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S. 1285, THE FAIR  
ELECTIONS NOW ACT, TO REFORM THE FINANCE  
OF SENATE ELECTIONS AND ON THE HIGH COST OF BROADCASTING  
CAMPAIGN ADVERTISEMENTS

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WEDNESDAY, JUNE 20, 2007

United States Senate,  
Committee on Rules and Administration,  
Washington, D.C.

The Committee met, pursuant to notice, at 10:03 a.m.,  
in Room SR-301, Russell Senate Office Building, Hon. Dianne  
Feinstein, Chairman of the Committee, presiding.

Present: Senators Feinstein, Durbin, Bennett, Stevens,  
McConnell, and Chambliss.

Staff Present: Howard Gantman, Staff Director;  
Veronica Gillespie, Elections Counsel; Adam Ambrogi,  
Counsel; Natalie Price, Professional Staff; Matthew McGowan,  
Professional Staff; Sue Wright, Chief Clerk; Carole  
Blessington, Executive Assistant to Chief of Staff; Mary  
Jones, Republican Staff Director; Matthew Petersen,  
Republican Chief Counsel; Shaun Parkin, Republican Deputy  
Staff Director; and Michael Merrell, Republican Counsel.

## OPENING STATEMENT OF CHAIRMAN FEINSTEIN

Chairman Feinstein. If I may, I am going to begin this hearing. I see Minority Leader McConnell, who is on the Committee, is present. I know the Ranking Member, Senator Bennett, is on his way.

Because we have a vote at 10:15, it is estimated--it often changes. What we will do is vote while keeping the hearing going during the time. And there is the Ranking Member. I hope you do not mind, but I just began the hearing.

Senator Bennett. I never mind whatever you do.

Chairman Feinstein. Oh, thank you. So I will go down and vote, come right back, and then Senator Bennett will go down and vote, and we will keep the hearing going.

We meet today to receive testimony on a bill that would significantly affect the manner in which Senate campaigns are financed and also provide major new curbs on the skyrocketing cost of television campaign advertising.

I would like to welcome three Senators who are here today: the distinguished Republican Leader, Senator McConnell; the Ranking Member of the Judiciary Committee, Senator Specter; and the Assistant Majority Leader, Senator

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Durbin, who wanted this hearing to begin promptly at 10:00 and who is not yet present, but hopefully will be.

[Laughter.]

Chairman Feinstein. Proposals to finance presidential and congressional campaigns through public funds have been the focus of long and heated debate. Since the 1970s, we have had in place a public financing system for presidential elections, but none for congressional elections. Bills providing publicly funded congressional elections have been offered in almost every Congress since the mid-1950s. In the 93rd Congress, the Senate twice passed public financing bills. In the 101st, 102nd, and 103rd, both the House and the Senate passed bills. The proposal in the 102nd was actually submitted to conference and reconciled, but it was subsequently vetoed by the President. It is a long and tortuous path.

Many of these bills also contained provisions that would provide for specified reduced broadcast advertising rates or for political advertising vouchers. But, again, these did not become law, and it is becoming increasingly urgent that these costs be brought under control.

Statistical data provided by the TV Bureau of

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Advertising, a trade association representing broadcasters, demonstrates that spending on broadcast political advertising has spiraled upward since 1970. Overall, spending increased almost 1,200 percent between 1970 and 2006 in inflation-adjusted dollars. In dollars, that is an increase from over \$62 million in 1970 to \$798 million in 2006.

I am hopeful that some of the witnesses will speak to this issue as well as the public funding provisions in the bill. I can tell you, in a State as large as California, when I campaign, and see somebody starting in a bus, I say, "Aha, they are going to lose." You cannot possibly meet enough people in the course of a campaign to win an election in an old-fashioned way in my State. The only way is television. In 2000, I spent, with light opposition, \$3 million just for 1 week in two-thirds of the media markets in the State.

S. 1285, the Fair Elections Now Act, is a bipartisan bill introduced by Senator Durbin, who is a member of this Committee, and Senator Specter, who is at the witness table. In addition to the Senators who are here to testify, the Committee has five witnesses who reflect a wide range of

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Federal and State campaign finance experience, expertise, and views.

I am not a cosponsor of this bill. Senator Durbin asked that I keep an open mind and that I agree to a hearing. I said I would and I am keeping my word.

However, I must say that there is one area of concern I have long had with public financing, and that is, fringe candidates obtaining public funds. In my State, an individual would be eligible for \$5,728,500 in a primary and \$8,550,000 in a general. This would mean that somebody even without their own marbles who could simply get signatures could qualify. As a former mayor of San Francisco told me, "Dianne, people will sign a petition for an overhead sewer line on Market Street." And to a great extent that is true. It is very easy to get signatures on virtually anything. So, in my State, it would mean somebody perhaps with half their marbles would get \$13 million with the potential of additional vouchers for television ads if the Fair Elections Now Act was done.

So I am concerned about that. I know we have excellent witnesses. I do not want to take their time. I would like to now turn this over to the distinguished Ranking Member,

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Senator Bennett, for his opening remarks.

OPENING STATEMENT OF SENATOR BENNETT

Senator Bennett. Thank you, Madam Chairman. And I will not have a lengthy opening statement, but I will share with you and the witnesses my own personal reaction to this.

I remember as a very young man first getting started in political campaigns asking one of the wise men of our State why a particular politician kept running. He ran for everything, and he never won. And I said, "Why in the world does he do it?" And this wise old head said, "Bob, that is how he earns his living. He raises money for the campaign. He pays it to himself in the form of salaries, and he has got a big enough base that they will give him money for every campaign, and that is how he earns his living."

Well, I suppose defrauding campaign contributors is one thing. Taking tax money to earn your living by continuing running for office is another. And I share with you a great concern about this bill.

I am looking forward to hearing from our witnesses and obviously will have more to say as the hearing goes on.

Chairman Feinstein. Senator, I just learned a big lesson. I should stick to my written remarks. I misstated

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a part of this bill. It is not signatures. It is a candidate who receives \$5 in qualifying contributions from 28,000 individuals in my State or 3,000 individuals in Utah, which is your States, would be eligible for these dollars.

Senator Bennett. I noticed that, and I figured the cost of getting 3,000 people to give you \$5 apiece is going to be more than \$15,000. But that is neither here nor there.

Chairman Feinstein. I would like to begin now with the testimony from Members. We function on the early-bird rule. We will follow that. I saw Senator McConnell, the Republican Leader and member of this Committee, in the room first. It is our pleasure to have you at the witness table.

STATEMENT OF HON. MITCH McCONNELL, A UNITED STATES  
SENATOR FROM THE STATE OF KENTUCKY

Senator McConnell. Thank you, Madam Chairman and Senator Bennett. I applaud you both for starting on that skeptical note about this proposal. I appreciate the opportunity to be here to discuss taxpayer-funded elections. As I know at least Senator Bennett knows, I have taken more than a passing interest, had more than a passing interest in this issue over the years, and I have a few battle scars

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from floor debates to prove it.

As a former Chair and long-time member of this Committee, it is good to be in familiar territory, and thank you for giving me the opportunity to be here.

I also want to thank Senator Specter and Senator Durbin for their interest in an issue that has consumed a lot of my time and my energy over the years. Elections can be messy, and ensuring an open, equitable process should be an important priority for every Member of Congress. But I would respectfully submit that if past experience is any guide, then the practice of taxpayer-funded elections--or, as I like to call it, "welfare for politicians"--has proved to be a sharp detour along that road; and expanding it to include congressional races would take us even farther afield.

Let us take the Ranking Member as an example. Under the population-based formula envisioned by this proposal, if Senator Bennett were running for reelection next year, he could expect to receive \$2.14 million for his campaign. If his opponent decided to use private funds or if an independent group decided to go after him, the maximum amount available to him under the bill's so-called fair-



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fight provision would be \$5.6 million.

This may seem like a lot of money, and it is, but when we consider that one of our former Senate colleagues, now a Governor, spent more than \$70 million of his own money to win a Senate seat 7 years ago, the relative value of these sums becomes clear: \$5.6 million versus \$70 million is not even a fair fight. It is a landslide.

The notion of taxpayer-funded campaigns gains popularity in the days after Watergate. Americans viewed it as a way to prevent corruption. Again, this was a noble goal, but with the perspective of time and experience, Americans have consistently and roundly rejected the idea of funding nominating conventions, primary elections, and general elections, not only for the candidates they support but also for the ones they oppose.

Tens of millions of Americans, including the one sitting in front of you, have always found this latter notion particularly hard to fathom. But for those of you on the dais or in the audience who did check the box on your tax returns electing to contribute, let me give you an idea of the return you have gotten on your investment. Over the years, you have paid for the convention parties and podiums

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from Miami to San Francisco and New York to Los Angeles. You have funded the many campaigns of Lyndon LaRouche, who for 6 years campaigned from prison. You have financed negative ads, positive ads, media consultants, political consultants, private jets, limousines, suites at the Four Seasons, and enough streamers and placards to stretch from Bakersfield to Bangor.

