporations, labor unions, individuals, and  
12 political parties should be free to engage  
13 in issue advocacy at any point -- at any  
14 point -- during the course of a year.

15          Q     Would this ad qualify as issue  
16 advocacy?

17          A     I can't imagine an ad that  
18 wouldn't qualify, in a free society.

19          Q     Is that a yes?

20                MR. ABRAMS: I think the Senator  
21 has answered. I also think it's time for  
22 lunch.

1                   You can resume this after lunch.

2                   MR. MOGILNICKI: That will be

3 fine.

4                                 (Whereupon, at 12:28 p.m., a

5 luncheon recess was taken.)

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A F T E R N O O N   S E S S I O N

(1:25 p.m.)

MR. MOGILNICKI: Welcome everyone  
back from our lunch break. I'd like to mark  
as the next exhibit McConnell 19, a one-page  
document.\*

1                   MR. MOGILNICKI: I'd like to show  
2                   you another ad that was run in Kentucky.  
3                   This was in the 1998 senatorial campaign.  
4                   I'll mark this as McConnell 20.

5                                 (McConnell Deposition Exhibit  
6                                 No. 20 was marked for  
7                                 identification.)

8                   BY MR. MOGILNICKI:

9                   Q     I will apologize in advance that  
10                   the pictures are hard to read, but I believe  
11                   you can read the next underneath them, and  
12                   I'd ask you to do so.

13                                MR. BARAN: Do you have a CMAG  
14                   number for this?

15                                MR. MOGILNICKI: No, I don't have  
16                   one, beyond what's on the document.

17                   BY MR. MOGILNICKI:

18                   Q     Have you had an opportunity to  
19                   read the ad?

20                   A     Yes, I read the script.

21                   Q     Do you remember seeing this ad run  
22                   in Kentucky during the 1998 senatorial

1 campaign?

2 A I think I did see it because I'm  
3 in Kentucky frequently and have the  
4 television on from time to time. I also  
5 could have seen it in my capacity as  
6 chairman of the Senatorial Committee during  
7 that period. I have a vague recollection of  
8 it, yes.

9 Q Did you review ads often as  
10 chairman of the NRSC?

11 A Yes.

12 Q Why was that?

13 A Part of the job of being chairman  
14 of the National Republican Senatorial  
15 Committee is to recruit candidates, to raise  
16 money for candidates, and to give candidates  
17 advice. So I would have seen a lot of ads  
18 from a lot of different states.

19 Q This is the sort of ad that you  
20 might had reviewed in your capacity as chair  
21 of the NRSC?

22 A Yes, I might well have done that.

1           Q     Do you remember thinking back  
2     in 1998 that this was an ad designed to  
3     influence the Senate election in Kentucky?

4           A     Well, it certainly would have  
5     influenced people's thinkings about the  
6     issues that were being discussed in this ad,  
7     you know. This is a classic issue ad  
8     discussing an issue, and of course, issues  
9     do have a bearing on elections.

10          Q     What issue is covered by this ad?

11          A     This is an issue about --  
12     obviously from reading the script, from --  
13     about taxes.

14                 MR. MOGILNICKI: If you would hold  
15     on to Exhibit 20, but I'd also like to show  
16     you a new document which will be marked as  
17     Exhibit 21.

18                         (McConnell Deposition Exhibit  
19                         No. 21 was marked for  
20                         identification.)

21                 MR. BARAN: Do you know what this  
22     handwriting means here?

1 MR. MOGILNICKI: I do not.

2 BY MR. MOGILNICKI:

3 Q Senator, have you had an  
4 opportunity to review Exhibit 21?

5 A Yes.

6 Q Do you remember seeing this ad run  
7 in Kentucky during the 1998 campaign?

8 A I probably did. I -- I don't  
9 remember it. I see a lot of ads.  
10 Particularly in those days, I saw a lot of  
11 ads, but I'm sure I saw it, yeah.

12 Q Is this also an ad that you might  
13 have seen in your capacity as chair of the  
14 NRSC?

15 A Yes, or -- or a resident of  
16 Kentucky, either one.

17 Q Do you remember thinking at the  
18 time that this ad was designed to influence  
19 the Senate election?

20 A Yes, um-hum.

21 Q When I asked you that question  
22 about Exhibit 20, you weren't sure whether



1 that ad was intended to influence the Senate  
2 election.

3 A Well, issue ads both discuss  
4 issues and set a positive environment for  
5 issue discussion. No doubt, in connection  
6 with the discussion of issues, have some  
7 impact on the election.

8 Q Can you tell me what you see as  
9 the differences between these two ads in the  
10 likelihood that they would persuade a voter  
11 in the Kentucky Senate election in 1998?

12 A Well, as I've said to you earlier  
13 in response to earlier questions, it's --  
14 it's my view that in a free society, there  
15 ought to be robust debate of the issues, and  
16 in the case of Congressman Baseler's ad, I'm  
17 aware of no speech code that would prevent  
18 him from saying anything he chose in his own  
19 ad. He chose to do a comparison as he saw  
20 it between himself and his opponent on -- on  
21 taxes.

22 Q Is it fair to say that Exhibit 21

1 is about the same tax issue as Exhibit 20?

2 A Well -- but, you know, a  
3 television ad is not just about the words  
4 that are being said, it's about the images,  
5 you know. Even though the -- the words are  
6 largely about taxes, it could have other  
7 implications as well because of the --  
8 whatever is being shown at the same time.  
9 So I don't know whether one would be more  
10 effective than the other, whether one is  
11 more or less issue oriented than the other.

12 Q Thank you. You testified earlier  
13 that you were chair of the NRSC for two  
14 election cycles, in 1998 and 2000; is that  
15 correct? I'd like to ask you some questions  
16 about that now.

17 A Yes.

18 Q Did you raise money for the NRSC?

19 A Yes, I did.

20 Q Did you raise soft money for the  
21 NRSC?

22 A I raised both soft money and hard

1 money.

2 Q I realize during the break that I  
3 might have misspoken earlier when I  
4 described soft money, so let's try again.  
5 What do you understand soft money to be?

6 A What I understand soft money to be  
7 is all money raised by -- political party  
8 soft money to be all money raised by  
9 political parties that is not hard money.

10 Q Do you have a ballpark estimate of  
11 how much soft money you helped the NRSC  
12 raise in the 1998 election cycle?

13 A No.

14 Q How about 2000?

15 A How about what?

16 Q The 2000 election cycle.

17 A No.

18 Q What methods did you use to keep  
19 other Republican senators abreast of the  
20 NRSC's activities?

21 A You're talking about incumbent  
22 Republican senators?

1 Q Yes.

2 A Well, we meet for lunch every  
3 Tuesday, and it was customary for me to give  
4 a report at the lunch on the activities of  
5 the committee. Occasionally I would give  
6 updates on races and respond to questions.

7 Q Where is the weekly Tuesday lunch  
8 held?

9 A In -- usually in the Capitol.

10 Q Are there other ways in which you  
11 kept incumbent Republican senators abreast  
12 of the activities of the NRSC?

13 A Sure. Occasionally we'd mail them  
14 reports. I would from time to time on the  
15 floor or other places just fill people in on  
16 what's -- what's happening out there.

17 MR. MOGILNICKI: I'd like to  
18 introduce as McConnell 22 a page from your  
19 official website, Senator. It's entitled  
20 "Biography of Senator Mitch McConnell."

21 (McConnell Deposition Exhibit

22 No. 22 was marked for

1 identification.)

2 BY MR. MOGILNICKI:

3 Q I'll direct your attention to the  
4 only paragraph I intend to ask you about,  
5 which is the paragraph that begins, "From  
6 January 1997-January 2001." Would you read  
7 that paragraph?

8 A Read it to you?

9 Q Would you just read it to  
10 yourself?

11 A Okay.

12 Q Is that an accurate summary of  
13 your tenure at the NRSC?

14 A Yes.

15 Q Is this page familiar to you?  
16 Have you seen this page before?

17 A Not lately, but it gets changed  
18 from time to time. I don't know whether  
19 this is the most recent one. Is it?

20 Q I believe so, but I'm wondering if  
21 you have any reason to doubt that it's an  
22 accurate copy of your biography from your

1 official website.

2 A I have no reason to doubt it, no.

3 Q How do you get senators to  
4 participate in NRSC activities?

5 A With great difficulty.

6 Q I believe that, so I'm wondering  
7 what methods you use to persuade them.

8 A Well, the -- the job of the  
9 chairman is -- is like in most  
10 organizations, a few people do most of the  
11 work and you're -- you know, hoping that  
12 senators will show up for events, and hoping  
13 that they will contribute to candidates who  
14 have a chance of winning, and in general, be  
15 supportive of trying to keep your party in  
16 the majority if you happen to be in the  
17 majority, or to get in the majority if you  
18 aren't.

19 Q Are you aware of which senators  
20 are doing most of the work?

21 A When you're chairman, you do,  
22 um-hum.

1           Q     In the 1998 election cycle, which  
2 senators were doing most of the work of the  
3 NRSC with you?

4           A     It's hard for me to recall exactly  
5 who the workhorses were, but I can tell you  
6 the type of person who's usually doing a  
7 little more if they're willing to chair a  
8 dinner, or to chair a donor group. You can  
9 usually count on the leader and the  
10 assistant leader of your party to do more  
11 than others, which is not surprising.

