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Testimony on S. 1091  
The Campaign Accountability Act of 2007  
U.S. Senate Committee on Rules  
April 18, 2007

Senator Feinstein, Senator Bennett and Members of the Committee:

Thank you for asking me to testify today on S. 1091, the bill introduced by Senators Corker and Bennett to remove the limits that current law places on spending by political parties when that spending is coordinated with a federal candidate. I request that my full statement be made part of the record so I may summarize here.

Three weeks ago Sen. Bennett offered this bill as an amendment to S. 223, the bill for Senate electronic disclosure. I want to take this opportunity publicly to thank Sen. Bennett for agreeing to separate the two issues and for becoming a co-sponsor of S.223 so the electronic disclosure bill could pass this committee unanimously on March 28. My understanding from staff is that the Democrats have cleared S. 223 for unanimous consent approval on the floor without amendment and I hope the Republicans will soon follow suit.

Before the committee met on March 28, I made it clear in a letter to the committee that I have long supported the thrust of S.1091. I also want to make it clear, as the letter did, that I am speaking on my own as a scholar who has written about this for more than thirty years. I say this because I am also executive director of the Campaign Finance Institute, a nonpartisan research institute, and Professor of Political Science at the State University of New York at Albany. CFI does not normally make recommendations without going through an elaborate process, typically involving bipartisan task forces, studies, and so forth, and CFI as an organization has not addressed this issue.

As members of this committee know, coordinated spending under the Federal Election Campaign Act is normally treated as a contribution. So the coordinating spending limit for parties can be viewed as a special, high contribution limit for the parties.

The question this bill raises is: why should there be any limits on a party's ability to help its candidates? The Supreme Court to date has upheld only one justification for contribution limits: namely, to restrain corruption or the appearance of corruption. In my view, there has been confusion in the corruption discussion between contributions going

into the party and spending coming out of them. Once you have contribution limits for *candidates*, it does make perfect sense to require limits on contributions *into the parties*, because without limits on the money going in, party contributions would become an easy end run for candidates to get unlimited help from a donor. However, once you do limit all contributions going in, party spending in another issue.

So after McCain-Feingold, why limit party spending? I never argued with Congress's *authority* here, but the wisdom of these limits has become particularly hard to defend after the Supreme Court's decisions in *Colorado-I* and *McConnell v. FEC*. In both cases, the Court said the parties have a constitutionally protected right to make unlimited *independent* expenditures using hard money. The question is: if unlimited independent spending is a given, why not allow unlimited coordinated spending?

To put the issue into a time perspective, I'd like to ask you to look briefly at a bar chart on party spending over the past decade. The chart is attached to the testimony, along with a table containing data for all of the Senate races in 2006. This chart shows that the role of the parties has changed fundamentally since 1994. In 1994 party money was made up entirely of contributions and coordinated spending amounting to a total of \$38 million.

In 1996, *Colorado-I* said parties could make unlimited expenditures, but that was also the year that parties discovered how to use unlimited soft money contributions for candidate-specific advertising. The major soft money years were 1996-2002. As you can see, party spending to support candidates soared from \$38 million in 1994 to \$216 million in 2002, with almost all of the spending in 2002 being attributed here to soft money.

What happened after soft money was banned? The contribution limit changed but the incentives did not. The parties were able to make up the lost soft money with hard money. As a result, the parties spent even *more* money to help their candidates in 2006, \$230 million. The bulk of the candidate support this time was for independent spending, which came to \$208 million. That was virtually identical to the amount of candidate-specific soft-money spending in 2002 (\$207.8 million).

In other words, what happened between 2002 and 2006 was that spending shifted from soft money to independent spending. Soft money had two characteristics. One was that it could be funded with unlimited contributions, including corporate and labor contributions. That was a problem. But the other characteristic was that the candidates could and did coordinate with the parties about soft money "issue ads". In fact, Dick Morris has written about Bill Clinton personally reviewing soft money ads in 1996.