And here are some of the things you have not paid for: In 2004, when nearly every candidate rejected the system as impractical, the Social Security trust fund was shorted \$207 million. In 2000, the fund was shorted \$240 million. This is the money that went to stump speeches and sound bites instead. All in all, taxpayers have spent more than \$1.3 billion subsidizing campaign attack ads and convention hot dogs. The signs of this systems' failure, both practically and popularly, are literally everywhere.

There is a growing movement within States to reverse taxpayer-funded elections at the State level. Just last year, my own State of Kentucky eliminated the practice. Lawmakers could no longer justify the expense while dealing with tight budgets and shortfalls in areas like education and health care. Kentucky's Secretary of State Trey Grayson

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put it this way. He said, "When facing these difficult choices, it is hard to argue that some of your hard-earned tax dollars should be spent to fund political campaigns." He congratulated the members of the State's General Assembly for placing the interests of children, seniors, and all Kentuckians ahead of their fellow political brethren by refusing to allow taxpayer dollars to fund political campaigns.

The issue has been a major part of the political discourse in Kentucky over the last several years. It is my belief that Republicans in the State have won races with this issue and that they have retained control of the State Senate as a result of their position to get rid of taxpayer funding of Governors' elections.

In a much more liberal State, Massachusetts, the voters adopted taxpayer-funded elections in 1999. But became lawmakers chose to fund projects like the Big Dig and child health care over campaign picnics, cheerleaders for the system turned to the courts for help. The courts ruled that the State had to either fund the system or repeal it. Lawmakers eventually chose the latter, but not before advocacy groups won the power to seize States property and

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auction it off to cover campaign costs. First on the auction block were two Ford Expedition SUVs and a station wagon, with the Speaker of the House's office furniture next in line. I wonder how many campaign ads could be funded if we auctioned off the dais that you guys are sitting in front of or this table and chairs.

Candidates themselves increasingly reject public financing. Not a single major presidential candidate for 2008 from either party has so far said that he or she will buy into the current system. Yet, mysteriously, public financing continues to be a cause celebre within the so-called reform industry, which has once again sounded its battle cry to save welfare for politicians.

Those groups often blame the decline on a lack of education about the system. In fact, it is because of education that taxpayers in increasing numbers say "No, thank you." Never in the history of our country has there been a more complete poll than is taken on the question of taxpayer-funded elections. Every year Americans are asked on our tax returns, which we file by April 15th, whether we support taxpayer-funded elections. The choice is simple: teachers and troops or streamers and stump speeches. Ninety

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percent of us vote for the former. Streamers fared just a little bit better in Congress when Senator Kerry offered an amendment in 2001 that would have instituted public financing for Senate campaigns. A whopping 30 Senators signed on.

The more Americans learn about this system, the less they like it. The chart behind me illustrates the point, and I think Senator Bennett and Senator Chambliss can see it. The percentage of Americans who checked the little box at the top of their tax returns agreeing to divert \$3 from the U.S. Treasury to pay for political campaigns reached its high watermark in 1980 at 28.7 percent. Since then, it has plummeted down to 9.1 percent participation in 2005, a nearly 70-percent decline in participation. And, remember, this is not money that comes out of the taxpayers' pockets. It is money they already owe. And more than nine out of ten of them would rather it be spent on health care and national security than political campaigns.

Candidates reject the system. Nine out of ten Americans oppose it as a bad idea. These are not reasons to expand it. They are reasons to dispose of it altogether.

Congress should heed the decision of over 90 percent of

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the American public that finds that this system is not sustainable. The American people have spoken on this issue more than any other. This is the most extensive poll ever taken on any issue every year, and 90 percent of Americans think it is a bad idea.

I certainly hope that we will not extend the system to cover congressional campaigns. It strikes me as a uniquely bad idea in spite of my affection for my good friends Senator Specter and Senator Durbin. I hope that this bill will not be approved.

Thank you very much, Senator Bennett, for the opportunity to be here.

Senator Bennett. [Presiding.] Thank you, Senator McConnell.

Senator Specter?

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STATEMENT OF HON. ARLEN SPECTER, A UNITED STATES  
SENATOR FROM THE STATE OF PENNSYLVANIA

Senator Specter. Thank you, Mr. Chairman. May I reciprocate on affection and differ on substance.

I would ask unanimous consent that my full text be made a part of the record.

Senator Bennett. Without objection.

Senator Specter. I will summarize.

This legislation is aimed at dealing with the skepticism which is present in the American public that candidates are for sale. When Senator McConnell referenced an "auction," in the public mind candidacies for the United States Congress are on the auction block. And we have seen with the convictions of Congressman Cunningham and Congressman Ney and the indictment and evidence publicly disclosed as to Congressman Jefferson good reason for the skepticism.

This is a modest first step to try to reduce the impact of money in elections. We have proposed in what Senator Durbin and I are introducing a voluntary system that provides candidates for the U.S. Senate the option to forego private funding of their own election campaigns with having

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to unilaterally to disarm, and the full statement discusses the details of the proposal, but I am going to use my time for some of the broader principles involved.

We need to move away from the very heavy impact of money, and when Senator McConnell cites the example of one of our colleagues spending \$70 million, that is good reason to take some steps to reduce the impact of money in elections. In my legal judgment, the decision in Buckley v. Valeo, which said that the First Amendment right to freedom of speech entitled any person to spend as much of his or her money as he or she chose, is the worst decision of the Supreme Court of the United States since the Dred Scott decision.

My own view is one person, one vote. Why should a person who is wealthy have such a megaphone to control elections? Why should one individual be able to spend \$70 million to, in effect, buy a seat in the United States Senate?

This issue has had some particular personal resonance with me because I decided to run for the Senate in 1976, after campaign finance reform was passed in 1974, which limited the amount of money an individual could spend of his



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or her own money. For Pennsylvania, it was \$35,000. That was about as much money as I had. My opponent was Congressman John Heinz. In the middle of our campaign, Buckley came down saying that anybody could spend millions, and Congressman Heinz did. I was so agitated that I took the futile step of petitioning for leave to intervene in the case and petitioned for rehearing. I did not expect it to get me anyplace, but in the Senate I teamed up with Senator Fritz Hollings for many years to urge a constitutional amendment which would overturn Buckley, would not deal with the language of the First Amendment, just say speech is not money. And I believe that would be very, very salutary for our society.

In addition to the skepticism that it creates in the public mind, it takes a phenomenal amount of time. My first election to the United States Senate in 1980 cost \$1.9 million. My last election cost \$25 million. Senator Santorum in Pennsylvania spent more than \$30 million on the last election. And you hear people figure out how much you have to raise every day. I do not like to think about that. It would be too discouraging. But recesses and weekends and when you can spare some time off to a campaign office to

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raise money is the order of the day. And I do not have to tell this Committee or the professionals who are in this room how much important work we have to do and how we really ought to be devoting our time to the public's business.

So this is a very small step forward, as I see it, to try to remove the tremendous influence of money in politics.

I am going to yield back my final 9 seconds, Mr. Chairman.

[The prepared statement of Senator Specter follows:]

/COMMITTEE INSERT

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Senator Bennett. We have about 2 minutes left on the vote, so that being the case--

Senator Specter. I would have yielded back the time even if I had more time.

Senator Bennett. Yes. We will declare the Committee in recess until the Chairman returns.

[Recess.]

Chairman Feinstein. [Presiding.] The hearing will reconvene. Senator Durbin, I think you are up at bat.

STATEMENT OF HON. RICHARD J. DURBIN, A UNITED  
STATES SENATOR FROM THE STATE OF ILLINOIS

Senator Durbin. Chairman Feinstein, thank you. You kept your word. I asked you months ago if you would have this hearing, and you said, "I will." You told me at the time that you needed to know more about this issue and this bill, and I appreciate that. It is a historic bill. It would result in dramatic change, and I can understand that every Member of Congress should ask the hard questions that are part of this process.

My starting point is this: The current system of financing campaigns is indefensible and unsustainable. It is indefensible for good, honest, hard-working Members of

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Congress to spend so much time raising money in political campaigns. It forces us to spend so many hours with special interest groups and generous, wealthy individuals that I am afraid it gives us an unreal view of the world. We are removed from the reality of daily life of many people because of all the time that we spend with those who are kind enough to support our campaign efforts. And that results, of course, in an estrangement where many voters just feel we are out of touch. We really do not know what life is like for the average working person. We do not spend a lot of time with average working people, at least as much as we should.