12          Q     Sitting here today, you cannot  
13 recall any Senator who did more than the  
14 usual amount of work for the NRSC in 1996?

15          A     It would be hard to name --

16               MR. BARAN: Excuse me, did you  
17 say 1996?

18               MR. MOGILNICKI: I'm sorry, yes,  
19 and I meant 1998. Thank you.

20               MR. BARAN: Thank you.

21               THE WITNESS: '98? I -- I don't  
22 remember who the workhorses were that cycle.

1 BY MR. MOGILNICKI:

2 Q Do you know who the workhorses  
3 were in the 2000 cycle?

4 A Not really.

5 Q Is there any record kept at the  
6 NRSC of which senators are most actively  
7 participating in NRSC activities?

8 A Gee, I -- I don't know. I simply  
9 don't know.

10 Q Would you ever get reports that  
11 indicated which senators had assisted the  
12 NRSC in raising funds?

13 A Yeah, from time to time you'd get  
14 an update as to who was helping out.

15 Q Can you describe what that report  
16 would be like?

17 A It would usually be oral, and of  
18 course, if you went to an event, you could  
19 see who was there if it was a small event.  
20 If it was a large event, it would be pretty  
21 hard to tell who was there. But a big -- a  
22 big part of the job as the chairman is to



1 encourage others to help.

2 Q Were there some senators who  
3 refused to help?

4 A Sure.

5 Q Do you remember any of their  
6 names?

7 A No.

8 Q Was there any other method by  
9 which the NRSC tracked which Senator was  
10 assisting with the NRSC activities?

11 A No. As I said, a big part of the  
12 job is to -- to try to encourage others to  
13 help. That's about all you could do is  
14 encourage them.

15 Q Did you encourage them in part by  
16 remembering who had been helpful and who had  
17 not been helpful?

18 A You know, in our conference there  
19 is no stick. About all you -- about all you  
20 have a carrot, and no stick.

21 Q Did senators' participation in  
22 NRSC activities affect in any way the amount

1 of assistance they could expect from the  
2 NRSC?

3 A No.

4 Q So a Senator who attended every  
5 event would be neither more nor less likely  
6 to get funding from the NRSC than a Senator  
7 who failed utterly to assist the NRSC?

8 A That's correct.

9 Q I assume you also spoke to  
10 potential donors to the NRSC in your tenure  
11 as chair of the NRSC.

12 A I did.

13 Q Can you describe the efforts you  
14 made to get donors to give money to the  
15 NRSC? I know it's a broad question. I'm  
16 asking just for general --

17 A Well, I signed letters --  
18 direct-mail fundraising letters, I went to  
19 events both in Washington and around the  
20 country; just the whole, you know, gamut of  
21 trying to get the resources in so we could  
22 have a chance at success.

1 Q Did you make phone calls as well?

2 A I did from time to time.

3 Q When you were going to make phone  
4 calls, would you get a memo from a staff  
5 person helping you understand what issues or  
6 political campaigns were of interest to the  
7 potential donor?

8 A Not on issues, but usually there  
9 would be a donor history. If they had been  
10 somebody that had supported us in the past  
11 and we were trying to encourage them to do  
12 it again, it was helpful to know what kind  
13 of history they had of giving to us.

14 Q Would it indicate whether a donor  
15 had an interest in a particular senate race  
16 or not?

17 A No, because we didn't care about  
18 that. Our goal was to -- to help retain the  
19 majority. And we wanted and assisted on  
20 total flexibility to deploy our resources in  
21 a way that we felt was -- gave us the best  
22 chance of doing that.

1           Q     In phone calls, would you point to  
2     a particular race as reason why a donor  
3     should give to the NRSC?

4           A     No, no. The goal was to stay in  
5     the majority, and we asked the donors to  
6     trust us as to how to deploy the resources  
7     in such a way that would maximize our chance  
8     of -- of staying in the majority.

9           MR. MOGILNICKI: I'd like to mark  
10    as an exhibit a one-page document that was  
11    produced in this matter by the NRSC.

12                     (McConnell Deposition Exhibit  
13                     No. 23 was marked for  
14                     identification.)

15           BY MR. MOGILNICKI:

16           Q     Would you take a moment to  
17     familiarize yourself with this document,  
18     Senator?

19           A     Okay.

20           Q     Have you seen this document  
21     before?

22           A     I don't recall seeing the

1 document, no.

2 Q Is the format familiar to you?

3 A We certainly had an organization  
4 called the Chairman's Foundation.

5 Q Is the setup of the document  
6 familiar to you as a type of call sheet you  
7 might get when being asked to make a series  
8 of calls for the NRSC?

9 A Yeah, it -- it might well be the  
10 way you -- you would have a sheet in front  
11 of you just to kind of orient you to who it  
12 was and what their past history, if any,  
13 might be, and what kind of range we might  
14 want to ask for.

15 Q At the bottom, there's a paragraph  
16 starting with the words, "Follow-up." Would  
17 you just read that into the record?

18 MR. BARAN: You're asking him to  
19 read it to himself? I mean, the document --

20 BY MR. MOGILNICKI:

21 Q Just read it out loud so the  
22 record reflects it.

1           MR. BARAN: The document speaks  
2 for itself, and it will be in the record,  
3 right? If you would like to read it, you  
4 may do so.

5           THE WITNESS: Do I need to read  
6 what he's read and what you've read and what  
7 I've read? I've read it.

8           MR. MOGILNICKI: I'll read it into  
9 the record. "Follow-up on his pledge of  
10 another \$150K. Mention that Harry Reid is  
11 beefing up his commercial air time and point  
12 out that now, earlier rather than later, is  
13 the time that we most need his pledge  
14 fulfilled."

15           BY MR. MOGILNICKI:

16           Q     Senator, if someone were to  
17 pledge 150K, that would mean \$150,000 to  
18 you; is that fair?

19           A     Yes.

20           Q     If someone were to pledge 150,000,  
21 that would have to be in soft money; is that  
22 correct?

1           A     That's correct.

2           Q     Who would have typically completed  
3 this descriptive narrative portion of the  
4 call sheet at the NRSC?

5           A     Well, it was what a staff person  
6 was suggesting that I needed to know or  
7 somebody needed to know. It looks like it  
8 was me because it's got my name at the top.  
9 I might well have called Mr. Ensign and  
10 recruited him as a donor for the campaign.

11           MR. BARAN: Please try not to  
12 speculate if you don't have a specific  
13 recollection.

14           THE WITNESS: Okay.

15           BY MR. MOGILNICKI:

16           Q     Do you have a specific  
17 recollection of whether you called  
18 Mr. Ensign?

19           A     I don't.

20           Q     Is it fair to say that the staff  
21 person is suggesting that you mention a  
22 particular Senate race in order to encourage

1 Mr. Ensign to give money to the NRSC?

2 A Yeah, because a staff person  
3 suggested that doesn't necessarily mean that  
4 that would have been the kind of pitch I or  
5 others making calls would have made.

6 Q Is it impossible that that's the  
7 kind of pitch that you or others made?

8 A Not impossible, but also not  
9 necessarily likely.

10 Q As the chair of the NRSC, did you  
11 have control over how and where the NRSC  
12 spent or transferred soft money?

13 A I had ultimate control. We had  
14 others around us who -- who helped advise in  
15 making those decisions.

16 Q What criteria did you use to make  
17 those decisions?

18 A There was really a couple of  
19 criteria. We did do some assistance for  
20 state and local campaigns. For example, we  
21 tried to help out in the Virginia governor's  
22 race in '97, I recall. I believe we helped



1 the Dan Lundgren campaign for governor in  
2 California. We even were involved in the  
3 election of the mayor of Warwick, Rhode  
4 Island.

5 So we were involved in state and  
6 local elections, but our principal mission,  
7 obviously, was to develop a positive issue  
8 environment in the states that had the most  
9 contested races and so the resources were  
10 deployed for the most part to develop a  
11 positive issue environment in states where  
12 we felt we had the most competitive races.

13 Q Competitive Senate races?

14 A Yes; not exclusively, but for the  
15 most part.

16 Q Did you try to send some money to  
17 each competitive race in 1998?

18 A Those decisions were made by the  
19 numbers. By that I mean we would get  
20 tracking polls every morning, which I and  
21 others would look at to give us the latest  
22 and best information about what the status

1 of the races were on a day-to-day basis.

2 Q Those tracking polls were an  
3 important influence on which states got soft  
4 money?

5 A Yes.

6 Q Those polls tracked how  
7 competitive the senate races were in those  
8 states?

9 A Yes.

10 Q In 1998, there was a race in the  
11 state of Washington, where Republican Linda  
12 Smith was running for the United States  
13 Senate. Do you remember that race?