Now that the contributions have been limited after BCRA, the question is whether candidates and parties should be able to work together on their election ads, as they used to do. I would say yes. Whether or not you like party spending, the bottom line is that you cannot constitutionally limit independent party spending. So the question is what form should party spending take? I think that once you have contributions under control, the more accountable spending is better. Candidates who run on a ballot under a party

label are the parties' candidates. They are not in fact or in law independent. Those party labels are still the most important cues voters use to help process information during a busy election season. It does the democratic process no good when we blur those lines by requiring the parties' messengers and the candidates to stay at arms length.

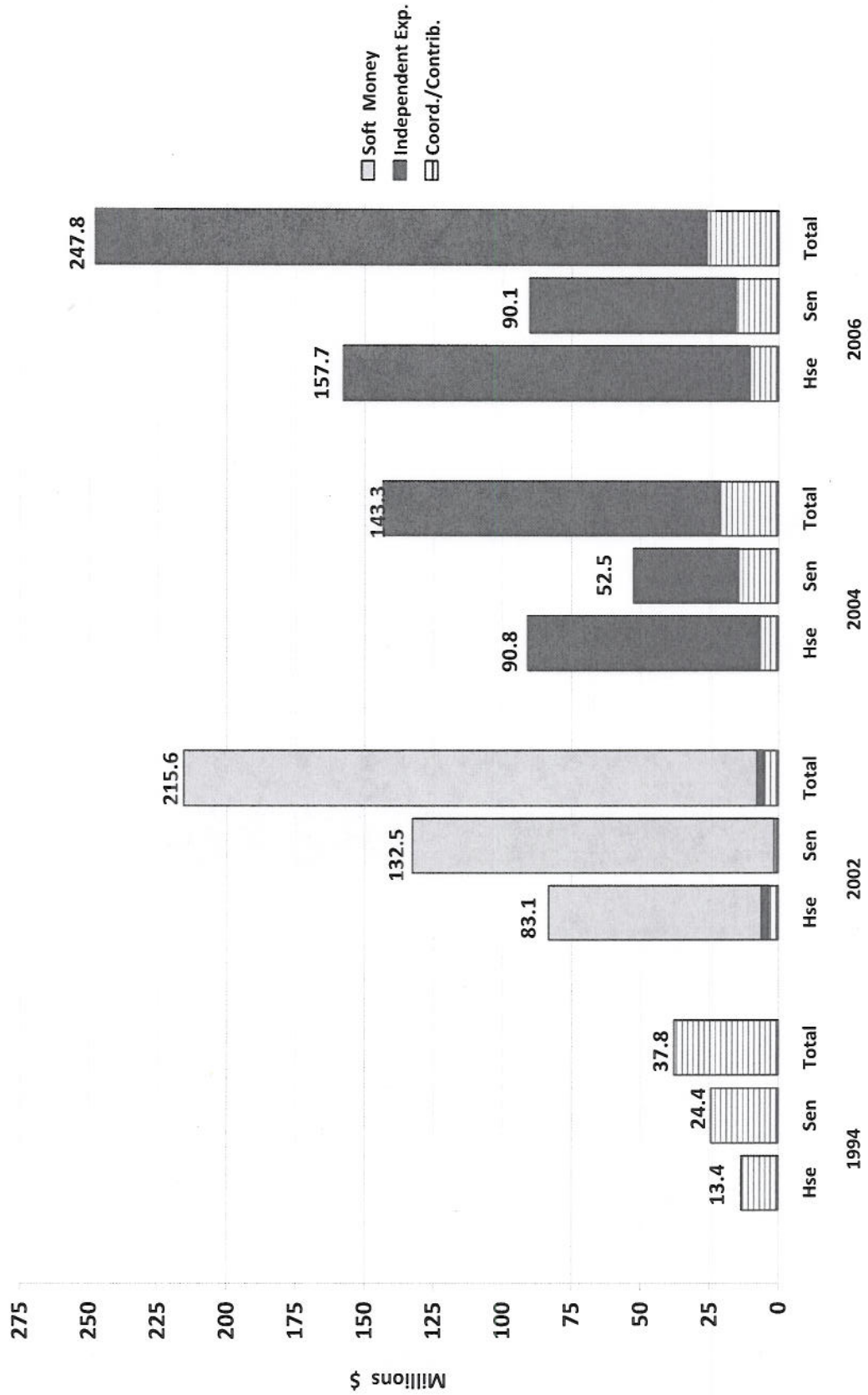
However, before you take this as a blanket endorsement of S.1091, two issues should be addressed. Call them the two P's: primaries and presidential candidates.