I think it would be embarrassing to both of us, and perhaps on the other side as well, if people knew how much time we spend in private meetings talking about raising money. It is the mother's milk and lifeblood of political campaigns. And you and I both know that we are called on time and again to raise money for ourselves and for others, and do it willingly knowing that it is the only way to advance our values and legislative ideas that we think are important for this country.

If the average person knew how many hours we spend, I

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think they would be surprised, and maybe disappointed. We have had a lot of talk about the culture of corruption in Washington. You know in your State that it has become a major issue in the southern part of the State with the indictment and prosecution of a sitting Member of Congress. And we all know the stories that have been frequently reported here in Washington. I happen to believe that the only way to clean up our system, our political system, is to not only address the rules of the House and Senate and the laws governing conduct by Members of Congress and others, but also our system of campaign financing.

I just want to address, if I can, a historical plight which should be on the record. Imagine for a moment that a President came before a joint session of Congress and called for a fundamental change in the way we finance political campaigns in America. It has already happened. The American President was Teddy Roosevelt. His appeal to a joint session of Congress was 100 years ago in his 1907 State of the Union address.

Now, I know the Senate moves slowly, but even by Senate standards, a century is long enough to wait. We can continue to work hard to pass lobbying and ethics reforms.

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I think we should. But we will not get to the heart of the problem until we really address the way we finance campaigns.

Now let me go to the issue of unsustainability. The current system is unsustainable, and let me tell you why I believe that. The cost of running for the Senate is what I will focus on now. That cost is escalating out of control. Here is a statistic which I think is very straightforward. The average cost of running in one of the ten most expensive Senate races in the year 2002, top ten races, average cost, \$17 million. Four years later, \$34 million. It had doubled in the top ten competitive races.

Here is another statistic. In 2002, the total amount spent on Senate races was less than \$300 million--2002. Four years later, \$550 million. We are not far away from an election cycle for the Senate where we will spend over \$1 billion on Senate campaigns.

I think that is unsustainable. How many \$2,300 contributions does it take to be a viable candidate? You know how many phone calls are involved, how many trips, how many fundraisers. We all know this business. And it means more and more time spent by incumbents and candidates to

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reach a viable competitive threshold. The total amount spent on all political ads in 2002 was just short of \$1 billion--2002, all political ads. 2006, \$1.7 billion. If the money spent on ads nearly doubles in 4 years, this is an indicator of where the cost of campaigns is headed.

Now, before someone argues that television stations are forced to generate all this political revenue in order to stay in business, let me point out that for stations in the top ten media markets in the country in the year 2000, the average profit margin was 46 percent. That is not bad. In order to compete in an environment such as this, candidates have to spend more and more time raising money, dialing for dollars, attending fundraisers, planning fundraising events, building donors lists, and so forth. We have all been through it. We all face it. And as we all know, we lose a lot of time that could be spent first with our families, who must sacrifice a great deal for us to have this chance to run and serve, also with our constituents who hope that we will be listening carefully to their needs and responding with legislation. We spend so much time in this effort to gather money.

Senator Specter and I have introduced a plan that will

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address this. It is called the Fair Elections Now Act. Our bill will create a pool of public accountable funds that qualified Senate candidates can use to run their campaigns. Candidates will be out of the fundraising business, Senator Bennett. Candidates will now be in the constituent business, regardless of whether they are wealthy or not. Candidates will be in the policy business, regardless of what policies happen to be preferred by certain donors.

I honestly believe--and I want to say this for the record--the overwhelming majority of people on the American political scene that I have had the honor to serve with are good, honest, hard-working people who value their reputations as everyone else does. But I believe that even guided by the best of intentions, we have been drawn into a system that is corrupting. The perception is that politicians are corrupted by big money interest, and whether that is true or not, that perception of the loss of trust that goes with it makes it difficult for the Senate to face tough challenges and have the American people believe what we are doing is right. My colleagues know as well as I do. We have passed rules which, on their face, sound very reasonable, that say that lobbyists cannot buy me a meal, a



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lobbyist cannot give me a gift, unless that lobbyist is holding a fundraising luncheon, at which point they can buy me a meal and do much more, within the law, to provide help in my campaign.

That may be a distinction which Members of Congress can understand, but the average person cannot, and I think we all realize why.

Now, Senator Specter and I have introduced the Fair Elections Now Act, and here is what it gets down to. Senator Feinstein made her opening statement and corrected it, and I want to make it clear for the record. In order to qualify for public financing in this campaign, a person has to collect small contributions, \$5 contributions, from a certain number depending on the population of your State.

Now, in my State it is 11,000. In Senator Feinstein's State, it is 28,000. In yours, Senator Bennett, it is 3,000.

And you might say, well what does that prove? I hope it proves that you have at least a credible fundraising base. Will some people sneak through this system? Some that Senator Feinstein said may not have all their marbles, or some, as you describe, who make a living out of political

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campaigns? Sure. Some people may argue that they are already in our system, doing quite well, thank you. But let me just say that I think it is a credible starting point to show that you can have a base of contributions in your State of people willing to put \$5 on the table saying, "I will stand by you." I think it is at least as valid, if not more so, than petition signatures because I agree with Senator Feinstein's earlier comment.

When I have challenged petitions in my State--and I will be you have had the same experience--half the people say, "Well, I don't remember ever signing that petition." And that is a natural reaction. Candidates who qualify, who raise enough small contributions, \$5 contributions, will then receive funding allocations for primary and general elections.

Now there is what I call the David Duke excuse, which I have used for more than 20 years in my political life. For that period of time, I resisted the idea of public financing because I said, "Why in the world would I want to give one taxpayer dollar to David Duke and the Ku Klux Klan Party to run anywhere in the United States?" It is a pretty good argument. But I think, unfortunately, it doesn't hold up

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when you compare it to the alternative, and that is the current system.

It is true there will be marginal candidates who will end up challenging incumbents. There will be people who are going to run who may or may not be credible. But consider the current system. Consider whether this is defensible. I don't think it is. I think we have to run the risk by opening the system that some people may come into the system and receive money. That may not be the very best. Let the voters be the ultimate judge as to whether that person should be elected.

General election candidates under the Durbin-Specter bill receive vouchers for free TV air time, and close to the primary and general election dates, candidates receive a 20-percent discount on ad buys. Candidates that face massive opposition funding can qualify for additional fair-fight funds, which increases the amount available in the primary and general elections. The plan, I believe, is fundamentally constitutional and it has growing public support. Three important points to note:

It is not public financing as that term has been usually understood. No individual taxpayers will see their

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taxes raised, and the system does not rely on general appropriations to function.

Second, it is voluntary. If you are a candidate and you'd prefer to run under the current system, you are free to do so. If your opponent wants to come into this system, this approach, they can certainly do so and receive more funds if you pass certain limits in your own spending.

Seventy-four percent of all voters support public financing in fair elections. Eighty percent of the Democrats, 65 percent of the Republicans, 78 percent of the Independents.

In two separate States, very diverse and very distance-- Arizona and Maine--the voters made that decision to go forward with public financing, fair elections. I think it is an indication that people are ready for real reform and real change.

It is fair to say that the Fair Elections Now Act, as it is currently written, isn't perfect. I welcome suggestions on improving it. But I think it is a good starting point. It would fundamentally change the way that we do business.

I will close--and I thank the indulgence of the Committee for giving me a couple extra minutes here, but I

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would just like to address the comments made you my friend and colleague, Senator McConnell. Senator McConnell said that these are taxpayer-funded elections, suggesting, unfortunately, that this does come from general revenue funds. It does not. It is a special tax that is imposed on the media to pay for this. And I think, overlooking the obvious, taxpayers fund the current system. When special interests fund our campaigns on both sides of the aisle, they have an entree to our system, an entree to the floor of the Senate and the House that average people do not have. They have a voice where others don't, so currently taxpayers are paying for the current system.

Senator McConnell called it "welfare for politicians." I do not see it that way. We still have to wage the campaigns. We still have to win the support of the voters, and we do it in a system that I think is much cleaner.

I would also just say that he believes the system can be overwhelmed, that even if we had \$5 million, someone could come through and spend \$70 million. There is only so much water you can put in that bucket, and in my State and others, those who have tried to overwhelm the system have, by and large, lost. The people see through it. If there is

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enough information out there and we believe our bill provides enough information for voters to make a choice, we are confident they will make the right choice.

Thank you.

Senator Bennett. Thank you very much, Senator.

We will move to the second panel now. We want to welcome the Honorable Warren Rudman. He is a two-term Senator from the State of New Hampshire. Senator, welcome back to your arena.

Since leaving this body, Senator Rudman has been involved in a number of public and charitable pursuits, areas of corporate fiscal responsibility as well as foreign affairs, and he is currently of counsel at the D.C. law firm of Paul, Weiss.

Then the second member of the panel is Stephen Hoersting. Mr. Hoersting is currently Vice President for the Center for Competitive Politics, and prior to assuming that position, he served as General Counsel to the National Republican Senatorial Campaign Committee, has advised over 50 Senate offices on how to comply with the campaign finance rules.