14 A Um-hum.

15 Q Do you remember why the NRSC  
16 transferred little or no money to the state  
17 of Washington in 1998?

18 A As I was just telling you in  
19 answer to another question, the decision to  
20 deploy resources was made entirely on the  
21 basis of which Republican candidates had the  
22 best chance of success, and my recollection

1 was that that race was never competitive,  
2 and at the end, I believe was not close at  
3 all.

4 Q Is that the same explanation for  
5 the decision to spend money in Wisconsin  
6 in 1998?

7 A Yes.

8 Q I'm sorry, I said spend money; to  
9 transfer soft money to Wisconsin in 1998?

10 A Yes. The -- the Wisconsin race  
11 was -- my recollection was, was very  
12 competitive and very close all the way to  
13 the end.

14 Q Was the same emphasis on which  
15 state senate races were competitive also the  
16 reason behind NRSC transfers of soft money  
17 in the year 2000?

18 A Yes.

19 Q What's a joint fundraising  
20 committee?

21 A As I understand that mechanism,  
22 it's a committee that's established -- the

1 details of this would -- would have to be  
2 answered by a lawyer.

3 MR. BARAN: Just to the best of  
4 your recollection and knowledge.

5 THE WITNESS: But to the best of  
6 my recollection, what the device is is a  
7 joint committee between a senate candidate  
8 and a senatorial committee into which is  
9 deposited both hard and soft dollars. The  
10 soft dollars, however, are not earmarked for  
11 that race is my understanding.

12 BY MR. MOGILNICKI:

13 Q Have you set up a joint  
14 fundraising committee?

15 A Myself?

16 Q Yes.

17 A Yes.

18 Q What's it called?

19 A I don't know.

20 Q Is it fair to say you left the  
21 details to the lawyers?

22 A Yes.

1           Q    Is it difficult, to your  
2 knowledge, to set up a joint fundraising  
3 committee?

4           A    Difficult to set it up?

5           Q    Yes.

6           A    I really don't know.  It's handled  
7 by my staff.

8           Q    Is it difficult to set up a  
9 political action committee?

10          A    I don't know.  I -- I don't know.  
11 I mean, you'd have to ask some lawyer what  
12 you have to do to establish one.

13          Q    Have you solicited for your joint  
14 fundraising committee?

15               MR. BARAN:  My understanding is  
16 that the joint fundraising committee  
17 activity is occurring in 2002 calendar year.  
18 We had an understanding that all the  
19 discovery regarding Senator McConnell would  
20 pertain to production and events ending  
21 December 31, 2001.

22               MR. MOGILNICKI:  That's fine, and

1 I'm happy to adhere to that line.

2 BY MR. MOGILNICKI:

3 Q Senator, could you just make  
4 clear, did you have a joint fundraising  
5 committee prior to the year 2002?

6 A I don't remember, but I'm fairly  
7 confident that if I did, I made no deposits  
8 into it.

9 Q I will explicitly exclude any  
10 questions about this election cycle.

11 A Um-hum.

12 Q But I would like to ask you a few  
13 more things about joint fundraising  
14 committees. I understood from your earlier  
15 answer that a joint fundraising committee  
16 would receive both hard and soft dollars  
17 from a contributor.

18 A I think that's the way it works.

19 Q Where would the soft dollars go?

20 A They can't be designated for a  
21 particular state, so as a practical matter,  
22 they really just go into the overall soft

1 money account at the -- in our case, the  
2 NRSC or -- or it could be at the Democratic  
3 Senatorial Committee, too. In fact, the  
4 Democrats apparently have made much more  
5 extensive use of these than the Republicans  
6 have.

7 Q So the NRSC would then be free to  
8 spend those soft dollars as the NRSC saw  
9 fit?

10 A Yes.

11 Q Why would a donor give to a joint  
12 fundraising committee rather than simply  
13 giving to the NRSC?

14 A Well, this was useful to the two  
15 senatorial committees in trying to get  
16 additional donors in various states who  
17 would not otherwise have much of an interest  
18 in giving to the senatorial committees.

19 Q Why would the existence of a joint  
20 fundraising committee give donors more  
21 interest in providing money to the NRSC?

22 A Because they would be familiar

1 with the candidate in their state and  
2 presumably interested in the success of that  
3 campaign, and it would be a way for them to  
4 develop an interest in the senatorial  
5 committee and to learn about it and learn  
6 that its mission was at least in part the  
7 election of Republican candidates for the  
8 U.S. Senate.

9 Q How would a donor's interest in a  
10 particular senatorial campaign lead them to  
11 want to give money that would end up at the  
12 NRSC?

13 A Because if you were interested in  
14 a particular senate candidate, you would  
15 presumably have an interest in the committee  
16 that is trying to elect Republican -- in our  
17 case, Republican senators, so as a way to  
18 reach out to -- to donors who had not  
19 previously been interested in the senatorial  
20 committees and in many cases hadn't even  
21 heard of them.

22 Q Does the NRSC earmark in any



1 fashion money that comes through joint  
2 fundraising committees by the Senator who  
3 raised the money?

4 A No, I don't think so.

5 Q Is there any reason for a Senator  
6 to believe that the money she or he raises  
7 through their joint fundraising committee  
8 for the NRSC, the more money the NRSC will  
9 spend in assisting their next race?

10 A Well, I think every Senator  
11 realizes that the resources of the  
12 senatorial committee are going to be  
13 deployed to the -- to the maximum extent in  
14 places where there are competitive races.

15 Q So what incentive does a Senator  
16 who's not in a competitive race have to  
17 establish a joint fundraising committee?

18 A The same incentive any Senator  
19 would have in trying to help the committee.  
20 There are just a variety of different ways  
21 to help the committee of your party, which  
22 ends up helping the whole. I mean, it's a

1 team sport. And so it is just another way  
2 of an individual Senator or senate candidate  
3 helping the team.

4 MR. MOGILNICKI: I'd like to  
5 introduce McConnell 24, a three-page letter.

6 (McConnell Deposition Exhibit  
7 No. 24 was marked for  
8 identification.)

9 BY MR. MOGILNICKI:

10 Q Would you take whatever time you  
11 need, Senator, to familiarize yourself with  
12 the letter? What is it?

13 A What is it?

14 Q Yes.

15 A It is a fundraising letter.

16 Q Is that your signature on the  
17 third page of Exhibit 24?

18 A Looks like it.

19 Q Do you recall this letter?

20 A This particular letter, no.

21 Q One of the things the letter  
22 offers people who are considering becoming a

1 life member of the NRSC Inner Circle is an  
2 opportunity to meet with the men who are  
3 shaping the Senate agenda; is that correct?

4 I'm sorry, you have to say yes or  
5 no.

6 MR. BARAN: You have to answer  
7 audibly.

8 THE WITNESS: Yes, I think that's  
9 in here somewhere. It's a rather lengthy  
10 letter, as most of these fundraising letters  
11 are like --

12 BY MR. MOGILNICKI:

13 Q I'll refer you to the fourth  
14 paragraph from the bottom of the first page.

15 A Okay. Yes.

16 Q The next paragraph indicates that  
17 being an inner circle life member will bring  
18 the donor closer and closer to the men who  
19 are shaping the Senate agenda. Is that  
20 fair?

21 A I -- I see that here, yes.

22 Q Is it in fact true that people who

1 joined the NRSC Inner Circle became close  
2 with the men who are shaping the Senate  
3 agenda?

4 A Well, of course, no one has as  
5 much proximity to us as the press does or  
6 our constituents, and this particular group  
7 is not quite as elite or exclusive as is  
8 being suggested in the -- in the letter. In  
9 fact, my recollection is that this is a very  
10 large group. So maybe a bit of salesmanship  
11 involved here in just how many other people  
12 may be around should they come to this  
13 dinner.

14 It's -- at the top of the letter  
15 it -- it says the third annual Senate  
16 Majority dinner. That is a very large  
17 affair attended by a great many people.

18 Q The term inner circle implies to  
19 me at least that it's better in terms of  
20 access to be in the inner circle than not;  
21 is that a fair characterization of why you  
22 use the term "inner circle" in raising

1 funds?

2 A Well, the inner circle is -- is a  
3 rather large circle. It has a very -- it is  
4 probably the biggest major -- major donor  
5 group that we have at the Republican  
6 Senatorial Committee. So I think  
7 "exclusive" is in the eye of the beholder.

8 Q Why does this letter use the term  
9 "inner circle"?

10 A I really don't know. This -- this  
11 particular donor level existed before I  
12 became chairman, and it's been around as  
13 long as I can remember.

14 Q So does the NRSC traditionally  
15 appeal to people who want to get close to  
16 United States Senators?

17 A Most of the time, they want to  
18 have their picture taken with us. When the  
19 inner circle comes to town, I think every  
20 Senator knows when they -- when they go,  
21 they're going to have red spots in their  
22 eyes after it's over because it's largely

1 about signing autographs and -- and posing  
2 for pictures.

3 Q You said it's largely about photo  
4 opportunities.

5 A Um-hum.

6 Q What parts of it aren't about  
7 photo opportunities?

8 A Well, there's usually a speech.  
9 In this particular instance, it looks like  
10 they're being asked to be a part of the  
11 Senate majority dinner, which is the biggest  
12 dinner of the year. So this would not be an  
13 intimate affair.