First: current law permits coordinated spending only for the general election. This bill would expand coordinated spending to primaries. That would give party leaders the power to bankroll a favored candidate not only in an open seat primary but also in a primary against a sitting member who was becoming too "independent". I recommend taking a hard look at that issue. The leaders have already become more powerful. Do you really want to take it this far?

Second: the presidential election poses special issues. Should candidates be able to accept more than \$80 million in public funds for the general election and still raise unlimited money for coordinated spending? It seems to me they should have to choose.

With that said, I would be pleased to answer your questions.

## Direct Party Support for House and Senate Candidates





## Senate Races 2006: Candidate Spending & Direct Party Support

State	Party	Name	Net Disbursements	Direct Party Support			Total
				Contributions	Coordinated	Independent	
AZ	REP	KYL, JON	15,571,727	0	606,264	0	606,264
	DEM	PEDERSON, JIM	14,703,074	37,300	23,128	1,012,684	1,073,112
CA	REP	MOUNTJOY, RICHARD L	195,265	0	0	0	0
	DEM	FEINSTEIN, DIANNE	8,030,489	0	0	0	0
CT	REP	SCHLESINGER, ALAN	204,113	0	0	0	0
	DEM	LAMONT, EDWARD M	20,614,353	0	62	0	62
	DEM	LIEBERMAN, JOSEPH I	17,210,710	0	0	0	0
DE	REP	TING, JAN	212,765	0	0	0	0
	DEM	CARPER, THOMAS R	2,632,478	0	0	0	0
FL	REP	HARRIS, KATHERINE	9,334,232	0	0	0	0
	DEM	NELSON, BILL	15,730,058	37,300	37,882	0	75,182
HI	REP	THIELEN, CYNTHIA H	356,413	0	0	0	0
	DEM	AKAKA, DANIEL K	2,651,026	37,300	155,197	0	192,497
IN	REP	LUGAR, RICHARD G	3,133,830				0
MA	REP	CHASE, KEN	853,730	0	0	0	0
	DEM	KENNEDY, EDWARD MOORE	7,043,052	0	0	0	0
MD	REP	STEELE, MICHAEL	8,217,260	37,000	661,935	1,394,933	2,093,868
	DEM	CARDIN, BENJAMIN L	8,676,056	37,300	0	2,492,102	2,529,402
ME	REP	SNOWE, OLYMPIA J	2,773,431	20,000	0	0	20,000
	DEM	HAY BRIGHT, JEAN M	126,823	0	0	0	0
MI	REP	BOUCHARD, MICHAEL J	5,998,148	30,000	1,170,588	0	1,200,588
	DEM	STABENOW, DEBBIE	11,220,506	37,300	1,127,872	849,205	2,014,377
MN	REP	KENNEDY, MARK RAYMOND	9,767,184	35,000	0	0	35,000
	DEM	KLOBUCHAR, AMY	9,155,313	37,300	235,472	0	272,772
MO	REP	TALENT, JAMES MATTHES	14,340,762	35,000	693,670	9,304,219	10,032,889