Then the third witness is Nick Nyhart, the President

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and CEO of Public Campaign. That is a nonprofit intent on de-emphasizing the role of private funds in the public sphere. He was the co-founder of Public Campaign and has advocated in many States on behalf of campaign finance reform measures.

We will hear from each of you in that order. Senator Rudman, again, welcome.

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STATEMENT OF WARREN B. RUDMAN, PAUL WEISS, LLP,  
WASHINGTON, D.C.

Mr. Rudman. Senator Bennett, I want to thank you for inviting me to speak on this topic. I am here to state unequivocally that I support public funding of elections and specifically support the Fair Elections Now Act that has been introduced by Senators Durbin and Specter.

Many of you probably know that I have not always held this view, and all of you should know that I have reached this conclusion very reluctantly. Times have changed, and so have I. That is why I am honored to serve as co-chair of Americans for Campaign Reform, the just six dollar movement, along with former Senators Bill Bradley, Bob Kerrey, and Alan Simpson.

As I look back on my 12 years in Washington, I hesitate to guess how many hours I devoted to attending fundraisers and calling strangers for campaign contributions. Today, as all of you know firsthand, the problem has gotten much worse. In 2004, nearly \$4 billion was spent on the congressional and presidential campaigns, up from \$2.2 billion in 1996. The average costs to win a Senate seat was well over \$7 million. That means that you and your



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colleagues had to raise an average of \$4,600 apiece every weekday for the 6 years you were in office. Every hour that each of you must spend dialing for dollars, calling people you don't even know, was an hour that you probably would have preferred serving your country and your constituents.

I have seen how the influx of cash in our system has distorted this country's agenda, undermined our democratic values, driven voters away from the polls, and limited electoral competition.

There are two insurmountable problems inherent in our current system--one rooted in reality and the other in perception. The reality is that private financing loosens a cascade of special interest money. The perception is that many Americans, or most, lack confidence in Congress and believe that the system is corrupt. While this perception I do not agree with and it is unfair to many good people who serve in Congress, the democracy suffers nonetheless.

Unfortunately, I believe it will be difficult, if not impossible, for Congress to face those issues that are particularly vexing and challenging if you don't have the confidence of the American people, which in recent polls is at an all-time low.

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Miles away from the Beltway, Arizona and Maine have implemented public financing for State races, and polls indicate growing support across the country. In Maine, 80 percent of those elected to the legislature in 2006 rejected private money, freeing them for the endless pursuit of contributions. Five top Arizona officials were elected without taking a dime of special interest money.

Janet Napolitano, the Governor of Arizona, said after her election, "I could spend my time talking with voters, not big contributors." Once in office, she said, "lobbyists are not swarming around me."

With public financing, the power rests with voters, not special interests. When the cost of financing a campaign is not an intimidating obstacle, more of our most able leaders will likely consider public service. Once elected, they will be free to spend their time and energy attending to the Nation's business instead of wasting time on non-stop and, I believe, demeaning fundraising. And when Americans have greater confidence in our democracy, more will be willing to participate and more will vote.

A healthy part of the American dream has always been the notion that anyone can hold public office.

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Increasingly, candidates' qualifications are being measured by the size of their wallets, not the strength of their ideas and convictions. Public funding would once again allow Americans from every walk of life and income level to contemplate public service.

To respect the First Amendment, public funding must, of course, be voluntary. Yet it still works. The key is to make sufficient public money available so that an unknown candidate who qualifies will have the necessary funds to introduce themselves and their points of view to all of the voters in their State.

Election history shows that candidates who opt out of public funding, and spend significantly more, will not necessarily have a meaningful advantage as long as their opponents are reasonably funded. And I would point out in this last Senate election that happened on a number of occasions. I believe that the mechanisms included in the Fair Elections Now Act are an ideal way to ensure that those who accept public funds will have sufficient money to run competitive races.

As I became more familiar with public funding, I was truly surprised to learn how inexpensive it will be. For

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just \$6 a citizen per year, we can publicly fund all elections for Congress and the White House. That is a real bargain when you consider that pork barrel projects alone cost each and every taxpayer well more than \$100 in a typical year.

Financing Federal elections with private money has led to apathy and alienation, if not corruption and fraud. It will take a bold move by you and your colleagues to restore confidence in our political system and restore faith in our democracy. It is for all of these reasons that I support the Fair Elections Now Act, and let me just conclude with something that is not in my prepared settlement.

I have listened to for years and participated in this debate and listened to all the arguments of why this is a bad idea, and I would simply say to you that the choices you have to make, whether it be the Iraq war, Social Security, or campaign financing, none of them are easy, none of them are perfect, none of them are necessarily good. But I have come reluctantly to the conclusion, looking at the whole panoply of elections in this country, that this is the least bad of a series of bad options.

Thank you very much.

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[The prepared statement of Mr. Rudman follows:]

Chairman Feinstein. Thank you very much, Senator Rudman.

Mr. Hoersting, please go ahead.

STATEMENT OF STEPHEN HOERSTING, VICE PRESIDENT,  
CENTER FOR COMPETITIVE POLITICS, ARLINGTON,  
VIRGINIA

Mr. Hoersting. Chairman Feinstein, Ranking Member Bennett, Senator Stevens, thank you for the opportunity to testify on S. 1285.

A study by the Government's own General Accounting Office of Arizona and Maine clean election systems shows that the taxpayer financing systems in those States would not do what the reformers say it should do. It does not improve citizens' perceptions of Government. It does not increase competitiveness in elections. It does not increase political participation by citizens and would not lead to better representation in the Senate, if adopted.

Now, some believe our current system of private contribution is corrupt. You have heard that already this morning. But political science shows little or no evidence that campaign contributions have a systemic effect on

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Federal legislation. Studies confirm that campaign contributions are tied to ideology and don't buy votes on the Senate floor. If they did, we would see Senators changing their voting patterns in their last term of office when they don't face reelection. But, of course, we all know that Senators don't change their voting patterns so dramatically.

I know you know that private contributions don't corrupt you. But you are right to be concerned about what Americans think about governance and about taxpayer financing of campaigns.

Polls show that taxpayer financing is not what the people want from their Government or from their candidates. A Gallup poll shows that Americans prefer presidential candidates to forego public financing by 56 percent not accept it. No one believes, for example, that the 2008 presidential hopefuls--be it Mitt Romney, Barack Obama, Rudy Giuliani, or Senator Clinton--would become more or less corrupt or would become better candidates the day after they decide to accept or reject taxpayer financing for the 2008 races.

A Tarrance Group poll in 1993 showed 77 percent of

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respondents oppose taxpayers financing of elections. CBS/New York Times polls show opposition of 78 percent in 1997, 75 percent in the year 2000. And just last November, Californians rejected taxpayer financing overwhelmingly in Proposition 89.

As to the matter of public perception, the GAO study found no evidence that taxpayer financing reduces the public's perception that special interests influence Government, with two-thirds of those surveyed saying public financing has no effect on their confidence in Government or that it is too soon for them to tell.

S. 1285 provides \$1 to your opponent for every dollar you raise, irrespective of fundraising costs, and allows a 20-percent discount for broadcast time, and subsidizes your opponent when independent groups speak against him, a deal so beneficial to participants that we question whether participation is truly voluntary.

S. 1285 is expensive, costing approximately \$1.5 billion per election cycle for both Congress and Senate, exceeding the budgets of several Federal agencies. And there are alarming aspects of S. 1285, including the power it cedes to Federal agencies, and let me contribute the

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balance of my opening statement to that issue.

S. 1285's Fair Election Review Commission of just five persons would determine for the entire country whether allocations from the fund are "sufficient" for voters in each State to learn about candidates to cast an informed vote. It seems a bit presumptuous to me. But the Commission's report would not just be its opinion on sufficient levels of campaign speech. Its choice would be written in the form of a bill, then either rejected in total or enacted into law, for S. 1285 requires the Majority Leader to introduce the Commission's bill for a vote on the Senate floor without amendment or alteration.

Now, some may argue the Commission's bill should proceed directly to the floor to prevent incumbents from rigging campaign spending levels for their challengers. After all, incumbent protectionism is a serious consideration in campaign finance regulation. But there is a greater danger, I would submit to you, and that is the danger of an independent commission short-circuiting legislative processes, interceding between the people and the Senators sworn to exercise judgment in representing them.



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The risk is not that the Commission would reduce the amount of candidate allocations. That is prevented by S. 1285. The risk is that the Commission would be unduly hesitant in raising them. The Thune and Webb Senate races might have all gone the other way had S. 1285 been law.