14 Q Is part of the appeal of the inner  
15 circle to potential donors that they will  
16 become closer to the men who are shaping the  
17 Senate agenda?

18 A As absurd as it may sound, there  
19 are a lot of people for whom political  
20 figures they've heard of have sort of a  
21 celebrity status. I've always been a bit  
22 amazed at that myself. But inner circle

1 members are people who are interested in  
2 shaking hands and having their photograph  
3 taken with and getting autographs from,  
4 amazingly enough, people like me.

5 Q When these letters are drafted, I  
6 assume they're drafted in order to appeal to  
7 donors.

8 A You certainly hope to, yes.  
9 Sometimes it works, and sometimes it  
10 doesn't.

11 Q The language that they use is  
12 designed to encourage donors to give money  
13 to the NRSC?

14 A Absolutely.

15 Q Is that true of all the letters  
16 that the NRSC sends out?

17 A If we're asking for money, we hope  
18 they contribute.

19 Q But my question is, are they all  
20 designed to encourage contributions?

21 A If it's a contribution letter, if  
22 we're asking for money, we certainly try to

1 design the letter in such a way that  
2 encourages them to contribute.

3 Q Have letters like the one marked  
4 as Exhibit 24 been successful in encouraging  
5 people to contribute?

6 A Some have, and some haven't.

7 Q How well did the inner circle do  
8 in the 1998 election cycle?

9 A I -- I don't remember.

10 MR. MOGILNICKI: I'd like to mark  
11 a new exhibit, Exhibit 25.

12 (McConnell Deposition Exhibit  
13 No. 25 was marked for  
14 identification.)

15 BY MR. MOGILNICKI:

16 Q Would you take a moment and read  
17 over Exhibit 25, please? What is  
18 Exhibit 25?

19 A It looks like a letter that might  
20 have been included for an inner circle  
21 meeting up -- apparently here in Washington.  
22 I guess it's part of a packet or something



1 when -- when the people arrived.

2 Q Did you sign this letter?

3 A That's a poor imitation of my  
4 signature, but I -- I -- they would have had  
5 permission to sign letters -- my name to  
6 such a letter.

7 Q How would they have obtained  
8 permission to sign your name to a letter?

9 A Look, something as routine as  
10 this, I would not have looked at myself or  
11 signed personally.

12 Q Is it routine to offer NRSC donors  
13 with an ample opportunity to put forth their  
14 own ideas on a wide range of issues to an  
15 audience of United States Senators?

16 A Absolutely. I mean, these  
17 meetings are very similar to press  
18 conferences, and the supporters certainly  
19 would not -- you know, ought to be given at  
20 least as much access to us as reporters are  
21 given every day. It's typically a seminar  
22 type format in which issues are discussed

1 and questions are asked, the sort of thing  
2 we do in a lot of different settings around  
3 Washington and in our home states, most of  
4 which, of course, are not involving raising  
5 money.

6 Q Is there any access-related  
7 benefit to being in the NRSC Inner Circle?

8 A I think other than an opportunity  
9 for an autograph or a photograph, it's --  
10 you know, they're not getting a whole lot  
11 more than the press gets -- they're not  
12 getting any more than the press gets with us  
13 every day and constituents meeting with us  
14 on a routine basis.

15 Q Are they getting more access than  
16 an average citizen who is not a constituent?

17 A But every citizen is a constituent  
18 of somebody, and if the other offices  
19 operate like mine do, we see -- either I see  
20 or my staff sees everyone who comes from  
21 Kentucky, and we would have no way of  
22 knowing whether they were contributors or

1 not.

2 Q Would you be as easy to get access  
3 to for a citizen from another state?

4 A It would depend. I do  
5 occasionally see people from other states.

6 Q I assume though citizens of  
7 Kentucky get preferential treatment in terms  
8 of access to you.

9 A Citizens of Kentucky are given as  
10 much access as we can provide, but many  
11 times, there are groups visiting around on  
12 the Hill who are here for a specific issue,  
13 and it might well include people from other  
14 states, you know, an association that may  
15 have membership from -- from every single  
16 state.

17 Q To a person who is not a citizen  
18 of Kentucky, is being in the NRSC Inner  
19 Circle of any value at all in obtaining  
20 access to you or other United States  
21 Senators?

22 A Not really. I think what they

1 really want to do here is to contribute to  
2 the party of their choice and to have an  
3 impact on trying to bring about the kind of  
4 America that they believe in.

5 Q If those are their goals, why does  
6 the letter inviting them to contribute  
7 mention the opportunity to set forth their  
8 own ideas?

9 A Well, there's nothing wrong with  
10 interacting with Americans, and I -- I think  
11 that that's a perfectly appropriate  
12 opportunity.

13 MR. MOGILNICKI: I'll mark a new  
14 exhibit, Exhibit 26.

15 (McConnell Deposition Exhibit  
16 No. 26 was marked for  
17 identification.)

18 THE WITNESS: You are aware, are  
19 you not -- I don't know whether we covered  
20 this earlier -- that the Inner Circle is 100  
21 percent hard money organization?

22 MR. MOGILNICKI: Thank you.

1 THE WITNESS: I thought maybe you  
2 knew that, but I --

3 MR. MOGILNICKI: I'm making yet  
4 another NRSC Inner Circle letter. This will  
5 be Exhibit 26. Would you take a moment and  
6 review that exhibit? The fourth page is  
7 blank, which can be deleted from the  
8 exhibit.

9 MR. BARAN: Thank you.

10 MR. MOGILNICKI: The document is  
11 Bates stamped NRSC045-000248 through 000250.

12 BY MR. MOGILNICKI:

13 Q Have you had an opportunity to  
14 review Exhibit 26, Senator?

15 A Um-hum.

16 Q I'm sorry, you have to say yes.

17 A Yes.

18 Q Thank you. Do you recognize this  
19 letter?

20 A No, I don't.

21 Q What does the letter appear to be?

22 A It appears to be a solicitation

1 for the Inner Circle, the same group we were  
2 just discussing earlier.

3 Q There is a signature on the third  
4 page of Exhibit 26. Is that your signature?

5 A It looks like a pretty good  
6 facsimile of it.

7 Q Is this one closer to having you  
8 believe it's actually your signature than  
9 the last one we saw?

10 A It's -- it's a better facsimile  
11 than the last one.

12 Q If it's not your signature, did  
13 the person signing this letter have your  
14 authority to sign it on your behalf?

15 A Yes. A lot of direct mail -- a  
16 significant portion -- I can't tell you  
17 exactly the percentage, but a significant  
18 proportion of the funds for, I believe all  
19 of the party committees and certainly the  
20 Republican Senatorial Committee come from  
21 direct-mail solicitation. So a lot of that  
22 is done, and I don't remember this

1 particular letter.

2 Q Is there anything in this letter  
3 that you disagree with, having read it  
4 today?

5 A Probably not. There might have  
6 provisions in some letters that I would  
7 disagree with, but --

8 Q But not this one?

9 A Look, I -- I don't know whether I  
10 would have agreed with every single part of  
11 this or not, but it has my name on it and I  
12 stand by it, I guess.

13 Q Can you explain to me what the  
14 letter means when it says -- I'll explain on  
15 the record -- at the top is a quote from  
16 President Clinton saying: "Because these  
17 times are good, we should raise the minimum  
18 wage."

19 Then the first paragraph of the  
20 letter says: "The above words were bought  
21 and paid for by the AFL-CIO. The cost, \$119  
22 million in 1996 election contributions."

1           My question to you, Senator, is  
2           what does that mean?

3           A     It means different things to  
4           different people. I think what the effort  
5           of the crafter of the letter -- here was to  
6           appeal to donors who both disliked Bill  
7           Clinton and disliked the labor unions.

8           Q     Did the labor unions give \$199  
9           million to President Clinton's re-election  
10          campaign?

11          A     I don't know where that figure  
12          came from. I -- I admire the unions myself,  
13          and I wish we had an ally like them.  
14          Everybody knows that they are 100 percent on  
15          the Democratic side and supported President  
16          Clinton vigorously.

17          Q     Does that vigorous support include  
18          the spending of soft money?

19          A     I would assume that it does.

20          Q     When Exhibit 26 refers to \$119  
21          million in the first paragraph and to  
22          millions of dollars in the fourth paragraph,



1 would that include soft money expenditures  
2 by the unions?

3 A I don't know where that came from.

4 Q Do you think it's likely that the  
5 number of 119 million includes soft money?

6 A I would -- I don't know where it  
7 came from, but I would -- I don't know.

8 Q Can you think of a way a union  
9 could spend \$119 million in 1996 without  
10 using soft money?

11 A Yeah, through political action  
12 committees.

13 Q Has a political action committee  
14 ever spent \$119 million in a campaign?

15 A I don't know.

16 Q As a seasoned observer of the  
17 political scene, does it seem unlikely to  
18 you that the \$119 million doesn't include  
19 some soft money?

20 A Well, you -- you asked me what was  
21 possible, and it would be possible for a PAC  
22 to do that. I don't know how much the

1 unions spent in 1996. Obviously, the  
2 crafter of this letter felt that it was this  
3 figure.