	DEM	MCCASKILL, CLAIRE	11,705,967	37,300	247,098	10,542,622	10,827,020
MS	REP	LOTT, TRENT	2,088,465	0	0	0	0
	DEM	FLEMING, ERIK ROBERT	38,495	0	0	0	0
MT	REP	BURNS, CONRAD	8,516,022	37,300	143,627	600,282	781,209
	DEM	TESTER, JON	5,588,292	37,300	9,509	3,621,395	3,668,204
ND	REP	GROTBERG, DWIGHT	259,081	0	0	0	0
	DEM	CONRAD, KENT	3,423,878	0	60,250	0	60,250
NE	REP	RICKETTS, PETE	13,417,690	0	0	0	0
	DEM	NELSON, E BENJAMIN	7,492,134	37,300	172,330	0	209,630
NJ	REP	KEAN, THOMAS H JR	7,718,442	35,000	1,000,000	4,067,420	5,102,420
	DEM	MENENDEZ, ROBERT	13,328,665	0	1,035,847	5,623,015	6,658,862
NM	REP	MCCULLOCH, ALLEN WILSON	555,511	0	0	0	0
	DEM	BINGAMAN, JEFF	2,628,276	0	184	0	184
NV	REP	ENSIGN, JOHN ERIC	4,452,778	0	0	0	0
	DEM	CARTER, JOHN WILLIAM	2,264,708	0	0	0	0
NY	REP	SPENCER, JOHN D	5,660,688	0	0	0	0
	DEM	CLINTON, HILLARY RODHAM	34,358,255	0	0	0	0
OH	REP	DEWINE, RICHARD MICHAEL	14,161,402	0	1,262,650	6,202,755	7,465,405
	DEM	BROWN, SHERROD	10,751,765	37,300	1,369,188	6,887,771	8,294,259
PA	REP	SANTORUM, RICHARD J	25,826,317	35,000	1,505,050	0	1,540,050
	DEM	CASEY, ROBERT P JR	17,580,212	0	171,246	0	171,246
RI	REP	CHAFEE, LINCOLN D	5,381,488	32,557	148,000	1,303,167	1,483,724
	DEM	WHITEHOUSE, SHELDON II	6,426,874	37,300	254	2,462,900	2,500,454
TN	REP	CORKER, ROBERT P JR	18,565,935	35,000	714,630	4,702,313	5,451,943
	DEM	FORD, HAROLD E JR	15,299,955	37,300	0	6,111,910	6,149,210
TX	REP	HUTCHISON, KAY BAILEY	5,682,346	0	0	0	0
	DEM	RADNOFSKY, BARBARA ANN	1,432,107	0	0	0	0
UT	REP	HATCH, ORRIN G	3,335,902	0	0	0	0
	DEM	ASHDOWN, PETER LYNN	255,734	0	0	0	0
VA	REP	ALLEN, GEORGE	16,069,064	37,300	884,270	3,892,835	4,814,405
	DEM	WEBB, JAMES H JR MR	8,558,861	37,300	904,849	6,569,040	7,511,189
VT	REP	TARRANT, RICHARD E	7,300,392	0	0	0	0

State	Party	Name	Net				Total
			Disbursements	Contributions	Coordinated	Independent	
	IND	SANDERS, BERNARD	6,004,222	37,300	10,000	0	47,300
WA	REP	MCGAVICK, MICHAEL SEAN	10,842,132	15,000	0	0	15,000
	DEM	<b>CANTWELL, MARIA</b>	14,010,432	37,300	20,597	0	57,897
WI	REP	LORGE, ROBERT GERALD	176,987	0	0	0	0
	DEM	<b>KOHL, HERB</b>	6,347,126	0	0	0	0
WV	REP	RAESE, JOHN REEVES	3,147,967	0	0	0	0
	DEM	<b>BYRD, ROBERT C</b>	4,944,546	37,300	129,095	0	166,395
WY	REP	<b>THOMAS, CRAIG</b>	1,291,723	0	0	0	0
	DEM	GROUTAGE, F DALE	141,164	0	0	0	0