And there are lessons from the States. Arizona's Clean Elections Commission ousted Representative David Smith from office for overspending his public campaign limit by \$6,000, or 17 percent, marking the first time an office holder has been ordered to forfeit his office for violating public financing. Removal from office wouldn't yet be a penalty under 1285, and it is easy for Senators who employ good election lawyers to believe they could never so exceed a spending limit. But just earlier this year, three FEC Commissioners determined that the Bush-Cheney Committee exceeded its taxpayer financing allotment by \$42 million, or 57.6 percent, and Bush-Cheney retains the most elite election lawyers in the country.

Luckily for Bush-Cheney, three other Commissioners did not agree with the finding, but consider S. 1285 is backed by the same reform organizations that propose remaking the FEC into a five-member agency with a strong Chairman and

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enhanced powers.

Arizona had another loser that you should consider in your deliberations. In removing David Smith from office, the Clean Elections Board usurped under color of law--

Chairman Feinstein. Could you wrap up, please?

Mr. Hoersting. --the electoral judgment of the sovereign citizens of Arizona and replaced it with their own.

I suggest that you view S. 1285 in the same way you viewed proposals for the independent ethics czar, where this body decided that how you conduct yourself is a matter for the voters, not agencies, and that you should not delegate your constitutional obligation to police your own. At the end of the day, in either ethics or campaigns, there is really no substitute for statesmanship.

Thank you.

[The prepared statement of Mr. Hoersting follows:]

Chairman Feinstein. Thank you, Mr. Hoersting.

Mr. Nyhart?

STATEMENT OF NICK NYHART, PRESIDENT AND CHIEF  
EXECUTIVE OFFICER, PUBLIC CAMPAIGN, WASHINGTON,  
D.C.

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Mr. Nyhart. Good morning, Chairwoman Feinstein, Ranking Member Bennett, and Senator Stevens. Thank you for your invitation to give testimony this morning. The issues we are considering here this morning are extraordinarily important to the political process and to the American public. On election day last November, when the leading exit poll asked what issue was very important in determining their vote that day, 42 percent of respondents replied, "Corruption and ethics." That was the number one answer. It was higher than terrorism, it was higher than the war in Iraq, or the economy.

Corruption headlines have opened the door to a broader discussion of the role that money plays in political campaigns. The unsustainable rise in the cost of running for office affects who can run and who politicians must turn to in order to raise enough campaign cash to remain competitive.

To remain in office, elected officials spend more and more time raising money in order to pay for escalating campaign costs. If the general rate of inflation was the same as the rising cost of campaigning, our economy would have collapsed long ago. The average cost to win a U.S.

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Senate campaign in 2006 was \$7.8 million. That was a new record. A large portion of what a campaign raises is to pay for television ads. Approximately \$1.6 billion was spent in 2004 on political ads on local television by candidates, parties, and outside groups. This massive expenditure amounted to roughly 80 percent of the television stations' revenue increase from 2003 to 2004. In other words, four out of the five new revenue dollars came from political ads, and that trend continued in the next elections. We saw the cost of political advertising go up to \$2 billion in 2006.

The non-stop rise in the cost of political campaigns put Members of Congress in an awkward position. Instead of being able to focus on the work that their constituents elected them to do, elected officials are compelled to spend vast amounts of time dialing for dollars and shaking hands in pursuit of the cash they need to retain their seat, lending an ear to the interests who can give the maximum contributions allowable under current law.

Fortunately, there is a common-sense answer that will refocus elections on voters and volunteers instead of campaign cash and political money bundlers. The Fair Elections Now Act, or FENA, gives candidates for Congress a

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way to run for office without joining in the campaign money chase.

FENA draws upon model State laws that have been in place for a number of political cycles and provides a practical alternative. Under FENA, Senate candidates would qualify for public financing by collecting a set number of small contributions based on the size of their State's population. Once qualified, the candidates would receive funds sufficient to run a competitive campaign. They would agree to strict spending limits, and they would forego future private contributions. If the fair elections candidate is outspent by a privately financed candidate, as Senator Durbin explained, there are fair-fight funds available to keep a level playing field. They also receive these funds if attacked by outside expenditures.

This voluntary system has changed the faces of democracy where it has been implemented. In Maine, for example, Deborah Simpson, a low-wage worker, a single mom, and a grass-roots civic activists, is now a member of the State legislature where she pays particular attention to the policies that affect children living in poverty. She credits the clean elections system as her successful entry

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ticket into the political arena. To date, publicly financed elections are the law for at least some offices in seven States and two cities. Hundreds and hundreds of candidates have run successfully using fair elections. Participation is increasing steadily. In Maine now, 84 percent of State House seats are occupied by elected officials that used the system. And in Arizona, 9 out of the current 11 statewide officials, including Governor Janet Napolitano, were elected that way as well.

The public is strongly behind this idea. A bipartisan poll that Senator Durbin mentioned showed that 74 percent of the people supported this kind of a program, and I want to depart from my prepared remarks just to address some of the issues around polling. We found in 10 years of polling on this that you gain that support, that high-level support, by making sure that the people who responded to the poll know that you only get it after raising small contributions, agreeing to a spending limit, and foregoing private contributions. And I think that accounts for some of the difference in the polling numbers that we see here. As Senator Durbin mentioned, the polling is widespread--support is strong across many demographic groups.

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Those results, coupled with the exit poll data that I mentioned earlier, make it vividly clear: the American public is not just ready for change; they are clamoring for it. We have seen tremendous growth in support of the system. It is not just the good government, and reform-oriented groups like Americans for Campaign Reform, the Brennan Center for Justice, Common Cause, Democracy Matters, Democracy 21, Public Citizen, Public Campaign, and US-PIRG that have taken up this cause, but at the bill's introduction some of the most established and respected organizations in our country representing tens of millions of Americans from all walks of life also supported the measure, as do a number of prominent business leaders.

Together, we can create a new system based on the values of fair competition, equal opportunity, and inclusive participation. It is simply an idea whose time has come.

Thank you.

Chairman Feinstein. Thank you very much.

I have one question I would like to ask and then I will turn it over to the Ranking Member. What advice do you have for the Committee on curbing the costs of television advertising. For those of us, and I can only speak for

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myself since I have been involved in 14 campaigns now. I have watched the cost of campaigning escalate. And the major cost--and this is California, of course--is television. The spots are just unbelievably expensive. You have to have a certain number of rating points--namely, a thousand--to drive a message through. Consequently, that is about \$3 million to drive one spot through. I think that broadcast ads have reached the point where they becomes the fundamental cost of a campaign in many states.

I would like to ask--and perhaps we can go right down the line, beginning with Senator Rudman--if you have any advice for us with respect to curbing costs associated with broadcasting political advertisements.

Mr. Rudman. Well, I do. And as a matter of fact--I am not sure if it was 1988 or 1989--Senator Jack Danforth and I joined together to introduce legislation that would have essentially required that the public airways be available to qualified campaigns for a fraction of what they currently cost, because it was our view then and it is my view now that it is not so much how much money you have to raise that is the scandal. It is how you have to spend it.

I might point out to you, as bad as your California



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example may seem to you, think of someone running for the United States Senate from New Hampshire, where 80 percent of the people who can vote for you, 80 percent of them are watching Boston television stations with a huge market. Only 10 percent of the people watching those stations can vote for you. So the bottom line is, like in New Jersey and other States, you are paying an enormous amount of money.

So it was our view at the time that there ought to be limitations, either strong discounts or actually the furnishing, since these are publicly owned airwaves, in theory, some portion of rating points to be furnished to legitimate qualified candidates at a certain point rating level.

We had very little success. The broadcasting lobby was overpowering, and we did not get much beyond the hearing stage. I still believe it is a good idea.

Chairman Feinstein. Thank you very much, Senator.

Mr. Hoersting?

Mr. Hoersting. Senator, you are right. You do need 1,000 gross rating points to penetrate your advertising market. But I am not an expert in broadcast advertising economics or even broadcast law. But one thing I do know

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about economics is there is no such thing as a free lunch, and if you do require the broadcasters to pay for this subsidy or to subsidize air time for candidates, it will at some point be passed on to consumers.

So while I cannot flesh out for you exactly how that would be, I can assure you that that will be the case.

Chairman Feinstein. So you don't believe that the airwaves are public or that the public should be entitled to have some free information about people running for office in a democracy?

Mr. Hoersting. That is a judgment call for you to make, Senator. What I am saying is that the subsidy for candidate rates, when candidates get a break on advertising costs, that will be made up somewhere in the business models of those broadcasting stations. That is my non-professional view on probably what will happen.

Chairman Feinstein. Okay. So Post Toasties will cost more to advertise. Please, if you would, Mr. Nyhart?

Mr. Nyhart. Senator, I think the Fair Elections Now Act takes this on directly by providing both free media vouchers and the right to buy discounted television time. That is part of the bill, so it addresses that directly.

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Chairman Feinstein. Thank you very much.

Senator?

Senator Bennett. Thank you very much.