4 Q I'm asking you if there is any  
5 reasonable explanation for that figure  
6 except that it includes soft money.

7 A I'm telling you you can draw any  
8 conclusion you want to about this 4-year-old  
9 letter and where that figure came from,  
10 because I don't know where it came from.

11 Q Senator McConnell, were the  
12 Clinton administration's policies ever  
13 affected by soft money spending by the  
14 AFL-CIO?

15 A I have no idea.

16 Q Does this letter imply that they  
17 were?

18 A I don't know that it implies that.  
19 I -- I think -- as I said, I think this  
20 letter was crafted to appeal to donors who,  
21 A, didn't like Bill Clinton; and B, didn't  
22 like labor unions.

1           Q     When it says "The above words were  
2 bought and paid for by the AFL-CIO," do you  
3 have any understanding of what that might  
4 mean?

5           A     You know, in spite of the fact  
6 that my name is on this, if I were crafting  
7 the letter, I wouldn't have put it that way.  
8 I -- I support the ability of the AFL-CIO in  
9 a free society to engage in issue advocacy  
10 to communicate with their members and to --  
11 to speak often and as vigorously as they  
12 would like.

13          Q     Do you know if the trial lawyers  
14 have given substantial soft money to the  
15 DSCC?

16          A     I don't know.

17                THE WITNESS: Are we through with  
18 this exhibit?

19                MR. MOGILNICKI: You can put it on  
20 the pile. I don't think we'll be coming  
21 back to it. I would like to introduce a new  
22 exhibit, Exhibit 27. This is a one-page

1 printout from the NRSC's website.

2 (McConnell Deposition Exhibit  
3 No. 27 was marked for  
4 identification.)

5 BY MR. MOGILNICKI:

6 Q Would you review Exhibit 27,  
7 Senator?

8 A All right.

9 Q Have you seen Exhibit 27 before?

10 A No, I -- I have not seen it  
11 before.

12 Q Is there anything in Exhibit 27  
13 that is untrue, to your knowledge?

14 A I -- I wouldn't be surprised if  
15 the trial lawyers were big givers to the  
16 Democrats. That's sort of common knowledge,  
17 and the exact amounts I'm unaware of. But  
18 the fact that trial lawyers would be  
19 contributing to Democrats would be not  
20 surprising.

21 Q Do you agree that the friendship  
22 created by those donations is an explanation

1 for why the Democrats are fighting  
2 common-sense efforts to limit damages and  
3 lawyer's fees?

4 A Well, this is somebody else's  
5 word. My -- my last name is not Bainwol,  
6 it's McConnell. I -- I think the trial  
7 lawyers are free to support whomever they  
8 choose. I'd be surprised if they didn't  
9 support the Democrats who tend to agree with  
10 them and oppose any and all litigation  
11 reform. So I -- I think it's not  
12 surprising. I -- I would be shocked if they  
13 tried to support with me; I disagree with  
14 them on this issue.

15 Q Do you agree with Mr. Bainwol's  
16 comment in the middle of Exhibit 27?

17 A Which comment are we talking  
18 about?

19 Q "With friends like that, we can  
20 understand why Democrats are so passionately  
21 fighting common-sense efforts to limit  
22 damages and lawyer's fees."

1           A     Look, I -- that's not the way I  
2     would have put it. I'd -- I'd put it this  
3     way: It is not surprising that trial  
4     lawyers are supporting individuals who agree  
5     with their agenda.

6           Q     Does the causal arrow ever point  
7     in the other direction, where soft money  
8     contributions to a particular party  
9     influences that party's stand on a policy  
10    issue?

11          A     I think it's always the other way  
12    around; that people tend to support  
13    candidates and parties that agree with their  
14    agenda.

15          Q     Is it ever the reverse, that an  
16    agenda gets supported because of soft money  
17    donations?

18          A     I've not seen that. I've not seen  
19    that.

20          Q     Why do corporations give to the  
21    NRSC?

22          A     I think you'd have to ask them.

1           Q     Part of your role as chair of the  
2 NRSC was to encourage corporations to  
3 donate; is that correct?

4           A     Others.

5           Q     In seeking to be successful in  
6 soliciting corporations, did you gain any  
7 understanding at all about what motivated  
8 corporations to give money to the NRSC?

9           A     I think you'd really have to ask  
10 them what their motivation was. My goal was  
11 to raise the funds to try to keep my party  
12 in the majority in the Senate.

13          Q     We certainly will ask them,  
14 Senator, but while we're together here,  
15 could I ask you if you have any  
16 understanding based upon your experience in  
17 seeking money from corporate givers what  
18 motivates corporate givers to give soft  
19 money to the NRSC?

20          A     I -- I don't know. You'd have to  
21 ask them.

22          Q     Do you have any view on why a

1 corporation would give substantial sums of  
2 soft money to both political parties?

3 A I don't know. You'd have to ask  
4 them.

5 MR. MOGILNICKI: I'd like to take  
6 a five minute break, if that works for you.

7 (Recess)

8 MR. MOGILNICKI: We are back on  
9 the record after a short break. Welcome  
10 back.

11 BY MR. MOGILNICKI:

12 Q Senator, in your last campaign for  
13 the United States Senate in 1996, in what  
14 ways if any did the Republican National  
15 Party support your candidacy?

16 A I believe that the only support  
17 was the statutory coordinated expenditure on  
18 my behalf which is limited under -- under  
19 federal law. I don't recall them doing  
20 anything beyond that, but they could have.  
21 That's hard money, as you know.

22 Q Yes. Do you recall what if



1 anything the NRSC did to support your  
2 candidacy in 1996?

3 A I just told you.

4 Q The NRSC? I asked you about the  
5 RNC.

6 A My last answer referred to the  
7 NRSC.

8 Q Let's back up then. Why don't I  
9 ask you first about the RNC.

10 A I -- not that I know of. They --  
11 they could have, but I don't recall  
12 anything.

13 Q Then I'd like to ask you about the  
14 NRSC.

15 A What I believe was the case with  
16 regard to the NRSC was the statutory hard  
17 money coordinated. Then as you know, under  
18 the current statute, that is based on  
19 population. That's not actually handed over  
20 to the campaign. It's spent on behalf of  
21 the campaign. They can give you up to 17-5  
22 directly. I believe that that was done, but

1 that was 6 years ago. I -- I don't know for  
2 sure, but I believe that was done.

3 Q Is there anything else that the  
4 NRSC did to support your campaign in 1996?

5 A Financially?

6 Q Yes.

7 A Not that I recall.

8 Q How about ways other than  
9 financial?

10 A Well, you know, I used the  
11 building for fundraisers for my campaign,  
12 from time to time, talked to the staff over  
13 there, just sort of general consultation  
14 services that are there for any Republican  
15 candidate in the cycle. I'm reasonably  
16 confident that we availed ourselves of that.

17 Q Is there any way in which the NRC  
18 assisted you in 1996?

19 A Not that I recall.

20 Q How about the Republican state  
21 party in Kentucky? Can you describe for me  
22 the ways in which they assisted your

1 campaign in 1996?

2 A There was a -- what we typically  
3 call victory campaign through the state  
4 party to benefit not just me, but the entire  
5 Republican ticket. This is what's usually  
6 refer to as the ground game, direct mail,  
7 voter ID, that sort of thing. I benefited  
8 from that as a -- as a member of the  
9 Republican ticket in 1996, so it would have  
10 been for all of us.

11 Q Was there anything else that the  
12 state party did to support your campaign  
13 in 1996?

14 A Not that I recall.

15 Q Did the state party run any ads  
16 in 1996?

17 A Not that I recall.

18 Q Did the DNC or DSCC assist your  
19 opponent in the 1996 election?

20 A I believe they did. In fact, I  
21 think you showed me an ad -- script of an ad  
22 earlier in this deposition to that effect.

1 Q Is there anything else that you  
2 recall the DNC or DSCC doing to assist your  
3 opponent in 1996?

4 A I would really not know that for  
5 sure, but I believe that they both did radio  
6 and television advertising on his behalf.

7 Q Just so the record is clear, let  
8 me just try to find the exhibit to which you  
9 referred a moment ago.

10 A It was the 60-second ad, I think,  
11 was it not?

12 Q That sounds right to me. I'd like  
13 to --

14 MS. BECK: Exhibit 20.

15 MR. BARAN: 20.

16 THE WITNESS: He was asking about  
17 the Kentucky Democratic Party, right?

18 BY MR. MOGILNICKI:

19 Q Actually, I was asking about the  
20 DNC or DSCC, and that's one reason I wanted  
21 to --

22 A I would have no way of knowing

1 that. Well, this -- I can only go by what's  
2 written here, my --

3 Q You're looking now at Exhibit 20?

4 A Yeah, which is a TV commercial.

5 My -- you know, it could have been --  
6 well --

7 MR. BARAN: Just for the record,  
8 it's a storyboard, and there is a  
9 designation there that uses the term "DSCC,"  
10 but you don't know where it came from.

11 THE WITNESS: But -- but this is  
12 a 1998 commercial. I wasn't running  
13 in 1998. I thought you were asking me about  
14 my campaign.