Mr. Nyhart, you said the public is "clamoring for it." If that is the case, why don't we hear it? I hold town meetings. I certainly have a lot of people in my office clamoring for a lot of things. I have been the subject of demonstrations recently because of a position I have taken. I don't think, as I look back over 14-1/2 years as a United States Senator, I have ever had in an open meeting or letters or petitions or any of the rest of the time, people come out at me--and Utah is a small enough State where they come at you--where anybody has said they really think this is a good idea. Where is the clamor?

Mr. Nyhart. I think the clamor, Senator, is--

Senator Bennett. Other than your members, of course.

Mr. Nyhart. I think the clamor is for change in the current political system. The exit polling I mentioned showed people were focusing on issues of money and politics.

Senator Bennett. Well, now, that is not the way I read the exit poll. I think they are talking about Duke Cunningham to jail. I think they are talking about Jack

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Abramoff. I think they are talking about a lot of things other than taxpayer funding of elections. And I heard a lot of--if you want to talk about clamor, "a lot" is an exaggeration. I heard criticism over the fact that Pat Buchanan was getting \$12 million of taxpayer money because he managed to take over the shell of Ross Perot's old movement.

So where is the clamor? I do not accept the idea that the concern over the exit poll in 2006 was support for this bill.

Mr. Nyhart. Senator, what I can tell you is that people are deeply dissatisfied with the political system. Let me take an example in Connecticut, where there are examples of corruption, all of which involve some money in politics as well as illegal acts by the elected officials. And there was an outpouring of grass-roots pressure that led to the adoption of a law similar to the ones in Arizona and in Maine.

I think when the issue comes to focus and people say, okay, we are upset about what we see, we are upset about issues of money and politics, and they look for solutions, this becomes the most reasonable. I agree with you that

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people are not calling up at this time making phones ring off the hook about a specific proposal. But I think there is great anxiety and upsetness about the--

Senator Bennett. How do you explain Kentucky and Massachusetts?

Mr. Nyhart. Let me go to Massachusetts, which I know better and which had a system that was supported 2:1 by voters at the polls. The legislature refused to fund it. Voters could not compel the legislature to spend money. So it sat on the books. The Supreme Court said to the legislature, "You can either implement this law, or you can repeal it. But you can't sit there and choose not to fund it." Their response was, "Make us." And that is what led to the auctioning off of State property, because as candidates qualified for the funds under the law passed by two-thirds of the voters, and the legislature then refused to fund them even though they had qualified by the law--

Senator Bennett. Yes, but my--

Mr. Nyhart. --the court ordered the property--

Senator Bennett. My point is the members of the legislature had to face the voters, and if they had felt a clamor for this kind of thing, they would have funded it.

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But instead they decided to go the other way, and Senator McConnell has told me that one of the reasons the Republicans are in control in Kentucky is that they took a position in opposition to taxpayer funding of elections and got rewarded by winning elections. The best indication of where people are is how they vote in elections.

Let me go to Senator Rudman. I identify with your concern about the amount of time we spent in fundraising. I don't like it any better than anybody else. But I have come to the conclusion--and I would like your reactions to this--that this is like squeezing a balloon. And you squeeze it in one place and it comes out in another. And one of the things that I have noticed with great interest, not necessarily approval, that we saw in the 2004 elections and subsequently are the multi-billionaires--and George Soros becomes the poster child for the is--who said, "I will spend whatever percentages of my fortune it takes in order to defeat George W. Bush." And this is advertising, this is staff, this is funding organizations like Moveon.org. Outside of the traditional political system entirely, how would you respond to that kind of pressure that may not show up in a television ad for a fair-fight circumstance? It is

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under the radar where increasingly, as Karl Rove proved in 2004, the votes are to be found with technology, new kinds of systems that cost money, but that don't show up on the television screen, and a billionaire who is determined to impact the system. How do you deal with that?

Mr. Rudman. I am not sure how you deal with it, in light of the United States Supreme Court case, which I agree with Arlen Specter, I just never could understand that decision, and I kind of had hoped that maybe that would be revisited, even by this so-called conservative Court, because what has happened, by equating speech to money is to essentially unleash enormous monied interests with no control whatsoever to spend what they want with no chance of stopping or inhibiting it due to that Supreme Court decision.

Until that is addressed, I don't think there is anything you can do by statute, short of a constitutional amendment.

Senator Bennett. Thank you, Madam Chairman.

Chairman Feinstein. Thank you, Senator Bennett.

Senator Stevens?

Senator Stevens. Thank you very much. It is nice to

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see you here, particularly, Warren, I am glad to see you. My memory goes back, the fact that I served on the Committee that led to the Valeo v. Buckley decision, introduced twice a constitutional amendment to reverse that, and it did not go anyplace.

Now, however, I would like to ask you this: We have independent expenditures. We have 527s. We have bloggers who are hired to attack candidates and keep it up just on a drumbeat. Simply giving a new approach to how candidates can raise funds, what does that accomplish in this political world today? My first campaign costs \$38,000. The last statewide campaign cost over \$5 million in my State. I agree with your principle that we spend too much time trying to raise money, but can we do? The effect of your bill would be that I would be limited, but all of those people would be out there spending money that I cannot answer in any way under the limits of your bill.

Mr. Rudman. Well, I believe--and Senator Durbin can speak for himself, but I believe the Durbin-Specter bill does look at that issue and proposes a solution, whether or not it is an adequate solution--

Senator Stevens. And not constantly changed--



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Mr. Rudman. --or something that you will have to work your will with. But it seems to me that if you are faced with the kind of special interest multi-millionaire money funded as we have seen in the last elections directed at a particular candidate, you have a better opportunity with the right kind of funding, even though it is from the Federal Treasury, to deal with those issues than you would ever have as an individual.

I have serious problems with the issue that you and Senator Bennett have both referred to. It is, I think, as critical an issue facing the electorate of this country as any issue. But I think Senator Durbin and Senator Specter's bill, either as it is stated or enhanced, could deal with offsetting that kind of special interest money in the name of the views of the people, in my view.

Senator Stevens. This is not something new. I remember when one Senator tracked back expenditures--it is 20 years ago now--a series of independent nonprofits hired other entities, and by the time you track them down, you really do not know where the money came from or who spent it. But they were running attack ads all over the country.

Now, unless there is a constitutional amendment, I do

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not see how we can turn to the system, which is the British system, the Canadian system, which limits expenditures and campaigns, period, by anybody. Today, the bloggers are really--they are the source of news now for the news media, but they really are nothing more than paid political advertisements. And now I am told they are going to claim that they are public--they are entitled to have the benefit of the public figure doctrine and that you can't sue them for any kind of libel.

I think that your bill is going along the right way--the Durbin bill and Specter bill goes along the right way, but it only goes partway. We are liable to pass it and put all candidates in the situation where we are gladiators in an arena and have no protection against lions there. But beyond that, we do not have any protection against being stoned from the gallery.

Mr. Rudman. Senator Stevens, it is a legitimate concern, and what I would say here is, you know, I endorse the bill, but I have said that that bill probably can be improved, and one of the areas that would have to be addressed is that particular area. I know Senator Durbin and his staff have talked about that issue because it is a

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very serious issue, because it then can switch the political power in a place that is truly not representative of the people.

Senator Stevens. Mr. Nyhart, do you see any answer to the 527s, the bloggers, the independent expenditures, if the Durbin-Specter bill is passed?

Mr. Nyhart. I would echo Senator Rudman's remarks, and I think the most important thing about the Fair Elections Now Act is that it keep current and provide candidates the wherewithal to respond and speak in a loud voice, a candidate's voice, with the money they have allotted. And that is going to be a changing landscape, and so even as this bill progresses through the process, perhaps improvements can be made based on the current state of affairs with independent expenditures, 527s, or other forms of communication. That is a valid point.

Senator Stevens. Well, I sympathize with the bill and congratulate Senator Durbin and Senator Specter for putting it in. I would just state this. I have got just a few seconds left, but I went back and looked, and I have spent 50 weeks away from my family each election year, plus unknown numbers of nights during the week being a Senator

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from a very small State that has very little fixed investment and industry. It is just an enormous challenge to raise money to meet the current system.

Now, with this system, I would be limited in money, but the attackers have no limits at all. I have got to tell you, I don't understand why we should take another step down the road to hell.

Thank you very much.

Chairman Feinstein. I think, Senator, we have just had a roll call vote. If you would like to continue this, fine. What I would like to do is move the other panel so that we can then go and vote.

Senator Stevens. I am done.

Chairman Feinstein. You are finished?

Senator Stevens. Yes, ma'am.

Chairman Feinstein. Okay. Thank you.

Senator Stevens. Senator Durbin is here.

Chairman Feinstein. Oh, I didn't see you. You are so quiet.

Senator Durbin. I know that is unusual.

Chairman Feinstein. Senator Durbin.

Mr. Rudman. Senator Feinstein, I will have to leave at

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the conclusion of this first round of questioning. I think I told your staff that. I do have something downtown at noontime.

Chairman Feinstein. That is quite all right. Thank you very much for participating in this hearing.

Senator Durbin. I want to thank all the members of this panel, particularly Senator Rudman, for making the sacrifice to be here on behalf of former members.

I am here in the Senate today because my good friend and former colleague, Paul Simon, grew weary of this and finally said, "I just can't do this again. I can't go out and raise the millions of dollars it takes to be even reelected as an incumbent in Illinois. I don't want to do it to myself or my family again."

That gave me my opportunity. In my naivete and callow youth, in relative Senate terms, I tackled it. But I really have to say in response to Senator Stevens, here is what we tried to do. We acknowledge Buckley v. Valeo is something that is a reality, and it says you can spend whatever amount of money you want to send, and that is your First Amendment right. And we also acknowledge that there are many ways to be attacked in this business. It does not have to be just

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your opponent. It could be your opponent's party. It could be a 527. It could be anybody that decides to attack you or me or any member of this panel.

The best that we can do is to provide additional funds for each new dollar being spent against you so that you can match it to a certain level, and in your State of Alaska, if--you mentioned a \$5 million campaign. In your State of Alaska, you would be right up at a \$4 million fair-fight fund if they come at you in every direction.

Now, you can argue that they may spend much more than that against you, or each one of us could make that argument. But I believe that the amount of money in my State and in your State and each of our States gives us a chance to bring our message to the voters. We may be outspent, but we will not be overwhelmed. We will have a fair opportunity to bring that message. And I think that is the best we can do in a voluntary system in light of Buckley v. Valeo. I just do not believe there is anything more we could do in this bill that would pass constitutional muster.

And so that is what we have come up with. I would say that--

Senator Stevens. Could I just put in one--

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Senator Durbin. Sure. Of course.

Senator Stevens. I understand what you are saying, but don't you agree that your bill gives incumbents an overwhelming advantage?

Senator Durbin. But let me just say this: Incumbents already have an overwhelming advantage. Over 95 percent of us are reelected. We know the system. As painful as it is, we created it. We have finessed it. We work it. And we win. And I know that is why some members, as much as they may hate the current system, don't want to change it. Change is scary. I can tell you, under this system it is likely that I would end up with a primary candidate in Illinois for the Senate. Under normal circumstances, probably not. Under this circumstance, probably yes. But if we are going to be honest about this and give challengers a chance, whether we like them or not or think they have all their marbles, as the Chairman alluded to in her opening remarks, the fact is you have to open up the system to those who can qualify. And qualifying in my State means 11,000 \$5 contributions. If you have those, you are in the mix, and you qualify for funds to present your candidacy.

I would just say, and I will be very brief because I

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know we have a vote here. Take a look at what has happened to television in a short period of time. When we got started, most of us in this business, I can tell you what was the old standard of television: a 30-second television ad in the newscast or 30 seconds on that Thursday night prime-time show that everybody watched. If you could afford those and your opponent couldn't, you were going to win this battle.

Look at what has happened to broadcast television in just a short period of time. They have seen a steady decline in the people watching broadcast network television, a steady increase in the television options available, and despite this declining audience base, the cost of television continues to go up far beyond our ability to raise money. We have to look at some many other things. Senator Stevens talks about blogs and the Internet. That is the reality of where we are today. And I think that we have to acknowledge the obvious. In the current system we cannot raise money fast enough to keep up with the cost of campaigns.

I am raising money for reelection. I am raising money, as Senator Dodd once said, creating a trust fund for television stations. That is what this is all about. So



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that sometime in the future, Illinois television stations will receive millions of dollars I have collected from generous contributors all over the United States of America. That is what it is all about.

And, Mr. Hoersting, let me just say, these are our airwaves. Those networks and television stations have a license to use the public airwaves to make a profit. And I don't think it is unreasonable to ask them in return to support a political system so that this democracy is a lot cleaner, a lot fairer, and that voters have a chance.

And the last point I will make, Madam Chairman, is that if there is any question--Senator Bennett raised it--why he doesn't hear about this in town meetings, it could be that the people who are not attending the town meetings are the ones he should ask. They have given up on us. They think in many respects this Congress is not responsive, that it is in the hip pocket of too many special interest groups, and they don't care to waste their time with us.

That is a sad commentary on this great Nation and this great form of government, and I think we can do something to change it. The support for fair elections with spending limits and no private contributions continues to raise. In

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June 2006, 74 percent of the people in America supported it. It is an indication to me that this reform is overdue and will be welcome.

Thank you, Madam Chair. I thank the panel.

Chairman Feinstein. Thank you very much, Senator Durbin. We have a vote. I am going to excuse this panel. I ask the next panel to come up quickly. Hopefully we will see how far we can get.

Thank you so much. I appreciate the testimony.

The next panel is Mr. Arnold Hiatt. He is the retired chief executive of the Stride Rite Corporation and has been active in the campaign finance world for urging limited private money in politics. He became notable for giving the then-largest campaign contribution to the Democratic Party in 1996 to encourage that those types of donations be limited. His focus is on the inequity of influence that money causes in politics.

Our final witness of the day will be Mr. Scott Thomas. Mr. Thomas currently serves as of counsel in the D.C. law firm Dickstein Shapiro. We at the Rules Committee know Mr. Thomas best as former Chairman of the Federal Election Commission. He has had decades of experience in this field,

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and his testimony will focus on explaining some of the legal aspects of S. 1285 and broadcast advertisements.

Mr. Hiatt, if you would like to proceed?

STATEMENT OF ARNOLD HIATT, CHAIRMAN, STRIDE RITE  
FOUNDATION, BOSTON, MASSACHUSETTS

Mr. Hiatt. Madam Chairman Feinstein, Ranking Member Bennett, over the years I have had the privilege to meet scores and hundreds of exceptional individuals who were running for office or already in office and seeking reelection. For me, public service is a noble calling, and I applaud each and every one who pursues it.

Everyone I have met over the years who aspired to public service shared one deep concern, and that was how to finance their campaign. I have served in the Finance Committees of many State and Federal office seekers of both parties and as treasurer of one presidential candidate. So I speak from experience. I think there are several problems inherent in the present private funding of our public elections.

First, the current campaign finance system, as you keep hearing today, forces good people to spend far too much time talking to a very narrow slice of our society, and at the

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expenses of focusing on the Nation's business. We have a system in which the people we elect are required to spend an enormous amount of time raising substantial sums of money, and it is now even more unsustainable. Even the most honest and honorable among us must recognize the conflicting and potentially corrupting incentives that are created by this system.

Second, campaigns have increasingly become a race for money as costs have escalated.

I will skip through because of the rush you are in, and I think I would be repetitive. But I do not think it is right that because I have succeeded in business I should have more to say in who gets elected. It violates our sense of fairness.

Under the Fair Elections Now Act, I will have the same ability to finance campaigns as anyone else. I will be able to make a seed contribution of \$100 and a qualifying contribution of \$5. More good people under this legislation will be able to seek office by doing the hard work of connecting with thousands of voters rather than for raising money from just those who can write significant checks, like myself.

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I like the idea that a candidate must demonstrate public support in order to qualify for public money and serve in office. The current system requires that candidates are vetted by those with money. Under public financing, candidates are vetted by voters.

I think many of you will say, publicly or privately, that fundraising is the worst part of your job or that you didn't go into public service to spend all your time on the telephone begging for money. Well, under this new act, the constant treadmill of fundraising ends.

Now, I know many of you have heard that I have made a significant number of contributions to both parties, but one in particular, \$500,000, to the DNC in 1996. What you may not know is the circumstance under which I made that donation. Ironically, I did this to hasten campaign finance reform. I designated my funds to candidates who would end the ability of people like me to give large contributions to political parties. My special interest was and is to get special interest money out of the political process, which indirectly costs taxpayers far more money than the costs of liberating the electoral process from the current system where lobbyists hold sway.

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Thomas Jefferson warned future generations that economic interests could overwhelm the political process. Sadly, the number of elected officials accused or convicted of abusing their public trust in recent years has given credence to his words and his concerns and in the process tarnished the image of Congress.

Fair elections would restore confidence in the system and tell all Americans they are equal participants in our democracy.

Thank you.

[The prepared statement of Mr. Hiatt follows:]

Chairman Feinstein. Thank you very much.

We have a vote in process Senator Durbin has gone to vote. I am going to recess now. We will reconvene. Senator Durbin will also come back to chair. We have a very big bill on the floor and an amendment that I am very much involved with having to do--CAFE is coming up this afternoon. I will need to talk to a few people. I would like to thank everybody that participated in this hearing. We will recess the Committee. Mr. Thomas, if you can have a little patience, we will get back to you.