15 BY MR. MOGILNICKI:

16 Q I am, and I didn't suggest that  
17 that was a document you should be referring  
18 to.

19 A Okay. Well, that's a 1998  
20 commercial. This, Exhibit 19 is a 1996  
21 commercial. It says at the bottom, "Paid  
22 for by the Kentucky Democratic Party." It

1 certainly is not singing my virtues, so my  
2 assumption is that the Kentucky Democratic  
3 Party was helping my opponent.

4 Q Do you recall anything else that  
5 the state Democratic Party did to assist  
6 your opponent in 196?

7 A I -- I don't know for sure.  
8 This -- this probably was a radio ad,  
9 although it could have been a TV ad. I -- I  
10 believe that they advertised on both radio  
11 and TV, but I'm not sure.

12 Q Do you know if the National  
13 Democratic Party or the DSCC did anything to  
14 assist your opponent in 1996?

15 A I -- I don't know for sure, but  
16 typically these ads are funded by transfers  
17 from the national party. I don't know that  
18 for a fact, but it could have -- could have  
19 been a national party transfer or it could  
20 have been the state party themselves.

21 Q Why would a national party  
22 transfer funds to a state party rather than

1 simply expending them themselves?

2 A Well, you'd have to ask the  
3 Democratic Senatorial Committee about that.

4 Q Does the NRSC do the same thing?

5 A Typically, we prefer to transfer  
6 money to state parties and do the placement  
7 through state parties.

8 Q Why is that?

9 A There is a ballot allocation in  
10 each state that determines what percentage  
11 of hard dollars and what percentage of soft  
12 dollars, and whether the soft dollars are  
13 individual or corporate based on state law.  
14 And my staff felt that in most instances it  
15 was better to do the placement through state  
16 parties. I can't speak for the Democrats.  
17 I don't know how they did that.

18 Q Do you recall ads run by the  
19 Kentucky Democratic Party in the 1990  
20 campaign?

21 A I believe that there was one, but  
22 that's been a while back and I -- I just --

1 I'm not -- I believe that they did, but  
2 I'm -- I'm not sure what it was about.

3 Q Do you remember anything at all  
4 about it?

5 A No, I don't.

6 MR. MOGILNICKI: I'd like to  
7 introduce as an exhibit, Exhibit  
8 McConnell 27. I'm sorry, 28.

9 (McConnell Deposition Exhibit  
10 No. 28 was marked for  
11 identification.)

12 BY MR. MOGILNICKI:

13 Q Would you read Exhibit 28, please?

14 A Okay. I read it.

15 Q The italicized text, I direct your  
16 attention to that. Does this refresh your  
17 recollection about the Kentucky Democratic  
18 Party advertisements in 1990?

19 A Well, there's no date on this, so  
20 I can't tell what year it might have run.  
21 The Democratic themes are so similar from  
22 cycle to cycle, this could have been run



1 in '96 or '90, and I can't tell from what  
2 you've handed me which year that is. But --  
3 so it -- it could have been -- do you know  
4 which year it was? It's not clear on here.

5 Q Yes, I believe this was an ad run  
6 in 1990, but I wanted to first see if --

7 A How do you know that?

8 Q I'll show you in a moment.

9 A Okay.

10 Q I wanted to first see if it  
11 refreshed your recollection, and apparently,  
12 it does not.

13 A I don't remember this particular  
14 ad. It's so similar to Democratic class  
15 warfare ads that it could have been run in  
16 any cycle.

17 MR. MOGILNICKI: This document  
18 gave rise to a complaint by the Kentucky  
19 Republican Party in 1990 which I'll now  
20 introduce as Exhibit 29.

21 (McConnell Deposition Exhibit

22 No. 29 was marked for

1 identification.)

2 MR. MOGILNICKI: Would you  
3 familiarize yourself with Exhibit 29? It is  
4 a letter of complaint filed with the Federal  
5 Election Commission by the Republican Party  
6 of Kentucky on October 19, 1990.

7 BY MR. MOGILNICKI:

8 Q Senator, are you familiar with  
9 this document?

10 A I remember the -- the issue now.  
11 I was not the complaining party, but I -- I  
12 remember the issue.

13 Q Who is Bob Gable?

14 A He was apparently the chairman of  
15 the party at that time. Let me see what it  
16 says -- what it says here.

17 Q That's what it says on the last  
18 page of Exhibit 29.

19 A Yeah.

20 Q Do you know Bob Gable?

21 A I do, um-hum.

22 Q Did you know him in 1990?

1           A     I did.

2           Q     Can you characterize your  
3 relationship in 1990?

4           A     A friend and political associate.

5           Q     Did he confer with you before  
6 filing this complaint?

7           A     I don't recall that he did.  He is  
8 somebody who feels very strongly about  
9 things and has frequently filed lawsuits and  
10 other -- taken other positions that he feels  
11 strongly about.  So I don't know whether he  
12 consulted with us or not.  I don't recall  
13 any such consultation.

14          Q     Do you remember seeing this  
15 complaint letter after it had been sent to  
16 the Federal Election Commission?

17          A     I'm sure I did it.  I -- I don't  
18 remember seeing it, and your showing it to  
19 me refreshes -- you know, refreshes my  
20 memory of the incident.

21          Q     I'd like to draw your attention to  
22 the second page of Exhibit 29, and to the

1 text that is Exhibit 28, which is I will  
2 represent to you one of the ads complained  
3 about in Exhibit 29.

4 I draw your attention to the  
5 middle of the page, where it says,  
6 "Transcripts of the two television  
7 advertisements and a tape of the ads  
8 themselves demonstrate conclusively that the  
9 purposes and activity is to influence a  
10 federal election."

11 Do you see where I've read from?

12 A Yes, I do, um-hum.

13 Q Would you agree with that  
14 statement?

15 A Well, those are Bob Gable's words,  
16 and not mine. The way I would characterize  
17 this is the Democrats were trying to produce  
18 a positive issue environment in -- in  
19 Kentucky which no doubt had the -- it also  
20 had the effect of helping their -- their  
21 candidate for the -- for the senate.

22 Q Do you disagree with Mr. Gable's

1 words?

2 A I didn't file it, and you know  
3 what my views are. I've expressed them  
4 repeatedly to you this afternoon. We don't  
5 have a problem in this country because we  
6 have too little speech. I -- I believe that  
7 parties should be free to discuss issues, to  
8 set an issue, positive issue environment, in  
9 states where they think it makes a  
10 difference in the outcome of elections just  
11 like outside groups do.

12 Q That would include the freedom to  
13 run ads whose purpose was to influence a  
14 federal election within 60 days of that  
15 election?

16 A Its -- its purpose would be to  
17 discuss issues, and it certainly has an  
18 additional effect of impacting the election.  
19 But certainly outside groups will be in  
20 discussing issues, and it's my view that  
21 political parties should be just as free as  
22 outside groups to discuss issues in -- in

1 states where races happen to be occurring at  
2 any time during the course of a year.

3 Q Would you agree as a factual  
4 matter with Mr. Gable's words that follow  
5 the paragraph I just read: "The central  
6 theme of both ads is the national budget  
7 debate, an issue which is clearly designed  
8 to influence federal elections on  
9 November 6, 1990"?

10 A Well, again, these are his words  
11 and not mine, and I have spent a  
12 considerable amount of time and energy  
13 defending the right of political parties to  
14 set a positive issue environment anywhere  
15 they want to, anywhere in America at any  
16 time during the course of the year. Bob  
17 Gable is not, you know, an agent of Mitch  
18 McConnell.

19 Q I appreciate that, Senator.

20 A Yeah.

21 Q That's why I'm asking you whether  
22 or not you agree with Mr. Gable.

1           A     Obviously, I don't, because I've  
2     said repeatedly that -- do I need to say it  
3     again?  Should I say it again?

4           Q     If you're referring to your  
5     statement of principles, I do think I  
6     understand you on that.

7           A     Good.

8                     MR. MOGILNICKI:  I'd like to mark  
9     as Exhibit a two-page article from "Roll  
10    Call" dated May 20, 1991.

11                    (McConnell Deposition Exhibit  
12                    No. 30 was marked for  
13                    identification.)

14                    BY MR. MOGILNICKI:

15           Q     Senator McConnell, would you take  
16     the time to read Exhibit 30?  This article  
17     is entitled "Kentucky GOP Sues FEC in  
18     Important Test of Soft Money in  
19     Congressional Campaigns."  Senator, you're  
20     quoted on the second page of Exhibit 30; is  
21     that correct?

22           A     This purports to be a quote from

1 me, yes.

2 Q Do you have any reason to doubt  
3 that it's a quote from you?

4 A It could be, but if that was my  
5 view then, it's not my view now, nor has it  
6 been for quite some time.

7 Q What was your view in 1990 on the  
8 issue of whether soft money was  
9 appropriately spent in congressional races?

10 A Well, we had had a number of  
11 campaign finance reform debates here in the  
12 Senate trying to head off taxpayer funding  
13 of elections and spending limits which were  
14 the most Draconian speech restrictions  
15 advanced around here, and in the legislative  
16 process, you frequently try to avoid the  
17 passage of the worst with something not  
18 quite so bad.

19 So in those days, I had my name  
20 associated with a variety of different  
21 alternative legislative products designed to  
22 get as many Republicans on board as I could,



1 the details of which I might not have agreed  
2 with. So if I did say this on May  
3 the 20, 1991, it is certainly not -- hasn't  
4 been my view for a long time.

5 Q So that the record is clear, were  
6 you concerned in 1990 about soft money  
7 seeping into congressional races, which is  
8 the quote from the article?

9 A I don't remember what I was  
10 concerned about in 1991. I think probably  
11 the thing I was the most concerned about was  
12 to try to avoid the passage of taxpayer  
13 funding of elections and spending limits  
14 which were considered the reform in those  
15 days. This was the Mitchell-Boren days. We  
16 won most of those battles, and taxpayer  
17 funding of elections hadn't been around for  
18 almost a decade.

19 But the feeling at that time was  
20 that you had to have an alternative in order  
21 to fend off worse legislation, and so I  
22 ended up the legislative process is

1 frequently not totally clear. I can  
2 remember, for example, when Senator McCain  
3 used to be against taxpayer funding of  
4 elections, but he's in favor of them today.  
5 So, you know, all of us may -- may have been  
6 somewhere else 12 -- 12 years ago.

7 Q Did you ever support legislation  
8 that you believed to be unconstitutional?

9 MR. BARAN: I'm going to object on  
10 the basis of the speech and debate clause.

11 BY MR. MOGILNICKI:

12 Q Are you going to refuse to answer  
13 on that ground, sir?

14 MR. BARAN: I would advise my  
15 client to refuse to answer.

16 BY MR. MOGILNICKI:

17 Q Are you going to refuse to answer?

18 A I'm taking my lawyer's advice.

19 Q I'm generally for that, Senator.  
20 Is it your position in this litigation that  
21 it would be unconstitutional to prevent soft  
22 money from seeping into congressional races?

1           A     Well, it's -- it's my position in  
2     this litigation that the expenditure of soft  
3     money by political parties to set a positive  
4     issue environment, to support state and  
5     local candidates, and to thereby help  
6     Republican candidates, should be  
7     constitutionally protected activity.

8           Q     If those efforts that you just  
9     described include soliciting and spending  
10    soft money, do you believe that the  
11    Constitution should protect those  
12    activities? Is it your position in this  
13    case that it would be unconstitutional to  
14    cap soft money contributions at \$60,000?

15          A     I believe that it would be  
16    entirely appropriate for the Congress to  
17    decide to cap political party non-federal  
18    money, if it shows and there was a vote in  
19    the Senate, which was defeated.

20          Q     By "entirely appropriate," you  
21    include constitutional, I assume.

22          A     Well, the Supreme Court held 25

1 years ago that it was constitutionally  
2 permissible to cap hard money. I suppose it  
3 might conclude that it would be  
4 constitutionally permissible to cap  
5 non-federal money going to political  
6 parties. But that's something we're going  
7 to find out, aren't we?

8 Q In assisting the Court in making  
9 that determination, I would like to know if  
10 it's your position in this litigation that  
11 such a cap would be constitutional.

12 MR. BARAN: Excuse me. I haven't  
13 objected up to this point. Your questions  
14 are asking, or at least appear to me to be  
15 asking for conclusions of law from the  
16 Senator. I just want to make it clear on  
17 the record that he's not responding as a  
18 legal expert, he's not responding in the  
19 form of briefs and legal argument.  
20 Obviously, we will have an opportunity to  
21 make such responses when we get to the  
22 briefing stage, and will be through counsel.

1           I will also note that similar type  
2 questions to some of the defendants -- I  
3 can't recall if it would be the intervenors,  
4 but certainly the Federal Election  
5 Commission, have been treated as requesting  
6 opinions and conclusions of law and  
7 inappropriate for discovery purposes. So  
8 I --

9           MR. MOGILNICKI: Are you  
10 instructing your client not to answer?

11           MR. BARAN: No, not at this point.  
12 But I would like to have this objection for  
13 the record, and I believe I've done so.

14           THE WITNESS: I was discussing a  
15 hypothetical. It's not part of this  
16 legislation, because the legislation, as you  
17 well know, did not choose to cap. It chose  
18 to abolish.

19           BY MR. MOGILNICKI:

20           Q     I'm asking you to address the  
21 hypothetical.

22           A     Well, the courts are ultimately

1 going to decide whether or not it's  
2 permissible to abolish. I can answer the  
3 question by saying that I voted -- I  
4 personally voted for the Hagel Amendment,  
5 which would have kept non-federal money at  
6 the same level as federal money.

7 Q Is it your position in this  
8 litigation that the Hagel Amendment was  
9 constitutional?

10 A Well, the Hagel Amendment is not a  
11 part of this litigation, as I understand it,  
12 since it was not adopted.

13 Q Yes.

14 MR. BARAN: I'm going to object  
15 that the question is delving into the  
16 Senator's own thought processes with respect  
17 to legislation.

18 MR. MOGILNICKI: That's fine.  
19 I'll rephrase.

20 BY MR. MOGILNICKI:

21 Q Senator, is it your position in  
22 this litigation that it would have been

1 constitutional for Congress to cap soft  
2 money contributions at \$60,000?

3 A I don't have that position in this  
4 litigation, because this litigation is not  
5 about capping non-federal money.

6 Q Is it your position this  
7 litigation is per se unconstitutional for  
8 Congress to cap soft money contributions?

9 THE WITNESS: Isn't he asking me a  
10 legal conclusion again?

11 MR. BARAN: I believe he is asking  
12 for a legal conclusion. I will object  
13 again. This time, I will instruct the  
14 witness not to answer.

15 BY MR. MOGILNICKI:

16 Q Senator, you brought this suit.  
17 Is that correct?

18 A I and others.

19 Q I assume you reviewed the  
20 complaint before it was submitted to the  
21 Court?

22 A I did.

1 Q Are you familiar with the theories  
2 that underlie the complaint?

3 A Generally.

4 Q Are you going to accept your  
5 counsel's instructions not to answer my  
6 question about your position in this  
7 litigation?

8 A Yes.

9 Q I'd like to mark two new exhibits.

10 A Are we through with these?

11 Q You could put them in a pile. I  
12 don't think we'll be working them again.

13 MR. MOGILNICKI: First, I'd like  
14 to mark as Exhibit 31, a 3-page article of  
15 the BNA Monitoring Service entitled  
16 "Industry, McConnell Dispute Charges by  
17 Anti-Tobacco Group in FEC Complaint."

18 (Deposition Exhibit No. 31 was  
19 marked for identification.)

20 BY MR. MOGILNICKI:

21 Q Exhibit 31, Senator.

22 A I'm reading it.



1 Q Thank you.

2 MR. BARAN: While the Senator is  
3 reading this document, it's my understanding  
4 that in other deposition transcripts, we  
5 have designated questions and answers  
6 regarding this issue as confidential.

7 MR. MOGILNICKI: If you'd like to  
8 designate this portion of the transcript as  
9 highly confidential, I'll have no objection.

10 MR. BARAN: Thank you. That is  
11 not to foreclose any other designations we  
12 wish to make within the 10 days after we get  
13 the transcript.\*

14

15

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22

1 BY MR. MOGILNICKI:

2 Q Do you attend events organized by  
3 the State party?

4 A From time to time I do.

5 Q Who arranges such events?

6 A If it's a state party event, it  
7 would be the state party people.

8 Q Do state party efforts to register  
9 voters benefit you in your election  
10 campaigns?

11 A I hope so. That's all right. I  
12 hope so.

13 Q Do state party efforts to get out  
14 the vote on Election Day benefit you in your  
15 election campaigns?

16 A As part of the Republican ticket,  
17 I would certainly hope so.

18 Q Do state party efforts to identify  
19 likely Republican voters benefit you on  
20 Election Day?

21 A They would benefit the entire  
22 ticket, state, local and federal.

1           Q     Other generic campaign activities  
2     conducted by the state party would also  
3     benefit you on Election Day.

4           A     Generic activities would benefit  
5     the entire ticket, federal, state and local  
6     level.

7           Q     You mentioned earlier that one of  
8     your responsibilities as chair of the NRSC  
9     was the recruiting of potential Senate  
10    candidates.  Is that correct?

11          A     Yes.

12          Q     Does the availability of personal  
13    funds play a role in the recruiting of  
14    candidates?

15          A     Well, it's certainly helpful if a  
16    candidate -- do you mean has personal money?

17          Q     Yes.

18          A     It certainly is helpful if a  
19    candidate has personal money and is willing  
20    to spend it.  The Democratic Senatorial  
21    Committee has done quite a good job of that  
22    in recent years, recruiting candidates who

1 have substantial personal funds.

2 Q Is it disadvantageous to the  
3 Republican candidates in races where the  
4 Democrat has substantial personal funds to  
5 spend on the campaign?

6 A Sometimes they win and sometimes  
7 they don't. You know, for every  
8 self-funding candidate who won, you can find  
9 one who didn't.