Thank you.

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[Recess.]

Senator Durbin. [Presiding.] Let us reconvene. I apologize that this hearing has been so disjointed, and it reflects the number of roll call votes that we have had to make on the floor.

Thank you very much. Have you made your statement?

Mr. Thomas. I have not.

Senator Durbin. Please proceed. Thank you.

STATEMENT OF SCOTT E. THOMAS, DICKSTEIN SHAPIRO  
LLP, WASHINGTON, D.C.

Mr. Thomas. Thank you, Senator Durbin and members of the Committee. Before I get going, I would like to ask that my full statement be submitted for the record as corrected.

Senator Durbin. Without objection.

Mr. Thomas. I truly thank you for the opportunity to testify at this hearing. I appear today in my individual capacity. As the Chairman noted, I served 19 years as a Commissioner at the Federal Election Commission and was Chairman there several times. And I got to witness the development of the presidential public funding program, and I hope that today maybe I can bring up a few points that will be of assistance to the Committee in developing this

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legislation.

I would note there are some practical considerations. First, the Federal Election Commission will have to shoulder most of the burden for administering this new legislation. For example, it will have to audit 30 percent of the participating candidates. By my rough estimates, the FEC would need about \$1.5 million just to perform that function. So I would first really urge the Committee to be willing to ask the Federal Election Commission and the Federal Communications Commission what needs they will actually have to implement this legislation as it works its way along.

Second, one section of the bill makes most of the provisions effective January 1, 2008. I would just briefly note that the agencies in question will have to pass implementing regulations. They will have to develop the appropriate forms and the internal procedures to make this legislation work. And I just advise that it is going to be a tough chore for them to turn this around in time for the 2008 election, and I want to make sure the Committee carefully considers that.

Third, I heard some say this legislation might cost as much as, say, \$1 billion every 2 years to fund Senate



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campaigns. That would be the public funding payments plus the vouchers. The bill earmarks 10 percent of spectrum sale proceeds and imposes an annual 2-percent spectrum use fee on broadcasters' gross advertising revenue. And I am just envisioning that there will be some opposition coming from persons already eyeing use of the spectrum sale proceeds. Also, there will be a pushback from broadcasters regarding that 2-percent assessment on their revenues. The Committee certainly will be pressed to consider other funding alternatives, such as a straight appropriation based on anticipated program needs. I am just hoping that everybody in this process will maintain an open mind, using the term that the Chairman noted at the outset.

Now, there will be possibly some potential unintended consequences with this legislation. As has been discussed, the qualifying thresholds set by the legislation are not very burdensome, at least in my opinion. As has been noted, the formula would allow a candidate to qualify in California with 28,000 \$5 contributions and in Utah with 3,000 \$5 contributions. Meanwhile, for the primary alone in California, a candidate qualifying would be eligible for about \$5.7 million, and in Utah a qualifying candidate would

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be eligible for about \$700,000. That is a fairly attractive sum of money, and I would just urge the Committee to think carefully about whether the bill makes funding of so-called fringe candidates a little bit too easy. At a minimum, I urge that there be a very thorough review of the reasons that the thresholds were set where they are in the legislation so that everybody in this process--those opposed to the legislation and those against it--will be able to at least understand those calculations. I know there are careful thoughts that underlie the numbers as they were developed.

The bill offers fair-fight funds to candidates who are disadvantaged when facing so-called independent expenditures and electioneering communications on behalf of an opponent. But these legal terms of art depend on either so-called express advocacy or a reference to a clearly identified candidate. Clever strategists probably could avoid triggering the fair-fight funds for a participating candidate with an ad saying, for example, "Anyone arguing for our President is bad for America." Or, alternatively, "We can't stand another supporter of the Iraq war."

The Committee might want to consider ways to tighten

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the bill to ensure that the fair-fight fund provision is truly effective and reaches all of the kinds of communications that we are now seeing in modern campaigns.

Last, I will just talk a little bit about some of the considerations, the business and legal considerations that relate to the requirements imposed on broadcasters. There probably, as I alluded to, will be opposition to the requirement that broadcasters providing air time to candidates or to party committees do so at reduced, preemptible-time rates. The actual economic impact may be significant. Also, the broadcasting industry probably will resist establishment of a 2-percent spectrum use fee. My rough calculation is that this will amount to about \$1.3 billion per year as an assessment on the industry. I urge the Committee to work with broadcasters to develop an accurate assessment of how these changes would indeed affect their bottom line. Only with that kind of cooperation do I think you will be able to work toward a consensus.

Absent cooperation and successful negotiation with the broadcast industry, for example, I suspect that the legislation will generate contention and perhaps litigation. Historically, Congress has been very successful when

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imposing certain conditions in the public interest on those who are licensed to use the airwaves. But broadcasters could claim that the obligation to offer reduced rates to candidates and party committees improperly burdens their editorial function, their ability to decide who gets which air time in what format. And they would claim this was some violation of their First Amendment rights.

The broadcasting industry also might attempt to construct a Fifth Amendment takings argument regarding the pressures imposed to provide air time at preemptible rates and to provide an additional 20-percent discount to participating Senate candidates.

I only raise this suggestion to make sure that the Committee carefully calculates the likely opposition along these lines and the potential for litigation. I have to say I would not want to bet on the outcome of that litigation given the length of time it has been since the Court has considered these kinds of issues and the change in the current Court.

But I do hope the foregoing thoughts are helpful. I think this bill has much to commend, and my comments are intended to be constructive and not judgmental.

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I would be happy to try to answer any questions that you may have.

[The prepared statement of Mr. Thomas follows:]

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Senator Durbin. Mr. Thomas, thank you. And, again, thank you for your patience in waiting for me to return and resume and then adjourn this hearing. Let me just go through your points very quickly because I think they are all very important and very valid observations.

Yes, it will take more staff at the FEC, and perhaps at the Federal Communications Commission. You estimated \$1.5 million. Perhaps that is right. I think that is a worthy investment for the goal that we are trying to reach.

In terms of the effective date when this would apply, it was our hope that it would apply in the next selection cycle. It still is. But we would need to make dramatic progress for that to occur. Regardless, we want to continue to pursue this concept and this notion.

In terms of the overall cost of this, I don't think it is unreasonable. You talked about \$1 billion. We estimated somewhere in the range of \$300 to \$400 million for the Senate. The House, of course, has counterpart legislation that could run even more. So that is not beyond the realm of possibility and is consistent with numbers that are now being spent, I might add, in the current situation.

In terms of unintended consequences that you have

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talked about and the threshold for qualification, I will just concede for the record the numbers that we have proposed are not etched in stone. We are open to reasonable suggestions. I do not want to tilt too far one way or the other. I don't want to put out a number that no challenger has a chance to reach. And I certainly don't want a number so low that virtually any challenger has access to huge amounts of money to test the campaign waters at the expense of the Treasury.

In terms of independent expenditures, I think well said. Let's be careful how we do this, because if we are not careful, we could end up with the types of ads that you just described being used by very wily operators. We have seen it in the past.

In terms of the broadcasters themselves, I have not received a letter of endorsement for this legislation from the broadcast industry. I am not surprised by that. This would cost them a lot of money. There is no doubt about that. But let me also add very quickly, they make a fortune off candidates. You ought to see the numbers. Take a look at election years. I visited a television station in downstate Illinois, met the manager, October of the last

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election cycle, said, "How are you doing?" He said, "I am the luckiest man on Earth, and you know why?" I said, "Why?" He said, "My signal goes into Missouri. That Talent-McCaskill race, we have sold every minute of time on our television station. I am just sitting back now waiting for this to end, raking in the dough, and then my regular advertisers will return."

So the broadcast industry does quite well because we run across the street and make phone calls night and day begging for money to send to their stations. And to ask them to put some small part of that back into the system is not unreasonable.

I don't know about the arguments about the First Amendment. I will tell you that the takings argument I think--I would like to be on the other side defending this bill because lowest unit rate could be argued the same way, as a takings provision. And yet we have had that in the law quite a few years.

So you raise some very good points. Thank you very much for taking the time to take such a close look at the bill and sticking around to make your presentation, and I thank you very much for doing that.



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Mr. Thomas. My pleasure, Senator. Thank you.

Senator Durbin. Thank you.

If there is no further business, I would like to ask unanimous consent--and I doubt if there will be objection--to enter statements and letters in the record in support of the legislation that is being considered. And I would like to also ask consent that any statements, for or against, the legislation will be made a part of the record, the permanent record here.

[The information follows:]

/COMMITTEE INSERT

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Senator Durbin. Colleagues and members of the Committee may send written questions to those who were kind enough to testify, and I ask them to promptly return them, if they can.

And if there is no further business, I ask that the Committee stand adjourned. Thank you.

[Whereupon, at 12:23 p.m., the Committee was adjourned.]