10 Q Now, I am confused. I thought  
11 you'd said that the Democratic Party's  
12 efforts to recruit candidates with  
13 substantial personal wealth had assisted the  
14 Democratic Party. Is that essentially  
15 correct?

16 A Well, sometimes they won and  
17 sometimes they haven't.

18 Q Does a candidate who is running  
19 against a candidate with substantial  
20 personal funds have a need for additional  
21 party funds or party fundraising assistance?

22 A Sometimes they do and sometimes

1 they don't.

2 Q What does that depend upon?

3 A Where the race stands, whether  
4 it's a competitive race, whether you have a  
5 chance of winning, all of those kinds of  
6 judgments are made in the last six weeks,  
7 four weeks of the campaign.

8 Q Would you agree with me at least  
9 that it's a drain on the time of a candidate  
10 who has to raise money to raise money versus  
11 a candidate who does not need to expend that  
12 time raising money?

13 A Well, the contribution limit,  
14 particularly not having been indexed for a  
15 quarter of a century, and that further  
16 compounded by the fact that the average  
17 Senate campaign was about 40 percent more  
18 expensive six years later makes it somewhat  
19 more difficult.

20 You have to have a lot of friends  
21 and a lot of supporters, particularly if you  
22 are in a big state.

1           Q     Does fundraising take up a lot of  
2     time?

3           A     Usually not.  If you are able to  
4     manage your time well, it shouldn't be an  
5     imposition.

6           Q     Do you agree that third party  
7     expenditures that are made in cooperation,  
8     consultation and concert with a candidate  
9     campaign should be treated as campaign  
10    contributions?

11          A     Are you asking me my legal opinion  
12    of existing law?

13          Q     Your position as a party in this  
14    litigation.

15          A     About my preference, I mean what  
16    my preferences are?

17          Q     Why don't we start there?

18          A     Ask the question again.

19          Q     What's your view as to whether  
20    third party expenditures that are made in  
21    cooperation or consultation or concert with  
22    a candidate should be treated as campaign

1 contributions?

2 A Do you mean by outside,  
3 independent bodies or by political party  
4 committees or by whom?

5 Q Yes, by independent third parties.

6 A Not political parties?

7 Q Correct.

8 A I believe that the law is that  
9 those issue ads, which is what they  
10 typically are, many of them funded by 100  
11 percent soft money, are conducted  
12 independent of the candidates.

13 Q If they are not independent,  
14 should they be counted as campaign  
15 contributions in your view?

16 A Well, they are supposed to be  
17 independent. Within my experience, they  
18 always are. Since they are an independent  
19 expression of an interest group's position  
20 on issues, no, they shouldn't be counted  
21 against a candidate who is not likely to be  
22 aware of what's being done, either for him

1 or against him and unable to control it.

2 Q I understand that you think that  
3 if they are truly independent, they  
4 shouldn't count as campaign contributions.  
5 I'm asking the further question, if they are  
6 in fact coordinated, should they be counted  
7 as campaign contributions?

8 A I've never experienced any that  
9 were coordinated.

10 Q If they were, what would be your  
11 view as to whether they should count as  
12 campaign contributions?

13 A That's a hypothetical. I'm not  
14 going to answer.

15 Q Is it your contention in this  
16 lawsuit that any regulation of coordination  
17 beyond agreement or formal collaboration  
18 would run afoul of the First Amendment?

19 A That's really a legal --

20 MR. BARAN: I object on the  
21 grounds that that calls for a legal  
22 conclusion. We will brief that at the



1 appropriate time.

2 MR. MOGILNICKI: Are you  
3 instructing the witness not to answer?

4 MR. BARAN: Yes.

5 BY MR. MOGILNICKI:

6 Q Is it your position in this  
7 litigation, Senator, that the BCRA prohibits  
8 certain types of speech?

9 A Yes.

10 Q What types of speech are those?

11 A Well, it would prevent issue  
12 advocacy within 60 days of an election  
13 unless you did it in the newspaper.

14 Q Would it prohibit issue advocacy  
15 or regulate the manner of financing issue  
16 advocacy?

17 A Well, if you don't have the  
18 resources to engage in issue advocacy that  
19 is the same as a prohibition. It's a  
20 distinction without a difference.

21 Q Is there any communication that is  
22 presently allowed that would be forbidden

1 under the BCRA?

2 A Yes. Issue advocacy within 60  
3 days of an election would practically be  
4 forbidden because the resources would be  
5 denied.

6 MR. MOGILNICKI: I would like to  
7 take a short break. I think we are winding  
8 down and I want to check my notes.

9 MR. BARAN: Sure.

10 (Discussion off the record)

11 MR. MOGILNICKI: I have just a few  
12 more questions, Senator. I appreciate your  
13 patience and your willingness to be here  
14 today.

15 BY MR. MOGILNICKI:

16 Q Would you agree, Senator, that  
17 corporations have an obligation to spend  
18 corporate funds only in manners that are in  
19 the interest of their shareholders?

20 A Yes, I think so. Of course,  
21 different shareholders would have different  
22 views about what might be in the best

1 interest of the corporation.

2 Q What corporation interests are  
3 served by donations of soft money to the  
4 NRSC?

5 A I think you would have to ask the  
6 corporations.

7 Q Is there any that you can think  
8 of?

9 A I think you would have to ask  
10 them. If you are asking for the motivation  
11 for giving, which is what I think you are  
12 asking, you would have to ask them.

13 Q As former Chair of the NRSC, I  
14 just want to ask you if you can think of any  
15 reason why a corporation might spend money  
16 by giving it to the NRSC.

17 A I think you would have to ask  
18 them. They would be the best person to ask  
19 such a question.

20 Q You would have no idea?

21 A No. You would have to ask them.

22 Q Senator, there was a lot of press

1 during the Clinton Administration about the  
2 use of the White House for coffees to which  
3 people who had given money to the Democratic  
4 Party were invited. Do you believe that the  
5 use of the White House in that manner gave  
6 rise to an appearance of corruption?

7 A You know, appearance is a  
8 difficult thing to define. What is an  
9 appearance of corruption to The New York  
10 Times or to Common Cause might be different  
11 from what's an appearance of corruption to  
12 you or to me.

13 The issue there was the use of  
14 public property, which is clearly prohibited  
15 under federal law. I think the President's  
16 interaction with donors, which I certainly  
17 would defend as not inappropriate, should  
18 have been done on non-governmental property.

19 Q Have Kentucky voters ever  
20 expressed concern to you about the role of  
21 money in politics?

22 A Which Kentucky voters are you

1 talking about?

2 Q You speak with multitudes of them,  
3 I assume. Is that correct?

4 A I do.

5 Q Have any of them expressed to you  
6 concern about the role of money in politics?

7 A Some have and some haven't. Some  
8 think that we ought to be spending more and  
9 some think we ought to be spending less.

10 Q Those that express a concern about  
11 the role of money in politics, what sorts of  
12 things do they say to you?

13 A Well, it varies depending upon  
14 their particular philosophy. Those that are  
15 offended by the efforts of newspapers to  
16 sway elections think that it's very good for  
17 the parties and the candidates to have  
18 enough resources to get their own message  
19 out; not filtered through The New York Times  
20 or the Washington Post, or in the case of  
21 Kentucky, through the Courier Journal and  
22 the Herald Leader.

1           There are other voters who tend to  
2   be more in the orbit of the editorial pages  
3   of the big papers who believe it would be  
4   quite desirable for the entire process to be  
5   filtered through the newspapers and for  
6   candidates to not have adequate resources to  
7   get their own message out in their own way.

8           Q    Do you believe the editorial pages  
9   of the big papers have created an unfair  
10   appearance of corruption or painted an  
11   unfair picture of the system being corrupt?

12          A    The editorial pages, like many of  
13   the monied interests who on the  
14   McCain-Feingold side have what I like to  
15   call the "Ross Perot" view of money and  
16   politics; that is, everybody's money in  
17   politics is bad except mine.

18          Q    Do you think they have convinced  
19   the American people that there is too much  
20   money in American politics?

21          A    It depends on the way you ask the  
22   question, you know.  If you ask the question

1 should the government be able to put a limit  
2 on how much a candidate can speak in the  
3 course of the campaign, I would expect that  
4 the position that I advocate would carry  
5 overwhelmingly. So, polling always depends  
6 on how you ask the question.

7 Besides, as you know, the Bill of  
8 Rights is not subject to polls. This whole  
9 case and this whole issue is about the First  
10 Amendment to the Constitution.

11 Q Who would be the monied interests  
12 you referred to a moment ago?

13 A Like The New York Times and the  
14 Washington Post, do you mean?

15 Q I'm asking you what you mean by  
16 "monied interests."

17 A That would be the two biggest  
18 influences in America by far, the two  
19 biggest corporate influences in America are  
20 The New York Times and The Washington Post.  
21 Everybody's influence besides theirs pales  
22 in comparison.

1                   MR. MOGILNICKI: I have no further  
2 questions at this time. I appreciate your  
3 being here, Senator, and your responses.

4                   (Whereupon, at 4:11 p.m., the  
5 deposition of MITCH McCONNELL  
6 was adjourned.)

7                   \* \* \* \* \*

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